A S. KRISHNA SRADHA

v.

STATE OF ANDHRA PRADESH AND ORS.

(Civil Appeal No. 1081 of 2017)

B JANUARY 19, 2017

[DIPAK MISRA AND R. F. NARIMAN, JJ.]

Education:

Admissions – MBBS Course – Wrongful deprivation of C *admission – Duty of constitutional courts u/Arts. 32, 136 and 226 – Re-consideration of decision in* Jasmine Kaur's case *holding grant of monetary compensation as the sole remedy for non-admission after lapse of prescribed time schedule when such lapse was a result of faults committed by the counseling/administrating authority –* D *Held: Meritorious students should not face any impediment to get admission for some fault on the part of the institution or the persons involved with it – He/She has no other remedy but to approach the Court for getting redressal of grievances – It is a grievance that pertains to fundamental right – When a* lis *of this nature comes in a constitutional court, it becomes the duty of the court to address* E *whether the authority had acted within the powers conferred on it or deviated from the same as a consequence of which injustice has been caused to the aggrieved person – Redressal of a fundamental right cannot be weighed in terms of grant of compensation only – Grant of compensation may be an additional relief – Compensation cannot be the adequate or sole remedy for the wrongful deprivation* F *of admission, as it affects the academic career of a student – Decision in* Jasmine Kaur's case *requires re-consideration by a larger Bench – Maxims – "Lex non intendit aliquid impossibile" – Doctrines/ Principles – Doctrine of restitution.*

Admissions – MBBS Course – Appellant denied admission G *to MBBS course in sports quota despite being more meritorious than the selected candidates – High Court placing reliance on* Jasmin Kaur's case *denied benefit of admission to appellant and granted compensation on the ground that the cut-off date for admission had expired, though, holding that appellant was entitled to get*

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priority and there were lapses on part of various authorities involved – Held: Appellant-student approached the Court u/Art.226 in quite promptitude and there was no delay laches on her part and did not fault in complying with procedure prescribed under the rules meant for the process of admission – Appellant directed to be admitted – Constitution of India – Arts.14 and 21.

Referring the matter to be placed before appropriate Larger Bench, the Court

HELD: 1. Jasmine Kaur's case restricts the grant of relief of admission, if it is within the time schedule prescribed, and then lays down if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate can only be granted appropriate compensation to off-set the loss caused. [Para 22] [485-C-D]

Chandigarh Administration and Anr. v. Jasmine Kaur and Ors. **(2014) 10 SCC 521 : [2014] 9 SCR 1122 – held, needs reconsideration.**

2.1 This Court has always laid stress on the merit in the matters of admissions as meritorious students should not face any impediment to get admission for some fault on the part of the institution or the persons involved with it. He/She has no other remedy but to approach the Court for getting redressal of his/her grievances. It is a grievance that pertains to fundamental right. A right is conferred on a person by rule of law and if he seeks remedy through the process meant for establishing rule of law and it is denied to him, it would never subserve the cause of real justice. When a *lis* of this nature comes in a constitutional court, it becomes the duty of the court to address whether the authority had acted within the powers conferred on it or deviated from the same as a consequence of which injustice has been caused to the grieved person. The redressal of a fundamental right, cannot be weighed in terms of grant of compensation only. [Para 26] [487-C-F]

2.2 Grant of compensation may be an additional relief. Confining it to grant of compensation as the only measure would defeat the basic purpose of the fundamental rights which the Constitution has conferred so that the said rights are sustained.

A **It would be inapposite to recognize the right, record a finding that there is a violation of the right and deny the requisite relief. A young student should not feel that his entire industry to get himself qualified in the examination becomes meaningless because of some fault or dramatic design of certain authorities and they can get away by giving some amount as compensation.**
B **It may not only be agonizing but may amount to grant of premium either to laxity or evil design or incurable greed of the authorities. In such a situation, justice may be farther away and the knocking at the doors of a constitutional court, a sisyphean endeavour, an exercise in futility. It is well known that the law intends not**
C **anything impossible; "*lex non intendit aliquid impossibile*". But when it is in the realm of possibility; and denial of relief hurts the "majesty of justice", it should not be denied. On the contrary, every effort has to be made to grant the relief. [Para 26] [487-F-H; 488-A-B]**

D *Asha v. Pt. B.D. Sharma University of Health Sciences & Ors.* **(2012) 7 SCC 389 : [2012] 6 SCR 876;** *Harshali D/o Sudamrao Wankhede v. State of Maharashtra & Ors.* **(2005) 13 SCC 464 – relied on.**

2.3 However, there are cases where this Court had granted
E **compensation because there was no other option and the only way of redemption was to grant compensation. It is necessary to state that grant of relief as lawfully due should be the primary duty of the court. Where doctrine of restitution can be applied and there is no impossibility it would be anathema to the cause of justice to deny the same. It is seemly to appreciate that restitution**
F **as a concept, as is traditionally understood, is the restoration of an aggrieved party to his condition prior to the wrongdoing. It could be limited to monetary quantification only if the breach is not capable of being remedied. That being so, compensation cannot be the adequate or sole remedy for the wrongful**
G **deprivation of admission, as it affects the academic career of a student. There may be cases where restitution may be too harsh. [Para 27] [488-D-F]**

