

BONNIE ANNA GEORGE

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v.

MEDICAL COUNCIL OF INDIA & ANR.

(Writ Petition (Civil) No. 986 of 2013)

SEPTEMBER 18, 2014

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**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND  
SHIVA KIRTI SINGH, JJ]**

*Constitution of India, 1950 – Art. 32 – Writ petition by Medical student – Sought writ of Mandamus to direct the Medical College and Medical Council of India to permit her to change her PG course from MD Pathology to MD General Medicine in the available vacant seat under NRI quota within the College – Held: On facts, the petitioner was deprived of the opportunity to opt for the available NRI seat in MD General Medicine during the third counseling, thus was wholly unjustified – However, in view that the admission schedule fixed by Medical Council of India and this Court is being scrupulously followed, there is no situation to violate the said schedule fixed by this Court and give direction as prayed for by the petitioner – However, in view of grave injustice caused to the petitioner for which the entire responsibility lies on the Medical College, direction issued to the Medical College to pay Rs. 5 lakhs and refund Rs. 13,000, the amount paid by the petitioner for her re-admission to the PG course of MD pathology – Education/Educational Institutions – Medical education.*

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**Partly allowing the writ petition, the Court**

**HELD: 1.1 The course adopted by the second Respondent ultimately deprived the Petitioner of the valuable right to opt for a course of her choice, which was very much available and the inept conduct of the second Respondent was extremely irresponsible and unconscionable. Deep anguish is expressed while**

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A noting such deplorable conduct of the second Respondent in having dealt with the right of the Petitioner in such a casual manner by which she was disabled from making a choice to a course for which she was very passionately waiting and the course which was very  
B much available for her option. [Para 25, 26][1234-B-D]

1.2 For an N.R.I. seat the prescribed fee is US\$ 1,25,000 which is equivalent to approximately Rs.75 lakhs as against the annual fee of Rs.3,98,000/- for 'A' category candidates. As per the refund rules, when  
C somebody vacates the seat on the last date of admission, he/she is entitled for refund of the full fee except administrative fee and any other expenses incurred by the institution towards the candidate. However, such  
D refund of full fee need not be made if the seat vacated by the candidate could not be filled up by the institution. Therefore, when the N.R.I. seat of M.D. General Medicine was vacated and if the seat was filled up by a candidate of 'A' category then second Respondent would be bound to refund the entire fee paid by the N.R.I. candidate except  
E the administrative expenses and other expenses towards the candidate. Since, the second Respondent was ultimately successful in not filling up the seat and thereby applying the refund rules, the concerned N.R.I. candidate need not be refunded with the full fee on the  
F ground that the seat vacated by him could not be filled by the second respondent. There is much to be doubted as regards the conduct of the second respondent in depriving the petitioner to exercise her right for opting the available N.R.I. category seat, while in law, she had  
G every right to seek for such an option. Further, the conduct of the second respondent in having made an application in this Court for holding fourth counselling on 07.08.2013 which was rejected by this Court also suggests that there was total lack of bona fide in the

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stand of the second respondent. [Para 27][1234-E-H; 1235-A-E] A

1.3 The second respondent was apparently creating a false hope not only to itself but also to the candidates as though there were every bona fide effort taken by it in the interest of the candidates. Therefore, the course adopted by the second respondent severely lacked in bonafides in its approach. [Para 28][1235-G-H] B

1.4 Having regard to the conclusions, depriving the petitioner of the opportunity to opt for the available N.R.I. seat in M.D. General Medicine during the third counselling was wholly unjustified. The petitioner sought for Mandamus to direct the second respondent to permit her to shift her P.G. Course from M.D. Pathology to M.D. General Medicine in the available vacant seat. Though, the second respondent was wholly unjustified in not making available the said vacant seat to the petitioner, as the admission schedule fixed by Medical Council of India and this Court is being scrupulously followed, there is no extraordinary situation to violate the said schedule fixed by this Court. The time schedule should be strictly adhered to and no mid stream admission should be allowed. Therefore, there is no inclination to give such a direction as prayed for by the petitioner. However, taking into account the grave injustice caused to the petitioner for which the entire responsibility lies on the second respondent, the second respondent is, therefore, directed to pay the said sum of Rs.5,00,000/- apart from refunding the sum of Rs.13,000/- which the petitioner had to pay for her re-admission to the very same P.G. course of M.D. Pathology. [Para 29][1236-A-G] C D E F G

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil)  
No(s). 986 of 2013.

