THE HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

W.A.NOS.749, 750, 765, 766, 767, 768, 769, 770, 771, 772, 773, 776, 778, 782, 783, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 827, 829, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 852, 853, 854, 855, 856, 857, 858, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 961 AND 1030 OF 2014, W.P.NOS.2700, 8248, 12512, 17304, 17401, 21228, 21333, 21513, 21525, 21540, 22511, 22690, 22749, 23220 AND 28958, OF 2013 AND 24449 OF 2014

COMMON JUDGMENT (Per the Hon'ble Sri Justice G.Chandraiah)

The managements of the private medical colleges, are the appellants in all the writ appeals, except in W.A.No.961 of 2014 and they are also respondents in all the writ petitions. In W.A.No.961 of 2014, the appellant is the student, and in all the writ petitions, the writ petitioners are the students. Heard the respective counsel appearing for the managements of the private medical colleges, learned counsel appearing for the students and the learned Government Pleaders for Medical and Health for the State of Telangana and the State of Andhra Pradesh, Standing Counsel for Dr.N.T.R. Health University.

2. As the matters arise out of the common judgment dated 15.4.2014 passed by the learned single Judge in W.P.No.20657 of 2013 and batch, they are heard together and are being disposed of by this common judgment. One student filed writ appeal in W.A.No.961/2014 aggrieved by the common judgment of the learned single judge in giving inadequate directions and the managements filed other writ appeals to set aside the order of the learned single Judge. As the subject matter in the writ petitions filed by the students aspiring seats in private medical colleges under management quota, is connected with the subject matter in writ appeals, as per the directions, they are also listed along with the present batch of writ appeals for disposal.

3. The writ petitioners are the students, who have completed 10+2 level i.e., intermediate in B.P.C. group in the examination conducted by the Board of Intermediate Education with mostly above ninety per cent of marks in the groups and are aspiring for pursuing M.B.B.S. course in private medical colleges under the management quota seats i.e., C-(I) category seats and the procedure for allotment of seats is governed by G.O.Ms.No.97 Health, Medical and Family Welfare (E1) Department dated 6.7.2013. The said G.O. was issued by way of amendment to The Andhra Pradesh Non-Minority

Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007. The 2007 Rules were framed by virtue of power conferred on the Government under Section 3 read with Section 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (for short Act No.5 of 1983). The case of the writ petitioners is that the Amended Rule 6 (C) of 2007 Rules under G.O.Ms.No.97 dated 6.7.2013, governs the procedure for filling of category C (1) seats under 25% of the sanctioned intake of the seats. The said provision for better appreciation is extracted as under:

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 invariable issue applications to all the candidates who request for applications.

III) The filled in application 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 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 of their respective college web site and be sent to the Dr.NTR University of Health Sciences for scrutiny and approval from time to time till the final date of admission.

VIII) Dr.NTR University of Health Sciences shall verify the merit list and accord approval.

IX) The merit list approved by Dr.NTR 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.

4. The writ petitioners – students, ventilated the following grievances against the managements of the respective medical colleges: (1) refused to issue application forms to the petitioners for securing admission against category (C) (1) management quota seats; (2) that the web sites of the private medical colleges were mostly non-responsive and that if the website could respond, the windows was kept alive for few hours and thereafter, the website stopped responding; (3) that when the students and parents found it extremely difficult to visit the website for downloading the application form and when they approached

the respective medical colleges, the managements have adopted such a hostile attitude towards them, that gaining access to the medical college was made nearly impossible and their physical entry was restricted by deploying guards at the gates and; (4) that only few selected students of choice of the management of the medical colleges have been made available forms, both physically and also through electronic devices and that only those students, who could enter into an arrangement with the management of the college before hand, have been made available the application forms (5) no proper advertisement in newspapers has been given, giving sufficient time and the advertisements were given on the alleged dates of interview or one day prior to the date of interview, thus denying the opportunity to the students to apply; (6) that though applications were received, the students were not intimated the date and time of interview and the venue of interview was changed without prior intimation and when the students and parents wanted to participate in the interview, they were prevented from attending the interview, by deploying guards at the gates; (7) that in the interview committee, no representative of the Dr.NTR Health University was present; (8) though there is no provision either under the Act or under the Rules framed thereunder requiring the student to furnish bank guarantee for the tuition fee of the entire course, the managements insisted upon the bank guarantee, even before provisionally giving admission and; (9) that the students with less merit than the writ petitioners, were provided with seats and the said merit list was approved by the Health University and the merit list was also not displayed on the college notice boards or websites. In other words, the grievance of the writ petitioners is that the managements of the respective private medical colleges have not adopted fair and transparent procedure and violated the principles of natural justice and the rules framed under G.O.Ms.No.97 dated 6.7.2013 and the University authorities failed to properly supervise, which resulted in alleged irregularities.