2.4 In view of the aforesaid, the decision in Jasmine Kaur's case requires re-consideration by a larger Bench. [Para 31] [490-
H **C-D]**

Aneesh D. Lawande & Ors. v. State of Goa & Ors. **(2014) 1 SCC 554 : [2013] 17 SCR 55 – explained.**

State v. Falkner Walter Clark, American Jurist, 1921; *MBBS/BDS Selection Board v. Chandan Mishra* **(1995) Supp. 3 SCC 77**; *Chandan Mishra v. MBBS/BDS Selection Board* **(1994) 77 Cut LT 624**; *Deptt. of Public Health, UT Chandigarh v. Kuldeep Singh* **(1997) 9 SCC 199 : [1997] 1 SCR 454**; *Julius v. Lord Bishop of Oxford* **(1880) 5 AC 214**; *Commr. Of Police v. Gordhandas Bhanji* **AIR 1952 SC 16 : [1952] SCR 135**; *K.S. Bhoir v. State of Maharashtra* **(2001) 10 SCC 264 : [2001] 5 Suppl. SCR 593**; *Faiza Choudhary v. State of J & K* **(2012) 10 SCC 149 : [2012] 7 SCR 528**; *Satyabrata Sahoo v. State of Orissa* **(2012) 8 SCC 203 : [2012] 10 SCR 204**; *Medical Council of India v. State of Karnataka* **(1998) 6 SCC 131 : [1998] 3 SCR 740**; *Priya Gupta v. State of Chhattisgarh* **(2012) 7 SCC 433 : [2012] 5 SCR 768**; *Christian Medical College v. State of Punjab* **(2010) 12 SCC 167**; *State of Bihar v. Sanjay Kumar Sinha* **(1990) 4 SCC 624 : [1989] 2 Suppl. SCR 168**; *Medical Council of India v. Madhu Singh* **(2002) 7 SCC 258 : [2002] 2 Suppl. SCR 228**; *GSF Medical and Paramedical Assn. v. Assn. of Self Financing Technical Institutes* **(2003) 12 SCC 414**; *Dwarka Nath v. ITO* **AIR 1966 SC 81 : [1965] SCR 536**; *State of Punjab v. Salil Sabhlok* **(2003) 5 SCC 1 : [2003] 1 SCR 877**; *S. Nihar Ahamed v. Dean Velammal Medical College Hospital and Research Institute & Ors.* **(2016) 1 SCC 662 : [2015] 10 SCR 242**; *Punjab Engineering College, Chandigarh through its Principal v. Sanjay Gulati & Ors.* **(1983) 3 SCC 517 : [1983] 2 SCR 801**; *Rudul Shah v. State of Bihar* **(1983) 4 SCC 141 : [1983] 3 SCR 508**; *Sebastian Hongray v. Union of India* **AIR 1984 SC 571 : [1984] 1 SCR 904**; *Chairman, Railway Board v. Chandrima Das* **(2000) 2 SCC 465 : [2000] 1 SCR 480**; *Jang Singh v. Brij Lal & Ors.* **AIR 1966 SC 1631 : [1964] SCR 145 – referred to.**

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Case Law Reference

[2014] 9 SCR 1122	held, needs reconsideration	Paras 2, 31
[2013] 17 SCR 55	explained	Para 19
B (1995) Supp. 3 SCC 77	referred to	Para 15
[1997] 1 SCR 454	referred to	Para 15
[1952] SCR 135	referred to	Para 15
[2001] 5 Suppl. SCR 593	referred to	Para 17
C [2012] 7 SCR 528	referred to	Para 17
[2012] 10 SCR 204	referred to	Para 17
[1998] 3 SCR 740	referred to	Para 17
[2012] 5 SCR 768	referred to	Para 18
D (2010) 12 SCC 167	referred to	Para 19
[1989] 2 Suppl. SCR 168	referred to	Para 20
[2002] 2 Suppl. SCR 228	referred to	Para 20
(2003) 12 SCC 414	referred to	Para 20
E [1965] SCR 536	referred to	Para 21
[2003] 1 SCR 877	referred to	Para 21
[2015] 10 SCR 242	referred to	Para 22
[1983] 2 SCR 801	referred to	Para 25
F [2012] 6 SCR 876	relied on	Para 26
(2005) 13 SCC 464	relied on	Para 26
[1983] 3 SCR 508	referred to	Para 27
[1984] 1 SCR 904	referred to	Para 27
G [2000] 1 SCR 480	referred to	Para 27
[1964] SCR 145	referred to	Para 28

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1081 of 2017.

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From the Judgment and Order dated 25.01.2016 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in W. P. No. 32710 of 2015.

