M.M.DAS, J.

W.P.(C) Nos. 10733,16444,16445,16446,16447,
16448 &16449/2009(Decided on29.03.2010)

PRINCIPAL, KALINGA INSTITUTE OF MEDICAL SCIENCES (KIMS), PATIA, BBSR & ORS. …….. Petitioner

.Vrs.

STATE OF ORISSA & ORS ……Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART.226.

For Opp. Parties - Addl. Government Advocate (For O.P.No.1).M/s. T.N.Patnaik &S.Patnaik (For O.P 2.) M/s. R.C.Mohanty & K.C. Swain.B.Sahu, A.K.Mishra (For OPP1&2) M/s. R.K.Dash, P.K.Tripathy & S.Pattanaik (For O.P.4)

For petitioners- Mr. Ramesh Ch. Rout.(In WPC Nos. 16444 to 16449)

For opp. Parties- Addl. Govt. Advocate (For O.Ps. 1 and 2 M/s. R.K.Dash, P.K. Tripathy & S.Pattanayak. (For O.P.No.3) M/s. R.C.Mohanty & K.C.Swain (For O.P.No.5) Mr. T.N.Pattanaik (For O.P. No.4)

M.M. DAS, J. W.P.(C) No. 10733 of 2009 has been filed by the Principal, Kalinga Institute of Medical Sciences (for short, 'the KIMS') and W.P. (C) Nos. 16444, 16445, 16446, 16447, 16448 and 16449 of 2009 have been filed by six petitioners - students of the said institution, who have been asked to be discharged from the M.B.B.S. Course , 2008-09.

2. The brief facts leading to the case are that the six petitioners-students appeared in the Orissa Joint Entrance Examination, 2008. Being selected to take admission in M.B.B.S. Course and being allotted the Medical College, i.e., the KIMS, they took admission in the said college and continued to study M.B.B.S. Course and were due to appear in the Ist Year M.B.B.S. Examination in the month of July, 2009, but were not permitted by the Utkal University to appear in the said examination in view of the letter dated 23.3.2009 of the Medical Council of India (for short, 'the M.C.I.') addressed to the Principal, KIMS, copy of which was endorsed to the Registrar, Utkal University and the authorities of the State.

Be it mentioned here that by an interim order passed by this Court, the said six petitioners-students were permitted to appear in the Ist Year M.B.B.S. Second Semester Examination, 2009 and thereafter, are continuing to prosecute the said course.

3. Learned counsel for the petitioners contended that the ground on which the M.C.I. has sought for discharge of the said six petitioners-students from the M.B.B.S. Course is that the petitioners – student, under the M.C.I. Regulation 5(5)(ii) of the Graduate Medical Education, 1997, were not eligible to be given admission to M.B.B. S. Course as they did not secure 50% marks in the Orissa Joint Entrance Examination. The six

petitioners - students were admitted in the seats reserved for AIPMT. Learned counsel further submitted that in the Information Brochure for the Orissa Joint Entrance Examination, 2008 published by the Chairman, J.E.E. 2008, which were given to the candidates for their information, under Clause 4.2, prescribed the eligibility of candidates for admission to Ist Year Medical Stream (M.B.B.S. and B.D.S.), that the candidate should have passed in 10+2 or has appeared in 2008 Examination of C.H.S.E., Orissa or any equivalent examination with Physics, Chemistry and Biology having at least 50% marks in the aggregate for the said subjects for general category candidates and 40% marks for Scheduled Caste/Schedule Tribe candidates. It was never prescribed in the said brochure that a candidate in order to be eligible to get admission to Ist Year Medical Stream should obtain a minimum of 50% marks in the Joint entrance Examination. The six petitioners - students being duly selected in the Joint Entrance Examination and offered with the chance of admission, they were admitted in the KIMS and, hence, after completing the Ist year course, they could not have been debarred by the Utkal University from appearing in the Second
Semester M.B.B.S. Examination basing on the letter of the M.C.I. The M.C.I., if found fault with the process of admission of the six petitioners - students, should have taken immediate steps before the said six petitioners - students took admission to the said course and since the M.C.I. has failed to take such action and the six– petitioners - students have continued to prosecute the M.B.B.S. Course, as such, the order for their discharge from the position stands irretrievable. It was, therefore, contended that for no fault of the six petitioners - students, they cannot be debarred from prosecuting the M.B.B.S. Course at this belated stage.