(Under Article 32 of the Constitution of India) H

A V.K. Biju, Ms. Bhawna Singh Dev, Advs. for the Petitioner.  
V. Giri, Sr. Adv., Sanjay Misra, Rakesh K. Sharma,  
Gaurav Sharma, Prateek Bhatia, Advs. for the Respondents.

The Judgment of the Court were delivered by

B **FAKKIR MOHAMED IBRAHIM KALIFULLA, J.**

1. The Petitioner who has joined the Christian Medical College, Ludhiana (hereinafter referred to as the 'second Respondent') in the P.G. Course i.e. M.D. Pathology, has come forward with this writ petition with a prayer for the issuance of  
C a Writ of Mandamus directing the Respondents to permit her to shift her P.G. course from M.D. Pathology to M.D. General Medicine in the available vacant seat under the N.R.I. quota within the College. According to the Petitioner, she joined the  
D P.G. course M.D. Pathology in the academic year 2013-14 based on the prospectus issued by the second Respondent. She claims to belong to sponsored category 'A'. She contended that after her success in the entrance examination wherein she secured thirteenth rank in the category 'A', she participated in the first counselling on 21.05.2013, that though  
E her first preference was M.D. General Medicine, as there was no seat available for her rank in the category 'A', she accepted M.D. Pathology and paid the full fee (Rs.3.98 lakhs) and joined the course. The second counselling was stated to have been held on 28.05.2013. Though there was a seat vacant in M.D.  
F General Medicine, since the higher rank holder, namely, Chris Baby Paranayil who was in the twelfth rank opted for the said vacant seat of M.D. General Medicine, the Petitioner did not make any attempt in the second counselling. Subsequently, the third counselling was scheduled on 31.07.2013. On the  
G evening of 30.07.2013, since the second Respondent displayed in the website the availability of two vacancies under the N.R.I. quota, namely, M.D. Anaesthesia and M.D. General Medicine, the Petitioner paid the necessary fee of Rs.13,000/

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- for participating in the third counselling, inasmuch as in the category 'A' upto the twelfth rank holders seats had already been allotted based on their options exercised in the second counselling for M.D. General Medicine and she was next in the order of merit i.e. in the thirteenth rank. A

2. On 31.07.2013, the Petitioner participated in the third counselling and stated that the second Respondent announced that the available N.R.I. vacant seats will not be shifted to the sponsored category 'A' as per the prospectus and in the said circumstances the Petitioner was forced to opt for the very same seat which she decided to vacate on the evening of 30.07.2013 or otherwise she was placed in a piquant situation in which she would have lost that seat also. The Petitioner, therefore, contended that by the illegal conduct of the second Respondent in not shifting the available vacant seat of M.D. General Medicine from the N.R.I. category to the sponsored category 'A' during the course of the day of the third counselling, the Petitioner was deprived of her valuable right to opt for the said course. It is in the above stated background that the Petitioner has come forward with this writ petition seeking for the relief as mentioned above. This writ petition was resisted by the second Respondent by filing a counter affidavit opposing the claim made in the writ petition. B C D E

3. The Petitioner relied upon the provisions contained in the prospectus under the caption 'filling up of vacant seats'. As per the said part of the prospectus, the stipulation contained therein was that all candidates who cleared the Christian Medical College-PG Entrance Examination (including those who have already taken admission in Christian Medical College and those who were absent in the previous counselling), would be eligible for the vacant seats arising. It also stated that vacant seats arising during the third counselling due to shifting of courses from already admitted candidates would be announced immediately and would be offered to the F G

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A next meritorious candidate onwards. It further stated that vacant seats arising in the N.R.I. category would be filled from the sponsored category. Administrative fee of Rs.13,000/- would be charged from the candidates who were already admitted but opting for shifting of course, during any subsequent counselling.

4. In the counter affidavit filed on behalf of the second Respondent, it was pointed out that as per clause 10 of the prospectus a candidate desirous of participating in subsequent counsellings after taking admission in any P.G. course in Christian Medical College, Ludhiana will have to first vacate the present course seat by 5 pm the previous day (as per rules) and let that seat be put up for counselling too. It was further contended in the counter affidavit that the vacancies in the particular category will first be filled up from the waiting list of that category and only after exhausting the waiting list candidates of that category, the vacant seats, if any, would be shifted.