P. S. Narasimha, ASG(AC), Vikas Singh, Sr. Adv., K. Parameshwar, Ashwani Kumar N., Guntur Prabhakar, Ms. Prerna Singh, Y. Raja Gopala Rao, Y. Vismai Rao, Ms. Manjit Kirpal, P. Shadat Kumar, Gaurav Sharma, Prateek Bhatia, Dhawal Mohan, Ms. Vara Gaur, Advs., for the appearing parties.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. The centripodal issue that emerges for consideration in this appeal, by special leave, compels us to think and constraints us to ruminate over the principle whether grant of monetary compensation can be considered as the sole and adequate remedy for a student who has been deprived of admission to the MBBS course, despite he or she being meritorious, vigilant and diligent and thereby abandoning the path of recalcitrance and eventually being found flawless, is forced to suffer non-admission to the course for which he had aspired for and found suitable because of lapses committed either by the counselling authority or the administrating authority intrinsically connected with the process of admission; and the ancillary issue that arises for deliberation is whether the constitutional courts, be it High Court or this Court, while exercising the power under Article 226 of the Constitution or under Article 32 or 136 of the Constitution, would feel handicapped because of expiry of time schedule fixed by the Court to deny the relief to the candidate by pronouncing, "relief denied as the time has expired". Mr. Vikas Singh, learned senior counsel appearing for the Medical Council of India would support the proposition that grant of compensation is the only possible remedy on the strength of a two-Judge Bench decision in ***Chandigarh Administration & Anr. v. Jasmine Kaur & Ors.***[1] which has been placed reliance upon by the High Court in the impugned judgment and order to decline the relief to the appellant (as it had no other alternative), and that forces us to cogitate on "superstitious sanctity" as put forth by Walter Clark in ***State v. Falkner***[2] and simultaneously also recapitulate the saying by Oliver Wendell Holmes:-

[1] (2014) 10 SCC 521

[2] Walter Clark. American Jurist. 1921

A "To an imagination of any scope the most far-reaching form of power is not money, it is the command of ideas"[3]

And above all we cannot be oblivious to our duty, a sanguine one, of the constitutional courts to protect and preserve the fundamental rights of the citizens as the *sentinel on the qui vive*.

B 3. The facts which are necessary to be stated to appreciate the controversy lie in a narrow compass. The appellant preferred W.P. No.32710 of 2015 before the High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh alleging that the Dr. NTR University of Health Sciences, the respondent No.2 herein, C had rejected her candidature for taking admission to the first year MBBS course for the academic Session 2015-2016 in Sports and Games quota and granted admission to the respondent Nos.7 and 8 on unacceptable grounds and on that basis sought issue of a writ of mandamus to the University to consider her case by giving priority over others in Sports and Games quota as she so deserved. We need not advert to the facts D in detail as neither the University nor the Medical Council of India has challenged the order passed by the High Court.

4. It is submitted by Mr. K. Parameshwar, learned counsel for the appellant that from the order passed by the High Court, it is clearly evident that the appellant was more meritorious in the Sports and Games E quota than the candidates who have been given admission. He has drawn our attention to certain passages from the judgment of the High Court. They read as follows:-

"11. .....From the material placed before this Court, it is clear that petitioner participated in World Artistic Skating Championship, F 2014 held at Reus, Spain under senior division from 28th September, to 12th October, 2014 and certification to that effect is made by no other than Roller Skating Federation of India. When there is such certification on record, there is no reason to deny priority due to the petitioner on the ground that there was G no response from the Sports Authority of India. It is relevant to mention here that 3rd respondent-SAAP has not taken immediate steps after collecting documents from the 2nd respondent-university on 22.08.2015. From the averments made in the counter-affidavit filed by the 2nd respondent university, it is clear

H [3]Oliver Wendell Holmes "The Path of the Law," Collected Legal Papers. 1921

that academic session for the year 2015-2016 started from 01.09.2015 and, further, 8th respondent was admitted into the course based on the admission given as per the priority furnished by the 3rd respondent. It is stated that 8th respondent started attending classes from 01.10.2015." A

And again :- B

"13. Further, in the case of Chandigarh Administration (2 supra), the Hon'ble Supreme Court has held that there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e. carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In the case of Union Bank of India (3 supra), it is held by the Supreme Court that Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. C D

14. In the case on hand, it is clear that in spite of submitting the necessary material in support of the claim of the petitioner for reservation under sports and games category for admission into MBBS course, she was denied due priority and admission into MBBS course. Had the participation of the petitioner in World championship been considered as per the norms notified by the Government, she was entitled for priority 10, in which event she was also entitled for admission into MBBS course. In spite of the fact that certificates were collected by the authorities of the 3rd respondent-SAAP on 22.08.2015, they have not acted quickly and diligently, if at all confirmation was required from the Sports Authority of India. As per the rules framed by the Government, confirmation is to be given only by the 3rd respondent, but not by another body. When there is statutory obligation on the 3rd respondent for confirmation of certificates, it cannot shirk its responsibility only on the ground that Sports Authority of India has not responded to letter dated 18.09.2015. In the absence of any dispute with regard to the participation of petitioner in World Championship, which is supported by the certificate issued by the Roller Skating Federation of India, only on the ground that there was no response to the letter dated 18.09.2015 addressed E F G H

A by the 3rd respondent, petitioner ought not to have been denied due priority. At the same time, having collected certificates on 22.08.2015, there is no reason for the 3rd respondent-SAAP in addressing to the concerned authority only on 18.09.2015. By forwarding the priority lists at the fag end, i.e. 28-29.09.2015, petitioner was deprived of opportunity to put forth her grievance. At the same time, it is evident from the counter affidavit filed by the 2nd respondent-university that academic session for the year 2015-16 commenced from 01.09.2015, candidates under sports and games quota have started attending classes from 01.10.2015. As such, no direction can be issued at this point of time for grant of admission to the petitioner for the academic session 2015-2016."