4. Counter affidavits have been filed by the M.C.I. and the Orissa J.E.E. The State, however, has chosen not to file any return to the writ petitions. The M.C.I. in its counter affidavit has referred to various decisions of the apex Court and has, inter alia, pleaded that the primary responsibility for giving admission to the students in the medical courses in accordance with the directions issued by the Hon'ble Apex Court from time to time squarely lies with the competent designated admitting authorities of the State/Universities. The M.C.I. is required to ensure that the admissions in all the medical courses by the competent State authorities are made within the annual intake capacity sanctioned to each of the medical colleges by the M.C.I. within the time schedule fixed in accordance with the directions of the Supreme Court. Further, such admission is required to be made strictly in accordance with law. Reference has been made to the decision in the case of ***State of Kerala v. T.P. Roshna*** (1979) SCC 560, wherein, the Supreme Court held that the Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. The Medical Council of India has power to prescribe the minimum standards of medical education and it has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions so as to prevent sub-standard entrance qualifications for medical course.

5. Section 33 of the Medical Council Act, 1956 has empowered the M.C.I. to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for imparting medicine course with prior approval of the Central Government. Further, reference has been made to the case of ***P.A. Inamdar*** v***. State of Maharashtra***, (2005) 6 SCC 537, wherein the Supreme Court has laid down that Committee for monitoring admission procedure and determining fee structure are permissible as regulatory measures aimed at protecting the interests of student community and such Committee shall continue until a suitable legislation or regulation is framed subject, however, to stipulation that the decisions of the Committee being

quasi judicial in nature would always be subject to judicial review. Further, in the counter affidavit, the
decision in the case of ***Krishna Priya Ganguli v. University Lucknow,*** (1984) 1 SCC 307 has also been referred, wherein the Supreme Court was examining the judgment of the Allahabad High Court in writ petitions filed by unsuccessful candidates, who could not get admission in the P.G. Medicine Course. In the said case, the Supreme Court has held that the High Court under Article 226 of the Constitution cannot ignore the rules framed by the Admissions Committee nor can it device its own criterion for admission.

6. Regulation 5 (5) of the M.C.I. Graduate Medical Education Regulation, 1997 reads as follows:

> "…… 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 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. 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.
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> (ii) In case of admission on the basis of competitive entrance examination under clause (2) and (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 schedule castes, scheduled Tribes or other backward classes the marks obtained in Physics, Chemistry and Biology taken together in qualification examination and competitive entrance examination be 40% instead of 50% as stated above.
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> 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 fulfills the eligibility criteria under regulation 4."

7. Reliance has also been placed in the case of ***Medical Council of India v. State of Karnataka and others*** (1998) 6 SCC 131 in support of the contention of the M.C.I. that the regulations framed by the M.C.I. are binding and mandatory and in relation to the conduct of Medicine Course, the Regulation framed by the Universities etc. so far as they are inconsistent with the Acts and the Regulation made by the M.C.I. are repugnant by virtue of Article 254 of the Constitution of India inasmuch as the Act is relatable to List I, Schedule - VII of the Constitution of India. This ratio is also reaffirmed by the Constitution Bench of the Supreme Court in the case of ***Dr. Preeti Srivastava v. State of Madhya Pradesh and others,*** (1997) 7 SCC 120. In substance, the M.C.I. has directed discharge of six students – petitioners, who have not secured 50% marks in the Joint Entrance Examination, 2008.

8. Now referring to the counter affidavit filed on behalf of the J.E.E. Committee, 2008, it is seen that the Chairman in the said affidavit has stated that the J.E.E. Examination was held in the year 2008, which published the result and prepared the merit list of the candidate as per their performance in the examination and conducted the counselling/admission of the candidates commensurating to their merit rank in the merit list where-after, the functions of the said Committee came to an end. It is further stated that the Policy Planning Body (for short, 'the P.P.B.') has been constituted by the State, which is a statutory committee as per section 3 of the Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 (for short, 'the Act 2007') . The aforesaid Act, 2007 was legislated by the Orissa Legislative Assembly basing on the decision of the Supreme Court in the case of P.A. Inamdar (supra).

9. Section 3 of the Act, 2007 provides the method of admission for all professional educational educations. The aforesaid enactment was challenged before this Court in W.P. (C) No. 2446 of 2007 and other connected writ petitions, wherein this Court declared the said enactment as ultra vires by its judgment dated 18.5.2007. The State has filed a Special Leave Petition against the said judgment which is pending before the Supreme Court. The Supreme Court in its interim order dated 1.6.2007 and 16.5.2008 directed the State Government to keep the Act in force except section 4(1), 4(2), 4(4) and 6(1), 6(2) and 6(3), which were stayed subject to stipulations provided in the said order. The P.P.B. is the statutory body, which is to recommend the modalities for conducting the examination and counselling/admission as approved by the Government of Orissa in its Industries Department. The modalities/procedures were mentioned in the information brochure J.E.E. 2008 which was published by the Chairman, J.E.E. 2008 as per the recommendation of the P.P.B. and approved by the State Government and were provided to the candidates for their information.

