SUPREME COURT OF INDIA

Neeraj Kumar Sainy

Vs.

State of U.P.

C.A.No.11974 of 2016

(Dipak Misra and Amitava Roy,JJ.,)

21.03.2017

JUDGMENT

Dipak Misra,J.,

SLP(Civil) No.27906 of 2016

1. The appellants invoked the jurisdiction of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 21038 of 2016 for issue a writ of mandamus commanding the opposite parties, namely, State of Uttar Pradesh, King George's Medical University, Coordinator, U.P. Post Graduate Medical Entrance Examination, 2016 (UPPGMEE, 2016) and Medical Council of India (MCI) to complete the process of counselling by holding the second, third and mop-up round of counselling as prescribed in the Information Brochure issued for the UPPGMEE, 2016 and to ensure that no seats in any of the courses advertised in the Information Brochure are allowed to go vacant for the academic year 2016-2017.

2. The facts which are requisite to be stated are that the appellants had appeared in the written test of UPPGMEE-2016 and after being declared successful, they participated in the first round of counselling which was held from 04.04.2016 to 08.04.2016. The candidates who got selected in the said counselling joined their respective seats allotted to them. The case of the appellants before the High Court was that as per the Information Brochure, minimum three round of counsellings are to be held and in case sufficient number of seats are left unallotted at the end of third round of counselling, then a mop-up round of allotment is required to be organized on the notified date after giving due publicity by the Director General of Medical Education and Training, U.P. to ensure that there is no loss of PG seats in the academic year 2016-2017. It was urged before the High Court that terms and conditions for participating in the mop-up round of counselling are that (i) candidates who are admitted/allotted but not joined/resigned in any seat in Uttar Pradesh will not be eligible for participation; (ii) any candidate who had taken admission in any PG course in any medical college in India also will not be eligible for participation; (iii) the candidate must present

himself/herself with all original documents, and (iv) no request for re-allotment of seats already allotted in the first and second round will be entertained.

3. It was the stand of the appellants before the High Court that it is obligatory on the part of the respondents to give effect to the postulates contained in the Information Brochure and hence, the authorities were under obligation to hold the second and third round of counselling as well as the mop-up round of counselling, but they had failed to do so by their erroneous understanding of the judgment and order dated 16.08.2016 in the case of *State of Uttar Pradesh and others v. Dinesh Singh Chauhan*[1]. It was further contended that there was infringement of valuable rights of writ petitioners as they had been denied admission to the institution of their choice in accordance with merit. It was canvassed with vigour that such an unacceptable situation had occurred, for despite the seats being lying vacant in several medical colleges no steps were being taken to fill them up. Citing an example, it was put forth that for the academic session 2013-2014 the counselling was done in the month of August and the admissions were given to the meritorious candidates and, therefore, it was necessary to issue appropriate directions to fill up the unfilled seats.

4. The stand of the appellants before the High Court was resisted by the respondent No. 2 therein - Director General of Medical Education and Training, Uttar Pradesh, contending, inter alia, that seats had remained vacant because of the directions of the Supreme Court in *Mridul Dhar (Minor) and another v. Union of India and others*[2] wherein stress was laid for adherence to the time schedule and the categorical command that there should not be midstream admissions. It was further held that carrying forward unfilled seats of one academic year to another academic year was not permissible. Reliance was also placed on the authority in *Priya Gupta v. State of Chhattisgarh and others*[3] wherein it was directed that the concerned authority was bound to fill up the seats in accord with the time schedule stricto sensu and any violation thereof is to be seriously viewed.

5. It was also highlighted by the contesting respondent that after the interim order passed by this Court on 12.05.2016 the merit list was drawn and counselling was carried out by 30.05.2016 as it was the last date fixed by the MCI for completion of admission process. It was highlighted that certain seats are lying vacant on ground of non-joining of the candidates and no further steps could be taken. Similar arguments were canvassed by the State of Uttar Pradesh and the Medical Council of India.

6. The High Court adverted to the factual background which was to the effect that a policy decision was taken by the State of Uttar Pradesh on 16.01.2014 whereby 30% of postgraduate seats had been reserved for those candidates who had completed three years service in the rural areas and in pursuance of the same, the Government Order dated 28.02.2014 was issued to engage Provincial Medical Health Services Cadre members to go for higher education. In the said order, it was also provided that those members of Provincial Services who had served in far remote backward areas in respective Community Health Centre/Primary Health Centre would get the benefit. After the said policy decision, the Examining Body issued advertisement and therein the eligibility for admission had been

provided for and as per the same only those incumbents were eligible to apply who had served for a period of three years in remote areas.

