Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 867 of 2021
(@ SLP (C) No.179 of 2021)

Index Medical College, Hospital and Research Centre.
.... Appellant(s)

Versus

The State of Madhya Pradesh & Ors.
.... Respondent (s)

WITH

Civil Appeal No. 868 of 2021
(@ SLP (C) No.1109 of 2021)

Civil Appeal No. 869 of 2021
(@ SLP (C) No.1274 of 2021)

O R D E R

Leave granted.

1. We had heard the above set of Appeals and passed an order on 03.02.2021 as follows:

> *"After hearing the learned counsel for the parties, we declare Rule 12 (8) (a) of the Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018 as violative of Article 14 of the Constitution of India.*

We direct the State of Madhya Pradesh to initiate the process of filling up the 7 unfilled seats of 1st year MBBS course in the mop-up round for the year 2020-21 by college level counselling within a period of 7 days from today.

Reasons to follow."

2. Reasons for the order dated 03.02.2021 are given hereinunder: -

3. The Appellants-Private Medical Colleges filed Writ Petitions in the High Court of Madhya Pradesh, Bench at Indore, challenging the Constitutional validity of Sub-Rule 8 (a) of Rule 12 of the Admission Rules (Madhya Pradesh Chikitsa Shiksha Pravesh Niyam), 2018 (hereinafter, 'the Rules'). Aggrieved by the dismissal of the Writ Petitions, the Appellants are before this Court.

4. The Madhya Pradesh Niji Vyavasayik (Pravesh Ka Viniyaman Evam Shulk Ka Nirdharan) Adhiniyam, 2007 (hereinafter, 'the Act') was promulgated to provide for regulation of admission, fixation of fee and for reservation of seats to persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes in private unaided professional educational institutions and matters connected therewith. Admission to private unaided professional

educational institutions is dealt with in Chapter III of the Act. Every admission to a private unaided professional educational institution shall be made only in accordance with the provisions of the Act or Rules made thereunder. The State Government constituted the Admission and Fee Regulatory Committee for supervision and management of the admission process and for fixing the fee to be charged from the candidates seeking admission in these institutions.

5. Rules were framed by the State Government in exercise of the powers conferred under Section 12 of the Act. Rule 10 prescribes the process of admission to be on the basis of allotment of students who participated in the first round of counselling. The procedure for admission in second round of counselling is dealt with in Rule 11 and that of in last round (mop-up round) is found in Rule 12. The allotment of admission after completion of final round of counselling is governed by Rule 13. Amendments to the Rules were notified on 19.06.2019. The relevant amendment which is subject matter of challenge in these Appeals is Rule 12 (8) (a) which reads as follows: -

> "(8) (a) The vacant seats as a result of allotted candidates from MOP-UP round not taking admission or candidates resigning from admitted seat shall not be included in the

college level counseling (CLC) being conducted after MOP-UP round".

6. Writ Petitions filed by Index Medical College, Hospital and Research Centre and Arushi Mahant and Others challenging Rule 12 (8) (a) as being violative of Articles 14 and 19 (1)(g) were dismissed by a Division Bench of the High Court of Madhya Pradesh, Bench at Indore by a judgment dated 15.12.2020. Index Medical College, Hospital and Research Centre and others have filed the Appeal arising out of SLP (C) No.179 of 2021, assailing the validity of the judgment dated 15.12.2020. L.N. Medical College, Hospital and Research Centre has also challenged the said judgment of the High Court by seeking permission to file SLP. People's College of Medical Sciences and Research Centre filed a Writ Petition questioning the vires of Rule 12 (8) (a) as well. It was disposed of by the High Court of Madhya Pradesh giving liberty to the Petitioner therein to file an appropriate representation before the Directorate of Medical Education for redressal of its grievances. People's College of Medical Sciences and Research Centre and Another are questioning the order dated 13.01.2021 in one of the Appeals. As the

point that arises in all these Appeals pertains to the validity of Rule 12 (8) (a), they were heard together.