In clause - 4.2, the eligibility of the candidates for admission to Ist Year Medical Stream (M.B.B.S. and B.D.S.) was prescribed. According to the said clause, a candidate would be eligible to take admission to the said course if he has passed 10+2 examination conducted by the C.H.S.E. or equivalent examination with Physics, Chemistry and Biology and has obtained 50% marks in the said subjects if he belongs to general category and 40% marks if he belongs to Scheduled Caste/Scheduled Tribe community. Since there was no provision in the information brochure informing the candidates that they are to obtain minimum 50% marks in case of general candidates and 40% of marks in case of S.C./S.T. candidates in the entrance examination in order to be placed in the merit list, the same was not implemented by the J.E.E. Committee, 2008 and the six students-petitioners have already been given admission and have been prosecuting their study and, as such, they should not be disturbed.

10. It is not disputed that under the Regulation framed by the M.C.I. which is a statutory regulation and has been held to be mandatory by the apex Court, a candidate to get admission to the medical stream is required to obtain 50% minimum marks in the entrance test if he is a general candidate and 40% of marks in case of S.C./S.T. candidate. But such fact was lost sight of and was omitted to be mentioned in the information brochure, which was recommended by the P.P.B. and approved by the Government. Hence, the J.E.E. Committee, which owes its existence to the P.P.B. cannot be faulted with for omitting to mention such a condition in the information brochure. No reason is also assigned by the M.C.I. as to why the M.C.I. in order to supervise and regulate Medical Courses in the country came out with the letter under Annexure-3 after more than a year from the date when the six students-petitioners were admitted to the M.B.B.S. Course and not earlier.

11. The State Government, however, has chosen not to file any return in this case and thereby, nothing is brought before this Court as to why the aforesaid condition with

regard to minimum percentage of marks to be obtained in the Joint Entrance Examination as per regulation of the M.C.I. was not followed or was omitted in the information brochure and approved by it in the year 2008. It is also strange that as submitted before this Court in the Joint Entrance Examination, 2009 also such a condition was omitted from the information brochure and the candidates, as per the merit list published by the J.E.E. 2009 have also been given admission to the medical stream in different colleges of the State including the Government and private. Many of such candidates might have secured less than the minimum percentage of marks in the J.E.E. as per the regulation of the M.C.I. Hence, it is clear that if the action taken by the M.C.I. with regard to the six petitioner- students in the present writ petitions, is to be repeated

in case of all such students in all the medical colleges of the State for the year 2008-09, a chaotic situation would be inevitable. This Court, therefore, is called upon to examine as to whether the principle of estoppel can be made applicable in the facts of the present case, even though it is a well known principle of law that there is no estoppel against a Statute.

12. Estoppel is a rule of evidence and the general rule of estoppel is enacted in section 115 of the Evidence Act, 1872 which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

13. It is also well known that estoppel is a product of an equitable doctrine. In the case of ***Lachoo Mal v. Radhe Shyam*** (1971) 1 SCC 619, the Supreme Court held that everyone has a right to waive and to agree to waive the advantage of law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public policy.

In the case of ***M/s. Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and others,*** AIR 1979 SC 621, this issue has been dealt with by the Supreme Court. In the said case, where a representation was made by the State Government that the petitioners' factory would be exempted from payment of sales tax for a period of three years from the date of commencement of production, it was proved that the petitioners had, as a consequence of the representation, set up the factory in the State, but the State Government refused to honour its representation and claimed sales tax for the period, it had said that it would not. The Government took the plea that in the absence of notification under section 4-A, the State Government could not be prevented from enforcing the liability to sale tax imposed on the petitioners under the provisions of the Sales Tax Act; that the petitioners had waived their right to claim exemption; and that there could be no promissory estoppel against the State Government so as to prevent it from formulating and implementing its policies in public interest.

14. The Supreme Court rejected all the three pleas of the Government and reiterated the well-known preconditions for the operation of the doctrine of estoppel. It was observed that the Government is equally susceptible to the operation of the doctrine in whatever area or field the promise is made – contractual, administrative or statutory and the Supreme Court held as follows:-

> "The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the

instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution……..."

The Supreme Court placing reliance upon large number of judgments held that it is not necessary that by altering the position by the promisee, he must have some detriment to his position. Thus, a person raising the plea of promissory estoppel does not have to establish that he suffers from any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise, meaning thereby that the promisee must have led to act differently from what he would otherwise have done. It is not a detriment but a benefit to him which he could have received on acting upon the promise made by the other side.

