

ITEM NO.26

COURT NO.9

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 883/2013

SARDAR RAJAS MEDICAL COLLEGE

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(with appln. (s) for directions and impleadment as party  
respondent and office report)

WITH

W.P. (C) No. 490/2014

(With appln.(s) for deletion of the name of respondent and appln.  
(s) for impleadment and appln.(s) for directions and Office  
Report)

Date : 16/09/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s) Mr. Basava Prabhu S. Patil, Sr. Adv.  
Mr. M. Gireesh Kumar, Adv.  
Mr. Ankur S. Kulkarni, Adv.  
Mr. Sriram P, Adv.  
Mr. Vijay Kumar, Adv.

WP (C) 490/2014 Mr. Harin P. Raval, Adv.  
Mr. A Bagchi, Adv.  
Mr. S.K. Das, Adv.  
Mr. S. Mishra, Adv.

Mr. Ajay Choudhary, Adv.

For Respondent(s) Mr. Tushar Mehta, ASG  
Mr. Milind Kumar, Adv.

Mr. Shibashish Misra, Adv.

(MCI) Mr. Gaurav Sharma, Adv.  
Ms. Amandeep Kaur, Adv.

(St. of Odisha) Mr. Ashok Panigrahi, Adv.  
Mr. Santosh Kumar, Adv.  
Ms. Ashmi Mohan, Adv.

IA 2/2014 in WP(C)883/2014

Mr. Sanjeeb Panigrahi,Adv.  
Mr. L. Nidhiram Sharma,Adv.

UOI

Mr. R.K. Rathore,Adv.  
Mr. RS. Nagar,Adv.  
Mr. D.S. Mahra,Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Writ Petition(C)NO.490/2014

Application for impleadment (I.A.No.2/2014 in WP(C)No.490/2014) filed by the petitioner for impleadment of necessary parties as contesting respondents is allowed and they are impleaded as respondent No.4 and 5. Notice be issued to the impleaded respondents 4 and 5. Mr. Ashok Panigrahi, learned counsel accepts notice on behalf of respondents 4 and 5.

Application for deletion (I.A.No.3) filed by petitioner for deletion of the name of respondent No.3 is allowed and the name of respondent No.3 is deleted from the arrays of parties at the risk of the petitioner.

Rule. To be heard alongwith Civil Appeal No.4060 of 2009.

We have heard the learned counsel for the parties on interim relief.

This petition (WP(C)No.490/2014) has been filed by Vigyan Bharati Charitable Trust which is running three medical colleges in the State of Orissa. All these colleges are private unaided colleges.

The issue raised in this petition pertains to filling up of 15% seats under the NRI quota. Since this main issue is pending consideration in Civil Appeal No.4060/2009 and other connected matters, that is the reason the main writ petition is tagged alongwith the aforesaid appeal.

The question at this stage which needs determination is as to what should be the interim arrangement till the aforesaid civil appeal and other connected matters are decided. Insofar as the State of Odisha is concerned, the admissions and fixation of fees is regulated by Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 ("Act" for short).

The validity of this Act was challenged in the High Court of Orissa and the High Court vide its judgment dated 18.5.2007 in Writ Petition(Civi) No.3689 of 2007 held the said enactment to be unconstitutional. Challenging the aforesaid judgment of the High Court, the State of Odisha filed SLP(C)No.10318/2007 etc. in which leave has been granted. While granting leave, vide orders dated 1.6.2007, this Court also passed interim order staying the operation of the impugned judgment dated 18.5.2007 of the High Court subject to certain conditions. Insofar as Section 4(1), 4(2), 4(4) as also Section 6(1), 6(2) and 6(3) are concerned, the operation thereof was

stayed. The effect of the aforesaid interim order is that except the aforesaid provisions, all other provisions of the Act of 2007 are in operation.

Section 9 of the said Act provides for reservation of seat. We are concerned with sub-section 2 and sub-section 3 of Section 9 which read as under:

"9.(1) In every professional educational institution admissions shall be in accordance with the reservation policy of the government notified for the purpose of this Ordinance: provided that nothing in this sub-section shall be applicable to the minority institutions.

(2) In a private professional educational institution other than minority institution not exceeding fifteen per centum of the approved intake may be filled up by NRI from the merit list prepared on the basis of JEE.

As per the provisions of sub-section 2 of Section 9, in a private professional educational institution other than minority institution, there can be maximum 15% reservation of seats for NRI quota. It also provides that such seats are to be filled from the merit list prepared on the basis of Joint Entrance Examination (JEE). In case, there are unfilled seats, the shortfall can be made by filling up the seats from the merit list of All India Medical Entrance Examination to be conducted by Central Board of Secondary Examination (CBSE).

We are informed that this year no JEE was conducted. In spite thereof, 85% seats, that is, seats other than NRI seats have been filled and admissions have been made in all the educational institutions. Last date for taking admission in MBBS Course in this year is 30<sup>th</sup> September, 2014. It is for this reason the learned counsel for the petitioner has submitted that the petitioner's colleges be allowed to admit the students on the basis of entrance examination which shall be conducted by the petitioner under the supervision of Policy Planning Body (PPB) which is referred to in the order dated 1.6.2007. He has also referred to the interim order passed in a batch of appeals where the issue regarding the NRI admission is pending therein. Mr. Tushar Mehta, learned Additional Solicitor General appearing for the aforesaid Body, has no objection if the JEE is conducted by the petitioner under the supervision of such PPB and seats filled on merits of such examination.

We are also informed that in State of Odisha, there are six privately managed medical colleges. Apart from 3 colleges which are before us in this petition, 2 other deemed universities and another college is Sardar Rajas Medical College. As far as Sardar Rajas Medical College is concerned, that College has not been recognised by the Medical Council of India in this year. In this manner we

are left with these three private medical colleges insofar as State of Odisha is concerned, and therefore, there is no impediment in holding the entrance examination to fill up the NRI seats in three colleges of the petitioner under the supervision of PPB.

We thus permit the petitioner to carry out the exercise in holding the entrance test and admit the students in the aforesaid manner and the entire exercise be completed by 30<sup>th</sup> September, 2014.

Petitioner is also granted four weeks time to file rejoinder affidavit in the writ petition, as prayed for, by Mr. H.P. Rawal, learned senior counsel appearing for the petitioner.

Writ Petition(C)No.883/2013

No interim order can be passed since Medical Council of India (MCI) has not granted affiliation for this year.

I.A.NO.2/2014 IN WP(C)NO.883/2013

Reply in I.A.No.2/2014 be filed by Mr. Vijay Kumar, learned counsel for the petitioner within two weeks.

List the IA NO.2/2014 in WP(C)NO.883/2013 after two weeks on a Miscellaneous Day.

(O.P. SHARMA)  
COURT MASTER

(INDU BALA KAPUR)  
COURT MASTER