[Emphasis supplied]

5. From the aforesaid analysis, it is limpid, requiring no deep dwelling and deliberation that at times can vex the brain, that though the High Court has come to a categorical and unequivocal conclusion that the appellant was entitled to get priority, yet has denied the benefit of admission placing reliance on the decision in ***Jasmin Kaur's*** case and granted compensation of Rs.5,00,000/- (Rupees five lac only). It is also noticed that the appellant was not extended the benefit of admission despite he was more meritorious than others on the basis of marks obtained solely on the ground that time had expired. Therefore, the pertinent question to be posed has to be, is it just or fair to a student who has approached the Court under Article 226 of the Constitution in quite promptitude and there is no delay and laches on his part and further where he had not faulted in complying with any procedure prescribed under the rules or regulations meant for the process of admission, to mitigate his grievance by granting monetary compensation possibly perceiving the duty of the Court goes so far and no further.

6. When the matter was listed on an earlier occasion, we had permitted the appellant-student to be admitted and accordingly she has been admitted. Mr. Vikas Singh, learned senior counsel being assisted by Mr. Gaurav Sharma, learned counsel appearing for the Medical Council of India has fairly conceded that the admission need not be disturbed and the appellant may be allowed to prosecute the course she has been admitted to. Therefore, any disputes as regards the appellant's

admission stands closed. And we record with appreciation the stand of Mr. Singh and Mr. Sharma on this score.

7. Having said so, in all possibility, we would have disposed of the appeal. But Mr. P.S. Narasimha, learned senior counsel, who has been appointed as *Amicus Curiae* to assist the Court and Mr. K. Parameshwar, learned counsel for the appellant submit with all the humility and sincerity at their command that it is a recurring problem and by virtue of the judgment delivered in ***Jasmin Kaur*** (supra), an impediment has been created and as artificial obstruction has been conceived of for mitigating the real grievance of a meritorious candidate, and, in a way, it scuttles the power of the constitutional courts to grant real substantive relief or mould the relief and, therefore, the said decision requires reconsideration.

8. Mr. Vikas Singh, learned senior counsel appearing for the Medical Council of India would strenuously support the said authority on the bedrock that the time fixed for admission by this Court has to be scrupulously followed and should never be allowed to be derailed, under no circumstances.

9. It is submitted by Mr. Narasmiha, learned amicus curiae that the Court in ***Asha v. Pt. B.D. Sharma University of Health Sciences & Ors.***[4], has recognized that the procedural sanctity of the admission process as an insegregable facet of Article 14 of the Constitution of India and further ruled that in exceptional circumstances, the deadline of 30th September should not act as an obstacle for grant of full relief of admission, if three conditions are satisfied. Learned amicus would contend that a candidate must be meritorious and his approach to the Court should be unblemished; that he should have approached the Court absolutely expeditiously; and that denial of admission must have occasioned on account of some fault or negligence of the concerned authorities including the counseling authority. It is propounded by him that it is the obligation of the authorities while giving admission to higher educational courses to strictly adhere to the norms of fairness and are expected to remain totally vigilant, scrupulously following the principle of transparency and when the constitutional court finds that there is deviation, the candidate cannot be allowed to suffer the deprivation of admission to the course. It is urged by him that grant of compensation in such cases would be contrary to fundamental principles and values

[4](2012) 7 SCC 389

A inherent in Article 14 of the Constitution and is likely to destroy the essential facet of Article 21 of the Constitution which recognizes right to life that encompasses manifold rights as expanded by this Court from time to time including the right to achieve excellence in life as permissible in law. According to the learned senior counsel the said expanse should neither be narrowed nor crippled by the Court.

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10. At this juncture, we think it appropriate to have a look at the decisions that have been cited at the Bar. In ***Asha*** (supra), the Court observed that it was the need of the hour and demand of justice that this Court clarified its decisions and stated the principles with greater precision so as to ensure elimination of colourable abuse and arbitrary exercise of power in the process of selection and admission to the professional courses by all concerned. The Court posed four questions. They are:-

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> "a) Is there any exception to the principle of strict adherence to the Rule of Merit for preference of courses and colleges regarding admission to such courses?
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> b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception?
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> c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations?
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> d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this court governing the subject?"

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11. While dealing with the second question, the Court held, thus:-

> "30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer."

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12. After so stating, the Court proceeded to record a finding that

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it was unfortunate but apparently unfair that the appellant therein had been denied admission. Thereafter, it stated thus:-

> "32. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Arti Sapru v. State of J & K [(1981) 2 SCC 484]; Chavi Mehrotra v. Director General Health Services [(1994) 2 SCC 370]; and Aravind Kumar Kankane v. State of UP [(2001) 8 SCC 355]."