5. The respective managements filed counter affidavits and categorically denied the allegations of the writ petitioners and stated that the procedure has been scrupulously followed before finalizing the merit list and the same has been approved by the Health University and sought for dismissal of the writ petitions. The Government and the Health University also filed counter affidavits and stated that the procedure has been followed and sought for dismissal of the writ petitions.

6. The learned Single Judge disposed of the writ petition with the following directions:

> Hence, for better serving the ends of justice, the following directions are issued:

1. A l l those writ petitioners who have secured more marks than the last candidate who has been granted admission by the respective college managements during the academic session 2013-14 are liable to be granted admission into the 1st M.B.B.S Course during the academic session 2014-2015, against one of theseats under the respective management quota seats, provided, they apply once again.

2. The State Government is empowered under Section 8 Read with Section 11 of Act 5 of 1983 to authorize any officer not below the rank of a Gazetted Officer to enter at any time during the normal working hours of an educational institution and search and inspect any record, register or other document and also seize any records, register or any other document for ascertaining that there is compliance with the provisions of the said Act, in case of necessity. Hence, the State Government shall nominate every Principal of the Government Medical College in the State as the Competent Authority for entering and inspecting the records and registers of every private medical college in the area or vicinity (to be notified by the Government) for satisfying that the provisions of Act 5 of 1983 are complied with by such private medical colleges.

3. Since, Section 3 enables rules to be made for regulating the admission process, the State Government is directed to make rules providing for;

a. Standard format of the application form, containing the required information about the student, for regulating the admissions into every Private-Unaided-Non-Minority Medical College/Dental College, such as his name, age, local area, marks secured at 10+2 examination etc.

b. Prescribe the fee payable, of not exceeding Rs.5,000/- payable through a Bankers Cheque/Demand Draft drawn on any scheduled bank.

c. For purposes of security of completing the admission process, duly avoiding multiple blocking of seats by meritorious students, the Director of Medical Education shall be recognized as the Competent Authority i n whose favour one single bank guarantee shall be obtained by the students, so that, by using the same single bank guarantee the student can solicit initially admissions into one or more private medical colleges.

d. Every student shall be given a minimum of 24 hours time for exercising an option for admission into one private medical college or the other. The option form can be delivered at the college concerned and or at Dr. N.T.R University of Health Sciences, through the mode of fax. Thereafter, the private medical college concerned, in whose favour option is not exercised, can offer the seat to the next meritorious candidate(s).

e. The University of Health Sciences shall approve a waiting list of candidates of running not more than 50% of the requisite approved merit list.

f. A minimum of 24 hours time shall be provided to every student to take/opt for admission and report before the Principal of the College concerned with all original certificates. Only after the expiry of this period, candidates in the waiting list can be offered admissions in the descending order of merit, but not otherwise.

g. T h e Director of Medical Education shall pass necessary acknowledgment for receipt of the bank guarantee(s). The Bank Guarantees thereafter be made available to the respective colleges later on, for any possible utilization at a later point of time, by presenting it to the DME for invoking the same, after the default committed by the student is established.

4. The necessary rules in this regard shall be published within 30 days from the date of receipt of this order.

All these writ petitions shall stand disposed of with this order. No costs.

7. Aggrieved by the above directions of the learned single Judge, the management of the respective private medical colleges filed all the writ appeals, except W.A.No.961/2014.