5. It was, therefore, contended that on 30.07.2013, a notice displaying vacancy in the N.R.I. category was published for the sake of N.R.I. candidates and that the Petitioner cannot claim shifting of seats from category 'A' to N.R.I. category by referring to an order dated 30.07.2013 of this Court. At this juncture, it will have to be stated that no such order was placed before this Court stipulating any such restriction. It was then contended that the Petitioner approached the second Respondent late in the evening at the end of third counselling when she was informed about the writ petition, namely, W.P.(C) No.433 of 2013 which was directed to be listed on 01.08.2013 along with an application for extension of last date of admission and that all the seats of M.D. General Medicine were already filled. A further statement was made to the effect that there were twelve rank holders and if any seat is available in M.D. General Medicine, that would be offered to only those rank holders who were above the Petitioner and also of the

possibility of offering those seats to N.R.I. candidates and only thereafter the shifting of course by the Petitioner could have been considered. A

6. Mr. Giri, learned Senior Counsel, appearing for the second Respondent realizing the prevaricating statements contained in the counter affidavit filed earlier on 02.12.2013, wanted to file a detailed counter affidavit and thereafter the additional affidavit on behalf of the second Respondent was filed on 28.08.2014. In the additional affidavit somewhat different stand was taken on behalf of the second Respondent. It would be relevant to make a detailed reference to the stand of the second Respondent now stated in the additional affidavit, inasmuch as we feel that the stand of the second Respondent requires to be considered in the anvil of the specific prescription contained in the prospectus as to how any vacant seat arising in the subsequent counselling was to be filled up by following a particular methodology. B C D

7. In the additional affidavit dated 28.08.2014, it was contended that by the time the third counselling was to take place on 31.07.2013, there were as many as two seats in the N.R.I. category to be filled. It was also stated that originally there were five seats in the N.R.I. category for which eight students had qualified, that in the first counselling on 21.05.2013, four out of the five seats in the N.R.I. category got filled up leaving M.D. Anesthesia alone which remained vacant. The said position stated to have continued even at the time of the second counselling. Before the third counselling, one seat in the N.R.I. category i.e. M.D. General Medicine admittedly fell vacant. The third counselling as stated earlier, was scheduled on 31.07.2013. As per the merit list for the N.R.I. category, it was stated that any of the five students could have opted for the said seats. Thereafter it was stated that the Petitioner surrendered her seat in M.D. Pathology on the eve of third counselling to enable her to participate in the third counselling. E F G

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A 8. On 31.07.2013 the third counselling stated to have commenced at 9 am and two students in category 'A' who were third and seventh rank holders were called, that Dr. Shiti Bose, the third rank holder who had earlier opted for M.D. Paediatrics opted for M.D. Dermatology, a new course which became  
B available at the time of third counselling and that one seat for M.D. Paediatrics became vacant. The seventh rank holder Dr. Richa who earlier opted for MS Ophthalmology and who surrendered that seat stated to have opted for M.D. Paediatrics which was vacated by the third rank holder Dr. Shiti Bose.  
C According to the Petitioner, in the midst of third counselling, the second Respondent announced that the vacant seats of N.R.I. category will not be shifted to the sponsored category as per the prospectus and, therefore, she had no option except to again opt for the very same seat of M.D. Pathology which  
D she vacated on the previous day evening. It is the further case of the Petitioner that when she enquired about the shifting of the vacant seats of N.R.I. category, the second Respondent informed that they needed an order of this Court in W.P.(C) No.478 of 2012 to shift the same to the sponsored category.  
E She was further informed that if this Court allows such shifting, there will be fourth counselling and in the fourth counselling she will be offered the course of M.D. General Medicine.

9. It is, however, stated in the subsequent paragraphs that after completing the formalities of admission to all students  
F in category 'A' around 12.30 p.m. on 31.07.2013, the second Respondent made a roll call of students belonging to category 'B' i.e. from rank 861 onwards upto 967 and by the time the roll call was completed and the other formalities were concluded, the time was around 8 p.m. and thereafter the  
G second Respondent finally published a notice saying that the available seats in the P.G. course were six in number, i.e. one seat in category 'A', three seats in category 'B' and two seats in the N.R.I. category. Of the two seats in N.R.I. category one was M.D. General Medicine.

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10. Apparently the stand of the second Respondent in the additional counter affidavit is that there was no possibility of the available M.D. General Medicine course of N.R.I. category being shifted to category 'A' in order to enable the Petitioner to exercise her option even on the third counselling date, as by the time such a decision was taken, it was already 8 p.m. and the second Respondent was, therefore, disabled from allowing the Petitioner to exercise her option. On that basis, the second Respondent would resist the claim of the Petitioner made in the writ petition.

