

W.P. No.8810/2015 (PIL), W.P. No.9892/2015,
W.P.No.10859/2015, W.P. No.10860/2015 (PIL),
W.P.No.11320/2015 (PIL), W.P. No.14365/2015,
W.P. No.14367/2015

16.10.2015

Shri A. M. Trivedi, Senior Counsel with Shri Ashish Trivedi, counsel for the petitioner in W.P. No.8810/2015 (PIL).

Shri Aditya Sanghi and Shri Ajay Shukla, counsel for the petitioner in W.P. No.9892/2015.

Shri Sanjay Kumar Verma, appears as *Amicus Curiae* in W.P. No.10859/2015.

Shri Nidhesh Gupta, Senior Counsel with Shri Amal Pushp Shrotri, counsel for the respondent– APDMC.

Shri Samdarshi Tiwari, Dy. Advocate General for the respondents/State.

Shri P. K. Kaurav, counsel with Shri Kapil Duggal, counsel for the respondent/AFRC and respondent No.33/M.P. Medical Science University in W.P.No.8810/2015(PIL).

Shri Vikram Singh, counsel for the Union of India.

Shri Anoop Nair, counsel for the Medical Council of India.

Shri Mohan Sausarkar, counsel for the respondent No.32 in W.P. No.8810/2015.

Shri Madhur Shukla, counsel for the respondent No.34 in W.P.No.8810/2015(PIL).

1. We have heard the learned counsel for the parties and the learned *Amicus Curiae*.

2. Two reports have been received from Shri C.L.M. Reddy, Database Administrator, appointed by the Court to supervise the technical aspects regarding the online examination to be conducted by APDMC.

3. The first report is dated 08.10.2015, which is about the events unfolded on the day of examination. The second report is dated 09.10.2015, which is in continuation of the first report.

4. AFRC has also placed its observation report through the counsel. Both the reports, more or less, deal with the same matter and there is unanimity about the events unfolded on the day of examination until the declaration of results. By and large, satisfaction has been recorded, both, by the Court appointed Database Administrator as well as by AFRC - except the abrasion at two Examination Centers in Delhi.

5. We were also informed that admission process on the basis of the results generated after the conclusion of the examination also commenced and completed till 14.10.2015, as directed in the previous order of this Court.

6. Considering the reports of the Court appointed Database Administrator Shri C.L.M. Reddy, as also of the AFRC, there is nothing to doubt about the manner in which the online examination was conducted. The abovesaid reports received are thus placed on record and accepted.

7. The question that may have to be first dealt with to ensure that the admission process is completed in all respects is: whether it would be open to the Court to issue direction to all concerned to permit admission process to be completed after 30.09.2015 for academic year 2015-16.

8. We are called upon to answer this core issue as to why : the Court must intervene to mitigate the situation which, essentially, has occurred due to the insistence of the Court in this PIL to conduct free and fair Medical Entrance Examination by APDMC.

9. Indisputably, the Regulation on Graduate Medical Education 1997, as amended on 25.02.2004, postulates that no admission of student in respect of any academic session beyond 30th September under any circumstance should be permitted nor the Universities shall register any student beyond the said date. However, from the Supreme Court decisions, which have been pressed into service by the learned counsel for the parties and the *Amicus Curiae*, it is permissible to hold that the prohibition is against the Authorities – such as, Union

of India, Medical Council of India, Dental Council of India, State Government, Universities and Medical & Dental Colleges and Management of the respective Universities or Dental and Medical Colleges. It is, however, open to the Writ Court to issue directions to the above said Authorities, which, must bind the Authorities to permit admission and registration of student even beyond 30th September. Provided, however, the Court records its satisfaction and just reasons therefor. This view can be discerned from the decisions of the Supreme Court in **Romil B. Shah (Dr.) and Others vs. State of Gujarat and Others (2006) 6 SCC 268 (para 5 and 6)** and in particular, **Asha vs. Pt. B.D. Sharma University of Health Sciences and Others (2012) 7 SCC 389 (para 29 to 31 & 38.2 and 40.4)** and **Padmashree Dr. D.Y.Patil Medical College v. Medical Council of India & Anr. (2015 SCC Online SC 770 (para 15).**

10. The counsel for the MCI and UOI, relied on the other decisions of the Supreme Court, in the case of **Medical Council of India Vs. State of Karnataka and others (1998) 6 SCC 131** and **Dr. Preeti Srivastava and another Vs.State**

of M.P. and others (1999) 7 SCC 120, to contend that the cut off date prescribed by the Regulation for completing admissions is inviolable. We agree with this argument, but, as aforesaid, that prohibition would operate against the stated Authorities. That does not denude the Writ Court from issuing directions to the Authorities, if the situation so warrants – for tangible and exceptional reasons to do complete justice and in larger public interest.

11. The counsel appearing for the two Universities have submitted that they would be bound by the Regulation/ Ordinance and directions issued by the Medical Council of India and Union of India. However, they would abide by the directions as may be given by this Court.

12. The real issue is whether : the facts of the present case would permit us to take such a view. It is noticed from the record that this Public Interest Litigation was filed in this Court on 17.06.2015 to question the methodology followed by APDMC in conducting entrance examination, which for this academic year was scheduled to be held on 12.07.2015. In the

context of apprehensions expressed, on 08.07.2015, this Court opined that after the written examination was completed, arrangements should be made by APDMC to immediately scan and digitize the answer papers. On 09.07.2015, a formal order in this behalf was passed after recording assurance of the State Government that complete logistical support will be extended in that behalf.