8. Similarly, complaining the inadequacy of the directions given by the learned single Judge; in not directing a CBI investigation into the alleged irregularities; in not directing the managements of the college to pay compensation for denial of admission to meritorious candidates; in allowing to continue the less meritorious students in the MBBS sets allotted to them; in not ordering disciplinary enquiry against the erring officials of the Health University and; in approving the action of the private medical colleges in insisting on the bank guarantee for the entire course, though such requirement is not provided in any Government Order, the student filed separate writ appeal in W.A.No.961/2014 and making similar allegations, writ petitions were filed.

9. W.A.No.749/2014 is the appeal filed by the management of the medical college against the common order of the learned single Judge dated 15.4.2013. Similarly there are other appeals filed by the Managements of the private medical colleges. The Division Bench of this court while admitting the writ appeals, granted similar interim directions. For reference, the interim order of the Division Bench in WAMP.NO.1599/2014 IN W.A.NO.749/2014 dated 15.5.2014 while admitting the said writ appeal, is extracted as under:

> "There shall be interim suspension to the extent of directions issued by the learned single Judge to consider the case of the petition for admission in the next academic year. It is made clear that if the respondent – Government wants to make Rules to regulate the C-category admissions, it is open to the Government to do so without reference to pendency of the writ appeal before this court."

10. The tenor of the contentions of the learned counsel appearing for the managements of the respective medical colleges and the grounds taken in their writ appeals is that the Government have prescribed the procedure under G.O.Ms.No.97 dated 6.7.2013 for filling up the category C – I seats under the management quota and the Rule 6 (C) of 2007 rules, is the relevant provision. As prescribed under the said provision, the managements have given wide publicity by way of publication of notifications in the two news papers of prominence, by way of issuance of the applications in the respective colleges, along with provision for downloading the applications from the websites of the respective colleges and number of candidates have availed the services offered by the colleges and applied for admissions. Some of the writ petitioners, even before issuance of such notifications, have approached this court for directing the colleges to issue applications and this court granted interim directions to issue application forms and accordingly they were issued and the applicants have made applications and they were considered as per Rules. The learned counsel submitted that on 19.7.2013 the Health

University has given permission to the private medical colleges for filling up the management quota seats and the last date to complete the entire process was 31.7.2013. In accordance with the permission and following the procedure as laid down under Rule 6 (c) of 2007 Rules, which were amended under G.O.Ms.No.97, as stated above, wide publicity was given and after receipt of the applications, acknowledgements were issued for the said receipts and after scrutinizing the applications, merit list in the descending order was prepared and after conducting interviews, the said merit list was displayed on the notice boards and websites of the respective colleges and sent to the University for approval and the University after verification, has approved the list. The learned counsel stated that the allegations of the petitioners viz., that applications were not issued; that the websites containing applications forms were not opened; that no news paper advertisement was given; that no date and time on which the selection would take place was indicated, either by phone or email; that no rational method for selection was followed; that the writ petitioners were not allowed into the colleges for attending the interviews, that less meritorious candidates were given admissions and; that the university did not appoint any observer to oversee the process of selections; that the university approved the lists sent by the colleges without verification of merit, are false and they cannot be taken into consideration based on the writ averments. It is submitted that number of candidates could obtain the applications from the colleges and many could download from the websites and they all attended the interviews and some of the writ petitioners also attended the interviews. Having obtained the application forms and on failure to secure seats in the interview, the writ petitioners made false and frivolous allegations and as they are disputed questions of fact, cannot be gone under the writ jurisdiction. They contended that the finding of the learned single Judge that online facility of filing applications has been rendered into a mere illusory exercise and that the allegations cannot be brushed aside only on the precious plea that the court does not possess technical expertise to pronounce a final opinion on such a contentious issues; is unwarranted, for the reason that for arriving to this conclusion there is no material basis and it is based on mere averments in affidavits. It is contended that these allegations have been vehemently denied by the management as well as by the university in their respective counter affidavits. Therefore, no finding can be recorded on disputed questions of fact. The learned counsel also pointed out that the learned single Judge has recorded that *"It is equally true that the private medical colleges have also demonstrated, to a certain extent, that several students could access the websites of the respective colleges and also download the applications thereform. There is considerable amount of force behind these submissions made by the learned counsel, who appeared for the private medical colleges."* In the light of this finding, the learned single