11. We heard Mr. V.K. Biju, learned counsel for the Petitioner and Mr. V. Giri, learned Senior Counsel for the second Respondent. Mr. Biju learned counsel for the Petitioner in his submissions contended that as per the prescription contained in the prospectus as regards filling up of all vacant seats arising during the third counselling due to shifting of courses from already admitted candidates will be announced immediately and will be offered to the next meritorious candidates onwards and that vacancies arising in the N.R.I. category would be filled up from the sponsored category namely category 'A'. By referring to such specific prescription contained in the prospectus learned counsel contended that the second Respondent having notified the vacancy in the N.R.I. category insofar as it related to M.D. General Medicine on the evening of 30.07.2013 should have offered the said vacant seat for the sponsored 'A' category students on the date of third counselling i.e. on 31.7.2013. The learned counsel contended that instead of strictly following the prescribed procedure under the prospectus, the second Respondent did not offer the said vacant seat of M.D. General Medicine under the N.R.I. category to the sponsored 'A' category by stating that some proceedings were pending in this Court, which were posted for orders on 01.08.2013 and that there would be scope for the fourth counselling in which the said seat would be offered to the sponsored 'A' category. The learned counsel, therefore, contended that such a course was adopted by the second

- A Respondent deliberately with a view to deprive the Petitioner of her lawful claim to opt for the said vacant seat in the M.D. General Medicine which forced her to re-opt for the very same course which she vacated on the day previous to the third counselling, namely, M.D. Pathology or otherwise she would have lost even that seat as well.

12. The learned counsel further pointed out that such a course was adopted by the second Respondent with some ulterior motive inasmuch as, as per the refund rules mentioned in the prospectus, if any student who had already joined the course seeks for refund of claim, such refund would be made after adjusting the administrative fees and any other expenses incurred by the institution towards the candidate, provided the vacant seat is re-filled by any other candidate. In other words, if a seat vacated by a candidate remained vacant, the candidate will be required to pay the fee for the entire duration of the course. By referring to the above rule, relating to refund, the learned counsel contended that the Petitioner was in the sponsored 'A' category and the seat which fell vacant belonged to N.R.I. category and if the said seat had been offered to the Petitioner, the candidate who vacated that seat under the N.R.I. category could as well claim refund of full fee except administrative expenses and other expenses incurred on the candidate. The learned counsel contended that the second Respondent, therefore, did not want to provide any scope for that N.R.I. candidate who vacated the seat to claim for refund of full fee by taking the stand that after he vacated the seat it could not be filled up again.

13. The learned counsel, therefore, contended that when the last date of counselling was prescribed by this Court as 31.07.2013, the second Respondent was not justified in extending a false promise to the Petitioner that there was a scope for fourth counselling being granted by this Court in some proceeding which was pending in this Court in which orders were to be pronounced on 01.08.2013. He further contended

that as a matter of fact, the second Respondent filed an application seeking for fourth counselling only on 04.08.2013, in I.A. No.3 of 2013 in W.P. (C) No.478 of 2013 which was also dismissed by this Court on 04.10.2013. One other factor which was pointed out by the learned counsel was that on 01.08.2013, this Court permitted only the Government colleges to hold one more counselling for filling up all vacant seats.

14. The sum and substance of the contention of the learned counsel for the Petitioner was that the overall conduct of the second Respondent disclosed that there was a calculated and deliberate attempt to deprive the Petitioner of exercising her valuable right to opt for a course which she really wanted to undergo, namely, M.D. General Medicine, that the said course was very much available and she was fully eligible as the thirteenth rank holder and there was no other rival candidate either under the N.R.I. category or under the sponsored 'A' category.

15. As against the above submission Mr. Giri, learned Senior Counsel for the second Respondent by making a detailed reference to the additional affidavit contended that the second Respondent had no intention to deprive the Petitioner of the seat in M.D. General Medicine. According to learned Senior Counsel, the second Respondent scrupulously followed the procedure in conducting the counselling on the third occasion and since it could not offer the available vacant seat of M.D. General Medicine under the N.R.I. category up till the end of third counselling date, namely, till 8 pm and further since the Petitioner re-opted for the very same seat which she vacated on the previous day evening on the morning of the third counselling date, no fault can be found in the action of the second Respondent. In the affidavit which was referred to by the learned Senior Counsel the second Respondent took the stand that after the counselling started at 9 am, students in category 'A' were called out rank wise. The third rank holder and seventh rank holder who were above the Petitioner in the