7. The said order was challenged in Writ-C No. 1380 of 2015 titled Dr. *Surya Kant Ojha and others v. State of U.P. and others*[4] before the High Court along with connected matters. The High Court vide order dated 07.04.2016 quashed the Government Order dated 28.02.2014 with a direction that admissions in postgraduate degree courses be made strictly on the basis of merit from amongst the candidates who had obtained requisite minimum marks in the examination in question so prescribed by the MCI.

8. As the factual matrix would uncurtain, the matter travelled to this Court in Dinesh Singh Chauhan (supra) wherein this Court took note of the authority in *Sudhir N. and others v. State of Kerala and others*[5], referred to Regulation 9 of the Medical Council of India Postgraduate Medical Education Regulations, 2000 which deals with the method of selection of candidates for admission to postgraduate courses and also noted the insertions made in Regulation 9(1)(b) and Regulation 9(2)(d). The proviso added after Regulation 9(2)(d) in terms of Gazette Notification published on17.11.2009 reads as follows:-

> "Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks may be given as an incentive @ 10% of the marks obtained for each year in service in remote or difficult areas up to the maximum of 30% of the marks obtained."

9. The Court noted the submissions of the learned counsel appearing for the parties and directed as follows:-

> "In the circumstances, we direct that the State Government shall as expeditiously as possible revise and redraw the merit list of the candidates keeping in view Regulation 9 of the Medical Council of India Postgraduate Medical Education Regulations, 2000 and giving to the eligible candidates such weightage as may be due to them for rendering service in notified rural and/or difficult areas and to grant admission to the candidates found suitable for the same on the basis of such redrawn merit list. This exercise shall be completed before 30-5-2016, the last date fixed for granting of admission. The entire exercise so conducted shall, however, remain subject to the outcome of these proceedings".

10. The matter was finally decided on 16.08.2016. The three-Judge Bench in Dinesh Singh Chauhan (supra) referred to the decisions in *AIIMS Students' Union v. AIIMS and others*[6], *State of M.P. and others v. Gopal D. Tirthani and others*[7], *Satyabrata Sahoo and others v. State of Orissa and others*[8] and Sudhir N. (supra) and ruled that Regulation 9 per se makes no distinction between Government and non-Government colleges for allocation of weightage of marks to in-service candidates. Instead, it mandates preparation of one merit list for the State on the basis of results in NEET and further, regarding in-service candidates, all it provides is that the candidate must have been in-service of a Government/public Authority

and served in remote and difficult areas notified by the State Government and the Competent Authority from time to time. The Court further held that the authorities are obliged to continue with the admission process strictly in conformity with Regulation 9. Elucidating the proposition, the Court expressed thus:-

> "The fact that most of the direct candidates who have secured higher marks in the NEET than the in-service candidates, may not be in a position to get a subject or college of their choice, and are likely to secure a subject or college not acceptable to them, cannot be the basis to question the validity of proviso to Clause IV of Regulation 9. The purpose behind proviso is to encourage graduates to join as medical officers and serve in notified remote and difficult areas of the State. The fact that for quite some time no such appointments have been made by the State Government also cannot be a basis to disregard the mandate of proviso to Clause IV-of giving weightage of marks to the in-service candidates who have served for a specified period in notified remote and difficult areas of the State."

Thereafter, the three-Judge Bench opined:-

> "The provision in the form of granting weightage of marks, therefore, was to give incentive to the in-service candidates and to attract more graduates to join as Medical Officers in the State Health Care Sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in the NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing health care facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas. That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to Post Graduate Medical Courses. Not even one instance has been brought to our notice to show that some areas which are not remote or difficult areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to Clause IV is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to Clause (IV) in particular is just, proper and reasonable and also fulfill the test of Article 14 of the Constitution, being in larger public interest."

