Before Ajay Kumar Mittal & G.S. Sandhawalia, JJ.

MS. KARUNA —*Appellant*

versus

GOVERNMENT MEDICAL COLLEGE & HOSPITAL, CHANDIGARH AND OTHERS—**Respondents**

LPA No. 2142 of 2012

March 19, 2013

Letters Patent, 1919 - Cl.X - Medical Council of India Regulations - Graduate Medical Education Regulations, 1997 - Regl.5(5)(ii) - Appellant applied for Common Entrance Test , 2011 for admission in MBBS Course under Scheduled Caste Category -

(1) 2010 (3) RCR (Crl.) 912

Passed test & secured 39.16% marks - Selected in merit list prepared by Panjab University - Respondent No.1 granted admission to the Appellant - MCI sought clarification on certain issues including grant of admission to Appellant who secured lesser marks than the minimum prescribed percentage as per Regulations on Graduate Medical Education, 1997 - Board of Governors decided admission contrary to Regl. 5(5)(ii) of Graduate Medical Education Regulations - Respondent No.1 cancelled admission as Appellant not secured minimum percentage of marks i.e. 40% in CET - Writ Petition & LPA dismissed - Held that MCI governs professional institutions relating to medicine and regulation are thus required to be mandatorily following for seeking admission to MBBS course - No deviation or departures can be made in achieving minimum standards - Claim of appellants on basis of promissory estoppel would not entitle them to any advantage as MCI regulation rendered them ineligible for inclusion of the name in merit-list for consideration for admission to MBBS course and writ petition and LPA dismissed.

Held, that MCI governs the professional institutions relating to medicine. The MCI Regulations are thus required to be mandatorily followed for seeking admission to MBBS course. In terms of the statute and the regulations passed there under, the professional institutions are required to maintain minimum standards. No deviation or departures can be made in achieving those standards. In medical profession to acquire excellence, a very high calibre is required to be satisfied by the meritorious students. In such a situation, merit alone should be the basis of selection of the candidates. The professional education like medicine would not be able to absorb any candidate who does not obtain the minimum qualifying marks in terms of Regulation 4 of the MCI Regulations and at the same time, to maintain quality in the profession, the Common Entrance Test is also required to be cleared as mandated under Regulation 5 of the MCI Regulations. The prospectus issued by any University or College at variance with the MCI Regulation lowering the minimum required percentage either for qualifying examination or Common Entrance Test would not have any statutory force. Thus, being different on factual matrix involved therein, the appellants cannot derive any benefit from the judgment in Shri Krishan's case (supra).

(Para 20)

Further held, that equally, the claim of the appellants on the basis of promissory estoppel would not entitle them to derive any advantage by invoking the aforesaid principle primarily as not obtaining minimum percentage of marks in CET as prescribed in MCI Regulations had rendered them ineligible for inclusion of their names in the merit list for consideration for admission to MBBS course. By this method, the minimum requirement as prescribed under any regulation, rule or statute cannot be bypassed and no benefit can be urged on behalf of the appellants. Issues No.(a) and (b), thus stands answered accordingly.

(Para 21)

Further held, that though the motion Bench hearing the appeal on 20.12.2012 had allowed the appellants to attend classes and appear in the examination which was specifically with the condition that it shall not create any right in law or equity in their favour, in the writ petition as well similar interim order was passed. Thus, the appellants cannot claim any benefit either in equity or in law to continue their studies. A mistake or an error committed by the college or the University in publishing its prospectus contrary to MCI regulations would not clothe the student with any legal right for admission which would be capable of enforcement in a Court of law. At the same time, it shall be open for the students to claim suitable damages against the wrong doer in accordance with law. Further, the MCI shall also look into the matter and take appropriate corrective action against the Institute/University for the commission of such an error which has affectedthe career of the appellants.

(Para 35)

Aman Arora,Advocate for the appellant.

Vishal Sodhi,Advocate for respondent No.1.

Deepak Sibal, Advocate for respondent No.3.

AJAY KUMAR MITTAL, J.

(1) This order shall dispose of a bunch of three appeals bearing LPA Nos. 2142, 2147 and 2165 of 2012 as according to the learned counsel for the parties, similar issues are involved therein. For brevity, the facts are being extracted from CWP No. 2142 of 2012.

(2) In this appeal, the appellant has challenged the order dated 11.12.2012 passed by the learned Single Judge of this Court whereby CWP No. 7928 of 2012 filed by her was dismissed.