A ranking were called first, that the third rank holder who was already admitted in M.D. Paediatrics surrendered her seat to participate in the third counselling opted for M.D. Dermatology which was a new course, that the seventh rank holder, Dr. Richa who was already admitted in MS Ophthalmology after  
B surrendering the said course opted for M.D. Paediatrics and accordingly those seats were allotted to the candidates. At 9.55 am when the turn of the Petitioner came who had earlier vacated a seat in M.D. pathology reopted for the very same  
C 10.15 a.m. Thereafter according to the second Respondent option to all students in category 'A' were completed by 12.30 p.m. on 31.07.2013 and a roll call of the students belonging to category 'B' was made from 861 rank holders upto 967 rank holders by calling their names thrice and after marking their  
D absence; by which time it was 6.22 p.m.; the counselling process was concluded. It was further stated that the shifting of N.R.I. category seat to sponsored 'A' category seat could not be made on that day even though none of the eligible N.R.I. category students were present at the venue of counselling and that even the candidate who vacated the seat, namely,  
E M.D. General Medicine i.e. Mr. Prashant Timoti Sada could have attended the third counselling and opted for any one of the seats available, did not appear for the third counselling. It is lastly stated that by 8 p.m. on 31.07.2013 the college finally  
F published a notice showing the available seats in P.G. courses in six numbers i.e. one seat in Category 'A', three seats in Category 'B' and two seats in the N.R.I. Category.

16. To substantiate its stand as to how the second Respondent was disabled from offering the available N.R.I.  
G seat in M.D. General Medicine for sponsored 'A' category student, namely, the Petitioner, the following statement has been made in the additional affidavit:

H ".....The Petitioner had opted for the seat of MD Pathology in the third counselling session on 31/07/2013

in the morning. So as to be eligible to opt for MD A  
Medicine i.e. the seat converted/shifted from NRI  
Category to Category A, the Petitioner would have  
necessarily had to surrender her seat of MD Pathology.  
The said seat being vacant, would then have to be offered B  
by the college to other students placed below the  
petitioner in the rank-list so as to give them an opportunity  
to opt for that seat. In the event the said seat was opted  
by an interested student, the vacant seat of that particular  
student would have to be offered further; and so on and  
so forth. As such, counselling would have to be held C  
afresh for all students, because of the shifting of the  
Petitioner's seat. As such, the exercise was not a simple  
exercise of shifting one seat; but rather a complex  
exercise which would have had to be undertaken by the  
college, without adequate time therefor. This would have D  
been an impossible task to complete in the evening of  
31/07/2013, without adequate notice to all interested  
students and without allowing them an opportunity to opt  
for the vacant seats. Further, 31/07/2013 being the last  
date for admission/holding counselling by Colleges all E  
over the Country in terms of the guidelines laid down by  
this Hon'ble Court, a subsequent session could not have  
been held after 31/07/2013 and neither could the third  
counselling session have continued on the next date. Due  
to this impossibility as well, the MD Medicine seat in the F  
NRI category could not be converted/shifted by the  
Respondent college."

17. That apart the second Respondent contended that  
W.P.(C) No. 433 of 2013 (NEET case) was listed before this G  
Court and was posted for orders on 01.08.2013 and this Court  
taking into account the delay occasioned in completion of  
counselling process permitted fourth counselling for filling up  
of the vacancy only to government colleges and not to private  
institutions, that the second Respondent applied to this Court  
by way of I.A. No 3 of 2013 in W.P.(C) No.478 of 2012 seeking H

A for an additional counselling session on 07.08.2013 and that the said I.A. was dismissed by this Court on 04.10.2013.

B 18. Mr. Giri, learned Senior Counsel, therefore, contended that the second Respondent had no intention to deprive the Petitioner of any of her rights much less the so-called valuable right of getting a vacant N.R.I. seat in M.D. General Medicine.

C 19. Having heard learned counsel for the Petitioner as well as the second Respondent, in order to appreciate the claim of the Petitioner as well as the stand of the second Respondent, we feel it appropriate to refer to relevant provisions in the prospectus relating to filling up of vacant seats, the refund rules and clause 10 which stipulate as to how a candidate who had secured a seat can be permitted to opt for any vacant seat in the subsequent counselling. The said provisions are as under:

D “10. A candidate desirous of participating in subsequent counsellings after taking admission in any P.G. Course, in CMC Ludhiana, will have to first vacate present course seat, by 5.00 pm the previous day (as per rules) and let that seat be put up for counselling too.

E **REFUND RULES**

F 2. On the last date of admission (31.05.2013), full fees except the administrative fees and any other expenses incurred by the institution towards the candidate, will be refunded, provided the seat is filled in the event the seat in question remains vacant, the candidate will be required to pay the fees for the entire duration of the course.