11. Lastly, the Court posed the question whether the arrangement directed in terms of order dated 12.05.2016 by the Court should have prospective effect or also apply to admissions for academic year 2015-2016, for the subject matter of challenge before the High Court pertained to the academic year 2015-2016, the dispensation directed in terms of Order dated

12th May 2016 should apply thereto. However, considering the fact that the said admission process had been completed and all concerned had acted upon on that basis and that the candidates admitted to the respective Post Graduate Degree Courses in the concerned colleges had also commenced their studies, the Court held that it would not be appropriate to unsettle that position given the fact that neither the direct candidates nor the eligible in-service candidates who had worked in remote and/or difficult areas in the State had approached the Court for such relief. The Court further held that it was only the in-service candidates who had not worked in remote and/or difficult areas in the State approached the Court for equating them with their counterparts who had worked in remote and/or difficult areas in the matter of reservation of seats for in-service candidates. The Court was of the view that if at that distance of time, the settled admissions were to be disturbed by quashing the entire admission process for academic year 2015-2016, it would inevitably result in all the seats in the State almost over 500 in number remaining unfilled for one academic year; and that the candidates to be admitted on the basis of fresh list for academic year 2015- 2016 will have to take fresh admission coinciding with the admissions for academic year 2016-2017 which would necessitate doubling the strength of seats in the respective colleges for the current academic year to accommodate all those students, which may not be feasible and is avoidable. In the peculiar facts of the case, the Court moulded the relief in the appeals by directing all concerned to follow the admission process for academic year 2016-2017 and onwards strictly in conformity with the Regulations in force, governing the procedure for selection of candidates for Post Graduate Medical Degree Courses including determination of relative merit of the candidates who had appeared in NEET by giving weightage of incentive marks to eligible in-service candidates. The Court ruled that the High Court was justified in quashing the Government Order providing for reservation to in-service candidates, being violative of Regulation 9 as in force. It modified the operative direction given by the High Court and instead directed that admission process for Academic Year 2016-2017 onwards to the Post Graduate Degree Course in the State should proceed as per Regulation 9 including by giving incentive marks to eligible in-service candidates in terms of proviso to Clause IV of Regulation 9 (equivalent to third proviso to Regulation 9(2) of the Old Regulations reproduced in the interim order dated 12th May 2016). The Court thereafter directed:-

> "We, accordingly, mould the operative order of the High Court to bring it in conformity with the direction contained in the interim order dated 12th May, 2016 but to be made applicable to Academic Year 2016-17 onwards on the basis of Regulation 9 as in force. We are conscious of the fact that this arrangement is likely to affect some of the direct candidates, if not a large number of candidates whose applications were already processed by the competent Authority for concerned Post Graduate Degree Course for Academic Year 2016- 17. However, their admissions cannot be validated in breach of or disregarding the mandate of Regulation 9, as in force. The appeals against the judgment of the High Court of Judicature at Allahabad dated 7th April, 2016 are disposed of accordingly."

12. After so stating, this Court adverted to the second set of appeals arising from the judgment of the High Court of Allahabad, Lucknow Bench dated 27.03.16 wherein it had taken the view that the direction to prepare a fresh merit list vide interim order dated 12.05.16 was in respect of only such eligible and in service candidates as had submitted applications for admission to post-graduate courses for relevant academic year within the stipulated time and the direction was not to consider all similarly placed persons (eligible in-service candidates) irrespective whether they had made applications for admission to post-graduate degree courses or otherwise. Concurring with the view of the High Court, the appeals were dismissed. Eventually, the Court clarified the position:-

> "We make it clear that we have not examined the correctness of the fresh merit list prepared by the concerned Authority in terms of interim order dated 12.05.2016. If any candidate is aggrieved on account of wrong placement in the fresh merit list or being in violation of this decision, will be free to question the same by way of appropriate proceedings. That challenge can be considered on its own merit."

13. The appellants, as the facts would unroll, filed writ petition before the High Court seeking writ of mandamus for holding the second, third and mop-up round of counselling as prescribed in the information brochure and to ensure that no seats in any of the courses advertised in the brochure is allowed to go vacant in the academic session 2016-2017. The appellants contended before the High Court that the respondents were bound to give effect to the prescription contained in the information brochure which is mandatory and, therefore, the authorities are under obligation to hold second and third round of counselling and that they had misread and misapplied the judgment dated 16.08.2016; that there was infringement of their rights as they had been denied admission in the institution of their choice in accordance with merit that too when number of seats were lying vacant in several medical colleges; that in the previous academic session 2013-2014, the counselling was done after the cut-off date and the admissions were given to the candidates and hence, it would be in the interest of the students to issue directions for filling up unfilled seats.