7. We have heard Mr. Neeraj Kishan Kaul, learned Senior Counsel, Mr. Siddharth R. Gupta and Mr. Amalpushp Shroti, learned counsel for the Appellants, Mr. Saurabh Mishra, learned Additional Advocate General for the State of Madhya Pradesh assisted by Mr. Sunny Chaudhary, Advocate for the Respondents. It was contended on behalf of the Appellants that Rule 12 (8) (a) is an affront to their right of occupation which is protected under Article 19 (1) (g) of the Constitution of India. Proscribing medical institutions from filling up seats which fall vacant due to candidates in the mop-up round not taking admission or candidates submitting resignation after taking admission amounts to an unreasonable restriction. It was asserted on behalf of the Appellants that admissions made by them are on the basis of allotment of students from common counselling pool. After two rounds of counselling, unfilled seats are taken up in mop-up round. Such of those seats which are not filled up in mop-up round are filled through college level counselling as provided in Rule 13. It was further argued that the pronounced object with which Rule 12 (8) (a) has been

introduced is to avoid manipulations in admission process and to prevent non-meritorious students from getting seats in better colleges. As the measures adopted have no nexus with the object, according to the Appellants, Rule 12 (8) (a) is violative of Article 14 of the Constitution of India. It was submitted on behalf of the Appellants that Rule 12 (8) (a) results in some seats going vacant, which is not only a national waste of resources but also a huge financial burden to educational institutions.

8. On the other hand, the State of Madhya Pradesh defended the judgment of the High Court. The State contended that it has become necessary to make amendment to Rule 12 and insert Sub-Rule 8 as it was found that students with lesser merit were getting admission to better colleges in stray vacancies which arose due to non-joining or resignation of candidates after mop-up round. Further, Rule 12 (8) was also brought to prevent manipulation by those candidates who were blocking seats in collusion with less meritorious candidates. As the entire exercise of admission to medical colleges has been laid to ensure transparency, Rule 12 (8) was made with the objective that less meritorious candidates do not steal a march over those

who have higher merit. The State relied upon a judgment passed by the High Court of Madhya Pradesh in Writ Petition No.8097 of 2017 wherein the High Court had directed the Government to prevent manipulation of admission process and stop the filling up of prime postgraduate seats by non-meritorious candidates in mop-up round. Seven seats were identified as those which became vacant due to students participating in mop-up round of counselling but not joining. Therefore, those seats have not been allotted for college level counselling.

9. Admission to private unaided medical institutions in the State of Madhya Pradesh are made on the basis of allotment through common counselling conducted by the State. There are two rounds of counselling conducted as per the procedure laid down in Rules 10 and 11. Students who are eligible for admission in first round are given an option to seek upgradation or change in second round along with those candidates who did not get admission in first round. Those who have sought for better option under Rule 10 are also considered in the second round of counselling which is conducted in accordance with Rule 11. Rule 11 (7) provides that admission in second round of counselling is final and

candidates who are admitted shall not be given the facility of a better choice. Rule 12 (2) makes it clear that candidates to whom allotment orders were issued in the previous rounds of counselling shall not be eligible for consideration in last round (mop-up round). The process of admission in last round shall be according to Rule 10. However, candidates participating in last round shall not be given the benefit of choosing a better option. In case, candidates do not take admission after the allotment order in last round of counselling, the amount of Rs. 2 lakhs deposited under Rule 12 (2) would automatically be forfeited.

10. Mr. Saket Bansal filed a Writ Petition No.8079 of 2017 before the High Court complaining of injustice caused to him by a lesser meritorious candidate getting a better subject/seat in the postgraduate medical course. He alleged that he accepted his fourth choice of subject in second round of counselling for admission to postgraduate course. In view of the Rules, he was not allowed to participate in the mop-up round. His first choice of subject came up for consideration in mop-up round and was filled up by a lesser meritorious candidate. He further alleged that certain candidates are indulging in manipulation of blocking seats and thereafter not

joining which gives an opportunity to lesser meritorious candidates to get better subject/college in later rounds of counselling. The High Court by an order dated 24.04.2019 expressed its anguish regarding the inaction of the State Government in the matter of manipulations in admissions to medical courses. The High Court was concerned that directions issued by this Court in ***Dar-us-Slam Educational Trust & Ors. v. Medical Council of India and Ors.[1],*** are not being followed by the State of Madhya Pradesh. The High Court recorded the statement made on behalf of the Government that such of those candidates who block seats and not join later shall be met with penal consequence of being debarred from taking admission in any other college for the current academic year. The High Court was also informed that admissions after mop-up round are confined to only such seats that remained vacant after the counselling, excluding those which are vacated by candidates who were allotted admissions.