**FILLING UP OF VACANT SEATS**

G Vacant seats (if any) arising will be displayed periodically on our website [www.cmcludhiana.in/](http://www.cmcludhiana.in/) [www.cmcludhiana.org](http://www.cmcludhiana.org) and on the notice board of the office of the registrar. There will not be any individual

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**communication to any candidate regarding the status of any vacant seats.** A

The second counselling (if required) will be held on 30<sup>th</sup> April 2013 at 10.00 am. Any further counselling (if required) will be intimated on our website.

All candidates who have cleared the CMC-PG entrance examination (including those who have already taken admission in CMC and those who were absent in the previous counselling) will be eligible for the vacant seats arising. B

Vacant seats arising during the third counselling, due to shifting of courses from already admitted candidates, will be announced immediately and will be offered to the next meritorious candidate onwards. C

Vacant Seats arising in the NRI Category will be filled from the Sponsored Category. D

**\*Administrative fee of Rs.13,000/- will be charged from candidates who are already admitted but opting for shifting of course, during any subsequent counsellings.\*** E

20. Having noted the stand of the Petitioner and the relevant details while referring to the participation in the third counselling as well as the stand of the second Respondent in that process, we do not wish to restate the same as we have made a detailed reference to the same in the earlier paragraphs. Keeping those factors in mind, in the forefront when we consider the relevant provisions contained in the prospectus their implication can be set out before considering the correctness or otherwise of the stand of either parties. As per paragraph 10 of the prospectus under the caption 'allotment of seats by personal appearance within counselling' a candidate who is already admitted to any P.G. course in the second Respondent institute if wishes to participate in the second or third counselling, will have to first vacate the seat F G H

A already held by him or her by 5 pm of the previous day so that the said seat can also be put up for counselling on the next date.

21. The provision relating to filling up of vacant seats mandates that all vacant seats arising will have to be displayed periodically in the website as well as in the notice board of the office of the Registrar though there will not be any individual communication to any candidate regarding the status of any vacant seat. The dates of the second and third counselling have also got to be intimated through website. Such vacant seats will be available for both the candidates who have cleared the entrance examination as well as those who have already taken admission in the second Respondent institute even if they were absent in the previous counselling. Insofar as the procedure relating to third counselling is concerned, it specifically provides that vacancies arising during the third counselling due to shifting of courses from already admitted candidates will be announced immediately and will be offered to the next meritorious candidate onwards. As far as vacancies arising in the N.R.I. category are concerned, it is simply stated that the same would be filled up from the sponsored category, namely, category 'A'. The administrative fee of Rs.13,000/- would be charged from candidates who were already admitted and who opted for shifting of course during any subsequent counselling. As we are concerned with the vacant N.R.I. seats, going by the provision contained in the prospectus, it merely states that N.R.I. category seats would be filled up from the sponsored category.

22. According to the second Respondent, as per the practice in its institution any vacant seat arising in the 'A' category will be first offered to other students in the said category and only thereafter it will be offered to the candidates in the 'B' category. Similarly, it is contended that N.R.I. category seats would be first offered to the eligible N.R.I. candidates and only thereafter they will be offered to the sponsored



category, namely, category 'A'. Though going by the prospectus, such a prescription is not specifically mentioned therein since it is claimed that is how it was being practiced in the second Respondent institution, we do not wish to make any adverse comment about the same at this juncture. Accepting the said practice as a valid one and in accordance with the prescription relating to the filling up of vacancies as mentioned in the prospectus, we wish to test the correctness of the stand of the second Respondent in not providing an opportunity to the Petitioner to opt for the N.R.I. vacant seat of M.D. General Medicine. According to the Petitioner such a stand of the second Respondent that the N.R.I. vacant seat will be offered only after exhausting such an offer to all eligible N.R.I. candidates came as a surprise. It was stated by the Petitioner that in the midst of the counselling such a disclosure was made to the shock of the Petitioner and apparently the Petitioner was, therefore, driven to take a decision to reopt for the very same seat of M.D. Pathology in order to ensure that she was able to continue her course without wasting a year. It was also the case of the Petitioner that the second Respondent made her understand that some orders are going to be passed by this Court on 01.08.2013 providing for fourth counselling and, therefore, there would still be scope for the Petitioner to stake her claim in the fourth counselling.

