

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 596 OF 2021

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 7907 OF 2020)

LALITHA R NATH AND OTHERS APPELLANTS(S)

VERSUS

KANNUR MEDICAL COLLEGE AND OTHERS RESPONDENT(S)

W I T HCIVIL APPEAL NO. 597 OF 2021

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9507 OF 2020)

CIVIL APPEAL NO. 598 OF 2021

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 8121 OF 2020)

A N DCIVIL APPEAL NO. 599 OF 2021

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 7462 OF 2020)

J U D G M E N T**SANJIV KHANNA, J.**

Leave granted.

2. Appeal preferred by Lalitha R Nath and 24 others impugns the final order and judgment dated 29th May, 2020 of the Division Bench of the Kerala High Court, partially allowing Writ Petition

(Civil) No. 10205 of 2020 filed by Kannur Medical College (hereinafter referred to as 'KMC' or 'the College') by staying operation of the order dated 29th April, 2020 passed by the Kerala University of Health Sciences (in short, 'KUHS') whereby the College was denied affiliation for conducting MBBS and post graduate courses for the academic year 2020-21. The stay, as granted, is subject to the College satisfying the following conditions: (i) furnishing of bank guarantee of Rs.10 crores before the Registrar of the Kerala High Court; and (ii) depositing of the title deed of 25 acres of land situated at Sy.No. 13/1 in Village Anjarakkandi, as security for payment of any amount that the College may be liable to pay as per directions to be issued in Writ Petition (Civil) No. 15337 of 2019, titled ***The Principal v. The Admission and Fee Regulatory Committee.***

3. Appeal preferred by Sita V.K. impugns the final order and judgment dated 22nd November, 2019 passed by the Division Bench of the Kerala High Court in Writ Petition (Civil) No. 26995 of 2019 filed by the Principal of the College, *inter alia*, quashing the reopening notices issued by the Admission Supervisory Committee for Professional Colleges in Kerala (in short, 'ASC') in 16 cases, with a further direction to not reopen 92 other cases where students had been issued notice after 4th October, 2018

and had submitted to the ASC that they had received the entire amount or had failed to appear and make their submissions. However, in cases of students who had objected to the refund made by the College, the ASC shall consider their claim and pass appropriate orders.

4. Appeal preferred by V. Prasanna Kumar and others, like the appeal preferred by Sita V.K., impugns order dated 22nd November, 2019 in Writ Petition (Civil) No. 26995 of 2019 passed by the Division Bench of the Kerala High Court.
5. Appeal preferred by the ASC, like the appeal preferred by Lalitha R Nath, impugns order dated 29th May, 2020 passed by the Division Bench of the Kerala High Court in Writ Petition (Civil) No. 10205 of 2020 filed by KMC.
6. In order to appreciate the controversy and the contentions, a brief synopsis of the relevant facts is required to be noticed.
 - 6.1 KMC is a private self-financing medical college which was established in the year 2006 with sanctioned intake of 100 students. Subsequently, it appears, an additional intake of 50 students was permitted thereby increasing the sanctioned intake to 150 students per year.

- 6.2 On 28th April, 2016, in ***Sankalp Charitable Trust and Another v. Union of India and Others***,¹ this Court had directed that admissions to MBBS courses shall be conducted through National Eligibility-cum-Entrance Test (NEET).
- 6.3 On 9th August, 2016, the Union Government had directed all States and Union Territories to conduct combined/centralised counselling for 2016-17 MBBS admissions, consistent with the judgment of this Court in ***Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others***.²
- 6.4 In consonance with the aforesaid directions, the Government of Kerala, on 20th August, 2016, had directed that all medical colleges would only admit students selected by the Commissioner for Entrance Examinations (in short, 'CEE') through common counselling.
- 6.5 This direction was challenged by KMC before the Kerala High Court. On 26th August, 2016, an interim order was passed by the High Court to the effect that MBBS admissions for 2016-17 shall be conducted on the basis of NEET-2016 and that all applications shall be made online to facilitate transparency with regard to merit and identity of the applicants.