11. Rule 12 (8) (a) provides that vacant seats which arise due to candidates in mop-up round not taking admission or submitting resignation after taking admission shall not be included in college level counselling. Rule 12 (8) (b)

1 (2017) 8 SCC 627

disqualifies these candidates who are allotted seats in the mop-up round and do not take up admissions or resign. They will automictically be declared ineligible and a list of such candidates shall be displayed on the portal and on the website of the Directorate. In addition, the list shall be sent to the Directorate of Medical Education of other States, Medical Council of India, Dental Council of India and D.G.H.S., Government of India, for not giving admission to such candidates in any other Medical or Dental colleges.

12. The right to establish and manage educational institutions as an occupation is protected under Article 19 (1) (g) of the Constitution of India. It is recognized by this Court in ***T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.***[2]. The right includes:

(a) The right to admit students.
(b) Right to set up of reasonable fee structure.
(c) Right to appoint staff.
(d) Right to take action, if there is a dereliction of duty on the part of an employee.

13. However, to ensure that admissions in educational institutions are made in a fair and transparent manner on the basis of merit, the Government is empowered to frame

2 (2002) 8 SCC 481

regulations. In ***T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*** (supra) it was held as under:

> **67.** We now come to the regulations that can be framed relating to private unaided professional institutions.
>
> **68.** It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes.

14. There is no controversy relating to provisions of the Act and Rules where procedure for admission to professional colleges is prescribed. The only dispute that arises for our consideration is validity of Rule 12 (8) (a) which was introduced on 19.06.2019. The object of Rule 12 (8) (a) is to ensure that all admissions to medical institutions are based on merit and to bar students of lesser merit from getting admission to better colleges. The notice issued by the Director General of Health Services, Ministry of Health and Family Welfare, Government of India dated 11.04.2018 has been referred to by the High Court in its order dated 24.04.2019. The said letter highlights the active participation of a group of students who were blocking all India quota seats in second round of counselling deliberately for financial gratification without intention to join. During the said period in the letter nearly 1,000 identified students did not join after first round. They were being monitored to find out whether they were taking admission at least in second round. DGHS proposed severe penal action against those indulging in such activities. Having been informed of this menace, this Court passed an order dated 09.05.2017 in ***Dar-us-Slam Educational Trust & Ors. v. Medical***

Council of India and Ors. (supra), barring students who take admission in all India quota seats from being allowed to vacate seats after second round of counselling. All vacant seats after last round of counselling were directed to be filled up from a list that is forwarded to the institutions in the ratio of ten times to the number of vacancies to ensure that all stray vacancies are filled. The contention of the Appellants is that being asked to keep seats unfilled amounts to an unreasonable restriction on their right to carry on their occupation guaranteed under Article 19 (1) (g) of the Constitution of India. Even assuming the object of the Rule is to ensure that lesser meritorious candidates do not get admission to better colleges, the measure adopted by the Government in keeping seats vacant is disproportionate.

15. This Court in ***State of T.N. & Anr. v. P. Krishnamurthy & Ors.***[3] held that a subordinate legislation can be challenged on the following grounds:

> a) Lack of legislative competence to make the sub-ordinate legislation.
> b) Violation of Fundamental Rights guaranteed under the Constitution of India.
> c) Violation of any provision of the Constitution of India.
> d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

3 (2006) 4 SCC 517

e) Repugnancy to the laws of the land, that is, any enactment.
f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

16. It is relevant to examine whether a subordinate legislation can be declared as unconstitutional on the principle of proportionality. This Court in ***Kerala State Beverages (M&M) Corpn. Ltd. v. P.P. Suresh***[4] held as under: -

C. Judicial Review and Proportionality

26. The challenge to the Order dated 7-8-2004 by which the respondents were deprived of an opportunity of being considered for employment is on the ground of violation of Articles 14, 19 and 21 of the Constitution of India. Lord Diplock in *Council of Civil Service Unions* v. *Minister for the Civil Service* [*Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] held that the interference with an administrative action could be on the grounds of "illegality", "irrationality" and "procedural impropriety". He was of the opinion that "proportionality" could be an additional ground of review in the future. Interference with an administrative decision by applying the *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] principles is restricted only to decisions which are outrageous in their defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it.

