

*** THE HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA
AND
THE HON'BLE SRI JUSTICE DAMA SESHADRI NAIDU**

**+ W.A.No.1305 of 2013 and
W.P.Nos.22553, 22561, 22542, 23005, 23255, 23267, 23394, 23406, 23407,
23412, 23452, 23490, 23494, 23502, 22602, 22617, 22622, 23632, 22699,
22724, 22753, 24812, 23026, 23072, 23160, 23293, 23294, 23302, 23411,
23577, 23596, 23621, 23813, 23823, 3997, 24143, 24136, 24144, 24484,
24518, 24861, 25349, 25400, 25756, 25065, 23262, 23606, 22555 and 26919
of 2013**

% 30.09.2013

Tummuri Jalandhari

..... APPELLANT

AND

The Government of A.P., rep. by its Principal Secretary,
Health Medical and Family Welfare Department,
Secretariat Buildings, Hyderabad
and others

.....RESPONDENTS

! Counsel for the petitioners : Sri G.Simhadri

^ Counsel for respondent No.1 : Government Pleader
for Health Medical and Family Welfare
Department

Counsel for respondent No.2 : Sri A.Prabhakar Rao

Counsel for respondent No.3 : Sri Challa Gunaranjan

Counsel for respondent No.5 : Sri Ch.Pushyam Kiran

< Gist:

> Head Note:

? Cases referred:

1. 2013(8) SCC 99
2. (2005) 6 SCC 536
3. (2002) 8 SCC 481
4. (2003) 6 SCC 697
5. (1992) 3 SCC 666
6. (1993) 1 SCC 645

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and 26919 of 2013

- **COMMON ORDER:**

- **Preface:**

- Every academic year, after a scorching summer of the examinations comes the monsoon of admissions, burgeoning forth litigation in abundance, this year being no exception. The seasonal litigation at times repeats itself in cycles within the same year. The State by invoking its legislative powers, and the Constitutional Courts, at the state levels and the Apex, by issuing judicial directives time and again, have made and have been making efforts to stem the rot of exploitation in the process of admissions. The ingenious methods adopted by the parties to this saga being inexhaustible, it calls for repeated legislative and judicial measures on an annual basis.

- **Back Ground:**

- Looking at the background of the present litigation, it is to be seen that in the last week of July, 2013, a batch of writ petitions came to be filed by various students aspiring admission into Undergraduate Medical Courses run by different private colleges alleging that the private medical colleges had not been receiving/rejecting their applications for admission into C-category M.B.B.S. seats, contrary to the regulations set out G.O.Ms.No.136, Health, Medical, Family Welfare (E1) Department, dated 30.04.2007 and G.O.Ms.No.144, Health, Medical, Family Welfare (E1) Department, dated 15.07.2009, as illegal, arbitrary, etc. They have also sought a consequential direction to the respondents to

consider their candidature for the admission into M.B.B.S. Course for the academic year 2013-14 against Category - C (Management seats) in those private medical colleges based on merit, in a transparent manner as per regulations contained in the G.Os., referred to above. A learned single Judge, through an order dated 26.07.2013, disposed of all the miscellaneous petitions in those writ petitions with certain directions.

2. The learned single Judge, *inter alia*, directed all the private medical colleges (1) to arrange the names of the candidates from whom they have received valid applications up to 5-00 p.m. on 25.07.2013 in the descending order of the merit, and (2) to grant provisional admission on the basis of the said order of merit. Insofar as the University of Health Sciences is concerned, it was directed to approve the admissions of all such candidates, whose applications are received by the colleges concern, which are found to be in order and grant them and convey the necessary approval immediately and that the said approval shall be communicated to each of the colleges latest by 30.07.2013 so that the selected and approved candidates shall report and join the respective colleges latest by 12 noon on 31.07.2013. The order dated 26.07.2013 further directs the University of Health Sciences to communicate the approval of a waiting list of the next 15 meritorious candidates to the respective colleges concerned by 12 noon on 31.07.2013, so that the candidates in the descending order of the merit in the wait list can be offered the seats.

3. The private medical colleges have undertaken the admission process for the academic year 2012-13, essentially based the directions given by the learned single Judge in the order dated 26.07.2013 passed in W.P.No.20657 of 2013 and the batch, by way of disposal of miscellaneous petitions therein, as well as the guidelines contained in G.O.Ms.No.136 Health, Medical, Family Welfare (E1) Department, dated 30.04.2007 and G.O.Ms.No.97 Health, Medical and

Family Welfare (E1) Department, dated 06.07.2013, through which the Government has effected certain modifications to G.O.Ms.No.136 dated 30.04.2007.

4. Yet again, complaining various irregularities in the process of admissions by the private medical colleges, many students have filed another batch of writ petitions, and they are the subject matter of the present adjudication. It may further be noted that from among the earlier batch of writ petitions i.e., W.P.No.20657 of 2013 and the batch, in which the learned single Judge gave directions through an order dated 26.07.2013, writ petitioners in W.P.No.21594 of 2013 chose to file W.A.No.1305 of 2013 assailing the supposed inadequacy of the directions by the learned single Judge in the interim order dated 26.07.2013. As a division bench is required to deal with the intra-court appeal, the batch of writ petitions has also been tagged to the said writ appeal and they are required to be dealt with by us under this common order, in view of the identity of the issues and substantial factual conformity of the writ petitions.

5. To begin with, recently the Apex Court in ***Women's Education Trust and another v. State of Haryana and others***^[1] has dealt with the issue of parcelling out batch cases under a common order, without paying due regard to the variations in the pleadings. Accordingly, a conscious effort has been made to set out separately, the pleadings of those writ petitions which have substantial factual variation calling for separate adjudication. In any event, almost all the writ petitions have commonality on the core issues, the variations being only peripheral. With this prefatory statement, we set out to examine the rival pleadings and issues involved therein.