13. For reasons noted in the subsequent orders, the written examination could not be conducted by APDMC on 12.07.2015, instead, it stood postponed. Thereafter, APDMC came with the suggestion to permit it to conduct the examination online. That proposal commended to the Court. However, once again due to logistical issues including appointment of Agency for outsourcing the job of conducting online examination, the examination could not be organized immediately. Realizing the complexity of the issues and since not being an adversarial litigation, we thought it appropriate to appoint *Amicus Curiae* on 21.08.2015. The hearing of the case progressed. On every date, new suggestions and counter-suggestions were made, as difficulty was expressed by

APDMC to fulfill the criteria set by the Court for adopting impregnable security measures. Eventually, the Court had to appoint an independent observer as Database Administrator to supervise and provide guidance. That order was passed on 16.09.2015. The APDMC was able to arrange for an Agency - who could conduct the online examination and also ready to fulfill the security conditions specified by the Court, which were made subject to the approval of Shri C.L.M. Reddy, Court appointed Database Administrator.

14. Finally, the date for conducting the online examination (postponed examination) was announced as 20.09.2015. However, on that date, the online examination had to be abandoned by APDMC, due to several technical faults that occurred during the examination period. After that experience, to ensure that such faults and errors are not repeated, further firm measures were adopted as per the guidance given by Shri C.L.M. Reddy, Court appointed Database Administrator. Although, there was allegation about the officials of APDMC regarding the manner in which they conducted themselves, the Court decided to keep those issues aside for the time being and

focus on ensuring that free and fair examination is conducted without any further delay to meet the cut off date of 30.09.2015. However, for the reasons recorded in the order dated 28.09.2015, it is noticed that due to reasons beyond the control of APDMC, as it was fully dependent on an outside Agency for conducting online examination; coupled with the strict technical norms specified by the Court and as suggested by Shri C.L.M. Reddy, Court appointed Database Administrator, compliance whereof, became a challenge for the outsourced Agency. The date of re-examination was, therefore, required to be scheduled as 8th October, 2015. This was permitted after due consideration of all aspects and including the actual loss of only few working days, which APDMC had assured on behalf of all the member Colleges that they would take extra lectures for the students to make-up the loss of working days/hours of such students.

15. Suffice it to note that the situation has not been created by the Institutions intentionally nor the students who would be taking admission are responsible for the same. The situation has arisen because of intervention of the Court in this PIL, for

ensuring free and fair entrance examination to be conducted by APDMC. That goal has, more or less, been achieved. It is not a case of midstream admission being given to the students, nor a case of intentional violation of the schedule. As a matter of fact, it is a case of re-examination in lieu of examination, which was originally scheduled to be held on 12.07.2015, to ensure that admission process is completed before 30.09.2015. It is also not a case of merit being compromised. Whereas, by refusing permission by not extending the timeframe, it would be against larger public interest. Inasmuch as, about 2000 medical seats in the Private Medical Colleges of the State of Madhya Pradesh will remain unfilled for whole one academic year. That would inevitably, result in denying opportunity to such a large body of students community to pursue their medical education. Resultantly, their merits would become causality.

16. Taking overall view of the matter, we have no hesitation in holding that it is not only a case for adjusting equities in larger public interest and to do complete justice - *ex debito justitiae*, which we must on all counts do, as no meritorious

and deserving student should become the victim of the circumstances, which have been created for reasons beyond his control and for which he is not responsible in any manner. Not intervening in this exceptional situation would be overlooking and disregarding the position that no one should suffer because of the initial intervention by the Court for ensuring free and fair entrance examination in this PIL. The finalization of date for conducting online examination took more time than what the APDMC could have otherwise arranged, because of the firm stipulations by the Court on different dates of hearing to instil confidence of the public and for observing complete confidentiality and security and provide impregnable method for conducting free and fair examination.

17. A priori, in exercise of our powers to issue writ of continuing mandamus, we direct the Union of India, Medical Council of India, Dental Medical Council of India and the Universities concerned, to recognize the admission process for academic year 2015-16 – completed by the member Private Medical Colleges of APDMC until the Court extended date i.e. 14.10.2015; and to register the students so admitted and allow

them to pursue their medical course in the respective Colleges treating them as having been admitted within the prescribed time, subject to the fulfillment of the undertaking given by APDMC, of conducting extra classes to make-up the deficit or loss of working days/hours.

18. We place on record, our appreciation for the services rendered by Shri C.L.M. Reddy, Court appointed Database Administrator. All the stakeholders – be it, AFRC, APDMC or for that matter the petitioner and the *Amicus Curiae*, were all in praise for Shri Reddy for his integrity, sincerity, impartiality, competence and industry. They said this in one voice - but for him, it was not possible to successfully complete the online examination in such a short time and with such precision and perfection.

19. We direct the Registrar General to immediately get in touch with Shri Reddy, not only to communicate our appreciation for the invaluable services rendered by him at such a short notice given by the Court, but also to request him to submit his final professional bill of expenses and

allowances, which will have to be honoured by APDMC, as was assured to the Court.

20. This order only governs the action of completion of online entrance examination under the supervision of the Court appointed Database Administrator.

21. We make it clear that the other issues – such as, irregularity in the actual admissions made by the respective Private Medical Colleges and the extent of involvement of APDMC in that behalf; also regarding non-cooperation by APDMC officials to the Court appointed Database Administrator during the re-examination conducted on 20.08.2015; and about any irregularity noticed in respect of any specific case concerning the online examination held on 08.10.2015 and other related issues will be examined independently. For that, we defer this matter to **23rd November, 2015.**

Ordered accordingly.

(A.M. Khanwilkar)
Chief Justice

(K.K. Trivedi)
Judge