

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No 6809 of 2022
(Arising out of SLP (C) No 15036 of 2022)

**Maharishi Markandeshwar University
And Another**

Appellants

Versus

Akriti Sharma and Others

Respondents

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1. Leave granted.
2. The appeal arises from a judgment dated 2 August 2022 of a Division Bench of the High Court of Himachal Pradesh.
3. The first appellant is a private state university in Himachal Pradesh established under the Maharishi Markandeshwar University (Establishment and Regulation) Act 2010. The first appellant runs the Maharishi Markandeshwar Medical College and Hospital at Kumarhatti, District Solan. The medical college

has a prescribed intake of 150 seats for admission to the MBBS degree course as approved by the National Medical Commission¹.

4. The first respondent is medical student currently pursuing her BDS course in a government dental college. The second respondent, Atal Medical and Research University, Himachal Pradesh, issued a prospectus for conducting centralized counselling for MBBS/ BDS courses based on the order of merit in the National Eligibility-cum-Entrance Test² 2021 for the undergraduate medical courses. The first respondent appeared in NEET-UG 2021 and secured 456 out of 720 marks with a rank of 1,26,537. On 29 January 2022, the second respondent issued a schedule of admission for the MBBS/ BDS courses for academic session 2021-2022. The first respondent secured admission for the BDS course in Bhojia Dental College, Nalagarh and joined the course on 02 February 2022. In the second round of counselling, the first respondent secured admission for the BDS course in the HP Government Dental College and Hospital, Shimla under the state quota.

5. After the completion of the second round of counselling, the medical college of the first appellant had 44 vacancies which were open for mop up counselling for admission to the first year MBBS degree course. Of these 44 seats, 4 were lying vacant under the state quota out of which 3 were under the general quota and one under the Scheduled Tribes quota. On 15 March 2022, the second respondent issued a schedule for conducting the mop up round for MBBS/ BDS courses. The appellant issued an advertisement for conducting the mop up round of counselling

¹ "NMC"

² "NEET"

from NEET qualified candidates. Counselling was to take place from 10 am on 25 March 2022. On 24 March 2022, the second respondent forwarded to the appellants a list of students who were eligible for admission under the state quota, but were admitted in the management quota in the first and second rounds of counselling. The letter stated that these students may be considered for being shifted to the state quota if no students with more marks in NEET had applied in the mop up round.

6. The first respondent filed an application with the medical college of the appellants together with the registration charges for admission to the MBBS course in the state quota. According to the appellants, the state quota seats in the general category were “automatically filled up” by upgrading the fifth, sixth and seventh respondents from the management quota to the state quota on 25 March 2022. The fifth, sixth, and seventh respondents secured 440, 441, and 442 marks respectively, and were lower in merit to the first respondent, who secured 456 marks. Thereafter, the management seats were also filled up. Therefore, the first respondent could not secure an MBBS seat under state quota in the medical college run by the appellants.

7. A writ petition was instituted by the first respondent before the High Court on 29 March 2022 for redrawing the merit list for admission to the MBBS degree course in the mop up round of counselling held on 25 March 2022 for the general category seats under the state quota. The appellants filed replies. During the pendency of the proceedings, the fifth, sixth, and seventh respondents, who were

students originally admitted to the management quota but upgraded to the state quota, were impleaded as parties on 11 May 2022.

8. The High Court allowed the petition by the impugned judgment and order dated 2 August 2022. It observed that the first respondent had the first right of admission to the medical college run by the appellants by virtue of securing higher marks than the fifth, sixth, and seventh respondents. The High Court further held that students admitted under management quota can be considered for upgradation to the state quota only if no student with more marks in NEET applied in the mop-up round. The High Court concluded that:

“In view of the above discussion, the instant petition is allowed. Admission of respondents 6 to 8 in state quota general category seats in MMMG on their upgradation from management quota by ignoring the merit of other applicants including the petitioner in mop-up round is held to be bad in law being against the express conditions of prospectus. Consequently, respondents No. 1 to 3 are directed to redraw the merit list of admission to MBBS course in MMMC in respect of the mop up round counselling held, on 25.03.2022 against general category seats of State quota and after such redrawing of merit list, admit the petitioner to MBBS course in MMMC, Kumarhatti, District Solan, H.P., commencing academic year 2021-2022 forthwith, in case she finds place in merit so redrawn.”