(3) Briefly stated, the relevant facts necessary for adjudication of the present appeal as narrated therein are that the appellant in the month of April, 2011 applied for competitive examination, namely, Common Entrance Test (CET) of 2011 for admission in MBBS Course under Scheduled Caste Category. The appellant passed the said CET by securing 39.16% marks and was selected in the merit list prepared by the Punjab University. Thereafter, the appellant obtained 2nd prospectus from respondent No.1 for admission to the MBBS Course. Respondent No.1 prepared 2nd merit list for admission to the MBBS Course to various candidates. In the merit list for SC Category, the appellant was at Serial No.7 and overall she was at Serial No. 99. On the basis of the 2nd merit list, respondent No.1 granted admission to the appellant to the course of MBBS by accepting fee vide receipt dated 13.7.2011 (Annexure P-4). Thereafter, the appellant started attending her classes w.e.f. 18.7.2011 and has been continuing till 25.4.2012. After a period of ten months of the attending of the classes by the appellant, respondent No.1 vide order dated 25.4.2012 (Annexure P-6) cancelled the admission in the MBBS Course on the ground that she had not secured minimum percentage of marks i.e. 40% in CET. The said order was passed on the basis of order dated 18.4.2012 (Annexure P-5) passed by respondent No.3. Feeling aggrieved, the appellant approached this Court by way of CWP No. 7928 of 2012.

(4) The said writ petition was contested by the respondents by filing separate written statements. Respondent No.1 in its written statement pleaded that it can only admit the students as per the guidelines laid down by the Medical Council of India (MCI) and had no power to overlook or ignore the guidelines so issued by the MCI. It further pleaded that order cancelling the admission of the appellant was pursuant to the directions issued by the MCI. Respondent No.3-MCI in its reply pleaded that the appellant appeared in the CET Examination under the category of Scheduled Caste and had scored 39.16% marks in Physics, Chemistry and Biology whereas as per the MCI Regulations, the minimum required percentage of marks in CET in the said three subjects is 40% for the students belonging to SC Category. It was further pleaded that once the admissions for

academic session 2011-12 were over, the MCI issued circular dated 29.9.2011 to all the Medical Colleges and Institutions to submit information regarding the admissions made by them in the MBBS Course in order to verify that all the admissions have been made on merit while complying with the statutory provisions. Respondent No.1 accordingly sent its communication dated 25.10.2011 to the MCI who vide communication dated 4.1.2012 sought clarification on certain issues including the admission of the appellant despite having scored lesser marks than the minimum prescribed percentage as per the Regulations on Graduate Medical Education, 1997. Thereafter, the MCI obtained legal opinion and the matter was placed before the Board of Governors. The Board of Governors decided that the admission of the appellant was contrary to Regulation 5(5)(ii) of the Graduate Medical Education Regulations and ordered that the appellant be discharged from the course. The said order was communicated to respondent No. 1 on 18.4.2012. Respondent No.1 accordingly discharged the appellant from the course of MBBS on 25.4.2012.

(5) Learned Single Judge vide order dated 11.12.2012 dismissed the writ petition. Hence, the present Letters Patent Appeal.

(6) Shri Aman Arora, learned counsel for the appellant submitted that on the basis of the prospectus (Annexure P-1) issued by Panjab University, the appellant was eligible as she fulfilled the following eligibility condition and the merit criteria enumerated therein:-

> "The eligibility criteria for admission to MBBS course for U.T. Pool, is as follows:-
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> The test shall be open to all candidates who
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> (a) Attain the age of 17 years on or before 31st December 2011
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> (b) Have passed 10+2 (12th class) examinations from Schools/ Colleges recognized by the Chandigarh Administration and situated in the UT of Chandigarh as regular students of the said Schools/Colleges. He/she should have passed in the subject of Physics, Chemistry, Biology and English individually, and must also have obtained a minimum of 50% marks in the aggregate

of Physics, Chemistry and Biology at 10+2 level in the first attempt. Admission will be based on Merit in CET. However, in the case of members of the Scheduled Castes, relaxation in marks not exceeding 10% shall be allowed,

Or

(c) Are due to appear in +2 (12th class) examination in March, 2011, but whose result has not been declared, the admission of such candidates to the test shall be provisional. It shall stand cancelled if they fail to pass qualifying examination securing the prescribed percentage of marks. Such candidates will not have any claim, whatsoever, with regard to their admission to the said course. Other eligibility conditions remain the same as in (b) above.

MERIT LISTS

(a) The University will publish CET merit lists of the candidates for the following combinations of subjects:

1. Legal and General Awareness
2. Tourism and Hotel Management
3. Physics, Chemistry and Biology, (Medical Merit)
4. Physics, Chemistry and Mathematics (PCM Merit)
5. Physics, Chemistry and Biotechnology
6. Physics, Chemistry and Computer Sciences
7. Mathematics only.,

(b) A candidate shall be included in a particular merit list on the basis of attainment of aminimum of 15% (cut off) aggregate of maximum marks in the test taken as a whole. Only in the case of candidates belonging to Scheduled Castes/Scheduled Tribes , this requirement will be a minimum attainment of 10% (cut off) aggregate of maximum marks in CET test. taken as a whole.