4 (2019) 9 SCC 710

17. In ***Om Kumar and Ors. v. Union of India[5],*** this Court observed that the principle of proportionality was being applied to legislative action in India since 1950. Any challenge to restrictions imposed by the Government under Articles 19 (2) to 19 (6) are tested by Courts on the principle of proportionality. Whether restrictions placed are reasonable or not is adjudicated on the basis of appropriate balance between rights guaranteed and the control permissible under Article 19 (2) to 19 (6). When legislation is challenged on the ground that restrictions placed on the fundamental right is disproportionate, the Court conducts a primary review where the State has to justify the necessity of restricting the fundamental rights. Proportionality involves balancing test and necessity test. The "balancing test" relates to scrutiny of excessive onerous penalties or infringement of rights or interest and a manifest imbalance of relevant considerations. Whereas, the "necessity test" requires infringement of human rights in question to be by the least restrictive alternative.[6]

5 (2001) 2 SCC 386
6 District Central Co-operative Bank V. Coimbatore District Central Co-operative Bank Employees Association and another' – (2007) 4 SCC 669

18. According to Aharon Barak[7] proportionality in the broad sense is based on two principal components. The first is legality, which requires that the limitation be "prescribed by law"; the second is legitimacy, which is fulfilled by compliance with the requirements of proportionality in the regular sense. Its concern is with the conditions that justify the limitation of a constitutional right by a law. There are two main justificatory conditions: an appropriate goal and proportionate means. An appropriate goal is a threshold requirement and in determining it no consideration is given to the means utilized by the law for attaining the goal. A goal is appropriate even if the means of attaining it is or not. The proportionate means must comply with three secondary criteria: (a) a rational connection between the appropriate goal and the means utilized by the law to attain it, (b) the goal cannot be achieved by means that are less restrictive of the constitutional right; (c) there must be a proportionate balance between the social benefit of realizing the appropriate goal, and the harm caused to the right (proportionality *stricto sensu* or the proportionate effect).

7 Aharon Barak, Proportionality and Principled Balancing, 4 Law & Ethics Human Rights, 1

19. The three tests of proportionality propounded by ***Dickson, C. J. of Canada in R. v. Oakes***[8] are:

(a) The measures adopted must be rationally connected to the objective.

(b) The means should impair "as little as possible" the right or freedom in question.

(c) There must be a proportionality between the effects of the measures which are responsible for limiting the right or freedom, and the objective which has been identified as of "sufficient importance".

20. A. K. Sikri, J. in ***Modern Dental College and Research Centre & Others v. State of Madhya Pradesh***[9] remarked that the doctrine of proportionality is enshrined in Article 19 itself. He explained that the expression "reasonable restrictions'' seeks to strike a balance between the freedom guaranteed in Article 19 (1) and social control permitted by Article 19 (2) to 19 (6). It was further held in ***Modern Dental College and Research Centre & others v. State of Madhya Pradesh*** (supra) that limitations imposed on the enjoyment of a right guaranteed under the Constitution should not be arbitrary or excessive to what is required in the interest of public. It is also relevant to refer

8 R. v. Oakes, (1986) 1 SCR 103 (Can. SC)]
9 (2016) 7 SCC 353

to the following factors which have to be kept in mind for examining the reasonableness of a statutory provision as laid down in ***M.R.F. Ltd. v. Inspector Kerala Govt.***[10]:

> **13.** On a conspectus of various decisions of this Court, the following principles are clearly discernible:
>
> (*1*) While considering the reasonableness of the restrictions, the court has to keep in mind the Directive Principles of State Policy.
>
> (*2*) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
>
> (*3*) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.
>
> (*4*) A just balance has to be struck between the restrictions imposed and the social control envisaged by clause (6) of Article 19.
>
> (*5*) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: *State of U.P.* v. *Kaushailiya* [AIR 1964 SC 416 : (1964) 4 SCR 1002] .)
>
> (*6*) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a

10 (1998) 8 SCC 227

strong presumption in favour of the constitutionality of the Act will naturally arise. (See: *Kavalappara Kottarathil Kochuni* v. *States of Madras and Kerala* [AIR 1960 SC 1080 : (1960) 3 SCR 887] ; *O.K. Ghosh* v. *E.X. Joseph* [AIR 1963 SC 812 : 1963 Supp (1) SCR 789 : (1962) 2 LLJ 615] .)