Case of the Writ Petitioners:

WP No.22561 of 2013:

6. We have taken W.P.No.22561 of 2013, from among the batch, as the leading case for discussion, since this writ petition encompasses almost all the grievances of the petitioners in the batch. That apart, the learned Senior Counsel, Sri C.V.Mohan Reddy, has led the arguments based on this writ petition, albeit covering the other writ petitions as well. Incidentally, all the other counsel appearing for the rest of the petitioners in the batch have adopted the same submissions. Even the arguments on the part of the private medical colleges were led by the learned counsel appearing for the 4th respondent in this writ petition. By making certain supplementary submissions, the rest of the counsel for the private medical colleges in the batch have adopted the same submissions.

Petitioners' plea:

7. All the four petitioners in W.P.No.22561 of 2013 questioned the action of the 4th respondent in completing the interview process on 27.07.2013 for admission into Management Quota Seats (Category-C(1)) in Undergraduate Medical and Dental Courses for the academic year 2013-14 without preparing and displaying the merit list as required under G.O.Ms.No.136 (Health, Medical and Family Welfare (E1) Department), dated 30.04.2007, as amended by G.O.Ms.No.97, dated 06.07.2013, and the order dated 26.07.2013 passed in W.P.No.20657 of 2013 and batch, as arbitrary and illegal, apart from being in violation of the principles of natural justice. The petitioners have sought a consequential direction to the 2nd respondent, i.e., Dr. N.T.R. University of Health Sciences, Vijayawada, not to finalise the merit list forwarded to it by the medical college (Respondent No.4). They have also sought a further direction to the private medical college to conduct interviews again after preparing the merit list and displaying the same in its website. Essentially, they have insisted that the process of admission must be transparent and are to be purely based on merit.

8. Expatiating on their grievances, the petitioners have pleaded that the 1st respondent-State framed the Andhra Pradesh Unaided Non-minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007 (Rules, 2007) in consequence to the judgment of the Supreme Court of India in ***P.A. Inamdar & Ors. State of Maharashtra & Ors.***^[2], that under the said Rules, three categories of seats were notified, that the third category i.e., Category-C, gives liberty for the management of the private medical colleges to have admissions on their own, but in a transparent manner with an emphasis on merit, that the private medical colleges are required to follow the guidelines obtained in the Rules 2007 as modified by G.O.Ms.No.97 dated 06.07.2013. The petitioners have further averred that to fill up the seats, the individual colleges are required to issue notification in two newspapers, make provision for the students to download the application forms from the website of the college and also to obtain them directly, that the college shall prepare a merit list of all the candidates, whose applications were received by the college, only then will the interviews be conducted by the college to prevent multiple blocking of the seats, that the merit list so prepared by the college shall be displayed on a notice board of the college and also on its website, that the 2nd respondent University shall verify the merit list and grant approval, that the said approved list shall be prominently displayed both on the notice board and on the website, and that no college can conduct an interview without preparing and communicating the merit list.

9. The petitioners allege that, at the very beginning, the college was not inclined to issue applications, which forced the petitioners to file W.P.No.20657 of 2013 and obtain necessary orders, that though on receipt of the applications, the 4th respondent displayed

a notification on its website on 27.07.2013 intimating the date of interviews, that the respondent college falsely gave an impression that the notice was uploaded to the website on 26.07.2013 itself intimating that all the candidates should attend interviews by 2-00 p.m. on 27.07.2013, thus hardly giving about three hours' time for the petitioners to secure all the necessary documents the respondent college has required the candidates to produce, as a precondition, at the time of interview, such as bank guarantee for an amount of Rs.22 lakhs. The whole attitude of the respondent college is deplorable, as it tried every conceivable means to prevent the meritorious students from securing the admissions, so that their own chosen candidates could be accommodated. It is further alleged that the 4th respondent college has finished its interview process in an illegal and arbitrary manner without prior notice to the petitioners and without following the orders of this Court and also the relevant rules, and that the entire process of admissions has been vitiated, resulting in deprivation of educational opportunities to the petitioners, i.e., to pursue an undergraduate course in medicine.

4th Respondent - College's Defence:

10. Apart from denying the allegations set out by the petitioners, the 4th respondent has pleaded that it has followed the admission process scrupulously, initially by issuing a paper notification dated 11.07.2013 in New Indian Express and Andhra Prabha calling for applications for filling up the seats in C-1 and C-2 Management Quotas, notifying the admissions, that along with the application form, detailed instructions were issued to the students as regards the enclosures to be submitted for treating the said applications as valid, that a broacher was also furnished to the students along with the application form, that it was specifically stated in the brochures that in the event of the students finding place in the merit list, they would be obligated to pay the first year tuition fee and

also provide a bank guarantee equivalent to the amount of fee for the remainder of course, that such a measure is necessary to protect the interest of the college, lest the students should leave the course of study in midway, rendering the seats vacant.

11. The 4th respondent has further pleaded that it issued 70 applications by hand and 954 applications were downloaded from the website, that as against the said 1024 applications, the 4th respondent received 168 applications under C-1 category, that in compliance with the orders of this court, dated 26.07.2013, the college prepared a preliminary list of candidates in the descending order of merit and displayed the same on the notice board of the college on 26.07.2013, requiring all the students, who have applied, to appear for interview along with necessary documents in original on 27.07.2013 from 2-00 p.m. to 5-00 p.m., that the interview date and time were uploaded to the college website on 26.07.2013 at 6-15 p.m., that it is in addition to displaying the information in the college notice board, that on 27.07.2013 the final merit list was sent to the 2nd respondent University for approval on 28.07.2013, that the merit list, as approved by the University, was displayed on the college notice board and also uploaded to the website on the forenoon of 30.07.2013, and that by the afternoon of 31.07.2013, the respondent college completed the admission of 37 candidates in order of merit. It is further stated that classes have commenced from 01.08.2013.

12. Specifically advertng to the allegations of the petitioners, it is stated by the respondent College that though the petitioners appeared for the interview on 27.07.2013, they were not considered for the reasons that (i) original certificates were shown, but on insistence they were returned, (ii) study bonds not submitted, (iii) service bonds not submitted, (iv) undertaking to pay the fee for remaining years of study in case of discontinuing the course was not submitted, (v) affidavit of the parent as to awareness of law pertaining to Ragging

and also that his ward would not indulge in ragging, etc., was not submitted, (vi) affidavit of the candidate as to awareness of law pertaining to Ragging and also not to indulge in ragging etc., was not submitted, (vii) D.D. for 1st year tuition fee not submitted, and (viii) bank guarantee for four years not submitted.