(c) Candidates scoring equal marks will be bracketed together. Their inter se merit will be determined at the time of interview/counselling by the concerned authority, as explained in the admission procedure.

(d) Admissions to various courses shall be made on the basis of merit lists prepared by the Panjab University."

(7) According to the learned counsel, the minimum percentage of mar s in the CET as given in the prospectus in case of general category was 15% whereas in the case of candidates belonging to Scheduled Castes/ Scheduled Tribes, it was 10%. Relying upon the judgment of the Hon'ble Apex Court in ***Shri Krishan*** versus ***The Kurukshetra University, Kurukshetra (1)***, it was contended that prospectus has a force of law and admission given on that basis could not have been cancelled later on. Doctrine of Estoppel was invoked to contend that MCI ought to have been vigilant and there was no fault on the part of the students. The appellants were fully eligible as per eligibility criteria prescribed in the prospectus as well as MCI guidelines and the CET was only for purposes of selection.

(8) Reference was made to Regulations 4 and 5 of MCI Regulations to contend that there existed difference between Regulation 4 and 5(2) thereof. Reliance was placed on the judgment reported in ***Rajan Purohit and others*** versus ***Rajasthan University of Health (2).***

(9) Equity was claimed on the plea that one year course has already been completed by relying upon ***Monika Ranka and others*** versus ***Medical Council of India and others (3), Deepa Thomas and others*** versus ***Medical Council of India and others (4)*** and ***Rajendra Prasad Mathur*** versus ***Karnataka University and another (5).*** Further, it was urged that observations in Dayanand Medical College was only obiter. Attention of the Court was also drawn towards the condition where NRI students were exempted from taking CET examination.

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(1) (1976) 1 SCC 311
(2) (2012) 10 SCC 770
(3) (2010) 10 SCC 233
(4) (2012) 3 SCC 430
(5) AIR 1986 SC 1448

(10) Mr. Harsh Aggarwal and Mr. B.B. Bagga, learned counsel for the appellants in other appeals also sought to draw support with reference to Regulations 4 and 5 of MCI Regulations. Support was also gathered from the following judgments:-

(a) ***Archana*** versus ***University of Mysore (6).***

(b) ***B.C. Chaturvedi*** versus ***Union of India and others (7).***

(11) On the other hand, controverting the aforesaid submissions, LPA No. 2142 of 2012 -8- Mr. Deepak Sibal submitted that Ms. Karuna and Vikram Singh had obtained 39.16% and 38.61%, respectively in the CET examination as against the minimum requirement of 40% whereas Ms. Sonia Sharma got 24.67% in CET examination as against 45% required for inclusion in the merit list for MBBS Course.

12.) Learned counsel contended that in case the admission to the appellants is allowed, the same would be in contravention of law which is not permissible. Learned counsel for the respondents urged that the minimum standards fixed by the MCI were required to be followed and placed reliance upon the following observations in ***State of Punjab*** versus ***Dayanand Medical College and Hospital and others (8) :***

> "17. It is clear that in respect of subjects other than Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Social and Preventive Medicine at least 40% of the marks will have to be obtained in order to be eligible for admission and in respect of other subjects there is no such condition at all. In the counter affidavit filed in the High Court, it is stated that the percentage of marks has been reduced below 40% for the basic subjects like Anatomy, Physiology and Pharmacology because the candidates of higher merit are not opting for these subjects and as such the postgraduate seats in Departments of Anatomy, Physiology and Pharmacology keep lying vacant and thus leading to an acute shortage of teachers in these Departments. Further, the condition of 50% marks in the entrance test was reduced to 40% because 80%

(6) ILR 1990 KAR 522
(7) 1995 (5) SLR 778
(8) (2001) 8 SCC 664

of the seats reserved for PCMS doctors remained unfilled because most of them could not secure 50% marks in PGET due to the fact that they do not get academic support in rural areas. It is submitted that the postgraduate entrance examination is held for those who have already passed in MBBS examination by securing at least 50% marks and, therefore, the candidates who had not secured 50% in the postgraduate entrance examination cannot be declared to be filled in MBBS. The lowering of the marks to less than 50% has the twin objective of safeguarding the interests of weaker sections of the Scheduled Castes and Backward classes and to meet the constitutional obligation. We are afraid, the approach of the State of Punjab in this regard results in stultifying the logic. What is contended is that suitable candidates are to be selected from amongst the eligible candidates and in that regard an entrance test is being held. When such an entrance test is held, a prescription has been made by the Medical Council of India fixing a standard in terms of Entry 66, List I of the Seventh Schedule to the Constitution and which cannot be diluted at all as has been held in a series of decisions including Dr. Preeti Srivastavas case, Dr.Narayan Sharma vs. Dr. Pankaj Kumar Lehkar and Medical Council of India vs. State of Karnataka. Therefore, it is not open to the University or the Government to dilute that standard by fixing marks lower than what is set out by Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly stated by this Court to be repository of the power to prescribe standards in Post Graduate studies subject, of course, to the control of the Central Government as envisaged in the Act constituting the Council.