9. The crux of the controversy turns on the interpretation of clauses 3, 4 and 9(e) of the Common/ Centralized Counselling Prospectus for admission to MBBS and BDS courses. The relevant clauses of the prospectus are extracted below:

"3. After completion of 1st & 2nd round of counselling, the schedule for Mop-up round of counselling shall be issued by the University and the online counselling form shall be made available on the University website www.amruhp.ac.in. Candidates who are eligible for participating in the mop-up round on online counselling are required to fill up fresh choices/preferences of course, college and quota in the online application form within stipulated period for provisional allocation against vacant seats along with requisite amount as prescribed for token amount of fee, as applicable. If candidate is satisfied with his/her seat allocated during the previous rounds of online counselling, he/she is not required to participate in the subsequent round of online counselling. No inter-se-shifting from

one Government Medical College to another Medical college shall be allowed during the mop up Round of Counselling as per MCI/NMC guidelines. However, shifting for upgradation of course and quota from private Dental Colleges to Govt. Dental College and Govt./private dental colleges to MMMC Solan and Government dental college/MMMC Solan to Govt. Medical Colleges in order of merit-cum-choices/preferences of the course, college and quota shall be allowed.

Note: (i) Candidates who had not participated / allocated seats in the 1st & 2nd rounds of counselling can also participate in the mop-up rounds(s) of counselling as per their AMRU merit Rank.

(ii) Candidates are advised to remain in touch with the AMRU websites regularly for any change in the counselling/ admission process as well as latest updating upto the last closing date of admission and University shall in no way be responsible for non-communication on this account. For any query, please contact on Tel. No. 01905-243962, 243967, 292102."

4. The Himachali bonafide candidates admitted under management quota in the private Medical/Dental colleges will also be converted automatically from management quota to state quota in the colleges concerned against vacant/drop-out seats, if any, in order of merit, as the case, may be, subject to fulfillment of the eligibility criteria as prescribed for State Quota seats.

9(e). After 2nd round of Common/Centralized Counselling, the private medical college (MMMCH, Solan) shall be allowed to fill-up the left-out seats under State/ Management/ NRI Quota at institution level by making wide publicity amongst eligible candidates. However, AMRU, Ner Chowk, Mandi will forward the waiting list of 2nd round of online counselling with their option to the Principal, MMMCH, Solan in order to fill-up the vacant seats strictly in order of merit-cum-choice of the candidates. The AMRU, Ner Chowk, Mandi may also upload the aforesaid waiting list on website www.amruph.ac.in."

10. Mr Aseem Mehrotra, counsel appearing on behalf of the appellants submits that the mop up round of counselling was carried out strictly in accordance with clause 4 of the prospectus. According to the appellant, the list which was sent by the second respondent did not include the name of the first respondent. Hence, the appellant automatically upgraded the names of the three candidates, namely, the fifth, sixth, and seventh respondents, from the management quota to the state general quota seats. Moreover, the college also filled up the remaining management quota/ NRI seats which were vacant. Hence, on 25 March 2022 all

the state quota seats got filled up. The first respondent, it has been submitted, instituted a writ petition thereafter on 29 March 2022 for redrawing the merit for admission, at which point of time, all the state quota seats were filled up. Mr Mehrotra submitted that in the absence of an interim order of the High Court, the appellants proceeded to grant admissions to the fifth, sixth, and seventh respondents.

11. Mr Aseem Mehrotra further submitted that the first session of the first year of the MBBS degree course has been completed and the students have completed their studies over a period of four months. Moreover, it has been submitted that in the event that the order of the High Court is allowed to stand, one student would have to be ousted from among the admitted students who is not a party before this Court. This, it has been submitted, would be the necessary consequence because while one of the fifth, sixth, and seventh respondents would be reverted to the management quota, the total number of admissions in the institution cannot exceed 150. The submission is that the grant of admission to the first respondent would involve the appellants crossing the prescribed intake of 150 seats, as a consequence of which one student who is lowest in merit would have to be ousted without the student being a party to the proceedings.

12. In the alternative, it has been submitted that if this Court were to accept the correctness of the judgment of the High Court, the appellants may be permitted to keep one seat vacant for the first respondent in the ensuing academic year 2022-2023, subject to approval of the NMC.

13. On the other hand, it has been urged by Mr M C Dhingra, counsel appearing on behalf of the first respondent that there was absolutely no delay on the part of the first respondent in seeking access to her remedies before the High Court. The submission is that the appellants were not justified in relying upon the provisions of clause 4 of the prospectus for the up-gradation of Himachali students admitted under the management quota. Counsel urged that the provisions of clause 3 of the prospectus had to be operated first and it is only if any seat remained vacant as a result that clause 4 could be operated.