In the case of ***State of Orissa and others v. Manglam Timber Products Ltd.*** (2004) 1 SCC 139, the Supreme Court has held that the statutory authority making a promise cannot be permitted to take the benefit of its own mistake and back out from the promise made by it if the other side has acted upon it. The Court held as under:

"……..To attract the applicability of the principle of estoppel, it is not necessary that there must be a contract in writing entered into between the parties. We are not satisfied even prima facie that it was
a case of an error committed by the State Government of which it was not aware. The State of Orissa should have, while holding out the representation, taken into consideration the fact – who will have to do the replantation and that the permission of the Government of India would be needed for the purpose. The State cannot take advantage of its own omission……."

The aforesaid principle was built upon in the case of ***Union of India v. Anglo Afghan Agencies,*** AIR 1968 SC 718, where it was said:-

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen….."

15. It is naïve to state that as already discussed, estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. (See ***Indira Bai v. Nand Kishore***, AIR 1991 SC 1055).

16. No doubt, estoppel does not lie against Statute, nor the Court has a power to issue any direction contrary to law, as has been reiterated by the Supreme Court in the case of ***Jit Ram Shiv Kumar v. State of Haryana and others***, AIR 1988 SC 1285, ***Bengal Iron Corporation v. Commercial Taxes Officer and others***, AIR 1993 SC 2414, ***Chandra Prakash Tiwari v. Shakuntala Shukla,*** AIR 2002 SC 2322 and ***I.T.C. Ltd. v. Person Incharge, AMC, Kakinada and others***, AIR 2004 SC 1796.

17. Applying the ratio of the aforesaid decisions and the settled position of law to the facts of the present case, where it is found that admittedly, the Policy Planning Body of the State constituted under the Act, 2007 while framing the information brochure for information of the candidates who were to appear in the Joint Entrance Examination of the year 2008 for taking admission into the medical courses, have omitted to mention the Regulation framed by the M.C.I. that a candidate is required to secure minimum

50% marks in the Joint Entrance Examination for being eligible to take admission to such medical courses. The petitioners having been duly selected in the Joint Entrance Examination were offered admission and they have taken admission to MBBS Course and prosecuting their study for the last more than one year. Had the above Regulation been adhered to by the Policy Planning Body and the Joint Entrance Examination Committee constituted by the said body for the year 2008, the petitioners would not have been selected and would not have changed their position by taking admission into MBBS Course. In the event, the cancellation of their admission to such course is upheld, the petitioners-students would be thrown into a lurch for no fault of theirs. It, therefore, appears that even though the doctrine of estoppel does not apply to the facts of the case in a strict sense, but the same is a product of an equitable doctrine and the Joint Entrance Examination Committee which became defunct after completion of Joint Entrance Examination 2008, being non-existent, cannot cancel the admission given to the petitioners. The M.C.I. also cannot direct the Principal, KIMS for discharging the six petitioners – students from MBBS Course at this belated stage. Though it was open for the M.C.I. to take up the matter with the State Government immediately after the information brochure was published/distributed to the students before the Joint Entrance Examination, 2008 was held, which could have prevented the petitioners – students from changing their position to their detriment, but no such steps were taken. In almost similar facts involved in this case, the Supreme Court in the case of ***A.Sudha v. University of Mysore and another***, AIR 1987 SC 2305, finding that the facts were similar to a previous judgment of the said court, in the case of ***Rajendra Prasad Mathur v. Karnataka University and another,*** AIR 1986 1448 held as follows:-

> "We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur Universities was recognized as equivalent to the pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would, therefore, notwithstanding the view taken by

us in this judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission. But we do feel that against the erring

Engineering Colleges the Karnataka University should take appropriate action because the managements of these Engineering Colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the Engineering Degree Course. We also endorse the directions given by the learned Judge in the penultimate paragraph of his judgment with a view to preventing admission of ineligible students".

18. Considering all these aspects and applying the law as laid down by the apex Court to the facts of the present case, it is inevitable to conclude that the petitioners – students in W.P.(C) Nos. 16444, 16445, 16446, 16447, 16448 and 16449 of 2009 should not be discharged from their seats and their admission to M.B.B.S. Course should not be treated to have been cancelled. The said orders under Annexures-5 in W.P.(C) Nos. 16444, 16445, 16446, 16447, 16448 and 16449 of 2009 stand quashed. The petitioners - students shall be permitted to continue to prosecute the M.B.B.S. Course and the Utkal University shall also allow them to appear in the University examinations. Since the petitioners – students have already appeared in the second semester examination of Ist M.B.B.S. Course, the Utkal University shall declare their results as early as possible preferably within three weeks hence, if the result of such examination is already declared in respect of other examinees.

19. In the result, the writ petitions are allowed, but in the circumstances, without any cost.

Writ petitions allowed.