18. What we have now to see is whether the action taken by the appellants is consistent with the prescription made by the Medical Council of India to the extent of obtaining 50% marks in the entrance examination and on that basis operate their rosters. If they do so and if the candidates, who have secured 50% marks, would be admitted,

no interference is called for in the matter. If, however, any of the students has secured less than 50% marks that admission alone will have to be cancelled and appropriate directions issued to select as against it another candidate belonging to the reserved category if there is a reserved category candidate who has secured such marks, and if no reserved category candidate is available, he must then be selected from the general category.

(19) We, therefore, find that the prescription made by the respondents reducing the minimum marks to 40% in the entrance examination for considering the eligibility of the candidates for admission to postgraduate medical courses and in respect of the basic subjects fixing no minimum standard is plainly in contravention of the Regulations framed by the Medical Council of India and that part of the notification will have to be ignored. If that is done and if the Regulations framed by the Medical Council of India are applied in toto, appropriate working will have to be made by the appellants as indicated, supra and the same will have to be given effect to."

(13) On the strength of judgments reported in ***A.P. Christians Medical Educational Society*** versus ***Government of Andhra Pradesh and another (9), CBSE and another*** versus ***P. Sunil Kumar and others (10)*** and ***Shri Morvi Sarvajanik Kelavni Mandal Sanchalit Mskm B.Ed. College*** versus ***National Council for Teachers' Education and others (11),*** the ground of equity as claimed by the appellant was stoutly opposed. Support was also drawn from para 5 of the judgment reported as ***Ahmedabad Municipal Corporation*** versus ***Virendra Kumar Jayanti Bhai Patel (12),*** which reads thus:-

"5. The second reasoning give by the tribunal in issuing direction to the Corporation for absorbing the respondent in its permanent service which was not touched upon by the High Court is that the case of the respondent requires sympathetic consideration, as presumably the respondent has been visiting the Corporation's Clinic since early seventies, remains to be considered. As noticed earlier, the recruitment

(9) (1986) 2 SCC 667
(10) (1998) 5 SCC 377
(11) (2012) 2 SCC 16
(12) 1997 (4) RSJ 19

of the doctors in the clinic run by the Corporation is made in accordance with the statutory rules and by no other method. Under the rules the vacancies are advertised for inviting applications from eligible candidates. After the applications are received the Selection Committee is constituted to select the candidates for appointment in the Corporation's clinic. Only after the candidates are selected they are taken in the service. It is also noticed earlier that respondent appeared before the Selection Committee but was not selected. Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. If the reasoning given by the tribunal is accepted, the statutory recruitment rules would become nugatory or otiose and the department can favour any person or appoint any person without following procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get any cache to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion. It is therefore not safe to bend the arms of law only for adjusting equity. We, therefore, find that the reasoning given by the tribunal that sympathy demands the absorption of the respondent in the service of the Corporation suffers from error of law."

(14) After hearing learned counsel for the parties, the following issues arise for consideration in these appeals:-

(a) Whether the MCI Regulations shall prevail and have precedence over the prospectus issued by the University/College?

(b) Whether the requirement of eligibility criteria would be sufficient for admission and non-fulfilment of the condition of Common Entrance Test would still entitle the appellants to retain their admission on the basis of doctrine of promissory estoppel?

(c) Whether in the facts and circumstances of the case, the appellants are entitled to the claim of equity in their favour?

(15) Taking up first and second issue together, as they overlap each other, it would be apposite to refer to Regulations 4 and 5 of the MCI Regulations. Regulation 4 of the MCI Regulations provides for eligibility criteria for admission to the medical course whereas Regulation 5 deals with selection of students to medical colleges on the basis of merit of the candidates. It read thus :-

> "4. Admission to the Medical Course- Eligibility **Criteria**: No Candidate shall be allowed to be admitted to the Medical Curriculum of first Bachelor of Medicine and Bachelor of surger (MBBS) Course until:
>
> (1) He/she shall complete the age of 17 years on or before 31st December, of the year admission to the MBBS course;
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> (2) He/she has passed qualifying examination as under:-
>
> (a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education; Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical Colleges;
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> or
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> (b) The intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject;
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> or
>
> (c) The pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary

school examination, or the pre-university or an equivalent examination. The preprofessional/pre-medical examination shall include a practical test in Physics, Chemistry and Biology and also English as a compulsory subject;

or

(d) The first year of the three years degree course of a recognized university, with Physics, chemistry and Biology including a practical test in three subjects provided the examination is a "University Examination" and candidate has passed 10+2 with English at a level not less than a core course;

or

(e) B.Sc. examination of an Indian University, provided that he/she has passed the B.Sc examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects – Physics, Chemistry, Biology and English.