14. Learned counsel for respondent No.2, opposing the relief sought by the appellant, submitted before the High Court that this Court in Mridul Dhar (Minor) (supra) has held that time schedule in respect of admission in postgraduate courses and super speciality courses should be strictly adhered to wherever provided; that there should not be midstream admissions; that admissions should not be in excess of sanctioned intake capacity or quota and carrying forward of unfilled seats of one academic year to another is not permissible. Reliance was also placed on the authority in Priya Gupta (supra), wherein it was directed that if anyone who fails to comply with the directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. It was further contended before the High Court by the respondent No.2 that in terms of the interim order of this Court, all the seats were allotted to the respective candidates and the admission process stood completed by 30.05.2016 and as regards unfilled seats, only 11 seats were lying vacant on account of non-joining of the candidates and no further steps could be taken on account of embargo put by

the MCI with regard to the last date for completion and the time frame could only be altered or modified by this Court.

15. Considering the rival submissions, the High Court accepted the submissions of the respondent and dismissed the writ petition. Hence, the present appeal.

16. We have heard Mr. Yatindra Singh, learned senior counsel along with Mr. A.S. Pundir, learned counsel for the petitioners and Ms. Indu Malhotra, learned senior counsel, Mr. Irshad Ahmad, AAG and Mr. Gaurav Sharma learned counsel for the respondents.

17. Learned senior counsel for the appellants would submit that the maxim actus curiae neminem gravabit or "an act of the court shall prejudice no man" is a settled principle of law and applicable in the present case. It is further contended that the delay in holding counselling was due to the orders passed by or delay in this Court which should not prejudice the appellants; that there was no delay on the part of the appellants but on account of orders passed by this Court or delay was caused in the proceedings or time taken by the State or by the MCI to file reply; that the Information Brochure of the examination body provided for holding three round of counselling and then mop-up round and under the latest amendments of the regulations, only two rounds of counselling was permitted and in the case of the appellants only one round of counselling had taken place and the second round was yet to take place; that the brochure as well as regulations provide counselling to be held first in which all can participate and thereafter the mop-up round to be conducted; that in the instant case, second round of counselling had not taken place and it should be held first and then, if the need be, the mop-up round should be held; that 71 seats are lying vacant in the State Government Colleges and non-filling of these seats will lead to waste of government investment, its resources and their full potential will not be utilized; that it is in public interest that further counselling should be held as has been held for University of Delhi and the States of Telangana and Andhra Pradesh.

18. Per contra, learned counsel for the State submitted that the legal position with regard to vacant seats after the cut-off date and extra round of counselling is settled in the decision of this Court in *Supreet Batra and others v. Union of India and others*[9], wherein it has been held that after the expiry of cut-off date, the seats lying vacant cannot be filled up by way of conducting extra round of counselling. He further submitted that pursuant to the order of the High Court quashing the policy decision of the State Government wherein provisions were made for giving reservation in post graduate courses for the doctors of Provincial Medical Services, who had worked continuously for three years in notified backward areas within the State, State of U.P. had preferred special leave petition wherein this Court vide order dated 12.05.2016 directed the State Government to revise and redraw the merit list and in pursuance of that order, State Government had redrawn the merit list and fresh counselling was held on 27.05.2016 and all the seats were filled up, except 71 seats which remained vacant due to non-availability of the candidates for the said courses. Therefore, in such circumstances no further counselling was required. It is further submitted by the learned counsel for the State that the seats became vacant after the cut-off date in different

Government Medical Colleges because after taking admission some of the candidates had either resigned from the allotted seats or not joined the courses after admission.

19. Be it noted that IA No.3 of 2016 was filed by the applicants seeking "mop-up" round of counselling for filling up the vacant seats which arose due to non-joining or resignation after de novo counselling on the basis of clause 15 of the Information Brochure for the UPPGMEE, 2016. Ms. Indu Malhotra, learned senior counsel submits that in the present case only one round of counselling took place as the criteria for preparing the merit list was changed vide order of this Court. It is further submitted by her that after de novo round of counselling held on 30.05.2016, large number of candidates did not join the allotted seats as a result of which almost 100 seats in various Government medical colleges have fallen vacant. To substantiate her claim, she relied on the order dated 01.09.2016 and 08.09.2016 passed by this Court in S.L.P. (Civil) No. 19633 of 2016 wherein this Court directed the University of Delhi to conduct one more round of counselling for vacant seats within a period of two weeks and the States of Andhra Pradesh and Telangana to conduct one more round of counselling to fill up all the vacant seats. In effect, the submission of the learned senior counsel is that the appellants and applicants are similarly situated and by redrawing the merit list, the right of the applicants to appear in the second and third counselling is denied.