¹ (2016) 7 SCC 487

² (2016) 7 SCC 353

- 6.6 However, the ASC, on 3rd September, 2016, reiterated its stand stating that admissions in contravention of its directions would not be registered by KUHS. Subsequently, on 15th September, 2016, the ASC, after conducting an inquiry, cancelled all admissions made by KMC on the ground that the college had neither called for online applications nor had it complied with the requirements in the revised approval of prospectus dated 10th September, 2016. Thereafter, the ASC issued an order dated 17th September, 2016 reiterating its earlier directions and calling upon KMC to publish relevant details online. Applications for MBBS degree course in KMC for 2016-17 were also invited.
- 6.7 The matter reached this Court in Special Leave Petition (Civil) No. 9835 of 2016 and vide order dated 28th September, 2016, it was directed that all counselling shall be centralised.
- 6.8 Shortly thereafter, on 2nd October, 2016, the ASC cancelled MBBS admissions granted by KMC due to non-compliance of its orders. The Government of Kerala was also requested to direct CEE to conduct centralised admissions.
- 6.9 KMC, thereupon, moved the Kerala High Court vide Writ Petition (Civil) No. 32186 of 2016 challenging the order cancelling the admissions to the MBBS course. On 6th October, 2016 an interim order was passed by the High Court directing KMC to submit

records to the CEE for conducting spot admissions. On 13th October, 2016, the CEE submitted its report alleging absence of cooperation by KMC. Several irregularities were also highlighted as applications had been received by KMC without NEET rank and roll numbers, etc. Some of the applicants were disqualified. Representatives of KMC could not furnish letter of authorisation from the college authorities and on being asked to register their attendance, the representatives had left the counselling hall without registering their attendance. The writ petition filed by KMC was dismissed by the High Court on 28th October, 2016 imposing costs of Rs.1,00,000/- (rupees one lakh only) and with a direction to the ASC to scrutinise all records of KMC with regard to the admissions made.

6.10 The order dated 28th October, 2016 of the High Court was challenged before this Court vide Special Leave Petition (Civil) Nos. 35374-75 of 2016. On 22nd March, 2017, this Court declined to interfere with the judgment of the Kerala High Court.

6.11 In the meanwhile, on 14th November, 2016, the admissions made by KMC were cancelled once again due to continued non-compliance with various directions, including non-publication of lists and conduct of admissions offline, among other reasons.

- 6.12 In view of the aforesaid position, including order passed by this Court on 22nd March, 2017, the Registrar of KUHS, on 31st March, 2017, directed the Principal of KMC to discharge the 150 students admitted for the academic year 2016-17 and report compliance.
- 6.13 The students had instituted Writ Petition (Civil) No. 16411 of 2017 in the Kerala High Court to challenge the order of cancellation of admissions, which petition was dismissed on 22nd June, 2017.
- 6.14 The dismissal order was confirmed by this Court on 10th July, 2017 in Special Leave Petition (Civil) No. 17080 of 2017.
- 6.15 State of Kerala had thereafter promulgated the Kerala Professional Colleges (Regularisation of Admissions in Medical Colleges) Ordinance, 2017 to regularise MBBS admissions in certain colleges against payment of Rs.3,00,000/- (rupees three lakhs only) per student as a regularisation fee. The Ordinance was, however, held to be *ultra vires* by this Court in ***Medical Council of India v. State of Kerala and Others***.³
- 6.16 In the meanwhile, several students/parents started pressing KMC to return the original documents of the students, and for refund of the fees paid. Many students had joined other colleges for their studies, including MBBS courses. Some students/parents had filed complaints with the police. First Information Reports were registered.

³ (2019) 13 SCC 185

- 6.17 Thereupon, KMC entered into settlements with the students/parents and applications were filed for withdrawal of complaints. In some cases, the Chairperson of the Admission and Fee Regulatory Committee for Medical Education had passed orders permitting withdrawal of the complaints as having been settled. However, in several cases, in spite of the settlement, disputes persisted as to the amounts paid towards capitation fee, etc. and that full refund had not been issued. In some cases, the Admission and Fee Regulatory Committee for Medical Education, after due consideration, had issued directions to KMC for further payment.
7. To cut short the controversy, on 29th August, 2018, a consent order was passed by a two Judge Bench of this Court in Special Leave Petition (Civil) No. 23225 of 2018, ***The Principal, Kannur Medical College v. Admission Supervisory Committee***, the relevant terms of which read as under:

“1. The college shall return the double of the amount than the fees at (sic) deposited by each one of 150 students with college, by 4th September, 2018.