Judge is not justified in observing that online facility of filing applications has been rendered a mere illusory exercise. With regard to furnishing of bank guarantee, the learned counsel relied on the judgments of the Division Bench of this court in W.P.Nos.33631/2012 dated – and 22715/2011 dated 30.7.2011 and submitted that the condition requiring the student to furnishing of bank guarantee for the entire course at the time of interview is permissible and the said requirement has been questioned before this court and in the above said judgments, this court has upheld the said requirement. The learned counsel further submitted that the writ petitioners have not challenged the rules framed under the G.O. and there is no finding in the common order of the learned single Judge that rules have not been followed and further the requirement of furnishing bank guarantee at the time of interview was made known to the students by way of information in college broachers and they knowingly participated in the interview without challenging the same and hence, they are estopped to question the said requirement. It is further contended that the writ petitioners without approaching the authorities in the University ventilating their grievances, have directly invoked the jurisdiction of this court under Article 226 of the Constitution of India. In such circumstances, the directions of the learned single in directing the Government to frame rules as per the orders of this court, is unwarranted and in the present case, no public interest is involved. It is submitted that there is no dispute that admissions shall be based on merit. The managements have followed the procedure and based on merit among the candidates who appeared for the interview and who fulfilled the conditions, were selected and the same was approved by the University and the classes have started within the time schedule fixed. The petitioners have not impleaded the students who have given admissions and any orders behind their back would be violative of the principles of natural justice They further contended that the direction of the learned single Judge to accommodate the meritorious candidates in the present academic year as per merit, provided they apply, cannot be sustained for the reason that the same would affect the candidates of the present academic year and in the absence of any finding by court based on tangible evidence that the allegations leveled by the writ petitioners are true, no such directions can be given and in the summary proceedings under the writ jurisdiction, such disputed questions of fact cannot be gone into. The learned counsel submitted that in fact the issue involved in the present writ petition is covered by a recent judgment of the Division Bench of this court in ***TUMMURI JALANDHARI v. GOVERNMENT OF ANDHRA PRADESH***[1], wherein the Division Bench of this court considering similar allegations, has dismissed the writ petitions holding that in the absence of clinching material on record to establish that colleges violated either rules or directives of

High Court, it is not possible for court to reach any conclusion about alleged violations. Therefore, following the judgment of the Division Bench, the learned single Judge ought to have dismissed the writ petitions. With regard to seeking CBI and ACB enquiries, the learned counsel relying on judgment of the Apex Court in ***DOLIBEN KANTILAL PATEL v. STATE OF GUARAT***[2] submitted that such enquiries cannot be ordered merely because a party makes some allegations. With these submissions, the learned counsel sought to set aside the order of the learned single Judge.

11. On the other hand, the learned counsel appearing for the writ petitioners/students, and for the appellant in W.A.No.961/2014, which is filed aggrieved by the order of the learned single judge in not ordering CBI enquiry and in allowing the less meritorious candidates to continue MBBS course in preference to the writ petitioners and in the directing the university to provide seats as per their merit provided they apply and giving insufficient time for choosing the college, reiterated the allegations with regard to non-issue of applications, non-response of the web sites of the respective medical colleges, non-receipt of the application forms, denying access to the students and parents by the respective medical colleges to the venues of interviews, demanding bank guarantees without giving admissions, non-intimation of date of interviews, alleged illegal approval of merit list by the university authorities; further submitted that when several students make similar allegations, the same can be taken judicial notice and appropriate directions can be given. It is contended that the authorities denied admission on the ground that bank-guarantee for the tuition fees for the entire course of the study was not produced. It is stated that production of bank guarantee is not traceable to any Government order and hence such a condition is arbitrary. It is submitted that when the anxious parents approached the bank for bank-guarantee along with relevant documents, the bank officials sought for admission proof. Therefore, demanding for bank guarantee without providing admission, is arbitrary. They contended that merit has been given a go-by and purely based on capitation fee, the merit list was prepared and the 4th respondent instead of curbing the menace, colluded with the managements of the private colleges and conferred upon them undue pecuniary advantage and the Government officials have not taken any action and therefore, they are liable to be proceeded under Section 13(1)(d) of the Prevention of Corruption Act. The learned counsel relying on the judgment of the Apex Court in ***PRADEEP JAIN' V. UNION OF INDIA***[3] submitted that the Apex Court held that merit alone must be criteria to the admissions of MBBS course. They stated that the Apex Court in ***SHRAWAN KUMAR v. DG OF HEALTH SERVICES***[4] and ***CENTRE***