13. The respondent college has further stated that in the face of non-production of the essential documents, the candidature of the petitioners could not be considered, as otherwise, it would result in blocking of seats without any ascertainment as to the *bona fides* of the petitioners to take admission in the respondent college, that by acceding to the request of the petitioners, if the mandatory requirement are dispensed with, it would deprive the college entry of meritorious students later on, and that this would also disable the institution from securing the fee for the entire course, which is the only source of sustenance. The respondent college has further pleaded that it is entitled to fair degree of autonomy in the matter of admissions, subject to compliance with the norms of merit, transparency and non-exploitative process.

2nd Respondent – University's Plea:

14. The respondent University has elaborately set out in its counter the procedure to be followed by the private medical colleges in admitting the student to the first year Undergraduate Courses. It has further stated that it has duly communicated the procedure to all the colleges concerned for the academic year 2013-14, that in compliance with the directions of this Court in its order dated 26.07.2013 in W.P.No.20657 of 2013 and the batch, the University has verified the applications of the certificates enclosed along with the applications forwarded by the respondent college to ascertain as to whether the candidates in the merit list prepared by the respondent college satisfy the eligibility criteria prescribed in Rule 3 of Rules 2007, that since the

merit list forwarded by the 4th respondent college was in order, the University approved the admission of 52 candidates and communicated the approval to the college on 30.07.2013 and that it has also displayed the approved list in the website of the University. It has also been stated by the respondent University that the 4th respondent has communicated to it the reasons for non-inclusion of the petitioners in W.P.No.22561 of 2013.

15. Based on the above rival pleas and the documents annexed therewith, the counsel for the respective parties have lead their oral submissions.

Oral submissions of the petitioners:

Oral submissions on behalf of the petitioners in W.P. No.22561 of 2013.

16. The learned Senior Counsel Sri C.V.Mohan Reddy passionately urged on the part of petitioners/students that the petitioners are highly meritorious having secured 96.33%, 95.13% and 92.4% respectively in the Intermediate Public Examination, and that they would have been placed at 8, 13 and 22 in the final admission list, had the respondent college followed the procedure and the directions issued by the learned single Judge in the order dated 26.07.2013 scrupulously. The learned Senior Counsel submitted that the admission of all three petitioners was denied by the 4th respondent college on very flimsy, untenable and absolutely lame grounds, especially in clear violation of Rules of 2007, as well as the directions given by the learned single Judge in Order dated 26.07.2013. He has further submitted that the rules have been more honoured in their breach than in observance. The 2nd respondent is stated to have turned a blind eye to the travails of the aspiring students and it has remained a mute spectator, though the respondent college has taken recourse to abuse of process with impunity. The learned senior

counsel stated that there was no effective communication of the merit list, and that the list was antedated and displayed inconspicuously.

17. Drawing our attention to the ratio laid down by the Constitutional Benches of the Supreme Court in ***T.M.A. Pai Foundation & Ors vs State Of Karnataka & Ors.***^[3], ***Islamic Academy of Education and Anr. v. State of Karnataka and Ors.***^[4] and ***Inamdar*** case (2 supra), the learned Senior Counsel has laid stress on the fact that the admissions ought to be transparent, merit based, non-exploitative and without capitation fee. He has submitted that G.O.Ms.No.97 (Health, Medical and Family Welfare (E1) Department), dated 06.07.2013 has categorized the 3rd division i.e., C-category into C (1) and C (2) with a total intake of 40% of seats. Concerning the admissions under C (1) category i.e., Management quota with 25% of seats, the learned Senior Counsel has submitted that the Rules 2007 have specified an elaborate admission procedure, beginning with issuing of applications and culminating with closing of the admissions after securing the necessary approval from the 2nd respondent/ University.

18. The learned Senior Counsel has stressed that the students have faced hurdles and hardship at every stage as the managements of the private colleges have unscrupulously prevented the students even from obtaining the applications, not to speak of the fairness in the admission process. Though the colleges were supposed to display the names of the shortlisted candidates on the web, the colleges did not choose to do so with an oblique motive. He has further submitted that colleges are situated far away from the city, and that, given the fact that most of the students have applied to different colleges, the Management has scuttled their efforts by providing them inadequate time to face the interview and also by fixing the same date for interviews across the board for all the private

colleges. It is urged that evidently the private colleges have acted in concert and have frustrated the efforts of the meritorious students in securing proper admission.

19. The learned Senior Counsel has pointedly drawn our attention to the fact that the display on the notice board and also on the web, and the notice of intimation of date of interview were antedated and the same could be verified from the log data of the websites. He has further submitted that the intimation was posted on the website on 26.07.2013 at 11.00 a.m., though the intimation was dated 26.07.2013, that hardly three hours' time was given for the petitioners to reach the colleges to appear for the interviews, and that the management has insisted on production of documents as a pre-condition for admission, knowing fully well that those documents are not essential and that they could not be obtained within a short span of time.

20. The learned Senior Counsel has further submitted that it is ludicrous on the part of the management to expect the students to produce a document like bank guarantee within matters of hours, when it would take a minimum of 3 to 5 days with all diligence to secure it from the banks. Drawing our attention to the check list taken aid of by the management at the time of admission, the learned Senior Counsel has pointed out that most of the documents, non-production of which has been cited as a reason for refusal of admission, have not been part of the check list and thus they are non-essential.

21. The learned Senior Counsel has further contended that what was displayed was only the intimation as to the date and time of interview, but not the names of the candidates whose names have been short listed for the interview and it was done with the sole objective of denying the admission to the meritorious students. Even taking into account the deadline set out by the Medical Council of India for the completion of admission process to the Undergraduate Medical

Course, the private colleges ought to have given sufficient time, at least 2 to 3 days for the students to appear for the interview after the publication of the merit list and it ought to have given an opportunity to the petitioners to produce all other documents, such as bank guarantee, at a later point of time, i.e., after confirmation of their admission.