It is submitted that the amount shall be remitted in the bank account of each of the students. Let compliance report including bank statements, bank account numbers with names of students be filed not only in this Court but also to the Admission Supervisory Committee (ASC). The ASC shall ascertain and submit the report whether amount has

been refunded, as ordered, to the students and bank accounts belong to them.

2. It is agreed to that the order of ASC for withdrawal of the affiliation shall not be acted upon in case the order is complied with.

3. It is also agreed to that Kannur Medical College, shall be permitted to participate in the mop-up round, which is going to take place on 4th and 5th of September, 2018, before the Controller of Entrance Examination, Kerala, and only those students who opt for college shall be allotted and no other.

4. The fees fixed by the ASC shall only be realised by the college from the students who opt for the college in question for the year 2018-19 onwards.

5. The college shall not admit even a single student for the year 2018-19, other than the one allotted by the Controller of Examination in the counselling that is to be held on 4th and 5th of September, 2018. In case of violation, entire order shall be withdrawn.

6. It is also undertaken that in future the college shall not collect the fees in any name more than one year's fees as prescribed under the Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 and by ASC.

7. Let the amount of Rupees One Crore cost be paid by the college to the Chief Minister's Relief Fund, Kerala, by 20th September, 2018. The college shall also deposit the sum of Rs.10,00,000/- (Rupees Ten Lakhs) with the Supreme Court Advocates-on-Record Welfare Trust and Rs.1,00,000/- (Rupees One Lakh) with the Supreme Court Bar Association.

8. If the original documents, if any, of the students, which may be lying with the college, shall be returned to the concerned students.

In case of non-compliance, the order shall be withdrawn by this Court. In view of disposal of the main petition, pending applications shall also stand disposed of.”

8. Subsequently, the issue of refund was revisited in the order dated 4th October, 2018, passed by another two Judge Bench of this Court in M.A. No. 2354 of 2018 in Special Leave Petition (Civil) No. 23225 of 2018. Pertinently, the order refers to the ASC’s report dated 4th September, 2018, to the effect that diverse amounts ranging from Rs.35,00,000/- to Rs.1,00,00,000/- were collected from most of the 150 students admitted to the College. The relevant portion of the order dated 4th October, 2018 reads as under:

“Thereafter ASC prepared the Report on 1.9.2018 pursuant to the order issued by this Court. The Report is extracted hereunder:

“Sub: Refund of Amount Paid by The 2016-17 Batch Mbbs Students – Public Notice Issued By The Kannur Medical College Matters – Reg.

Ref: 1. Order of the Hon’ble Supreme Court of India in SLP (C) No. 23225 of 2018 dated 29.08.2018.

2. This office letter of even number dated 31.08.2018.

3. Your email dated 31.08.2018 at 11.40 AM enclosing a Public notice.

The Admission Supervisory Committee has noticed the contents in the public notice issued by the Kannur Medical College and found that the notice issued is totally against the direction contained in the Hon'ble Supreme Court order dated 29.08.2018 and it appears that the Medical College has not properly understood the order.

The apex court has directed the medical college to comply with (sic) was clearly stated in the communication referred as 2nd paper above, i.e. the Hon'ble Supreme court has directed to refund double of the amount than the fees deposited by each one of the 150 students.

The tuition fees regulated by the Fee Regulatory Committee for Kannur Medical College during the academic year 2016-17 was Rs.3 lakhs as per the order no. FRC 50/16/MBBS/KMC dated 23.02.2018, which was already received by the Medical College. The Medical College has to refund this amount of 3 lakhs to each of the 150 students.

In addition the Medical College had collected an amount ranging from 35 lakhs to one crore most of from those 150 students which was admitted by the Medical College as well as by the representatives of the Medical College during the course of hearing conducted in connection with the refund of the capitation on various occasions.

Therefore, you have to refund double of the said amount so received from each of the 150 students in addition to Rs. 3 Lakhs.