20. The submission of Mr. Singh, learned senior counsel is fundamentally entrenched on the principle actus curiae neminem gravabit. The said submission is structured on the factual score that the time schedule could not be followed because of the directions of this Court issued vide order dated 12.05.2016 and eventually it became final on 16.08.2016 for which no fault can be found with the appellants. The prayer of the appellants to hold further counselling in respect of 71 seats was done in promptitude and, therefore, the High Court would have been well advised to direct for holding counselling or mop-up counselling so that the seats would not remain vacant and the procedure would have been duly complied with. Reliance has been placed on certain orders passed by this Court in respect of the University of Delhi and the States of Telangana and Andhra Pradesh.

21. As far as States of Telangana and Andhra Pradesh is concerned, it is necessary to note that the High Court had issued certain directions for filling up the seats. The same was challenged by the Medical Council of India. Taking note of the peculiar facts and circumstances of the newly born States, the Court had passed the following order:-

> "We take note of the fact that 86 seats in the State of Andhra Pradesh and 32 seats in the State of Telagnana are available in the Government colleges in both the States. Having regard to the facts and circumstances of the case, we direct that the University(s) that conducted the last counseling shall conduct a counseling within two weeks hence after giving due publicity. A student who has already taken admission will not be eligible to participate in this counseling. Needless to say, the University shall follow the procedure as provided in the admission brochure/prospectus. We further say that the vacant seats are meant only for Government colleges and

Universities. We repeat at the cost of repetition that we have passed this order in the special features of the case."

22. The situation in the case of the said two States is totally different than the present one. In the instant case, the appellants approached the High Court only on 01.09.2016. They did not choose to move this Court when the case of Dinesh Singh Chauhan (supra) was pending. They were aware that such a litigation was pending before this Court. Despite the same, they chose to maintain a sphinx like silence. It is beyond any trace of doubt that admission to post graduate courses for the academic session 2016-2017 in the State of Uttar Pradesh stood concluded by this Court as per the decision in Dinesh Singh Chauhan (supra). Had the grievance been raised before this Court at the time when the special leave petitions were filed in respect of the seats lying vacant, the matter could possibly have been differently perceived. Mr. Gaurav Sharma, learned counsel appearing for the MCI would submit that the appellants only woke up from the slumber after this Court, in exercise of power under Article 142 of the Constitution, permitted the States of Andhra Pradesh and Telangana to hold counselling concurring with the view of the High Court and also directed University of Delhi to conduct an extra round of counselling beyond the cut-off date regard being had to the peculiar facts and circumstances of the case. It is urged by him that in such a situation, the appellants cannot be permitted to advance the stand that nobody should suffer for the fault of the court.

23. It is manifest that effective and complete counselling was held in the case of Uttar Pradesh on the basis of the verdict rendered by this Court in Dinesh Singh Chauhan (supra) and the appellants, after certain orders were passed by this Court, felt to have got the wake up call to agitate their grievance.

24. The seminal question that is required to be posed is whether the maxim actus curiae neminem gravabit would be applicable to such a case. In *Jang Singh v. Brij Lal and others*[10], a three-Judge Bench noted that there was error on the part of the court and the officers of the court had contributed to the said occur. Appreciating the fact situation, the Court 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" ."

25. Noting that there was mistake by the concerned district court, relief was granted by stating so:-

> " 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."

26. Another three-Judge Bench in *Jagannath Singh and others v. Dr. Ram Naresh Singh*[11], took note of the fact that the judgment by the High Court had been rendered ex-parte, and the application for recall did not impress the High Court. Appreciating the factual matrix that there was an error in the cause list and accepting that there was an omission to mention the case correctly in the cause list and treating it as a a mistake of the court, the Court held that though there was some negligence on the part of the counsel or of his clerk but it was not so grave as to disentitle the party to be heard, and in any event, the alleged contemnors could not be punished for a mistake on the part of their counsel or the counsel' s clerk.
Being of this view, this Court set aside the order with costs.

27. In *Atma Ram Mittal v. Ishwar Singh Punia* [12], this Court, in the context of interpretation of Section 13(1) in juxtaposition with Section 1(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, adopting the purposive interpretation ruled:-

> "It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit' − an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."