Or

(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English.
Note:

The pre-medical course may be conducted either at Medical College or a Science College.

Marks obtained in Mathematics are not to be considered for admission to MBBS Course.

After the 10+2 course is introduced, the integrated courses should be abolished.

5. Selection of Students: The selection of students to medical college shall be based solely on merit of the candidate and for determination of the merit, the following criteria be adopted uniformly throughout the country;

(1) In states, having only one Medical College and one university board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

(2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examination conducted by different agencies;

(3) Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

(4) A competitive entrance examination is absolutely necessary in the cases of Institutions of All India character;

(5) Procedure for selection to MBBS course shall be as follows:-

(i) In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above;

(ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must

have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Caste, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under regulation 4."

(16) Regulation 4 of the MCI Regulation prescribes the eligibility criteria for admission to the medical course. According to it no candidate shall be allowed to be admitted to the MBBS course unless; (a) he/she has completed the age of 17 years on or before the 31st December of the year of admission to the MBBS course, and (b) he/she has passed the qualifying examination as stipulated therein.

(17) Regulation 5 of the MCI Regulations relates to selection of students to Medical Colleges on the basis of merit of the candidates. Various criteria have been prescribed for determination of merit which are required to be adopted uniformly throughout the country. Clauses (2) and 5(ii) of Regulation 5, are relevant for the purpose of decision of these appeals. Under clause (2) of Regulation 5, in the States where there are more than one University/Board/examining body conducting the qualifying examination, a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standard at qualifying examination conducted by different agencies. Clause (5)(ii) of Regulation 5, deals with cases where admission is to be made on the basis of competitive entrance examination under clauses) to (4) of Regulation 5 of the MCI Regulations. According to it, a candidate is required to pass subjects of Physics, Chemistry, Biology and English individually and must have obtained 50% marks taken together in Physics, Chemistry and Biology in the qualifying

examination as required under Clause 4(2) of these regulations. Additionally, their names must appear in the merit list prepared on the basis of competitive entrance test wherein marks in Physics, Chemistry and Biology taken together in the competitive examination should not be less than 50%. However, relaxation of 10% has been provided in respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes. In other words, where a candidate belongs to Scheduled Castes, Scheduled Tribes or Backward Classes, he or she would be required to obtain 40% instead of 50% marks in the subjects of Physics, Chemistry and Biology taken together in qualifying examination and also in competitive entrance examination.

(18) The Constitution Bench in ***Dr. Preeti Srivastava and another*** versus ***State of M.P. and others (13),*** emphasizing the requirement of prescribing standards in Institution for higher professional education and dealing with admission for MBBS courses has laid down that the Regulations of MCI laying down the standards of education for postgraduate medical courses have to be complied with. It was observed as under:-

> "55. We do not agree with this interpretation put on Section 20 of the Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that the Council may prescribe standards of post-graduate medical education for the guidance of universities. The second part of subsection(1) says that the Council may adviseuniversities in the matter of securing uniform standards for post-graduate medical education throughout. The last part of sub- section (1) enables the Central Government to constitute from amongst the members of the Council, a post-graduate medical education committee. The first part of sub-section(1) empowers the Council to prescribe standards of postgraduate medical education for the guidance of universities. Therefore, the universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by

(13) (1999) 7 SCC 120

a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will not be able to practice. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the Council. The postgraduate medical committee is also under Section 17, entitled to appoint medical inspectors to inspect any medical institution, college, hospital or other institution where medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any medical institution or university concerned in the manner provided in Section 19. Section 19A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than post-graduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of post-graduate medical education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. We, therefore, disagree with and overrule the finding given in Ajay Kumar v. State of Bihar, to the effect that the standards of postgraduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed."

(19) Similar view was expressed in ***State of Madhya Pradesh and others*** versus ***Gopal D. Tirthani and others (14)*** and ***Harish Verma*** versus ***Ajay Srivastava and another (15).***

(14) (2003) 7 SCC 83
(15) (2003) 8 SCC 69

(20) MCI governs the professional institutions relating to medicine. The MCI Regulations are thus required to be mandatorily followed for seeking admission to MBBS course. In terms of the statute and the regulations passed thereunder, the professional institutions are required to maintain minimum standards. No deviation or departures can be made in achieving those standards. In medical profession to acquire excellence, a very high calibre is required to be satisfied by the meritorious students. In such a situation, merit alone should be the basis of selection of the candidates. The professional education like medicine would not be able to absorb any candidate who does not obtain the minimum qualifying marks in terms of Regulation 4 of the MCI Regulations and at the same time, to maintain quality in the profession, the Common Entrance Test is also required to be cleared as mandated under Regulation 5 of the MCI Regulations. The prospectus issued by any University or College at variance with the MCI Regulation lowering the minimum required percentage either for qualifying examination or Common Entrance Test would not have any statutory force. Thus, being different on factual matrix involved therein, the appellants cannot derive any benefit from the judgment in **Shri Krishan's case (supra).**