22. It is the contention of the learned Senior Counsel that the Rules, 2007 have nowhere mandated that the students should produce all the documents, especially those based on which the admission was denied to the petitioners, at the very stage of admission, that 4th respondent has contradicted itself by stating in their counter affidavit that items 6, 12 and 11 in the check list were not produced by the petitioners, when their own documents, namely, the check list, indicates that they were duly produced by the petitioners. In essence, the learned Senior Counsel has submitted that the 4th respondent college has made a mockery of the admission procedure and has effectively prevented the meritorious students from securing admissions into M.B.B.S. Course, which is without justification.

Oral submissions of the petitioners:

Oral submissions on behalf of the 4th Respondent in W.P. No.22561 of 2013.

23. Sri M. Ravindranath Reddy, the learned counsel appearing for Sri G.Madhusudhan Reddy, learned counsel for the 4th respondent, has taken us through parts of affidavit filed by the petitioners in support of the writ petition and contra distinguished those allegations with the averments made in the counter affidavit filed by the respondent/college. The learned counsel has submitted that the respondent college has followed the procedure as laid down in the Rules of 2007 and also the directions given by the learned Single Judge in order dated 26.07.2013 meticulously, ensuring that no

meritorious student was deprived of an admission. He has submitted that the course of action adopted by the respondent college should be viewed in the face of stiff time limit stipulated by the learned Single Judge in Order dated 26.07.2013. Having not objected to the time frame given in Order dated 26.07.2013, the petitioners are estopped from making a grievance out of it.

24. Adverting to the issue of not publishing the merit list on the web before the interviews, the learned counsel has submitted that it is not a requirement either under Rules of 2007 or in the directions given in Order dated 26.07.2013. The requirement was to publish only the final merit list after the interviews and it was accordingly complied with. The learned counsel, chronologically speaking, has stressed that 16.07.2013 was the last date for receiving the applications, but later it was extended till 25.07.2013, with a direction by this Court to complete the admission process by 25.07.2013, that the Management had to operate against the severe time constraint, and that within that given timeframe, it completed the admission process by following the procedure.

25. The learned counsel has strenuously contended that the arguments about antedating of the intimation about the interviews and posting the same on web the next date are without any basis. The learned counsel refers to Para 5 of the Counter affidavit and submits that the respondent/college has gone an extra mile and taken meticulous care by ensuring effective communication to the successful candidates about the date of interview and also the final list of shortlisted candidates by way of publication, though it is not a mandatory requirement. Placing further reliance on statistical data, the learned counsel has submitted that there are 28 private colleges in the State having seats of 2800, that 2200 fall under Category-A, that 950 seats fall under Category-B and that only 570 seats fall under Category-C. As such, it is fallacious to contend though the petitioners

are very meritorious, they have been deprived admission into medical course. Only those students who could not secure admission under A and B Categories alone applied under Category-C and it cannot be said that they stand at the higher rung of the merit for admission.

26. The learned counsel has laid much stress on the attitude of the petitioners in applying to all the private colleges in the State and making efforts to hop from one college to another, without committing themselves to any one college for admission. He has illustratively submitted that precisely for this reason the petitioners were not willing even to keep the original certificates with the college and that they had insisted on taking them back, so that they could approach other colleges. The regulations are very specific to discourage any blocking of seats and it is high time for the Government to limit the number of colleges a student could apply to.

27. On the part of the medical colleges, the learned counsel Mr. Ravindranath Reddy has submitted a tabulated form with the reasons for rejection and the procedure followed during the course of admission. With reference to various writ petitions, the tabulated form has more or less uniform grounds of rejection. These writ petitions are W.P.Nos.23406 of 2013, 23262 of 2013, 23494 of 2013, 23452 of 2013, 23502 of 2013, 23160 of 2013, 23411 of 2013, 23621 of 2013, 24143 of 2013, 24136 of 2013, 25756 of 2013.

28. For some of the respondent medical colleges in the batch, Sri D.V.Seetharama Murthy, the learned Senior Counsel, adopted the submissions made by the learned counsel Sri Ravindranath Reddy earlier, and has further submitted that the approach of the respondents colleges has passed the triple test of transparency, strict adherence to merit and non-exploitative approach. The petitioners-students have brought the present situation of exclusion upon themselves by adopting a watch and wait method in order to secure admission in

colleges of their choice. They have never committed themselves to any particular college, but applied to many colleges and went about hopping from one college to another. Precisely for this reason, none of them has submitted the requisite documents and has not remitted the requisite fee as well. The learned senior counsel has been candid in his submissions by saying that the managements of the medical colleges may not be paragons of virtue, but have only had the choice of the students within the permissible limits of the Rules 2007. Though the notification was published on 10.07.2013 inviting applications from the prospective students, and though they had all along been aware of the conditions stipulated, none of them agitated until the eleventh hour, but only after facing the interview, they rushed to the Court with untenable pleas.

29. Sri S. Sriram, the learned counsel appearing for the respondent-colleges in W.P.Nos.24484 and 25400 of 2013, has submitted that since most of the students have secured marks in the higher margins of 90%, merit has literally been marginalized and the repeated insistence of the petitioners' counsel that meritorious students were shut out of the process could not hold any water. Insofar as the supposed wait and watch method of the students as canvassed by the learned Senior Counsel Sri D.V.Sitharama Murthy, the learned counsel Sri S. Sriram has also reiterated the same and has further gone on to submit that the issues cannot be decided on emotions. Alluding to the practical issues of commercialisation, he has submitted that here the issue is not merit alone, but something beyond it. The management, apart from complying with the regulations, has to survive only on the fee that is collected from C-category students, lest the institutional expenses concerning the other students under A & B categories should not be met. He has strenuously submitted that, along with applications, brochures were given by the management containing the regulations and that all those brochures and other

supplementary material provided to the students along with the applications have very expressively indicated the manner of admissions and also the documentary requirements, apart from other compliances.