FOR PUBLIC INTEREST LITIGATION vs. UNION OF INDIA[5] held that admission procedure shall be fair, transparent, non-exploitative and based strictly on merit and the eligible persons shall get a fair opportunity in the selections. They contend that a Division Bench of this court in W.P.NO.26241 of 2012 and batch directed CBI enquiry against the erring medical colleges in the said case, based on very similar allegations and however fairly submitted that the Apex Court in Civil Appeal Nos.488-511 arising out of SLP (C) Nos.36930-36953 of 2012 has modified the order. They further submitted that the notices in news papers was given without sufficient time for the parents of the students to prepare for the admissions and it cannot be said to be true compliance of principles of natural justice. The learned counsel submitted that the judgment of the Division Bench of this court in Tummuri Jalandhari (1 supra), is slightly different and the present allegations of seeking enquiry against the erring officials and managements and rationality of seeking bank guarantee prior to giving admissions, denying meritorious candidates admission by following dubious methods, etc., were not canvassed and considered and hence cannot be taken into consideration. Relying on the judgment of the Apex Court in ***BHAVNAGAR UNIVERSITY v. PALITAN SUGAR MILL (P) LTD.***,[6], it is contended that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. With these submissions, inter alia, the learned counsel sought to give admissions to the writ petitioners, who have secured more marks than the last selected candidate in the approved list and initiate CBI enquiry on the managements of the respective medical colleges.

12. In view of the above rival contentions, the issue that arises for our consideration is whether the order of the learned single Judge is sustainable?

13. The managements of the private medical colleges are required to maintain requisite standards of professional excellence by giving admissions based on merit, make it accessible to eligible students through a fair, transparent and non-exploitative methods, by following the relevant rules in vogue and procedure prescribed under G.O.Ms.No.97 is required to be followed by the managements for filling up the category C (I) seats under management quota. Hence, the citations relied on by the respective counsel which reiterate this principle, are not being noted.

14. The main grievance of the writ petitioners, as noted above, needs no repetition the quintessence of which that the managements of the respective medical colleges in utter violation of the rules and by adopting deceptive methods, denied admissions to the meritorious candidates. With the same tone and tenor, the managements of the colleges

have denied those allegations and stated in categorical terms that they have followed the rules and the university has approved the list within the time schedule and the classes have commenced. The settled principle of law is that the allegations and counter allegations cannot form basis to come to a conclusion in a summary proceedings and a tangible proof is required to come to a definite conclusion either way and such disputed questions of fact cannot be gone into under the writ jurisdiction. Therefore, the observations of the learned single judge in this regard based on writ averments that *"When we analyze the complaints made by the petitioners, it has emerged that the online facility of filing applications has been rendered into a mere illusory exercise. It is true that all private medical colleges have taken out advertisements in some newspapers of prominence or the other. That far there was no difficulty in complying with the rules by the colleges. But however, the filing of applications online, in my opinion, has not been made available by these colleges in the manner in which the State may have expected. When several students have complained that the websites are designed by the colleges in such a way that they have become mostly non-responsive, such allegations cannot be brushed aside lightly only on the precious plea that the Court does not possess technical expertise to pronounce a final opinion on such a contentious issue"*. This finding in our view, based on writ averments, without sufficient proof, is unwarranted, *a fortiori* the learned single Judge again notes that *"It is equally true that the private medical colleges have also demonstrated, to a certain extent, that several students could access the websites of the respective colleges and also download the applications therefrom. There is considerable amount of force behind these submissions made by the learned counsel, who appeared for the private medical colleges."* These two contrary observations, leaves the matter undecided.