(21) Equally, the claim of the appellants on the basis of promissory estoppel would not entitle them to derive any advantage by invoking the aforesaid principle primarily as not obtaining minimum percentage of marks in CET as prescribed in MCI Regulations had rendered them ineligible for inclusion of their names in the merit list for consideration for admission to MBBS course. By this method, the minimum requirement as prescribed under any regulation, rule or statute cannot be bypassed and no benefit can be urged on behalf of the appellants. Issues No.(a) and (b), thus stands answered accordingly.

(22) Adverting to third issue, it may be noticed that the standard of excellence has to be preserved and maintained. At higher level, more particularly in technical and professional institutions/courses, it would be the requirement of general consensus that the best is preferred avoiding mediocrity and annihilating quality. Particularly in professional institutions, passing of the CET and prescribing of minimum marks is a necessity to maintain quality, excellence and academic standards in the profession. This can be achieved by prescribing the minimum standards and qualifications that must be possessed

by candidates. In order to acquire excellence in medical profession in particular, a very high calibre is demanded which criterion can be fulfiled by the meritorious students alone. In order to produce good doctors, the merit alone should be the basis of selection for the candidates. The Apex Court in ***TMA Pai Foundation*** versus ***State of Karnataka (16),*** also in no uncertain terms said that merit would be the first criterion for imparting professional education. In other words, it has been clarified that merit and excellence assume special significance in the context of professional studies. In ***P.A. Inamdar*** versus ***State of Maharashtra and others (17),*** it has further been noted that "though merit and excellence are not anathema to non-professional education, yet at that level and due to the nature of education which is more general, the need for merit and excellence therein is not of the degree as is called for in the context of professional education." It has further been recorded that professional education should be made accessible on the criterion of merit and on nonexploitative terms to all eligible students on a uniform basis.

(23) A Three Judges Bench of the Hon'ble Apex Court in ***A.P. Christians Medical Educational Society*** versus ***Govt. of A.P. (18),*** observed as under:-

> "We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

(24) Relying upon this decision, in ***CBSE and another*** versus ***P. Sunil Kumar and others (19),*** the issue relating to proprietary to permit students to appear on sympathetic grounds was deprecated by the Hon'ble Apex Court in the following words:-

> "3. There is no dispute that the institution in which these students had pursued their studies have not yet received any affiliation from the Central Board of Secondary Education, who is the appellant in these

(16) (2002) 8 SCC 481
(17) (2005) 6 SCC 537
(18) (1986) 2 SCC 667
(19) (1998) 5 SCC 377

appeals. Under the bye-laws of the Board only regular students of affiliated schools with the Board are entitled to appear in the Secondary School Examination and the Senior Secondary School Examination conducted by the Board. Since the institutions in which the respondents - students have prosecuted their studies are admittedly not affiliated to the Board but the students have been allowed to appear at the examination pursuance to the interim direction of the court, which is in contravention of the Rules and Regulations of the Board, the question that arises for consideration is : whether the High Court was justified in issuing these impugned directions ? This question no longer remains res integra. This Court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularising the same by taking a sympathetic view of the matter. In the case of A.P. Christians Medical Educational Society v. Government of Andhra Pradesh and another, this Court held that the court will not be justified in issuing direction to the University to protect the interest of the students who had been admitted to the medical college in clear transgression of the provisions of the University Act and the regulations of the University. It was also observed that the court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law. In the case of the State of T.N.v. St. Joseph Teachers' Training Institute, this Court held that the direction of admitting students of unauthorised educational institutions and permitting them to appear at the examination has been looked with disfavour and the students of unrecognised institutions who are not legally entitled to appear at the examination conducted by the Education Department of the Government cannot be allowed to sit at the examination and the High Court committed error in granting permission to such students to appear at the public examination. All these cases were again considered by a three Judge Bench of this Court in the case of the State of Maharashtra v. Vikas Sahebrao Roundable and others, and it was held that the students of unrecognised and unauthorised educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognised

institutions. The Court ultimately struck down the direction issued by the High Court. In yet another case, Guru Nanak Dev University v. Parminder Kr. Bansal and others, another three Judge Bench of this Court interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing the MBBS examination. The Court observed: (SCC p. 403 para 7) "We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever ism left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates then 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."

(25) Similar view was expressed by the Hon'ble Apex Court in ***Regional Officer, CBSE*** versus ***Ku. Sheena Peeth Ambaran and others (20).***

(26) A three Judges Bench in ***Guru Nanak Dev University*** versus ***Parminder Kr. Bansal (21),*** relating to academic matters noted as follows:-

"We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial

(20) (2003) 7 SCC 719
(21) (1993) 4 SCC 401

discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. 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."