It is made still clear as follows:

From one student viz. Ms. Rehna Banu, the Medical College had collected Rs.35 Lakhs. As per the directions of the Hon'ble Supreme Court, the Medical College has to

pay Rs.64 lakhs + 3 lakh = 67 lakh (35 lakh – 3 lakh = 32 lakh x 2 = 64 lakh + 3 lakh = 67 lakh) to the above candidate.

The Principal of the Kannur Medical College shall refund each students the amount as calculated above and report to this office on 03.09.2018 at 4.00 PM, without fail.”

(emphasis as originally supplied)

The admissions of 150 students were found to have been made in illegal manner and matter had attained finality in this Court in the first round of litigation. Thereafter the State of Kerala had promulgated ordinance regularising the aforesaid admissions. The ordinance has been declared ultra vires by this Court vide judgment and order dated 12th September, 2018 in W.P. (C) No. 231 of 2018.

It is seriously disputed fact in the instance case that how much amount had been collected from each of the students and what has been refunded as per the Order passed by this Court is not the appropriate sum. In the facts and circumstances of the case, as certain material has been placed on record by the college in this Court only and that was not placed before the ASC and students have also come up with certain documents indicating how they had collected amount paid, they are also required to be considered by the ASC. This Court cannot conduct factual enquiry. It was suggested by Mr. Jaydeep Gupta, learned senior counsel that the parties may be relegated to the ASC for adjudication of the aforesaid aspect. The ASC to consider the material which may be placed on record by the respective parties and take a decision in accordance with law on the basis of the evidence adduced in each of the case with respect to each of the students.

Sh. Mukul Rohatgi, learned senior counsel submitted that college may be permitted to give admissions in the current session i.e. in 2018-2019.

After hearing learned counsel for the parties, we are of the opinion that as there is serious dispute with respect to adequacy of the refund that has been made; and apart from that we are already in the month of October, 2018; admissions are over for the current academic session i.e. 2018-2019; no admission can be ordered to be given at this juncture – in the Kunoor Medical College.

With respect to refund, let enquiry be made by the ASC and let appropriate order be passed in this regard. Accordingly, the application stands disposed of.”

9. Significantly, the consent order dated 29th August, 2018 passed by this Court records that the College had agreed and accepted that the order of the ASC for withdrawal of affiliation of KMC shall not be acted upon in case the directions given in the order dated 29th August, 2018 for refund of double the amount to each of the 150 students is complied with. Affirming the position, the order dated 4th October, 2018 of this Court notices and records that there was a serious dispute of fact as to how much amount had been collected from each student. Allegations made being that the amount refunded by the College to the students was not the appropriate amount as per order dated 29th August, 2018. These disputes, it was specifically held, would be examined by the ASC. Students were permitted to come up with documents evidencing how they arranged/obtained the amount paid, and the ASC was to consider the material placed on record by the respective parties

and take a decision on the basis of evidence adduced in case of each student.

10. More significant and important for our purpose, the order dated 4th October, 2018 had rejected the prayer of the College that they be permitted to grant admissions for the current academic year 2018-19. This Court was of the opinion that there was a serious dispute with respect to the adequacy of the refund that had been made. Besides, it was already the month of October, 2018, and the admissions for the academic session 2018-19 were over.
11. KMC had thereupon preferred a review petition numbered Review Petition (Civil) No. 2012 of 2018 which was dismissed by a Division Bench of this Court vide order dated 16th January, 2019.
12. KMC had also filed Writ Petition (Civil) No. 25895 of 2018 before the Kerala High Court challenging withdrawal of affiliation/recognition by KUHS for the academic year 2018-19. This writ petition was dismissed by a Division Bench of the Kerala High Court vide judgment dated 1st August, 2018. Relief was refused as the Court was not satisfied that KMC had cleared the mess created by it for the academic year 2016-17. The High Court observed that it was in the interest of justice that further admissions in KMC should be deferred till the whole state of

affairs was sorted out and the misdeeds were purged. A number of complaints were pending before the ASC from students alleging collection of amounts far in excess of the fee stipulated and for refund of the amounts paid. It was recorded that claims of the students had not been settled till then. Reference was also made to the orders passed by the ASC directing KMC to produce demand drafts for undisputed amounts, but a number of adjournments had been taken by KMC without compliance.

