

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

Civil Appeal No. 3940 of 2020

National Medical Commission **Appellant(s)**

Versus

Mothukuru Sriyah Koumudi & Ors. **Respondent (s)**

J U D G M E N T

L. NAGESWARA RAO, J.

1. Aggrieved by the denial of admission to 1st year Post-Graduate Medical Specialty course of MS (General Surgery) for the academic year 2020-2021, the Respondent No.1 filed a Writ Petition in the High Court of Judicature at Hyderabad for the State of Telangana. The High Court allowed the Writ Petition and directed the Appellant-National Medical Commission/ Medical Council of India to create or sanction one seat in MS (General Surgery). A further direction was given to Respondent No.2- Kamineni Academy of Medical Sciences and Research Centre, Hyderabad to grant admission to the

Respondent No. 1 in MS (General Surgery) course. The judgment of the High Court is challenged in the above Appeal.

2. The Respondent No.1 passed the final year MBBS Examination in January, 2019. She completed the one-year Compulsory Rotary Internship as a Resident Intern from 28.03.2019 to 27.03.2020 at Malla Reddy Narayana Multispecialty Hospital. Thereafter, she was awarded Bachelor of Medicine and Bachelor of Surgery Degree on 11.06.2020. In the meanwhile, she appeared in the All-India National Eligibility-cum-Entrance Test (NEET) Medical PG Entrance examination, 2020 on 05.01.2020. She secured All India Rank-93563 with 327 marks in the NEET examination for admission into Post Graduation Medical Course. The Respondent No.1 was called for counselling and was given provisional admission to the MS (General Surgery) course in the Mop-up Phase (MQ)-P3 on 28.07.2020 and was allotted to the Respondent No.2- College under Management Quota. According to the provisional allotment order, Respondent No.1 was required to report before the Principal of Respondent No.2-College by 04:00 PM on 30.07.2020. In case of

failure to report before Respondent No.2-College within the prescribed time, the provisional selection of Respondent No. 1 shall be automatically cancelled. According to Respondent No.1, she approached Respondent No.2-College along with her father on 29.07.2020 and 30.07.2020 for submission of certificates and payment of tuition fees as well as college fees. In spite of her presence in Respondent No. 2-College, the admission of Respondent No.1 was not completed. On 30.07.2020, the last date for admission into PG Medical Courses was extended till 30.08.2020 pursuant to the directions issued by this Court. Respondent No.1 made an attempt to meet the Chairman of Respondent No.2-College on 07.08.2020. However, she was not permitted to meet the Chairman.

3. Having left with no other alternative, Respondent No.1 filed a Writ Petition for seeking a declaration that denial of admission to her in the PG Medical Course for the academic year 2020-2021 as illegal. Respondent No. 1 also sought a direction to Respondent No.2-College to grant admission in MS (General Surgery). Respondent No.2-College filed a counter in the Writ Petition in which

it was stated that the University constituted a Committee for verification of original certificates and students who were allotted provisional admission by the University were directed to approach the said Committee for the purpose of verification of original certificates. Respondent No.2-College denied that Respondent No.1 approached the College for admission on 29.07.2020 or 30.07.2020. In the next sentence the Respondent No.2-College averred that Respondent No.1 and her father visited the College on 29.07.2020 only for the purpose of enquiring about the admission procedure and the requisite fee. As Respondent No.1 did not avail the opportunity of admission, Respondent No.1-College contended that Respondent No.5 was given admission on 11.08.2020.

4. By its judgment dated 18.09.2020, a Division Bench of the High Court allowed the Writ Petition and directed the Appellant to create a seat in MS (General Surgery) and to grant admission to Respondent No.1. The High Court disbelieved the statement of Respondent No.2-College that Respondent No.1 did not approach the

College either on 29.07.2020 or 30.07.2020. The admission granted to Respondent No.5 who is 2000 ranks below Respondent No.1 on 11.08.2020 was found fault with by the High Court. As Respondent No.1 was illegally denied admission by Respondent No.2-College, the High Court directed creation of a seat and to grant admission in MS (General Surgery) to her. Admission that was granted to Respondent No.5 was not interfered with as he might have been an innocent party unaware of the circumstances in which seat was denied to Respondent No.1 by Respondent No.2-College. The Appellant is mainly aggrieved by the direction given by the High Court to create or sanction an additional seat in Post-Graduate Medical Specialty course of MS (General Surgery) for the academic year 2020-2021.