(27) In the case of ***Sunil Oraon (minor) through Guardian and others*** versus ***CBSE and others (22),*** it was recorded as under:-

"14. Now, we would refer to the law settled by this Court in various Judgments to the effect that interim orders of the nature passed in the present case are detrimental to education and its efficient management. As a matter of course, such interim orders should not be passed, as they are aberrations and it is subversive of academic discipline.

15. In Regional Officer, CBSE v. Sheena Pethambaran, this Court has observed: (SCC p. 724, para 6)

"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."

16. In C.B.S.E. and another v. P. Sunil Kumar, the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not entitled to appear in the

(22) (2006) 13 SCC 673

examination. They were, however, allowed to appear in the examination under the interim orders granted by the High Court. In that context the Supreme Court observed: (SCC p. 381, para 4)

> "4.... But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

17. In Guru Nanak Dev University v. Parminder Kr. Bansal, the Supreme Court observed that such interim order is subversive of academic discipline. The relevant observations are as under: (SCC p. 403, para 7)

> "1....We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, illconceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates ... The courts should not embarrass academic authorities by themselves taking over their functions."

18. Yet in another case i.e. in the case of A.R Christians Medical Educational Society vs. Govt. of A.P. this Court held that: (SCC p. 678, para 10)

> "We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

19. In State of Tamil Nadu v. St. Joseph Teacher's Training Institute this Court observed that the direction of admitting the students of unauthorized educational institutions and permitting them to appear at the examination has been looked on with disfavour and the students of unrecognised institutions who are not legally entitled to appear at the examination conducted by the Educational Department of the Government cannot be allowed to sit at the examination and the High Court committed an error in granting permission to such students to appear at the public examination.

20. In Central Board of Secondary Education v. Nikhil Gulati, this Court deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future.

21. In Krishna Priya Ganguly v. University of Lucknow, the Supreme Court observed: (SCC p. 310, para 3)

> "3..... whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted 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."

22. In State of Maharashtra v. Vikas Sahebrao Roundale, it was held that the students of unrecognized and unauthorized educational institutions could not have been permitted by the High Court on a writ Petition being filed to appear in the examination and to be accommodated in recognized institutions. This Court observed: (SCC p. 439, para 12)

> "12.... Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education."

(28) In all fairness, adverting to the judgments relied upon by learned counsel for the appellants, it may be noticed that in **Monika Ranka's case (supra)**, the Hon'ble Apex Court while maintaining the

judgment of the High Court that the admission of the students was illegal and irregular and their studies were directed to be terminated, in the facts and circumstances therein, held that as a special case, they were allowed to continue with their studies. Thus, it was in exercise of power vested under Article 142 of the Constitution that the appellants therein were allowed to continue studies.

(29) In **Deepa Thomas and others v. Medical Council of India and others**, while holding that irregular admissions were made by the Colleges in violation of MCI regulations, exercising its power under Article 142 of the Constitution of India, the Hon'ble Apex Court granted equitable relief as the students therein had continued studies for 4½ years and the prospectus of medical colleges were also approved by Statutory State Admission Supervisory Committee.

(30) In **Rajan Purohit and others v. Rajasthan University of Health Science and others**, the Hon'ble Supreme Court held that the 117 students who had been admitted to the MBBS course in the College as there was violation of Clause (2) of Regulation 5 of the MCI Regulations, however, in exercise of power under Article 142 of the Constitution of India, their admission should not be disturbed.

(31) In **Rajendra Prasad Mathur's** case (supra), the students therein were admitted in some colleges and had been pursuing course for four years under orders of the High Court and the Supreme Court. In the peculiar facts of the case, the Supreme Court allowed them to continue their studies.

(32) Hon'ble Supreme Court in **B.C.Chaturvedi's** case (supra) opined that though there was not any provision parallel to Article 142 of the Constitution relating to the High Courts, that cannot be taken as a ground to think that they have not to do complete justice and wherever required the relief should be moulded to do complete justice between the parties though it may not be as wide which the Supreme Court has under Article 142 of the Constitution.

(33) Karnataka High Court in **Archana's** case (supra) noticed that just as the Supreme Court, the High Court also in exercise of its jurisdiction under Article 226 of the Constitution can do equity and the decision of the

Supreme Court in matters of equity if applies to the facts of a particular case, becomes a binding precedent.