13. The Court added that even if the conditions are satisfied, still the Court would be called upon to decide whether the reliefs should or should not be granted and, if granted, should it be with or without compensation. Thereafter, the Court adverted to certain facts and granted the relief in the following manner:-

> "37. From the above data, it is clear that the appellant has miserably failed to pursue her BDS course in accordance with Rules and, thus, she has not fulfilled even the pre-requisites for MBBS course, assuming that the BDS and MBBS courses are similar for the first six months. In these circumstances and finding that the appellant is at fault to this limited extent, we are of the considered view that the only relief the appellant can be granted in the present appeal is a direction to the respondents to give the appellant admission to the MBBS course not in the academic year 2011-12 but in the current academic year i.e. 2012-2013, that too, subject to the condition that she will pursue her MBBS course right from the beginning without any advantage of her course in the BDS. If any examinations have been held in the meanwhile, it shall be deemed that she had not appeared in those examinations and be treated as such for all intent and purpose.

A While giving her admission to the MBBS course, preferably and if it is permissible, admission of none of the other candidates to the MBBS course may be disturbed. If for whatever reasons, it is not possible to do so, in that event, the candidate last in the merit who has been granted admission to the MBBS course shall be transferred to the BDS course and appellant shall be admitted to the MBBS course. We also direct that such candidate would not be required to commence her/his BDS course from the beginning provided the candidate has satisfied the attendance requirements of the Dental Council of India.

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41. For the reasons afore-recorded and with the directions as mentioned above, we direct the respondents to grant admission to the appellant to the MBBS course in the current academic year subject to the condition that she will pursue her MBBS course right from its beginning and to the conditions afore-noticed. However, in the facts and circumstances of the case, we award no costs."

14. At this juncture, it is necessary to note that the appellant therein was not granted the benefit of admission for the academic year 2011-2012 as she had miserably failed to pursue her BDS course in E accordance with Rules and had not really fulfilled even the pre-requisites for MBBS course assuming that the BDS and the MBBS courses are similar for the first six months. It is imperative to note that though the Court did not grant the benefit of admission for the current year but directed her admission in the MBBS course in the subsequent academic F year as it had arrived a definite conclusion that the denial of admission to the MBBS course was not only unfortunate but apparently unfair.

15. In ***Aneesh D. Lawande & Ors. v. State of Goa & Ors.***[5]), a two-Judge Bench was dealing with a sad scenario wherein State of Goa and its functionaries had allowed ingress of systemic anarchy throwing G propriety to the winds. The Court referred to the three-Judge Bench decision in ***MBBS/BDS Selection Board v. Chandan Mishra***[6] where the Court had commented on the insensitivity of the authorities administering medical college admissions and approvingly reproduced a

[5](2014) 1 SCC 554

H [6]1995 Supp.(3) SCC 77

sentence from the decision in ***Chandan Mishra v. MBBS/BDS Selection Board***[7] that proclaimed in sheer anguish "Shakespeare in *Othello* has written 'Chaos is come again'." The context in ***Aneesh's*** case was admission to postgraduate courses in a single government medical college at Goa. It is necessary to state that though the factual score was different, yet the two-Judge Bench referred to the decision in ***Asha*** (supra) to accentuate the saga of anguish that continued. The Court noted various irregularities and also the view expressed by the High Court. The Court referred to the authority in ***Deptt. Of Public Health, UT Chandigarh v. Kuldeep Singh***[8] wherein the Court has reproduced the observations of Farl Cairns L.C. in the House of Lords in ***Julius v. Lord Bishop of Oxford***[9] which was quoted with approval by this Court in ***Commr. of Police v. Gordhandas Bhanji***[10]. The succinctly stated passage reads thus:-

> "27... '... There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

16. And thereafter the Court proceeded to observe that the State Government had really crucified the fate of the candidates who had been protected by the verdict of this Court. After lancinating the order passed by the High Court, the Court expressed:-

> "26. The agony and woe do not end here. The anguish of the students who were admitted on the basis of the Rules, in our considered opinion, deserves to be addressed. True it is, they instead of approaching this Court knocked at the doors of the High Court, may be in anxiety, as the counselling for the candidates qualified in the NEET examination had commenced. By virtue of the order of the High Court they got provisional admissions. They have prosecuted their studies for some time.

[7](1994) 77 Cut LT 624
[8](1997) 9 SCC 199
[9](1880) 5 AC 214
[10]AIR 1952 SC 16

A Had the NEET not been introduced, they would have been admitted under the Rules. But, presently the situation is totally different. With the intention to solve the problem we had directed issue of notice to the Medical Council of India."

17. After referring to the decisions in ***K.S. Bhoir v. State of Maharashtra***[11]; ***Faiza Choudhary v. State of J & K***[12]; ***Satyabrata Sahoo v. State of Orissa***[13] and ***Medical Council of India v. State of Karnataka***[14], the Court culled out two principles. They are:-

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"30. From the aforesaid decisions two principles emerge:

(i) That there cannot be direction for increase of seats, and

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(ii) There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent years."