14. Before the High Court, the second respondent has supported the case of the first respondent. The second respondent referred to its letter dated 24 March 2022 where it was advised that students admitted under management quota in the first and second rounds of counselling could be admitted to the state quota provided that no student with more marks in NEET applied in the mop-up round. On 28 March 2022, the second respondent also sent an advisory to the appellants to review the conversion of management quota seats to the state quota in the general category. The relevant part of the advisory is extracted below:

“We have received a representation regarding incorrect conversion of management quota seats to HP quota. You are requested to review the allocation keeping in mind the directions issued by us vide letter No. AMRU/COE/Counselling/2021/-3083 dated 24th March, 2022, in which it was clearly mentioned that the candidates admitted under management quota may be shifted to vacant HP quota seat rank wise if no students with more ranks in NEET applies in Mop-Up round and also refer the decision of the Hon’ble High Court of H.P. vide CWP No. 2160/2020 decided on 10.7.2020 titled Gunjan Ahuja & Others Vs. State of Himachal Pradesh & others.”

15. This Court has consistently held that merit must be the primary consideration for admission to medical colleges.³ In **Asha v. Pt. B. D. Sharma University of Health Sciences**⁴, a two-judge bench of this Court held that the rule of merit for preference of courses and colleges should be strictly followed by all stakeholders and authorities. It further observed that rule of merit is defeated by inefficient, inaccurate or improper methods of admission to medical colleges:

21. ... the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be a travesty of the scheme formulated by this Court and duly notified by the States, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the rule of merit can be compromised. ... It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also an abuse of the process of law.

16. The High Court in the course of the impugned judgment has underscored the importance of merit and of a fair procedure in completing admissions to medical courses. The High Court has held that clause 3 of the Prospectus deals with a situation where seats are available as a result of the mop up round which is a continuation of the admission process, whereas clause 4 is available only in respect of vacant/ drop out seats which would be the position when the entire process of counselling, including the mop up round is completed. Hence, the High Court rejected the contention of the appellants that the up-gradation which was granted to the fifth, sixth, and seventh respondents was justified in terms of the prospectus for admission. In giving relief to the first respondent, the High Court held that she had been denied admission to the MBBS degree course by the

³ Pradeep Jain v. Union of India (1984) 3 SCC 654; Association of Management of Unaided Private Medical and Dental College v. Pravesh Niyrantran Samiti (2005) 13 SCC 704; Priya Gupta v. State of Chhattisgarh (2012) 7 SCC 433

⁴ (2012) 7 SCC 389

arbitrary action of the appellants. In other words, but for the wrong which was committed by the appellants, the first respondent would have been entitled to admission.

17. Clause 3 of the prospectus stipulates that after the completion of the first and second rounds of counselling, a schedule for the mop up round shall be issued by the university and the online counselling form would be made available. Candidates who are eligible for participating in the mop up round have to fill up fresh choices/ preferences in respect of the course, college and quota online. Shifting for up-gradation of a course and quota from private dental colleges to government dental colleges and government/ private dental colleges to MMMC Solan and government dental colleges/ MMMC Solan to government medical colleges in order of merit-cum-choices/ preferences has to be allowed. The provisions of clause 3 are abundantly clear. The first respondent admittedly ranked higher in merit than the fifth, sixth, and seventh respondents. She was therefore clearly entitled to admission in terms of the provisions of clause 3.

18. Clause 4 of the prospectus provides that students belonging to Himachal Pradesh who were admitted under the management quota in private medical/dental colleges will also be converted automatically from the management quota to the state quota in the colleges concerned against vacant/drop out seats, if any, in order of merit. As the High Court has correctly observed, clause 4 in its plain terms applies to vacant/drop out seats which would necessarily refer to the position as it obtains after the mop up round of counselling is completed. Hence,

the interpretation which has been placed by the High Court on clauses 3 and 4 of the prospectus cannot be faulted.

19. The next question which arises for our consideration is whether the High Court was right in directing the appellants to redraw the merit list of admission to the MBBS course for granting admission to the first respondent for the academic session 2021-2022.

20. In **S. Krishna Sradha v. State of Andhra Pradesh**⁵, a three-judge bench of this Court considered the nature of relief that can be granted to a meritorious student who is denied admission illegally by the authorities. This Court observed that denial of admission to a meritorious student for no fault of theirs would be violative of their fundamental rights under the Constitution of India. Therefore, the Court held that the primary relief must be in the nature of restitution and the courts can, in rare and exceptional circumstances, grant admission to the student in the same academic year even after the last prescribed date for admission. The relevant part of the decision is extracted below:

13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there

⁵ (2020) 17 SCC 465

is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed — 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time i.e. within one month from 30th September i.e. cut-off date and under no circumstances, the Court shall order any admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

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

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain to admission in MBBS course only and we have not dealt with postgraduate medical course.