13. KMC had filed yet another Writ Petition (Civil) No. 15642 of 2019 for permission to admit students and affiliation for the academic year 2019-20, which had been denied by KUHS. By judgment dated 28th June, 2019, the writ petition was dismissed after referring to the orders passed by this Court on 29th August, 2018 and 4th October, 2018, observing that the recommendation for cancellation of affiliation cannot be acted upon till these orders were fully complied. Consequently, KMC was not entitled to invoke the jurisdiction of the High Court for issuance of *mandamus* for subsequent years as long as compliance of the two consent orders was not made. Compliance would require repayment of double the fee paid by the students admitted in 2016-17. Specific details from the orders passed by the ASC viz. the defaults made

were recorded. The contention that the ASC was passing orders prejudicial to KMC behind their back was rejected.

14. Judgment dated 28th June, 2019 in Writ Petition (Civil) No. 15642 of 2019 was challenged before this Court in Special Leave Petition (Civil) Nos. 16368-16369 of 2019 but was withdrawn with liberty to seek appropriate remedy next year. However, the order records that this Court had not commented on the merits of the case as the special leave petitions had been withdrawn.
15. Before we examine and determine the merits, it is pertinent to state that vide interim order dated 18th June, 2020 passed in the special leave petition filed by Lalitha R Nath and others, impugned judgment and order dated 29th May, 2020 has been stayed.
16. The primary contention of the ASC and the appellants is premised on the assertion that the students/guardians were compelled and forced to sign documents by the College even without informing them about the contents. Students/guardians were coerced as they required money at the earliest so that the students could take admission in some other college. Secondly, without discharge receipt, the College would not return the original certificates submitted by the students. Accordingly, these documents obtained under duress and coercion should not be accepted as valid 'No

Dues Certificates'. In particular, reliance is placed on the decision dated 21st February, 2019 in Writ Petition (Civil) No. 1247 of 2018 titled ***Riya George v. Kannur Medical College and Others***, wherein, this Court had noted the contention that the withdrawal of the complaint against KMC by the father of the student therein might not be voluntary and could be occasioned by the urgency to obtain certificates deposited with the College and refund of money, so as to secure the admission in another college.

17. The appellants submit that the Division Bench of the High Court ought not have granted the relief, as this Court vide two orders dated 29th August, 2018 and 4th October, 2018, had directed the ASC to examine the disputed factual matrix pertaining to the actual amount paid by the students and for refund of double the amount, which direction and mandate had been agreed to and accepted by KMC. Further, the impugned order dated 22nd November, 2019 was passed by the Division Bench without hearing the adversely affected parties, namely, the guardians/students who had purportedly signed the certificates in favour of KMC.
18. Challenging the order dated 29th May, 2020, it has been submitted that the order directing furnishing of bank guarantee of Rs.10

crores and title documents etc. does not take into account the misery and suffering of the students who have not been paid/refunded double the amount they had paid, though orders in this regard were passed by this Court in August and October, 2018. The impugned order, it is submitted, is at variance with, and ignores the continued non-compliance of the orders of this Court as well as those of the High Court. Even the amounts due and payable as per the orders of the High court have not been paid, though KMC has not challenged the determination. KMC in its affidavit filed on 16th December, 2020, accepts and admits that an amount of Rs.4,82,46,000/- is due to one batch of students. This amount has not been paid, though the College submits that it is ready and willing to secure payment of the amount by bank guarantee or other means considered fit by this Court. Similarly, with regard to another batch of students, this affidavit states that an amount of Rs.6,49,29,000/- has been ordered to be paid by the ASC and that it is ready and willing to secure the amount by a bank guarantee or other means as may be considered fit by this Court. The College has primarily paid double of the fee including tuition fee deposited by the students at the time of admission, amounting to Rs.23.30 lakhs in each case. In respect of the other amounts, including capitation fee paid in cash, no

refunds/payment has been made. Thus, KMC has been deliberately disobeying the orders passed by this Court and the High Court. The students should not be put in a disadvantageous position by permitting KMC to furnish bank guarantee, which on invocation would only lead to another round of litigation for realisation of the amount. Besides, the amount of bank guarantee, as directed, is wholly inadequate and ignores the quantum actually payable. Selling land would be a long drawn, if not an impossible exercise. KMC has to pay substantial amount to different banks and the College property itself (valued at Rs.136 crores) had been mortgaged with a bank.