18. The Court referred to the authority in ***Priya Gupta v. State of Chhattisgarh***[15] wherein directions were issued permitting the D appellants therein to complete the course and thereafter, the Court invoked the jurisdiction Article 142 of the Constitution to issue a direction so that it can act as a palliative at least for some of the students who had been given admission under the Rules. Eventually it held :-

"33. We have been apprised by Mr. Singh, learned senior counsel E for the State and Ms. Indu Malhotra, learned senior counsel for the private respondents, that 21 seats of All India quota in postgraduate medical course and 7 seats in dental course have been transferred to the State quota. Mr. Amit Kumar, learned counsel for the Medical Council of India, while not disputing the numbers, would submit that they are to be filled up on different F parameters. We are absolutely conscious of the said position. However, regard being had to the special features of the case and the litigations that have cropped up and the mistake that the State Government has committed, we are inclined to direct that 21 seats transferred to the State quota shall be filled up from among the students who had taken admissions under the 2004 G Rules. It needs no special emphasis to state that the admissions

[11](2001) 10 SCC 264
[12](2012) 10 SCC 149
[13](2012) 8 SCC 203
[14](1998) 6 SCC 131
H [15](2012) 7 SCC 433

and the allocations of the stream shall be on their inter se merit as per the Rules. We may hasten to clarify that none of these candidates shall be allowed to encroach upon the streams that have already been allotted to the petitioners who were admitted having been qualified in the NEET examination. We have been further apprised at the Bar that there are some unfilled seats as some students have left the College. If the vacancies have occurred, the same can also be filled up regard being had to the merit as stipulated under the Rules.

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35. The next submission relates to the issue whether the students who cannot be adjusted in the seats of All India quota that have been transferred to the State quota of this year can be adjusted next year. During the course of hearing though there was some debate with regard to giving of admissions to such students in the academic year 2014-15, Mr. Amit Kumar, learned counsel for the Medical Council of India, has seriously opposed the same and, thereafter, has cited the authorities which we have referred to hereinbefore. We are bound by the said precedents. In certain individual cases where there is defective counselling and merit has become a casualty, this Court has directed for adjustment in the next academic session but in the case at hand, it is not exactly so. Though we are at pains, yet we must express that it will not be appropriate to issue directions to adjust them in respect of the subsequent academic year, for taking recourse to the same would affect the other meritorious candidates who would be aspirant to get admissions next year. For doing equity to some in praesenti we cannot afford to do injustice to others in future. Therefore, the submission stands repelled."

[Emphasis added]

19. The aforesaid decision has to be appropriately understood. The Court did not direct for adjustment of number of students who had to go out to be adjusted in the subsequent year, regard being had to the principles stated in ***Faiza Choudhary*** and ***Satyabrata Sahoo*** (supra), as the factual score was quite different. It needs to be stated in an elaborate manner. The State of Goa had framed a set of Rules, namely, the Goa (Rules for admission to Postgraduate degree and diploma courses

of the Goa University at the Goa Medical College) Rules, 2004 (for short "the Rules"). Rule 3 dealt with eligibility, preference and order of merit. Rule 3(1) dealt with eligibility criteria and Rule 3(2) with preference. The said Rule governed the admission to the singular medical college and the lone dental college, both Government colleges affiliated to Goa University. On 9.8.2012 the Government of Goa in the Department of Public Health, through its Under Secretary (Health) communicated to the Dean, Goa Medical College to implement Medical council of India's Notification on the NEET for the academic year 2013-14, which was challenged in ***Christian Medical College v. State of Punjab***[16]. During the pendency of the matter, the writ petitioners qualified for NEET and secured ranks for admission to postgraduate courses. When the matter was sub-judice before this Court the High Court of Bombay at Goa entertained Writ Petition No. 366 of 2013 by the students, who had failed to qualify in the NEET examination but were eligible to get admission on the basis of their aggregate marks as provided under the Rules, and ordered counselling in respect of both the categories of students and permit admission to the students. On 25.7.2013, Additional Secretary (Health) directed the Goa Medical College to admit the students on the basis of aggregate marks and cancelled the admissions based on NEET. The candidates, who had qualified in the NEET examination and had been admitted, were compelled to leave the college and the students who had qualified under the Rules were admitted. The dissatisfaction impelled the grieved students to approach this Court under Article 32 of the Constitution and the Court on 30.7.2013 stayed the order of the State Government and thereafter on 7.8.2013 passed a mandatory order to the effect that the petitioners shall be permitted to continue their studies. However, the Court observed that in certain individual cases, there had been a defective counseling and merit had become a casualty, and accordingly directed for adjustment in the next academic session which followed the principle laid down in ***Priya Gupta*** (supra).