23. As far as the above stand of the Petitioner is concerned, we find that both the above statements were virtually admitted by the second Respondent. Even according to the second Respondent, any N.R.I. seat which fell vacant could be offered only to the N.R.I. candidate in the first instance and only thereafter it could be shifted to category 'A'. It is also the case of the second Respondent that in W.P. (C) No.433 of 2013 this Court after hearing arguments on 30.07.2013 posted it for orders on 01.08.2013 and to the utter dismay of the second Respondent, the permission granted by this Court for holding fourth counselling was restricted only to the government colleges and not to the private institutions for filling up of the

- A vacant seats. As far as the second statement is concerned, it must be stated at the very outset that the said factor can have no relevance insofar as it related to depriving of the petitioner to opt for her chance in the third counselling. The second Respondent cannot be heard to state that it can anticipate any order from this Court providing for fourth counselling and based on such anticipation it could have suggested to anyone, much less, to the Petitioner that a claim on that basis for getting a seat in the vacant N.R.I. category could be opted in the fourth counselling. In that respect, the stand of the second Respondent was wholly in violation of the mandatory directions of this Court as regards the time schedule fixed for different process relating to admission to the professional courses right from the date of initial notification calling for application and the closing of the admissions after third counselling. Therefore, any wishful thinking on the part of the second Respondent as regards the scope of getting a chance for fourth counselling to be granted by this Court could not have, in any manner, persuaded the second Respondent to deny an opportunity to the Petitioner to seek for an option for change of course from M.D. Pathology to M.D. General Medicine in respect of a seat which was lying vacant as early as on 30.07.2013 and which continued to remain vacant right from the morning session of the date of third counselling, namely, 31.07.2013 till the end of that day, as well as, even as on this date.
- F 24. When we come to the stand of the second Respondent that any vacant seat of N.R.I. category would be first offered only to the eligible N.R.I. candidates and thereafter it would be offered to category 'A' candidates, it must be stated that going strictly by the provisions contained in the prospectus, we do not find any such provision for it. The provision merely states 'vacant seats arising in the N.R.I. category will be filled up from the sponsored category'. Therefore, the provision is crystal clear to the effect that vacant N.R.I. seats could be filled up from category 'A' candidates. Assuming there would be a right for an eligible N.R.I. candidate to first opt for any vacant
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seat in that category, even in that case the second Respondent cannot state that it should wait for the absentee N.R.I. candidates to appear till the end of the third counselling session and thereby provide no scope for the 'A' category candidates who were readily available to exercise such option and yet deprive them from exercising their option without any other legal or factual impediment. A  
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25. In this respect when we refer to the stand made on behalf of the second Respondent in the additional affidavit which we have extracted in detail, we do not find any justification at all in the said stand while depriving the Petitioner of her right to opt for that seat which was vacated by N.R.I. candidate. In the first instance none of the provisions contained in the prospectus and in particular the provision relating to filling up of the vacant seats any specific prohibition to the effect that a candidate who has already secured a seat and who has expressed her option to vacate the seat on the previous day after noting the availability of the vacant seat under the N.R.I. category of her choice being available should be driven to a situation on the commencement of the third counselling which is the last chance of counselling to reopt for the very same seat by informing her that there would be no point in waiting till the end of the third day counselling, inasmuch as, the second Respondent would be waiting for the absentee N.R.I. eligible candidates as well as any other 'A' category candidates who are above the rank of the Petitioner and who had already opted for their choice of seats. We also do not find any acceptable logic or reasoning in the conduct of the second Respondent in carrying out an exercise of calling absentee 'B' category candidates between 867 to 961 by calling their names thrice and thereby wasting the whole of the day between 12.30 pm and 6.22 pm and at the end, state that there was no time left for shifting the available N.R.I. vacant seats to category 'A'. Such a course adopted by the second Respondent to say the least was a most irresponsible and imprudent conduct by C  
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A   whosoever who was in-charge of holding the counselling at  
the venue.

26. Since, Mr. Giri, learned Senior Counsel for the second  
Respondent contended that the second Respondent institution  
is an age old institution and is well-known for its reputation, we  
B   refrain ourselves from making harsh remarks but yet wish to  
state in a sublime way that such a course adopted by the  
second Respondent ultimately deprived the Petitioner of the  
valuable right to opt for a course of her choice, which was very  
much available and the inept conduct of the second  
C   Respondent was extremely irresponsible and unconscionable.  
We also wish to express our deep anguish while noting such  
deplorable conduct of the second Respondent in having dealt  
with the right of the Petitioner in such a casual manner by which  
she was disabled from making a choice to a course for which  
D   she was very passionately waiting and the course which was  
very much available for her option.