30. The learned counsel has submitted that, though many students have rushed to the court even before the date was announced for issuing the applications alleging that applications were not issued, none of the petitioners chose to question the regulations or the conditions stipulated by the colleges for admissions before this court, despite having come to know of them and despite having ample time. He has submitted that none of the documents required by the colleges is irrelevant; on the contrary, they are very much essential to establish the *bona fides* of the students in selecting the college. It is also stipulated in the applications that any non-compliance with any of the requirements shall result in rejection, and as such, the petitioners could not be heard saying that they were deprived of an opportunity on extraneous grounds, when they themselves are to be blamed for non-compliance.

31. The learned counsel has placed reliance on ***T.M.A. Pai Foundation*** case (3 supra), ***Islamic Academy of Education*** case (4 supra) and ***P.A. Inamdar*** case (2 supra).

32. Sri S. Niranjan Reddy, the learned counsel appearing for the writ petitioners in W.P.No.22617 of 2013 and W.P.No.24484 of 2013, has contended that the colleges have not violated any procedure and have completed the admission process in accordance with law. Since the classes have already commenced, any interference at this stage will have deleterious impact on the professional standards of the students who have been pursuing the studies, having been duly admitted into colleges.

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Supplementary Submissions:

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In W.P.No.23072 of 2013:

33. The learned counsel for the petitioners, apart from adopting the submissions of the learned Senior Counsel Sri C.V.Mohan Reddy, has said that there was no intimation at all to the petitioners either by way of notice or by way of web notification ever since the date of their submitting their applications to the respondent college. Notwithstanding the claim of the college that every piece of information was posted on the web, it was strenuously contended that the web was not at all opening. Taking advantage of the technology, it is, the learned counsel submitted, very easy to block the website so as to deny access by a simple stratagem of jamming, etc. The learned counsel has urged the court to obtain the information from the service providers of the web portals to realise the nefarious intention of the management.

34. The learned counsel has also brought to our notice that when the petitioners want to communicate with the college management through e-mail, they got their mails bounced with the message that no such e-mail account is in existence.

Respondent College's Reply:

25. Repelling the contentions of the learned counsel for the petitioners, the learned counsel for the respondent college has submitted that there is no truth in the allegation that the website was not opening and that the management had deliberately blocked the website. He has stated that 37 people downloaded the applications and many other people obtained applications directly from the college and that all other applicants, whose names have been shortlisted in the merit list accessed the information and appeared for the interviews. As such, it is urged that the contentions of the petitioners cannot be countenanced.

In W.P. No.23005 of 2013:

36. The learned counsel for the petitioners in W.P.No.23005 of

2013 has placed certain additional papers and drew our attention to page-157, emphasising that as per their own documents, the information was posted and modified on 29.07.2013, and as such, their contention that the information was posted on the evening of 26.07.2013 is totally false. He has also submitted that in collusion with the 2nd respondent University, the respondent college has sent all the information to the University along with the applications of chosen candidates of the management by generating those documents after finalising the whole process. The management has left no stone unturned in exploiting the situation by imparting a semblance of normalcy to the selection process. It has robbed the students of their academic career.

Respondent College's reply:

37. Sri S. Ravi, the learned Senior Counsel appearing for respondent college in the said matter, has drawn our attention to the strict time period assigned by the learned single Judge in order dated 26.07.2013, and submitted that the colleges were compelled to expedite the process of admissions on the pain of contempt and the rejections were only due to non-compliance. Adverting the material on record, the learned Senior Counsel has submitted that there were instances of the students submitting irrevocable bank guarantees within the stipulated time. When it was possible for some, it could have been equally possible for the petitioners, but they did not seem to have made any efforts. The learned Senior Counsel has pointed out that the petitioners have not chosen to rectify even curable defects in the documents submitted, despite an opportunity given. In the absence of any valid application, the question of intimation and the consequential participation in the selection process does not arise. As to the allegation of antedating the web posting, the learned Senior Counsel has submitted that even the screen shots of the web information were sent to the respondent university by post prior to 29-07-2013, as such, antedating does not arise.

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In WP No.23026 of 2013:

38. Sri V. Maheswar Reddy, the learned counsel appearing for the petitioners has submitted that the petitioners in the said writ petition have filed all the relevant documents and whatever the documents not produced on that day have no bearing on the selection of the candidates. The management could have obtained those documents from the candidates even subsequently. Only with a pre-meditated intention, the respondent colleges have taken shelter under the excuse of non-production of documents and committed an abuse of process, resulting in deprivation of career opportunities to the petitioners.

Synoptical submissions of the counsel in the writ petitions:

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39. Some of the writ petitioners have submitted synopsis of their contentions. Though most of them run on the common lines as to their grievances, certain aspects of some individual writ petitions may call for attention.

Writ Petition Nos.26919, 24861, 24812, 23490, 23452, 23412, 23394, 23255, 22724, 22617, 22602, 22561 and 22542 of 2013:

40. Insofar as the above writ petitions are concerned, in all these cases the arguments were lead by the learned Senior Counsel Sri C.V.Mohan Reddy and his submissions have been extracted in *extenso*.

W.P.Nos.22553 and 22555 of 2013:

41. Coming to the rest of the writ petitioners in W.P.Nos.22553 and 22555 of 2013, Sri K.Jaganmohan Reddy, the learned counsel, has submitted that, on the refusal of the respondents Nos. 3 and 4 to receive the applications, the petitioner in W.P.No.22553 of 2013 was constrained to send it through registered post. He has contended that no merit list was published; nor were the petitioners called for interview. In W.P.No.22555 of 2013, the 4th respondent did not file any

counter denying the allegations and that there was no intimation to the petitioner about the interview. Though it was claimed by the respondent college that the merit list was published on the website on 27.07.2013, when the petitioner tried to access it, he only got the message that 'the session has timed out, try again'. He has submitted that it is a deliberate strategy on the part of the college management.