19. KMC, on the other hand, submits that it has been penalised as it was not permitted to admit students for the academic years 2016-17, 2018-19 and 2019-20. KMC has been conducting MBBS course since the academic session 2006-07, and is a fully compliant institution which meets all regulatory and statutory requirements for a medical college. The facilities, including the infrastructure, plant and equipment, have a market value of Rs.1,000 crores. Excellent medical facilities are, therefore, not being utilised and taken full advantage of, as students are not being allocated and admitted to the MBBS course. KMC is a self-financing minority medical college and any further restraint on

admitting students would bring the institution itself to a state of bankruptcy. KMC has already offered to deposit Rs.15.71 crores to be paid, if required, towards double the amount of fee paid by the students. KMC has entered into settlements with 134 guardians/students. Further, payment of Rs.39 crores has been made to students/guardians.

20. We have given our consideration to the arguments raised before us.
21. The impugned order dated 22nd November, 2019 quashing the re-opening notices issued by the ASC in the case of 92 students for several reasons is liable to be set aside. The said 92 students were not made parties to the writ petition preferred by KMC before the High Court and were not heard on the stand and stance with regard to receipts or No Dues Certificates signed by them. This Court in its order dated 4th October, 2018 had referred to the report of the ASC *inter alia* recording that KMC had collected different amounts ranging from Rs.35 lakhs to Rs. 1 crore from most of the 150 students. The report referred to one particular case of Ms. Rehna Banu who had paid Rs.35 lakhs for admission. The report also noticed that the tuition fee to be paid was regulated by the Fee Regulatory Committee, *albeit* the students

had paid different amounts in addition to the tuition fee for securing admission. Accordingly, on account of the seriously disputed facts, this Court had directed that these aspects would be examined by the ASC. Liberty was given to the guardians/ students to place relevant material before the ASC. This Court did not consider it appropriate to conduct a factual inquiry into the disputed facts on the aspect of total amount paid and adequacy of the refund. The Division Bench of the High Court, by allowing the writ petition filed by KMC and by quashing the notices issued by the ASC to 92 students, has virtually made this Court's order dated 4th October, 2018, a dead letter in the case of those 92 students. In the aforementioned case of **Riya George**, a Division Bench of this Court had dealt with an identical controversy – as in its defence, KMC had relied on the No Dues Certificate, along with the application and affidavit of the father of Riya George withdrawing all claims in lieu of payment of Rs. 20 lacs, and the order of the Chairperson of the Admission Fee Regulatory Committee allowing withdrawal of the complaint. The court also lamented failure of Riya George to make fair and candid disclosure of full facts in the writ petition. In spite of observing that there were sufficient indications to hold that Riya George/ her father had knowledge of what had transpired, the judges took

notice of the contention that the claim was withdrawn under duress, since the petitioner therein required refund of fee as she had taken admission elsewhere. Referring to the two orders dated 29th August, 2018 and 4th October, 2018, it was held that it would be inappropriate for this court to compute damages. Accordingly, given that the ASC had already issued notice to examine facts, it was held:

“27. There can be no manner of doubt that the petitioner is entitled to be compensated for the loss of a valuable year which was occasioned by the misdemeanours of the first respondent. A student who has been deprived of a valuable year in pursuing her studies, cannot be left in the lurch. It is in this background, that the explanation that the complaints made by the father of the petitioner were withdrawn only because there was an urgent need to obtain a refund of the fee, to enable the petitioner to secure admission to the Amrita Institute of Medical Sciences must be understood. Middle class parents do not have the luxury of resources. We must form a robust understanding of the circumstances in which the father of the petitioner withdrew his complaint. The Committee has in fact recorded a finding of fact that the withdrawal was not voluntary and was occasioned by the serious impediment in receiving a refund of fees. Hence, the petitioner would be entitled to the benefit of the principle which was formulated in the orders of this Court dated 29 August 2018 and 4 October 2018. Since the issue has been remitted back to the Committee by a coordinate bench, following the norm of judicial discipline, we are inclined to follow the same course of action.