15. In similar circumstances, a Division Bench of this court in a recent judgment in Tummuri Jalandhari (1 supra) considering the very same provisions of Rule 6 (C) A. P. Unaided Non-Minority Professional Institutions (Regulations and Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007 and the allegations of the students with regard to rejection of applications on the basis of non-production of non-essential documents, requiring document/bank guarantees to be produced hardly giving about three hours time to secure them, non-intimation of date of interviews, irregularity in preparation and publication of merit list, and use of every conceivable means by respondent –colleges to prevent meritorious students from securing admissions, so that their own chosen candidates could be accommodated, wherein the learned single Judge has granted certain directions, the Division Bench of this court while setting aside the directions and dismissing the writ petitions, held that there cannot be any objective

adjudication of what is essential and what is non-essential and onerous nature of pre-conditions as to production of documents/bank guarantees, should have been questioned at the earliest, but no effort seems to have been made. It was further held that non-intimation of date of interviews, being disputed fact, not determinable in a summary adjudication and similarly the allegations about preparation and display of merit list on notice boards and websits of respective colleges, being disputed facts, could not be established by petitioners, except by way of imputations and that time frame, since fixed by High Court in earlier batch of writ petitions, petitioners could have requested court to modulate said time frame, keeping in view the MCI guidelines, but it was not done. In the absence of clinching material on record to establish that colleges violated either rules or directives of High Court, it is not possible for court to reach any conclusion about alleged violations. The relevant portions with regard to pleadings and the conclusions are as under:

> **Back Ground:**
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> 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.
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> 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.
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> 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.

47. Summarizing 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.

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?

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 allegations, 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 management would do everything in their ability to browbeat thesystem 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.

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.

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.

16. In the present case also, the writ petitioners have made similar allegations, as made in the above Division Bench. These allegations cannot be taken, when they are specifically denied, to come to the conclusion that the managements of the respective medical colleges have violated the procedure.

17. With regard to bank guarantee also, the Division Bench held that the petitioners have not questioned the bank guarantee. Apart from that, this issue is no longer res integra in view of the Division Bench judgment of this court in W.P.No.33631/2012 dated 26.10.2012, wherein the Division Bench of this court following judgment of the Apex Court in ***ISLAMIC ACADEMY OF EDUCATION v. STATE OF KARNATAKA***[7], held as under:

> The only question that arises for consideration in this writ petition is whether the fourth respondent-institute is justified in demanding the bank guarantee of Rs.22,50,000/- from the petitioner towards proof of capacity to pay tuition fee for the full term of the course. In the judgment referred supra, which is relied on by the learned senior counsel for the fourth respondent-institute, the Hon'ble Supreme Court has elaborately dealt with regard to fixation of fee structure for medical education courses and the procedure to be adopted in collecting fee. In the said judgment, when there was a complaint against educational institutions collecting tuition fee for the entire course in advance, it was held that the same is not
> proper. At the same time, it was specifically observed that institutes can obtain bond/bank guarantee to make sure that the student will not leave the institute midstream, causing loss to the institute. It is apposite to refer para-8 of the said judgment, which reads as under:
>
> "It must be mentioned that during arguments it was pointed out to us mat some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall duo. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance."
>
> In view of the aforesaid observations made by the Hon'ble Supreme Court, it cannot be said that the demand made by the fourth respondent-institute to furnish bank guarantee which is equivalent to tuition fee for the remaining course period is either illegal or arbitrary.