WP No.23823 of 2013:

42. In W.P.No.23823 of 2013, Sri V.V.Lakshmi Narayna, the learned counsel appearing for the petitioner, has contended that the petitioner obtained 92.25%, she would have been placed in the merit list of the 4th respondent college at 27 and in that of the 5th respondent college at 14. In fact, the colleges have admitted students, who secured marks as low as 63.5% in intermediate. It is alleged that the petitioner was not allowed to participate in the interview; much less any verification of documents took place. The rejection of the application on the ground that the petitioner has not submitted transfer certificate and EAMCET Rank Card is unsustainable. The EAMCET Rank Card has no relevance. The respondent college has gone to the ridiculous extent of rejecting the study certificate on the ground that it was not attested. All the defects are curable in nature and the petitioner could have been given an opportunity. A forensic examination of the logs of the 4th respondent website will reveal falsity of the claim of the respondent college.

In WP No.23072 of 2013:

43. In W.P.No.23072 of 2013, the learned counsel for petitioner has submitted that the petitioner scored 85.3%, submitted all the requisite documents along with necessary payment drawn on the college, and though the petitioner was regularly checking the college website, he did not get any prior intimation or notice. When the merit

list was published, his name did not find place. The learned counsel has further contended that the email provided by the college was false and on the important occasion of admission, the college took recourse to blocking the website. From the extract of the pleadings, it is also evident that the respondent college has rejected the application on the ground that the relevant documents have not been submitted by the petitioner.

In WP No.23267 of 2013:

44. In W.P.No.23267 of 2013, Sri P. Girish Kumar, the learned counsel for the petitioner, has submitted that the petitioner has scored 93.33%, that she had to fight all along even to obtain the application form, that she also filed a writ petition No.22348 of 2013 questioning the pre-condition of production of bank guarantee, and that the same is pending, that the respondents Nos. 4 to 8, except the 7th respondent, have not displayed any merit list either on the notice board or on the website showing the names of the candidates applied, that though the names of less meritorious candidates have been short listed for admission by the 7th respondent, the petitioner's name was omitted without any basis. It is further contended that the petitioner attended the interview conducted on 29.07.2013 by the 5th respondent and produced every document except the bank guarantee. But, she was denied admission. In sum and substance, the respondents Nos.4 to 8 have not followed the procedure and have even violated the orders of this Court. The learned counsel has further submitted that though her father approached the bank for obtaining bank guarantee, it was refused by Andhra Bank, Kannapuram branch, on the ground that unless there was a proof of admission, they could not issue any bank guarantee. As such, the requirement of bank guarantee as a pre-condition is illegal. In the end, it is contended that the rejection of her application by the respondent colleges Nos. 4 to 8 is totally on flimsy

and untenable grounds.

In W.A.No.1305 of 2013 & W.P.No.23005 of 2013

45. In W.A.No.1305 of 2013 and W.P.No.23005 of 2013, the learned counsel Sri G. Simhadri has contended that the petitioner got 93.7% marks in the intermediate, that though the respondent college informed the petitioner's father that he could attend the interview from 24.07.2013 to 29.07.2013, later when he tried to attend the interview, he was prevented, that even after encashing the demand draft of Rs.5,000/- as process fee, the respondent college has not given any definite information about the interview or the requirements to face the interview, that when the petitioner tried to open the website, it did not open till 29.07.2013, that the information was posted on the net only 29.07.2013, but it was falsely claimed by the management that it was posted on 25.07.2013 and that, the entire process adopted by the respondent college is totally illegal.

Respondent Colleges:

In W.P.Nos. 22553, 23267, 23407, 22622, 22724, 23026, 23394, 23823, 23997, 25349, 23262, 23302, 23596, 22555, 23267, 22699, 22753, 23813, 22555, 23072, 23262, 23293, 23490, 23302, 23596, 22555, and 23005 of 2013:

46. The respondent colleges have filed their synopsis in W.P.Nos.22553, 23267, 23407, 22622, 22724, 23026, 23394, 23823, 23997, 25349, 23262 through the learned counsel Sri B.R. Ravula; in W.P.Nos.23302, 23596, 22555 through Sricharan Teleprolu; in W.P.Nos. 23267, 22699, 22753, 23813 and 22555 of 2013 through the learned counsel Sri V.R.N. Prashanth; in W.P.Nos.23072, 23262, 23293 and 23490 of 2013 through the learned counsel Sri G. Mohan Rao; in W.P.Nos.23302, 23596 and 22555 of 2013 through the learned counsel Sri V.V.Ramana appearing for the learned counsel Sri Sricharan Telprolu; in W.P.No.23005 of 2013 through the learned counsel Sri C. Pushyam Kiran.

47. Summarising the submission on the part of the respondent colleges, essentially the plea is to the effect that the rejections are based on non compliance with the conditions stipulated in the application and in the brochure, as well as in accordance with the Rules of 2007. They have also contended that they adopted a transparent process and they did not play favourites with any other students, to the exclusion of the petitioners.

48. Heard the learned counsel for the petitioners as well as the respondents, and perused the documents. The dispute centres on the solitary issue whether the respondent colleges adopted a fair procedure or they have subverted the admission process for a wrongful gain, to the detriment of the writ petitioners.

ISSUE:

Whether the respondent colleges adopted a fair procedure or they have subverted the admission process for a wrongful gain, to the detriment of the writ petitioners?

EXPOSITION:

49. With the march of time commercialization has come to stay, taking into its fold even education. The Supreme Court has aptly observed in **P.A. Inamdar** case (2 supra) that education used to be charity or philanthropy in the good old times, and that it gradually became an “occupation”. As of now, imparting education has come to be a means of livelihood for some professionals and a mission in life for some altruists.

50. After the supposedly conservative phase of **Mohini Jain v. State of Karnataka**^[5] and **Unnikrishnan v. State of AP**^[6], the Supreme Court has felt the need of revisiting the field of private educational institutions by constituting a 11 judge bench in **TMA Pai Foundation** case (3 supra). Having recognized the limitations of the

Government in establishing sufficient number of professional educational institutions, the Supreme Court is believed to have taken a liberal view of the issue. Acknowledging the right of non-State players to establish and maintain educational institutions, the Supreme Court has said that an educational institution can be regulated by the State, but such regulatory measures ought to be for maintenance of proper academic standards, atmosphere and infrastructure and prevention of maladministration by those in charge of management.