27. Viewed in that respect, we find force in the submission  
of the learned counsel for the Petitioner that such a conduct  
displayed by the second Respondent during the third  
E   counselling cannot also be said to be an innocuous move in  
the context of the rule relating to refund of the fees. It will be  
worthwhile to note that for an N.R.I. seat the prescribed fee is  
US\$ 1,25,000 which is equivalent to approximately Rs.75 lakhs  
as against the annual fee of Rs.3,98,000/- for 'A' category  
F   candidates. As per the refund rules, when somebody vacates  
the seat on the last date of admission, he/she is entitled for  
refund of the full fee except administrative fee and any other  
expenses incurred by the institution towards the candidate.  
G   However, such refund of full fee need not be made if the seat  
vacated by the candidate could not be filled up by the institution.  
Therefore, when in the case in hand, the N.R.I. seat of M.D.  
General Medicine was vacated and if the seat was filled up by  
a candidate of 'A' category then second Respondent would  
be bound to refund the entire fee paid by the N.R.I. candidate  
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except the administrative expenses and other expenses A  
towards the candidate. Since, the second Respondent was  
ultimately successful in not filling up the seat and thereby  
applying the refund rules, the concerned N.R.I. candidate need  
not be refunded with the full fee on the ground that the seat  
vacated by him could not be filled by the second Respondent. B  
In the context of the inept conduct displayed by the second  
Respondent, there is no reason why the said contention made  
on behalf of the Petitioner should not be accepted. We do not  
find any acceptable submission made on behalf of the second  
Respondent to rebut such an argument made on behalf of the C  
Petitioner. On these grounds as well, we are convinced that  
there is much to be doubted as regards the conduct of the  
second Respondent in depriving the Petitioner to exercise her  
right for opting the available N.R.I. category seat, while in law,  
she had every right to seek for such an option. Further, the D  
conduct of the second Respondent in having made an  
application in this Court in I.A. No.3 of 2013 on 04.08.2013 for  
holding fourth counselling on 07.08.2013 which was rejected  
by this Court by an order dated 04.10.2013 also suggests that  
there was total lack of bona fide in the stand of the second E  
Respondent.

28. All along, the second Respondent was taking the  
stand that this Court having heard the scope for granting a  
fourth counselling on 30.07.2013 posted and passed  
appropriate orders on 01.08.2013 providing for a fourth F  
counselling only for the government colleges and not for the  
private institutions. We are, therefore, unable to understand  
any basis for the second Respondent to have applied on  
04.08.2013 for the very same relief knowing fully well that it  
was already rejected by this Court. The second Respondent G  
was apparently creating a false hope not only to itself but also  
to the candidates as though there were every bona fide effort  
taken by it in the interest of the candidates. Therefore, the  
course adopted by the second respondent severely lacked in  
bonafides in its approach. H

A           29. Having regard to our above conclusions, we are  
convinced that depriving the Petitioner of the opportunity to  
opt for the available N.R.I. seat in M.D. General Medicine during  
the third counselling was wholly unjustified. Having reached  
the above conclusion when we come to the question of grant  
B of relief as prayed for by the Petitioner in this Writ Petition, the  
Petitioner seeks for Mandamus to direct the second  
Respondent to permit her to shift her P.G. Course from M.D.  
Pathology to M.D. General Medicine in the available vacant  
seat. Though, we have found that the second Respondent was  
C wholly unjustified in not making available the said vacant seat  
to the Petitioner, as the admission schedule fixed by Medical  
Council of India and this Court is being scrupulously followed,  
we do not find any extraordinary situation to violate the said  
schedule fixed by us. We have held in various decisions that  
D the time schedule should be strictly adhered to and no mid  
stream admission should be allowed. We are, therefore, not  
inclined to give such a direction as prayed for by the Petitioner.  
However, taking into account the grave injustice caused to the  
Petitioner for which the entire responsibility lies on the second  
E Respondent, we are convinced that second Respondent should  
be mulcted with the liability of payment of appropriate  
compensation to the Petitioner for having snatched away her  
valuable right. Though, we would have been fully justified in  
directing exemplary amount by way of compensation, we feel  
F it appropriate to fix it in a sum of Rs.5,00,000/-(Rupees five  
lacs only). The second Respondent is, therefore, directed to  
pay the said sum of Rs.5,00,000/- apart from refunding the  
sum of Rs.13,000/- which the Petitioner had to pay for her  
readmission to the very same P.G. course of M.D. Pathology.  
G We are confident that since the Petitioner was only fighting for  
her lawful rights, the same should not have any reflection in the  
approach of second Respondent either directly or indirectly  
which would cause any disruption in her studies or in the  
completion of her course. It will always be open for the Petitioner  
H to approach the appropriate Forum or for that matter even this

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Court to seek for the redressal of her grievances, if any on that score. The compensation of Rs.5,00,000/- shall be paid to the Petitioner within two weeks from the date of production of copy of this order. A

The Writ Petition is partly allowed to the extent stated above with costs. B

Nidhi Jain

Writ petition partly allowed.