18. The next vehement contention of the learned counsel for the students is that in the light of the allegations, a CBI enquiry is required to be initiated against the colleges and also against the erring officials. As already noted above, mere imputations cannot form basis. Further, CBI enquiry cannot be ordered for the sake of asking. The Apex Court in ***DOLIBEN KANTILAL PATEL v. STATE OF GUARAT***[8] while considering the request of the petitioners therein for asking the CBI investigation in a criminal case, held that despite wide powers conferred by Articles 32 and 226 of the Constitution, the courts must bear in mind certain self-imposed limitations on the exercise of such constitutional powers. The relevant portion at paragraph no.17 is as under:

> 17. With regard to the direction for investigation by CBI, a Constitution Bench of this Court in *State of W.B.* v. *Committee for Protection of*

Democratic Rights[3] clarified that despite wide powers conferred by Articles 32 and 226 of the Constitution, the courts must bear in mind certain self-imposed limitations on the exercise of such constitutional powers. Insofar as the question of issuing a direction to CBI to conduct an investigation, the Constitution Bench has observed that: (SCC p. 602, para 70)

"*70.* … although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

19. Coming to the facts on hand, the allegations were refuted by the managements, which form disputed questions of fact, which this court cannot go into and in such circumstances, ordering CBI enquiry is unwarranted. Further, with regard to ordering of CBI enquiry by an earlier co-ordinate Bench of this court in ***CHANDRA SAI VASUDHA ANNAPURNA V. STATE OF ANNAPURNA v. STATE OF A.P.***[9] the Apex Court in Civil Appeal No(s) 488-511 of 2013, arising out of SLP (C) Nos. 36930 – 36959 of 2012 date 17.1.2013 has set aside the directions and modified the order of the learned Division Bench. Hence, the learned counsel for the students, cannot seek to place reliance of the earlier judgment of the Division Bench, that too in the light of the law laid down by a recent judgment of the Division Bench.

20. The learned single Judge while disposing of the writ petition made certain directions and under the first direction, ordered that all those writ petitioners who have secured more marks than the last candidate who has been granted admissions by the respective college managements during the academic session 2013 -14 are liable to be granted admissions into the 1st M.B.B.S. course during the academic session 2014-2015, against one of the seats under the respective managements quota seats provided they apply once again. Such direction, in our considered view, cannot be granted, for the reason that the writ petitioners could not establish their right and mere imputations cannot form basis, especially when the same have been denied and more particularly in similar circumstances, a Division Bench of this court in recent judgment (1 supra), had dismissed the claim of the writ petitioners therein. This court while admitting the present writ appeals also granted interim suspension to the extent of directions issued by the learned single Judge to consider the case of the petitioner for admission in the next academic year.

Further, it is brought to the notice of this court that some of the students carried the matter to the Apex Court against the order of the Division Bench (1 supra) and could not obtain any interim orders and the same is pending adjudication.

21. With regard to remaining directions of the learned single in the impugned common order, as already noted above, there is no challenge to the rules and the issue of furnishing bank guarantee is no longer *res integra* in view of the judgment of the Apex Court and, the Division Bench (1 supra) of this court, advised certain guidelines, for fair, transparent and non-exploitative admissions, which are required to be followed by the University. The learned Government Pleaders for Medical Education, representing the State of Telangana and the State of A.P. have brought before this court the Government orders issued by the respective Governments in G.O.Ms.No.10 Health, Medical and Family Welfare (C1) Department dated 25.8.2014 and G.O.Ms.No.11 Health, Medical and Family Welfare (C1) Department dated 26.8.2014, respectively, with regard to the fee structure for management quota seats in the State of Telangana; and amendment to Rule 6 (b) to Andhra Pradesh Un-aided Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2006 issued in G.O.Ms.No.272, HM & FW (E1) Department dated 10.7.2006.

22. In the light of the above conclusions arrived at, the other citations relied on by both the counsel are not being referred to.

23. For the foregoing reasons, the impugned order of the learned single Judge is set aside and the writ appeals filed by the managements are allowed and consequently the writ appeal filed by the student and the writ petitions are dismissed. No costs.

24. Miscellaneous petitions, pending if any, shall stand closed.

G.CHANDRAIAH,J

M.S.K.JAISWAL,J

DATE:26--09--2014

AVS

[1] 2013 (6) ALD 155 (DB)

[2] (2013)9 SCC 447

[3] (1984)3 SCC 654

[4] (1993)3 SCC 332

[5] (2012)3 SCC 1

[6] (2003)2 SCC 111

[7] (2003)6 SCC 697

[8] (2013) 9 SCC 447

[9] 2013(2) ALT 740 (DB)