28. In order not to prejudice the case of the petitioner, we leave it open to her to pursue her claim before the

Committee. The petitioner would be at liberty to pursue her claim before the Committee in terms of Clause 1 of the order dated 29 August 2018 passed by this Court as clarified by the subsequent order dated 4 October 2018. We request the Admissions Committee to take a decision expeditiously and within a period of three months of the receipt of a certified copy of this judgment. All the rights and contentions of the parties are kept open.”

22. The impugned order dated 22nd November, 2019 does not refer to or examine the order dated 21st February, 2019 passed by this Court in the case of **Riya George**. This apart, it was accepted during the course of arguments before us that KMC has paid a total amount of Rs.38,35,63,000/- to the guardians/students. Rs.36,09,87,000/- has been paid to the guardians/students for refund of the actual tuition fee and other amounts which were admittedly paid. These payments were made on or before 4th October, 2018, i.e. the date on which the second order was passed by this Court with the observations that there is a factual dispute as to the total amount paid by the students to KMC. After 4th October, 2018, KMC has, in its affidavit filed on or about 3rd February, 2021, accepted that it had remitted an amount of Rs.2,25,76,000/- to the students who had settled their disputes before the ASC. These payments have been made through demand drafts. It is also accepted that KMC is still to make payment of Rs.15,72,89,020/- which is an undisputed figure

payable to guardians/students as per the amount determined by the High Court or ASC. This is the final and undisputed figure as it refers to the amount payable to about 55 students in terms of the orders passed by the High Court and the ASC, which direction and computation has not been challenged by the KMC before this Court or before the High Court.

- 23.** Once we accept the appeal against the impugned order dated 22nd November, 2019, we have to also accept the appeal against the second impugned order dated 29th May, 2020. The latter order that directs the College to furnish a bank guarantee of Rs.10 crores is predicated on the assumption that no further amounts would be due and payable in respect of 92 students as the notices issued by the ASC to these students have been quashed. Further, the impugned order does not notice that KMC had failed to make payment even in cases where it had accepted the orders passed by the ASC or the High Court. As noticed above, KMC, before us, has accepted that they had to make payment of Rs.15,72,89,020/- as per the amount finally awarded by the High Court or the ASC. KMC has not filed any appeal to question and challenge these orders. Therefore, this amount of Rs.15,72,89,020/- must be immediately paid to the students/guardians. This figure of Rs.15,72,89,020/- gives us an indication and is the basis of the

directions that we propose to issue to secure the interests and rights of the 92 students, while permitting admission/affiliation in the College.

24. We have already referred to the two orders passed by this Court on 29th August, 2018 and 4th October, 2018 which had *inter alia* directed that double the fee paid by the guardians/students would be refunded by KMC through electronic mode. Obviously, the intent being that the payment must be made. In order to ensure that payment is actually made, specific directions were issued that the amount would be remitted to the bank account of each student. Further, a compliance report including bank statement, bank account numbers with the names of the students was to be filed before this Court and also the ASC. The ASC was thereupon to ascertain and submit the report to this Court as to refund of the amounts to the students in their bank accounts. In order to ensure prompt payment and also by way of penalty, KMC was directed to not admit even a single student for the year 2019-20 other than the students allotted by the CEE in their counselling to be held on 4th and 5th of September 2018. It was further directed that in case of violation of the order, i.e. non-refund of double the amount of fee paid, the entire order shall be withdrawn. Paragraph 2 of the order dated 29th August, 2018 had, by consent, recorded that KMC

had agreed that the order of the ASC for withdrawal of the affiliation shall not be acted upon if the directions given for refund of double the fee, etc. by way of consent were complied with. It obviously means that the order of withdrawal of affiliation would remain in operation until and unless there was full compliance by KMC. In case of non-compliance, the order passed by the ASC for withdrawal of the affiliation would continue. We do not, therefore, find anything wrong in the letter dated 29th April, 2020 whereby KUHS has rejected KMC's application for continuation of affiliation for the academic year 2020-21 as it is a necessary sequitur and consequence of the two orders passed by this Court.