21. Further, this Court on numerous occasions has held that courts cannot issue directions to increase seats beyond the sanctioned strength decided by the NMC.⁶ In **National Medical Commission v. Mothukuru Sriyah Koumudi**⁷, a two-judge bench of this Court was tasked with deciding the correctness of the judgment of the High Court directing the NMC to create an additional seat and grant admission to the respondent student, who was illegally denied admission to a post-graduate medical course. This Court disagreed with the decision of the High Court by holding that courts cannot issue directions to create seats and increase annual intake capacity beyond those sanctioned by the NMC. Further, it referred to **S. Krishna Sradha** (supra) to grant monetary compensation of Rs. 10 lakhs to the respondent student for loss of one academic year and also granted her admission for the next academic year in the management quota of the concerned college.

22. In the instant proceedings, the High Court understandably held that the first respondent was wrongfully denied admission in the medical college run by the appellants. However, the admissions for the MBBS degree courses were concluded on 25 March 2022 for the academic session 2021-2022. Undoubtedly, there were no laches on the part of the first respondent in moving the High Court since she had instituted a writ petition on 29 March 2022. Nonetheless, by the time the High Court decided the issue, the admissions had already been concluded and the last prescribed date for admission was over.

⁶ Medical Council of India v. State of Karnataka (1998) 6 SCC 131; Satyabrata Sahoo v. State of Orissa (2012) 8 SCC 203; Faiza Choudhary v. State of J&K (2012) 10 SCC 149; Aneesh D Lawande v. State of Goa (2014) 1 SCC 554

⁷ 2020 SCC OnLine SC 992

23. The fifth, sixth, and seventh respondents who were the three students who were upgraded in terms of clause 4 of the prospectus were impleaded as parties to the proceedings. The issue however does not rest only with these three students. The prescribed intake capacity of the medical college of the appellants is 150 students. The consequence of the direction of the High Court to redraw the merit list and grant admission to the first respondent gives rise to certain unfeasible outcomes. The total strength of the students admitted for the MBBS course for the academic session 2021-2022 would stand increased to 151 students and one of the three students among the fifth, sixth and seventh respondents would be reverted to the management quota, but the matter would not rest there. Once the intake of the college increases to 151 seats after the admission of the first respondent, one student who would be the lowest in merit would have to give way for the admission which is directed to the first respondent. That student would not have been impleaded as a party to the proceedings before the High Court. Compounded with the above position is the fact that five months of the first session for the MBBS degree course for the academic year 2021-2022 have been completed and the admitted students are pursuing their studies. In this view of the matter, it may not be possible for this Court to accede to the direction of the High Court for the grant of admission to the first respondent. The alternative submission which has been urged by Mr Aseem Mehrotra cannot also be acceded to because it would not be appropriate for this Court to direct that admission be granted to the first respondent against the seats available for the ensuing academic year 2022-2023. Those seats should be filled on a competitive basis in accordance with the governing prospectus.

24. However, we are clearly of the view that the first respondent cannot be left without any remedy. She has suffered though she ranked higher than the fifth, sixth and seventh respondents in merit in the NEET-UG 2021. She has been deprived of the admission to which she was entitled under clause 3 of the prospectus by an erroneous interpretation. Although the first respondent is currently pursuing her BDS course in a government dental college, she aspires to a seat for the MBBS degree course. The loss of one full academic year of the MBBS degree course can only be partially compensated in terms of money. However, we are clearly of the view that compensation must be provided to the first respondent and she cannot be left in the lurch having lost a seat for admission for the MBBS degree course.

25. On a considered view of the matter, we direct that the appellants shall pay to the first respondent compensation quantified at Rs 10 lakhs within a period of one month from the date of this order. Hence, for the reasons which are indicated above, we are in agreement with the interpretation which has been placed by the High Court on the interplay between clauses 3 and 4 of the prospectus. However, for the reasons set out above, we set aside the direction of the High Court for redrawing of the merit list and to grant admission to the first respondent and substitute it with the direction that the appellants shall pay compensation quantified at Rs 10 lakhs to the first respondent. The compensation shall be paid within one month.

26. The appeal is partially allowed in the above terms.

27. Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hima Kohli]

New Delhi;
September 19, 2022
CKB