51. With a view to throwing more light on certain areas of ***TMA Pai*** case (3 supra) the Supreme Court has constituted a Five Judge Bench in ***Islamic Academy of Education*** case (4 supra) to answer the questions which have arisen in the wake of ***TMA Pai*** case (3 supra). As certain issues have refused to die down even after ***Islamic Academy***, the Supreme Court has yet again constituted a Seven Judge Bench in order to ascertain and enunciate the correct proposition of law, as was laid down by ***TMA Pai***.

52. Under the Constitution there are three Articles which allow establishment of Educational Institutions, namely Art 19 (1) (g), Art.26 and Art.30. Though their fields may overlap, they do have the content of their own as well.

53. All citizens have a right to establish and administer educational institutions under Arts. 19(1)(g) and 26, but this right is subject to the provisions of Arts. 19(6) and 26(a). In para 53 of ***TMA Pai***, it is stated, "With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government."

54. Further as indicated in para-50 of the same judgment, the right to establish and administer educational institutions broadly comprises the following rights:-

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees.

55. Advocating a balanced view, the Supreme Court has further held that it would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. (Para 68).

56. In fact, subsequently, in *P.A. Inamdar*, the 7 Judge Bench of the Supreme Court posed to itself, *inter alia*, the following questions:

(1) To what extent can the State regulate admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

(2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether the direction made in *Islamic Academy* for compulsorily holding an entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such institutions, can be sustained in light of the law laid down in *Pai Foundation*?

57. After analysing the ratio both in *TMA Pai* and *Islamic*

Academy, the Bench has held that it needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis.

58. While arguing at the bar, all the counsel for the petitioner-students have urged that these students have toiled tirelessly and secured a very high percentile of marks, but all their efforts were nullified by the machinations of the managements of the private colleges. But regrettably the record would not substantiate those allegations to the fullest measure. 59. Despite the pain and privation of students, we cannot take the shadow for the substance, however ominous the shadow may be. In the pleadings and submissions of the petitioners, the spectre of the devious methods of the management loomed large. If they were taken at their face value, they would sound deplorable and even despicable. But the principle remains that the graver the allegation, the more stringent proof it calls for. Let us take illustratively one example that one respondent college used the police force to prevent the meritorious students to enter the college premises and closeted only those who could pay hefty sums of money for admission, over and above what is statutorily required. If it were so, what was that the petitioners or their parents did? They were expected, in the least, to lodge a complaint, though it sounds ironical as it was the police that were deployed, or at least they ought to have moved the respondent university with their grievance. But no record is placed before us to the said effect. We are very conscious that it is a matter of academic achievement of high order to aspire for and secure a seat in medicine; we are also aware of the grinding toil that goes into securing high marks; and we are also aware that managements would do

everything in their ability to browbeat the system for the lure of lucre. We are sympathetic. But sympathies and lurking doubts as to the alleged devious methods adopted by the management is no answer to convincing, if not clinching, proof before the Court, to establish that the students, in deed have been wronged.

Procedure:

59. Now we may examine the procedural parameters prescribed under the Rules, 2007, which were framed exercising the powers conferred by Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (A.P.Act No.5 of 1983). The seats to be allotted in each un-aided Non Minority Professional Institution under these rules for admission of Candidates shall be classified as:

Category-A seats (50% of the sanctioned intake of the seats);

Category-B (20% of the sanctioned intake of the seats;

Category-C (30% of the sanctioned intake of the Seats), i.e., "Management Seats".

60. In fact, through G.O.Ms.No.97, dated 06.07.2013, Rules 2007 were amended by subdividing Category C in to C (1) and C (2), and by raising the total intake to 40%. The amendment is in the following manner: Category – C (1) - (25% of the sanctioned intake of the Seats) – "Managements Seats". The seats shall be filled by the Managements of individual Colleges or Committee of Managements in the order of merit based on the applications received following a transparent procedure as specified in these rules. Category – C (2) - (15% of the sanctioned intake of the seats) - NRI quota seats. These seats shall be filled by Managements of individual colleges or Committee of Managements in the order of merit based on the applications received from the Children / wards of NRIs, following a transparent procedure as specified in these rules.

61. As we are concerned with Category-C "Management

Seats”, these seats shall be filled by the Managements of individual colleges or committee of Managements in the order of merit based on the applications received following a transparent procedure as specified in these rules. When it comes to the authority to fill the Category-C (Managements Seats), the seats shall be filled by the individual college Managements/Committee of Managements in the order of merit in a transparent manner by following the prescribed procedure under Rule 6 (C), which, as amended by GO Ms. No.97, Health, Medical and Family Welfare (E1) Department, dt.06-07-2013, is as follows:

PROCEDURE FOR GRANT OF ADMISSIONS INTO UG [MEDICAL AND DENTAL COURSES UNDER THE MANAGEMENT QUOTA SEATS

- - i) The individual college shall issue notification in two news papers calling for applications for admission into Management Quota seats in UG Medical and Dental Courses also making a provision for downloading the application forms by the prospective candidates from the web-site of the colleges.
 - ii) The College office shall invariably issue applications to all the candidates who request for applications.
 - iii) The filled in applications along with the necessary certificates shall be submitted by the candidates to the college office within the prescribed time period fixed by the college office.
 - iv) The College shall invariably issue a receipt of the application received.
 - v) The college shall scrutinize all the applications received in respect of the eligibility in Biology, Physics and Chemistry subjects in 10+2 course.
 - vi) The College shall prepare a merit list of all the candidates who have applied to the College based on the marks obtained in the three subjects mentioned in instruction (5) above and the interview conducted by the college to prevent multiple blocking of the seats in more than one college.
 - vii) The merit list prepared by the College shall be displayed on the notice board of the college and their respective college web

site and be sent to the Dr. N.T.R University of Health Sciences for scrutiny and approval from time to time till the final date of admission.

viii) Dr. N.T.R University of Health Sciences shall verify the merit list and accord approval.

ix) The merit list approved by Dr. N.T.R University of Health Sciences containing the names of the applicants and the marks obtained by them shall be prominently displayed on the notice board of the college and also in their respective websites.

x) The college shall admit the candidates strictly in the order of merit shown in the approved merit list.