5. Mr. Gaurav Sharma, learned counsel appearing for the Appellant- National Medical Commission submitted that Respondent No.1 did not pursue available remedies immediately after 30.08.2020. She should have approached the concerned authorities without delay to voice her grievance about the illegal action of Respondent No.2-College in not granting admission to

her. As the last date of admission was 30.08.2020, Mr. Sharma contended that no direction could have been granted by the High Court for admission to Respondent No.1 on 18.09.2020. He argued that the direction given for creation of a seat is contrary to the law laid down by this Court.

6. Mr. K. Parameshwar, learned counsel appearing for Respondent No.1 submitted that the denial of admission by Respondent No.2-College to Respondent No.1 in GS-MS (General Surgery) in spite of her being more meritorious than Respondent No.5 who was granted admission on 11.08.2020 has resulted in irreparable loss to Respondent No.1. He contended that the High Court was right in directing the creation of a seat in MS (General Surgery) in Respondent No.2-College and granting admission to Respondent No.1. Mr. Parameshwar submitted that the judgment of this Court in ***S. Krishna Sradha v. The State of Andhra Pradesh & Ors.***¹ is applicable on all fours to Post Graduate Courses as well. Mr. Siddhant Buxy, learned counsel appearing for Respondent No.2-College argued

¹ (2019) SCC OnLine SC 1609.

that the procedure prescribed under the Regulations of the Medical Council of India for admission to PG Medical Courses was scrupulously followed by the College. Having not approached the College before the last date of admission, Respondent No.1 cannot complain that she was denied admission. According to Mr. Buxy, Respondent No.5 was rightly given admission on 11.08.2020 and that Respondent No.2-College did not have any objection to the direction issued by the High Court for creation of a seat in favour of Respondent No.1. Mr. P. Venkat Reddy, learned counsel appearing for Respondent No. 3-the Kaloji Narayana Rao University of Health Sciences and Mr. A. Venayagam Balan, learned counsel appearing for Respondent No.5 have submitted that they have no objection to the judgment of the High Court. Mr. Balan submitted that Respondent No.5 joined MS (General Surgery) on 11.08.2020 when he was offered admission and he was not aware of the instant events which gave rise to this dispute.

7. There is no dispute that Respondent No.1 was provisionally granted admission to MS (General Surgery) Course in Respondent No.2- College on the basis of her

merit in the NEET PG Examination. The dispute before the High Court was whether Respondent No.1 approached Respondent No.2-College before the last date prescribed for admission i.e. 30.07.2020. Respondent No.1 asserted that she visited Respondent No. 2-College with her father on 29.07.2020 and 30.07.2020 but her admission process was not completed. On the contrary, Respondent No. 2-College insisted before the High Court that Respondent No.1 did not turn up for the admission before the last date. The High Court recorded a finding that it is clear from the counter affidavit filed by Respondent No.2-College that Respondent No.1 visited the College on 29.07.2020. The High Court also took note of the fact that Respondent No.1 paid the University Fee of Rs.49,600/- on 29.07.2020, and she was given a check list and also a PG Student Personnel Data Form by Respondent No.2-College. After taking into account the material on record and considering the submissions made on behalf of the parties, the High Court arrived at a conclusion that Respondent No.2-College had intentionally and illegally

denied admission to GS-MS (General Surgery) seat to Respondent No.1 for the academic year 2020-2021.

8. We are in agreement with the said finding of the High Court. A perusal of the counter affidavit filed by Respondent No.2-College in the High Court would show that there is a contradiction in the pleadings by Respondent No.2-College. On one hand, it is stated that Respondent No.1 and her father did not approach Respondent No. 2-College either on 29.07.2020 or 30.07.2020 for the purpose of admission. Having said so, Respondent No.2-College in its counter also stated Respondent No.1 had approached the College on 29.07.2020 to enquire about the admission procedure and the requisite fee. There is no reason to believe that Respondent No.1 did not approach Respondent No. 2-College for admission, especially after paying the University Fee on 29.07.2020. The last date for admission to the PG Medical Courses for the academic year 2020-2021 was extended from 30.07.2020 to 30.08.2020. Respondent No.5 was granted admission on 11.08.2020 to the seat which was provisionally allotted to Respondent No.1. He is 2000 ranks below Respondent