25. In light of the abovementioned facts and with due regard to orders passed by this Court on 29th August, 2018 and 4th October, 2018, we are inclined to issue the following directions:

(a) KMC shall deposit Rs.15,72,89,020/- with the ASC along with full details of the guardians/students to whom the amounts have to be paid, their addresses and bank accounts, within a period of one month from today. On deposit of the said amounts, the ASC would disburse and make payments to the guardians/students.

(b) ASC would issue fresh notices to the remaining students (possibly 92 in number) as was the position before impugned

order dated 22nd November, 2019 was passed. It will examine the objections or claims made by the guardians/students as to the actual amount paid by them on the basis of material placed by the guardians/students and the college. It will thereupon pass appropriate orders. Any party, i.e. the guardian/student/college, aggrieved by the order to be passed by the ASC would be entitled to challenge the same before the High Court.

- (c) KMC would make a deposit of Rs.25 crores with the ASC, which deposit would be converted into multiple fixed deposit receipts as the ASC may deem appropriate.
- (d) ASC would disburse and make payments to the guardians/students on the basis of the orders passed by it or on the basis of the orders passed by the High Court in case a writ petition is filed impugning the order passed by the ASC regarding quantification and refund.
- (e) The orders passed by the ASC would indicate that the payments in terms of the said order would be made within 45 days of the passing of the order and that any party, be it the student/guardian or KMC, would have the right to challenge the order before the High Court. The High Court upon

examination of the case would be entitled to grant stay or direct refund/payment.

- (f) KMC would be entitled to claim affiliation and admit students only after they have deposited Rs.15,72,89,020/- and Rs.25 crores, as indicated above. Of course, KMC, for affiliation would have to meet and satisfy all statutory conditions. It is made absolutely clear that if the aforesaid payments of Rs.15,72,89,020/- and Rs.25 crores are not made, the order passed by the ASC and KUHS denying/rejecting KMC's application for continuation of affiliation for academic year 2020-21 and future academic years would continue. As the amount of Rs.15,72,89,020/- has not been disputed by the College, in case it fails to deposit the same, the students/guardians will be well within their rights to approach the authorities for enforcement and payment. Further, in the event that KMC does not deposit Rs.15,72,89,020/- and Rs.25 crores, decision with regards to grant of affiliation shall be made by the ASC and KUHS only upon determination, settlement and refund of all claims pertaining to the students admitted in the academic year 2016-17. Compliance report would be filed in terms of order dated 4th October, 2018.

- (g) As indicated above, the ASC would be entitled to open a separate bank account and convert the amounts received in multiple fixed deposits of varying amounts for different periods. The bank account and the fixed deposits would be in the name of KMC, i.e. Kannur Medical College, but the account/deposits would be only operated and abide by the instructions of the Authorised Officer/Member of the ASC. For the purpose of account opening, KMC would provide their PAN number and other details. KMC would assist and cooperate with the ASC. Tax at source, if any, deducted on the interest would be reflected as deducted on interest earned by KMC. The interest accrued on the fixed deposits would also be income and would be reflected in the income-tax returns of KMC. However, the interest accrued on the deposits/bank account (minus the TDS) would be also available to the ASC to make payment to the students.
- (h) ASC is requested to complete the aforesaid exercise as expeditiously as possible and preferably within a period of nine months from the date of this order. Upon completion of the entire exercise, including awaiting the decision of the High Court/this Court, the ASC shall refund excess amount, if any, to KMC. In case of a shortfall, it would be the obligation of

KMC to make the amount available for disbursal to the guardians/students. In case of failure to make payment, the ASC would be entitled to issue appropriate orders/directions, including direction to restrain KMC from admitting students in the then current or the next academic year. Such direction, however, would not affect the students who have already been admitted.

- (i) In case of any difficulty in implementation or clarification of this order, it would be open to the parties to move an application for directions, clarification or modification before this Court.

26. Accordingly, the impugned orders are set aside and the appeals are allowed in the aforesaid terms. Pending applications, including application I.A. No. 120323 of 2020 filed by the College, are also disposed of in the above terms.

.....J.
(S. ABDUL NAZEER)

.....J.
(SANJIV KHANNA)

**NEW DELHI;
FEBRUARY 18, 2021.**