21. It is pertinent to refer to the observations made by Justice M. Jagannadha Rao in ***Om Kumar and Ors. v. Union of India*** (supra) regarding proportionality in connection with Article 14 of the Constitution of India which are as under: -

> **"32.** So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable [see *Air India* v. *Nergesh Meerza* [(1981) 4 SCC 335: 1981 SCC (L&S) 599] (SCC at pp. 372-373)]".

22. The Rules govern admission to both undergraduate and postgraduate medical courses. The practice of students vacating allotted seats in All India Quota to help lesser meritorious candidates was identified and suitable steps

were directed to be taken to prevent it. Large number of seats in All India Quota were being sent for counselling to State Quota. It was found that certain unscrupulous elements were making meritorious students vacate their seats so that the said seats would be filled up by candidates having lower merit in the next rounds of counselling. In the counter affidavit filed in these Appeals, the State Government referred to the observations made by the High Court in the Writ Petition filed by Mr. Saket Bansal relating to postgraduate admissions. The complaint of the Writ Petitioner therein was that a lesser meritorious candidate got a better subject due to the filling of the seat in mop-up round and the student who was allotted the seat in the earlier round not joining. In the background of the said facts, the High Court directed the State Government to find a solution to put an end to the pernicious practice of students who were allotted to a medical seat not joining to favour lesser meritorious candidates.

23. The professed object of the amendment to the Rules by insertion of Rule 12 (8) (a) is to ensure that admission to medical institutions are made strictly in accordance to merit as the Government noticed that lesser meritorious

candidates were getting better colleges/subjects. Therefore, seats that fall vacant due to non-joining or resignation of students who were allotted seats in mop-up round of counselling will not be included in the college level counselling. The result is such seats will remain unfilled.

24. There is no doubt that the object with which Rule 12 (8) (a) is made is appropriate as malpractice by students in the admission process should be curtailed. Rule 12 (7) (c) provides that students who do not take admission after issuance of an allotment letter will not be entitled to seek refund of the advance admission fee of Rs.2 lakhs which would stand forfeited automatically. According to Rule 12 (8) (b), those students who do not join after being allotted a seat through mop-up round will automatically be declared ineligible for the next round of counselling. They will not be entitled for admission to any other medical/dental colleges. Suitable steps are taken to prevent such students from participating in the next round of counselling, forfeiting the advance admission fee and making them ineligible for admission in any medical college. However, the medical colleges who have no part to play in the manipulation as detailed above are penalised by not being permitted to fill up

all the seats. The measure taken by the Government of proscribing the managements from filling up those seats that fall vacant due to non-joining of the candidates in mop-up round is an excessive and unreasonable restriction.

25. The right to admit students which is a part of the management's right to occupation under Article 19 (1) (g) of the Constitution of India stands defeated by Rule 12 (8) (a) as it prevents them from filling up all the seats in medical courses. Upgradation and selection of subject of study is pertinent only to postgraduate medical course. In so far as undergraduate medical course is concerned, the upgradation is restricted only to a better college. Not filling up all the medical seats is not a solution to the problem. Moreover, seats being kept vacant results in huge financial loss to the management of the educational institutions apart from being a national waste of resources. Interest of the general public is not subserved by seats being kept vacant. On the other hand, seats in recognised medical colleges not being filled up is detrimental to public interest. We are constrained to observe that the policy of not permitting the managements from filling up all the seats does not have any nexus with the object sought to be achieved by Rule 12 (8) (a). The

classification of seats remaining vacant due to non-joining may be based on intelligible differentia but it does not have any rational connection with the object sought to be achieved by Rule 12 (8) (a). Applying the test of proportionality, we are of the opinion that the restriction imposed by the Rule is unreasonable. Ergo, Rule 12 (8)(a) is violative of Articles 14 and 19 (1) (g) of the Constitution.

26. For the aforementioned reasons, the judgment of the High Court is set aside and the Appeals are allowed accordingly.

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

.....J.
[INDIRA BANERJEE]

New Delhi,
February 03, 2021.