20. In ***Jasmin Kaur & Ors.*** (supra), the two-Judge Bench referred to all the authorities in the field, namely, ***Priya Gupta*** (supra); ***State of Bihar v. Sanjay Kumar Sinha***[17]; ***Medical Council of India v. Madhu Singh***[18]; ***GSF Medical and Paramedical Assn. v. Assn. of***

[16](2010) 12 SCC 167
[17](1990) 4 SCC 624
[18](2002) 7 SCC 258

Self Financing Technical Institutes[19]; and ***Christian Medical College*** (supra) and distinguished the decision in ***Asha's case*** stating as follows:-

> "31. In para 32 of *Asha* case, the exceptional circumstances which can be examined have been quoted in order to ensure that when any deviation is to be made from the normal rule, such similar principles should be kept in mind by the Courts. In para 32, it was highlighted that in the rarest of rare cases or exceptional circumstances, the Courts may have to mould the reliefs and make an exception to the cut-off date of 30th September but in those cases the Court must first return a finding that no fault was attributable to the candidate, that the candidate pursued her rights and legal remedies expeditiously without any delay and that there was fault on the part of the authorities and that there was no apparent breach of the rules, regulations and principles in the process of the selection and grant of admission. It was also highlighted that where denial of admission would violate the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. By relying upon the said part of the decision, the learned Senior Counsel submitted that the case of the contesting Respondent was squarely covered by the principle of an exceptional case and, therefore, the direction of the Division Bench was well justified."

21. The Court distinguished the decisions in ***Dwarka Nath v. ITO***[20] and ***State of Punjab v. Salil Sabhlok***[21] and proceeded to conclude thus:-

> "33.1 The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the courts or the Board and midstream admission should not be permitted.
>
> 33.2 Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there

[19] (2003) 12 SCC 414
[20] AIR 1966 SC 81
[21] (2003) 5 SCC 1

A is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.

B

33.3 If a candidate is not selected during a particular academic year due to the fault of the Institutions/Authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.

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33.4. When a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission.

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33.5 If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non- selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

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33.6 If it is found that the candidate acquiesces or waives his/her right to claim relief before the Court promptly, then in such cases, the legal maxim *vigilantibus et non dormientibus jura subveniunt*, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

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33.7 No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfill the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

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33.8 There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a

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candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply in next academic year.

33.9 There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

33.10 Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical."

[Underlining is ours]

22. The aforesaid authority, as the underlining portion would show, restricts the grant of relief of admission, if it is within the time schedule prescribed, and then lays down if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate can only be granted appropriate compensation to off-set the loss caused, if any. The said authority has been followed in ***S. Nihar Ahamed v. Dean Velammal Medical College Hospital and Research Institute & Ors***[22].

23. In this context, a reference to the pronouncement by a three-Judge Bench in ***Harshali D/o Sudamrao Wankhede v. State of Maharashtra & Ors.***[23] would be apt. In the said case, the appellant was denied admission in MBBS first year course in academic year 2004-05 despite obtaining higher marks in the entrance test. The appellant therein had approached the High Court which had dismissed the writ petition on the ground that direction for grant of admission to the appellant could not be issued after the cut-off date, i.e. 30th September 2004 in view of the decision of this Court in ***Madhu Singh*** (supra). The Court accepted the stand of the appellant with regard to her merit and directed as follows:-

"6. Learned Counsel for the college submits that the appellant can be granted admission in the present Academic Year 2005-2006 out of the sanctioned intake of the college. Learned Counsel also states that the appellant would be required to pay only that fee which was required to be paid if admission had been granted against a government quota seat in Academic Year 2004-2005.

[22] (2016) 1 SCC 662
[23] (2005) 13 SCC 464

A Further, it is stated that whatever fee has been paid by the appellant for getting admission into dental course for the last year or this year, due adjustment would be made while calculating payment of fee by her for the admission in the first year MBBS course in the present Academic Year 2005-2006.

B 7. The question which still requires to be examined, which would be examined later, would also be about the loss of one year of career of the appellant. In view of the aforesaid, we direct that the appellant be granted admission in the first year MBBS course by 30.09.2005."

C 24. The concern of the Court from the aforesaid two passages is writ large. As we understand the ratio, the three-Judge Bench was concerned with the non-granting of admission and the loss of one year of career of the student.

25. Mr. Parameshwar, learned counsel has drawn our attention to a passage from a three-Judge Bench decision in ***Punjab Engineering*** D ***College, Chandigarh through its Principal v. Sanjay Gulati & Ors.***[24]. The said passage reads as under:-

"Cases like these in which admissions granted to students in educational institutions are quashed raise a sensitive human issue. It is unquestionably true that the authorities who are charged E with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds F of those unfortunate young students who are wrongly or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. But the problem which the courts are faced with in these cases is, that it is not until a period of six months or a year elapses after the admissions G are made that the intervention of the court comes into play. Writ Petitions involving a challenge to such admissions are generally taken up by the High Courts as promptly as possible but even then, students who are wrongly admitted finish one or two semester of the course by the time the decision of the High

H [24](1983) 3 SCC 517

Court is pronounced. A further appeal to this Court consumes still more time, which creates further difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul: once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions."