(34) The cases relied upon by learned counsel for the appellants being exceptional on their own facts as noticed hereinbefore would not entitle them to pursue the medical studies as the requirement under Regulation 5(5)(ii) of MCI Regulations does not stand fulfilled. Defining the scope of Article 142 of the Constitution of India, the Hon'ble Apex Court in ***A.B. Bhaskara Rao*** versus ***Inspector of Police, CBI, Vishakapatnam (23),*** after referring to various Constitution Bench judgments noticed as under:-

> "Speaking for the Bench one of us - (Dr. Justice B.S. Chauhan) referred to more than fifty decisions including the Constitution Bench judgments. The relevant paras, which are useful, may be quoted: (Manish Goel case SCC pp. 398-401, paras 11-18)
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> > "11. We are fully alive of the fact that this Court has been exercising the power under Article 142 of the Constitution for dissolution of marriage where the Court finds that marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. Decree of divorce has been granted to put quietus to all litigations between the parties and to save them from further agony, as it is evident from the judgments in Romesh Chander v. Savitri, Kanchan Devi v. Promod Kumar Mittal, Anita Sabharwal v. Anil Sabharwal, Ashok Hurra v. Rupa Bipin Zaveri, Kiran v. Sharad Dutt, Swati Verma v. Rajan Verma, Harpit Singh Anand v. State of W.B., Jimmy Sudarshan Purohit v. Sudarshan Sharad Purohit, Durga Prasanna Tripathy v. Arundhati Tripathy, Naveen Kohli v. Neelu Kohli, Sanghamitra Ghosh v. Kajal Kumar Ghosh, Rishikesh Sharma v. Saroj Sharma, Samar Ghosh v. Jaya Ghosh and Satish Sitole v. Ganga. However, these are the cases, where this Court came to rescue the parties on the ground for divorce not provided for by the legislature in the statute.

(23) (2011) 10 SCC 259

> 12. In Anjana Kishore v. Puneet Kishore, this Court while allowing a transfer petition directed the court concerned to decide the case of divorce by mutual consent, ignoring the statutory requirement of moving the motion after expiry of the period of six months under Section 13-B(2) of the Act. In Anil Kumar Jain, this Court held that an order of waiving the statutory requirements can be passed only by this Court in exercise of its powers under Article 142 of the Constitution. The said power is not vested with any other court.

13. However, we have also noticed various judgments of this Court taking a contrary view to the effect that in case the legal ground for grant of divorce is missing, exercising such power tantamounts to legislation and thus transgression of the powers of the legislature, which is not permissible in law (vide Chetan Dass v. Kamla Devi and Vishnu Dutt Sharma v. Manju Sharma.

14. Generally, no court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide State of Punjab v. Renuka Singla, State of U.P. v. Harish Chandra, Union of India v. Kirloskar Pneumatic Co. Ltd, University of Allahabad v. Dr. Anand Prakash Mishra and Karnataka SRTC v. Ashrafulla Khan).

15. A Constitution Bench of this Court in Prem Chand Garg v. Excise Commr. AIR 1963 SC 996 held as under: (AIR p. 1002, para 12)

> '12. ... An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws.'

The Constitution Benches of this Court in Supreme Court Bar Assn. v. Union of India and E.S.P. Rajaram v. Union of India held that under Article 142 of the Constitution, this Court cannot altogether

ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure.

16. Similar view has been reiterated in A.R. Antulay v. R.S. Nayak, Bonkya v. State of Maharashtra, Common Cause v. Union of India , M.S. Ahlawat v. State of Haryana, M.C. Mehta v. Kamal Nath, State of Punjab v. Rajesh Syal , Govt. of W.B. v. Tarun K. Roy, Textile Labour Assn. v. Official Liquidator, State of Karnataka v. Ameerbi, Union of India v. Shardindu and Bharat Sewa Sansthan v. U.P. Electronics Corpn. Ltd.

17. In Teri Oat Estates (P) Ltd. v. UT, Chandigarh this Court held as under: (SCC p. 144, para 36)

> 36. ... sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. ... despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.'

18. In Laxmidas Morarji v. Behrose Darab Madan, while dealing with the provisions of Article 142 of the Constitution, this Court has held as under: (SCC p. 433, para 25)

'25. ... The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory

enactments pertaining to the case. The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties."

(35) Though the motion Bench hearing the appeal on 20.12.2012 had allowed the appellants to attend classes and appear in the examination which was specifically with the condition that it shall not create any right in law or equity in their favour, in the writ petition as well similar interim order was passed. Thus, the appellants cannot claim any benefit either in equity or in law to continue their studies. A mistake or an error committed by the college or the University in publishing its prospectus contrary to MCI regulations would not clothe the student with any legal right for admission which would be capable of enforcement in a Court of law. At the same time, it shall be open for the students to claim suitable damages against the wrong doer in accordance with law. Further, the MCI shall also look into the matter and take appropriate corrective action against the Institute/ University for the commission of such an error which has affected the career of the appellants. 36. With the above observations, finding no merit in the appeals, the same are dismissed.

A. Jain