No.1. There is nothing on record to show that Respondent No. 2-College followed the procedure prescribed by the Regulations for filling up the seat due to non-joining. As the last date for admission has been extended beyond 30.07.2020, there was sufficient time for Respondent No.2-College to have intimated Respondent No.1 to come and join in the seat that was allotted to her provisionally. In case of refusal by Respondent No.1 to join, it was incumbent upon Respondent No.2-College to have followed the merit list and offered the seat to doctors who were immediately ranked below Respondent No.1. The manner in which Respondent No.2-College acted in depriving admission to Respondent No.1 and giving admission to Respondent No.5 on 11.08.2020 is deplorable. The Managements of the Medical Colleges are not expected to indulge in such illegalities in making admissions to Medical Courses.

9. The question that arises for our consideration is whether the High Court was right in directing creation of a seat for this academic year for granting admission to Respondent No.1. It has been repeatedly held by this

Court that directions cannot be issued for increasing annual intake capacity and to create seats. The annual intake capacity is fixed by the Medical Council of India (now National Medical Commission) which has to be strictly adhered. Admissions to Medical Colleges cannot be permitted to be made beyond the sanctioned annual intake capacity of a medical college as has been repeatedly held by this Court.

10. The next point that arises for our consideration is whether Respondent No.1 can be left high and dry in spite of having suffered due to the illegal action of Respondent No.2-College in denying admission to her. This Court in ***S. Krishna Sradha*** (supra) had occasion to consider the nature of relief to be granted to a student after the last date of admissions in case it is found that he or she was denied admission illegally. The conflicting in the judgments of this Court in ***Asha v. Pt. D.B. Sharma University of Health Sciences & Ors.***² and ***Chandigarh Administration & Anr. v. Jasmine Kaur & Ors.***³ was resolved by this Court in the judgment of ***S.***

2 (2012) 7 SCC 389

3 (2014) 10 SCC 521

Krishna Sradha (supra). In the case of **Asha** (supra), it was held by this Court that the rule of merit for preference of medical courses and colleges admits no exception and that the said rule has to be followed strictly and without demur. The last date for admissions has to be strictly followed except in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency. In such cases, admission can be granted by courts even after the last date. A contrary view was taken in **Jasmine Kaur** case (supra) wherein this Court was of the opinion that a student is only entitled to a compensation in cases of illegal denial of admission and no admission can be directed after the last date. In **S. Krishna Sradha** case (supra), this Court held as follows:

“33. 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:

(i) 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 concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) 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 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.

(iii) 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.

(iv) 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.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

11. As the dispute in ***S. Krishna Sradha*** case (supra) pertained to admission to the undergraduate MBBS Course, this Court held that they have not dealt with the Post Graduate Medical Courses. Mr. Parameshwar argued that there is no reason why the logic behind the

judgment in ***S. Krishna Sradha*** case (supra) should not be made applicable to Post Graduate Courses. We find force in the said argument of Mr. Parameshwar. This Court was only dealing with the admission to the MBBS Course for which reason directions given in the said judgment were restricted to the MBBS Course. Directions issued in ***S. Krishna Sradha*** case (supra) can be made applicable to admission to Post Graduate Courses as well.

12. As the last date for admissions for the present academic year is 30.08.2020, we are not inclined to grant admission to Respondent No.1 for this academic year. Even if the admission of Respondent No.5 is cancelled as having not been in accordance with the Regulations, it would not be of any use to Respondent No.1 or to any other eligible candidate. Furthermore, the High Court is right in holding that Respondent No.5 might not have known about the denial of admission to Respondent No.1 illegally. Though we disapprove the practice of Respondent No.2-College in picking up students for granting admission without following the

merit list, we do not seek to disturb the admission granted to Respondent No.5. Respondent No.2-College adopted unfair means to deprive Respondent No.1 admission to PG course. Respondent No.1 has lost one precious academic year for no fault of hers for which she has to be compensated by way of an amount of Rs.10 Lakhs to be paid by Respondent No.2- College within a period of four weeks from today. Furthermore, Respondent No.1 is entitled for admission to the MS (General Surgery) course in the next academic year 2021-22 and shall be given admission in a seat allocated to Respondent No.2-College. In other words, one seat in MS (General Surgery) course from the Management Quota of Respondent No.2-College for the next academic year (2021-22) shall be granted to Respondent No.1.

13. The Appeal is disposed off with the above directions.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

**New Delhi,
December 07, 2020.**