62. Summarising the admission process, it is to be seen that we have moved past the controversy of non-issue of application, which aspect has been taken care of by an earlier batch of writ petitions. In fact, all the petitioners have applied. Thus what is to be seen is from the stage of scrutiny of the applications.

63. In fact, it is part of the procedure that the filled in applications along with the necessary certificates shall be submitted by the candidates to the college office within the prescribed time period fixed by the college office. What is required to be annexed and what is required to be produced at the time of interview have been specified in the applications and the brochures. Though arguments were advanced at the bar that there should not have been any rejection on the basis of non-production of those non-essential documents, there cannot be any objective adjudication of what is essential and what is non-essential. The petitioners could have questioned at the earliest the onerous nature of some of the preconditions as to the production of documents, such as bank guarantees – but no effort seemed to have been made.

64. The college is required to scrutinize all the applications received in respect of the eligibility in Biology, Physics and Chemistry subjects in 10+2 course. After such scrutiny, the College is to prepare

a merit list of all the candidates who have applied to the College based on the marks obtained in the three subjects mentioned in instruction (5) above. Before this shortlisting, an interview is to be conducted by the college to prevent multiple blocking of the seats in more than one college. Evidently there was a scrutiny of applications, and the interviews were conducted to prevent multiple blocking. In fact, the allegations crop up here as to non-intimation, which is a disputed fact not determinable in a summary adjudication. The mode is by way of display in the college notice board.

65. Moving forward from the preparation of merit list, the merit list so prepared by the College shall be displayed on the notice board of the college and their respective college web site and be sent to the Dr. N.T.R University of Health Sciences for scrutiny and approval from time to time till the final date of admission. Here again, the allegations flow thick and fast. Again those allegations are disputed facts, which could not be established by the petitioners, except by way of imputations.

66. Though heavy stress was laid on the inadequacy of time frame, it is to be borne in mind that the time frame was fixed by this Hon'ble Court while disposing of the miscellaneous petitions in an earlier batch of writ petitions. The petitioners could have requested this court to modulate the said time frame, keeping in view the MCI guidelines. That was not to be the case.

67. We remind ourselves of the fact that we are called upon to adjudicate the issues under Article 226 of the Constitution of India, which has its judicial contours well defined through self-imposed limitations, though. Neither the petitioners nor the respondents have laid any challenge to any of the statutory provisions including the Rules of 2007 or the application requirements. As such, essentially all the issues have concerned themselves about the factual disputes as to

whether the respondent-colleges have adhered to the procedure mandated in Rules of 2007 and also in the order dated 30.06.2013 in W.P.No.20675 of 2013.

68. Though the allegations are grave, the response on the part of the respondent colleges is equally salubrious in repeated assertions that they have followed the procedure. Needless to say that under Article 226, as the very procedure is summary, based on affidavits; unless there is clinching material on record to establish that the colleges have violated either the rules or the directives of this court as referred to above, it is not possible for us to reach any conclusion about the alleged violations.

69. There is no gainsaying the fact that these days the education has become intensely competitive, robbing the children of their childhood and adolescence. There is no exaggeration to say that post corporatisation of education, the childhood has bypassed the children. Looking at the marks pattern, almost all the petitioners have secured in the higher ratios of 90% with very minimal variations as to the merit. Securing rank in EAMCET, especially for medicine, is almost as difficult as making a grade in Civil Services.

70. Missing an opportunity to get an admission, and seeing the less meritorious stealing a march over them, is heartburning. Regrettably emotions cannot replace reasoned and impassioned judicial adjudications. All the same, it leaves a bitter after taste in the mouth to speak that these students have missed their educational opportunity of pursuing medical courses on the procedural altar, when the very admission process has been mired in controversy.

71. Be that as it may, without calling into question the policy decisions of the Government, we deem it appropriate to urge the Government and the University to ensure proper supervision of the

admission process. No doubt, the Apex Court has given sufficient leverage to the private colleges in determining their own admission process, albeit subject to the statutory limitations to be imposed by the Government. It is still desirable for the Government and the University to keep a strict vigil over the admissions even under Category- 'C'. To protect the interest of all the students, at least from the next academic year onwards, it is hoped that respondents will follow, *inter alia*, the following safeguards, which, by no means, are not exhaustive:

- 1) The respondent-University shall ensure uniformity in form and content of the applications, which shall be made available for multiple colleges even from the counters of the University.
- 2) The admission process shall take place in a staggered manner comprising all the private colleges, facilitating opportunity to the students to participate in as many colleges as possible, so as to have admission to the best possible college commensurate with their merit. We underline the fact that profit alone is not the driving force behind the scheme of admission process framed or formulated either by the Government or by the private colleges.
- 3) The scrutiny of the applications shall be in a transparent manner and the enclosures required to be submitted must be predetermined, ensuring that sufficient time is made available to the students to procure them.
- 4) That the respondent university shall ensure the presence of its representative or that of the educational department at the time of interview in every college, since firstly they are not numerous, and secondly, the admission process is staggered.

72. With the above observations, we dismiss the WA No.1305 of 2013, WP No.22553 of 2013 and the batch as being without any merit. No order as to costs. As a sequel to it, miscellaneous petitions, if any, pending in the writ appeal and the batch of writ petitions, shall stand closed.

ASHUTOSH MOHUNTA, J

Date: 30.09.2013

eha/siva/scs

[\[1\]](#) 2013(8) SCC 99
[\[2\]](#) (2005) 6 SCC 536
[\[3\]](#) (2002) 8 SCC 481
[\[4\]](#) (2003) 6 SCC 697
[\[5\]](#) (1992) 3 SCC 666
[\[6\]](#) (1993) 1 SCC 645