[Emphasis added]

26. As is seen, stress has always been laid on the merit in the matters of all admissions as meritorious students should not face any impediment to get admission for some fault on the part of the institution or the persons involved with it. He/She has no other remedy but to approach the Court for getting redressal of his/her grievances. It is a grievance that pertains to fundamental right. It has to be remembered that a right is conferred on a person by rule of law and if he seeks remedy through the process meant for establishing rule of law and it is denied to him, it would never subserve the cause of real justice. When a *lis* of this nature comes in a constitutional court, it becomes the duty of the court to address whether the authority had acted within the powers conferred on it or deviated from the same as a consequence of which injustice has been caused to the grieved person. The redressal of a fundamental right, if one deserves to have, cannot be weighed in terms of grant of compensation only. Grant of compensation may be an additional relief. Confining it to grant of compensation as the only measure would defeat the basic purpose of the fundamental rights which the Constitution has conferred so that the said rights are sustained. It would be inapposite to recognize the right, record a finding that there is a violation of the right and deny the requisite relief. A young student should not feel that his entire industry to get himself qualified in the examination becomes meaningless because of some fault or dramatic design of certain authorities and they can get away by giving some amount as compensation. It may not only be agonizing but may amount to grant of premium either to laxity or evil design or incurable greed of the authorities. We are disposed to think, in such a situation, justice may be farther away and

A the knocking at the doors of a constitutional court, a sisyphean endeavour, an exercise in futility. It is well known that the law intends not anything impossible; "*lex non intendit aliquid impossibile*". But when it is in the realm of possibility; and denial of relief hurts the "majesty of justice", it should not be denied. On the contrary, every effort has to be made to
B grant the relief. Needless to say, to get the relief, conditions precedent are to be satisfied; and that is what has precisely been stated in ***Asha*** (supra) and ***Harshali*** (supra).

27. In this context, Mr. Narasimha, learned friend of the court submitted that the court in ***Jasmine Kaur*** (supra) has been guided by the principle adopted by this Court in the cases of constitutional tort. He
C has drawn our attention to the authorities in ***Rudul Shah v. State of Bihar***[25], ***Sebastian Hongray v. Union of India***[26] and ***Chairman, Railway Board v. Chandrima Das***[27], where the Court granted compensation because there was no other option and the only way of redemption was to grant compensation. It is necessary to state that
D grant of relief as lawfully due should be the primary duty of the court. Where doctrine of restitution can be applied and there is no impossibility it would be anathema to the cause of justice to deny the same. It is seemly to appreciate that restitution as a concept, as is traditionally understood, is the restoration of an aggrieved party to his condition prior to the wrongdoing. It could be limited to monetary quantification only if
E the breach is not capable of being remedied. That being so, compensation cannot be the adequate or sole remedy for the wrongful deprivation of admission, as it affects the academic career of a student. There may be cases where restitution may be too harsh. Then, as we are inclined to think, telescoping albeit reasonably is not an impossible one. In ***Aneesh***
F ***D. Lawande*** (supra) some of the candidates were adjusted as the government had played possum and telescoping was not allowed as the candidates had got into the course in contravention of the decision of this Court. The factual score was different. But when a right is comatosed by a maladroit design, we think, the right of the person presently aggrieved should matter, not the right of the future candidate.
G Present cannot be crucified at the alter of the present. Whether the beneficiary who has got in should go out or not, would depend upon the discretion of the Court.

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[25] (1983) 4 SCC 141

[26] AIR 1984 SC 571

H [27] (2000) 2 SCC 465

28. In this regard, we may, with profit, refer to the dictum laid down in ***Jang Singh v. Brij Lal & Ors.***[28]. In the said case, the Court applied the principle *actus curiae neminem gravabit*, namely, an act of the Court shall prejudice no one and in that context held:-

> "It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "*Actus curiae neminem gravabit*".

29. And thereafter moulded the relief, set aside the judgment of the High Court by observing thus:-

> "The mistake committed by the Court must be set right. The case must go back to that stage when the mistake was committed by the Court and the appellant should be ordered to deposit the additional rupee for payment to Bhola Singh. If he fails to make the deposit within the time specified by us his suit may be dismissed but not before. We may point out, however, that we are not deciding the question whether a Court after passing a decree for premption can extend the time originally fixed for deposit of the decretal amount. That question does not arise here. In view of the mistake of the Court which needs to be righted the parties are relegated to the position they occupied on January 6, 1958, when the error was committed by the Court which error is being rectified by us *nunc pro tunc*."

[Emphasis supplied]

[28] AIR 1966 SC 1631

A 30. The three words that have been proclaimed in the said judgment, namely, *nunc pro tunc*, is basically in the realm of doctrine of relation back and it is applied because of the fault of the Court, the litigant should not suffer. At this juncture, we are obliged to say that when the courts have gone to the extent of saying that for the fault of the court, the litigant should not suffer, it is unimaginable that for the B fault of the administrators or the counselling body or for some kind of evil designer, grant of compensation should be regarded as the lone remedy. We think not; as we are reminded of what Justinian had said "Justice is the constant and perpetual wish to render to everyone, his due". Needless, "his due" only can mean "due in law in praesenti."

C 31. In view of the aforesaid, we think the decision in ***Chandigarh administration*** (supra) requires re-consideration by a larger Bench. Papers be placed before Hon'ble the Chief Justice of India for constitution of the appropriate larger Bench.

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Divya Pandey Matter referred to Larger Bench.