28. The aforesaid authorities deal with three different situations. There cannot be an iota of doubt that no prejudice shall be caused to anyone due to the fault of the court, but it is to be seen in what situations the court can invoke the maxim "actus curiae neminem gravabit'. In this regard, reference to the authority in *Jayalakshmi Coelho v. Oswald Joseph Coelho*[13] would be apt. In the said case, the Principal Judge, Family Court, Bombay had modified the earlier decree. The same was challenged in the writ petition which was dismissed. The Division Bench confirmed the order of the learned Single Judge, which compelled the appellant to approach this Court. Dealing with the principle of rectification of decree under Section 152 CPC, the Court opined that there can be hardly any doubt that any error occurred

in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. It has been further observed that the basis of the said provision is founded on the maxim that an act of court will prejudice no man. The Court referred to the authorities in *Assam Tea Corpn. Ltd. v. Narayan Singh* [14], *L. Janakirama Iyer v. P.M. Nilakanta Iyer*[15], *Bhikhi Lal v. Tribeni*[16], *Master Construction Co. (P) Ltd. v. State of Orissa and another*[17], *Dwaraka Das v. State of M.P. and another*[18] and T*hirugnanavalli Amma.l v. P. Venugopala Pillai* [19] and, eventually analysing the facts, opined that rectification of the decree was totally misconceived.

29. In this regard, we may usefully refer to a passage from *Kalabha.rati Advertising v. Hemant Vimalnath Narichania and others* [20], wherein it has been ruled that the maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable when a situation is projected where the court is under an obligation to undo the wrong done to a party by the act of the court. In a case, where any undeserved or unfair advantage has been gained by a party invoking the jurisdiction of the court, and the same requires to be neutralized, the said maxim is to be made applicable.

30. In this regard, reference to the Constitution Bench decision in *Sarah Mathew v. Institute of Cardio Vascular Diseases and others*[21] would be seemly. In the said case, the question for consideration was whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence. Answering the issue, the Court held that for that purpose computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. In the course of deliberation, the larger Bench observed:-

> "... The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim nullum tempus aut locus occurrit regi, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim vigilantibus et non dormientibus, jura subveniunt. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim actus curiae neminem gravabit which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."

31. It is noticeable from the aforesaid passage that the interpretation was made in accordance with the Code and the legal maxim was taken as a guiding principle. Needless to say, it is well settled in law that no one should suffer any prejudice because of the act of the court. The authorities that we have referred to dealt with the different factual expositions. The legal maxim that has been taken recourse to cannot operate in a vacuum. It has to get the sustenance from the facts. As is manifest, after the admissions were over as per the direction of this Court, the appellants, who seemed to have resigned to their fate, woke up to have control over the events forgetting that the law does not assist the non-vigilant. One cannot indulge in luxury of lethargy, possibly nurturing the feeling that forgetting is a virtue, and thereafter, when the time has slipped through, for it waits for none, wake up and take shelter under the maxim "actus curiae neminem gra.vabit". It is completely unacceptable.

32. Considering the precedents where the legal maxim actus curiae neminem gravabit has been applied, we are compelled to form the opinion that the said maxim is not applicable to the factual score of the present case. Once the said principle is not applicable, the rest of the submissions pertaining to seats going waste or the State losing its investment or the suffering of the students or claim of parity with other students have no legs to stand upon. It is because to give indulgence to the appellants or the interfering with the impugned order would only give rise to chaos; and it is an accepted norm that law does not countenance any chaos and abhors anarchy.

33. Consequently, the appeal, being sans substance, stands dismissed. There shall be no order as to costs.

Judgment Referred.

[1]*(2016) 9 SCC 749*
[2]*(2005) 2 SCC 65*
[3]*(2012) 7 SCC 433*
[4]*(2016) SCC OnLine All 622*
[5]*(2015) 6 SCC 685*
[6]*(2002) 1 SCC 428*
[7]*(2003) 7 SCC 83*
[8]*(2012) 8 SCC 203*
[9]*(2003) 3 SCC 370*
[10]*AIR 1966 SC 1631*
[11]*(1970) 1 SCC 573*
[12]*(1988) 4 SCC 284*
[13]*(2001) 4 SCC 181*
[14]*AIR 1981 Gau 41*
[15]*AIR 1962 SC 633*
[16]*AIR 1965 SC 1935*
[17]*AIR 1966 SC 1047*
[18]*(1999) 3 SCC 500*
[19]*AIR 1940 Mad 29*
[20]*(2010) 9 SCC 437*
[21]*(2014) 2 SCC 62*