HIGH COURT OF JUDICATURE AT BOMBAY

BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1234 OF 2014

Prateek Chandrashekhar Patil)
aged 28 yars, Occupation : Doctor)
Indian inhabitant and having his)
present address at Room No.502,)
Old RMO Quarters, LTMMC & GH)
(Sion Hospital), Sion Mumbai 400022 … Petitioner

Vs.

1. State of Maharashtra)
Through Government Pleader)
Original Side, High Court, Bombay)
2. The Medical Council of India)
Having its address at Pocket 14,)
Sector 8, Dwarka Phase – I)
New Delhi – 110 077)
3. Maharashtra University of Health)
Sciences, though the Controller of)
Examinations, having its address at)
Wani Road, Mhasrul, Nasik 422 004)
4. The Directorate of Medical Education)
And Research, having its address at)
St. George Hospital, Fort, Mumbai.)

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5. The Dean,
Lokmanya Tilak Municipal Medical)
College and Lokmanya Tilak)
Municipal General Hospital)
(Sion Hospital), having its address)
at Lokmanya Tilak Municipal Medical)
College & Lokmanya Tilak Municipal)
General Hospital, Sion,)
Mumbai 400 022.)

6. Mandar Borde,)
Occupation : Doctor, Adult, Indian)
Inhabitant and having his present)
address at : Department of)
Orthopaedics, 1st floor, College)
Building, Lokmanya Tilak Municipal)
College & Lokmanya Tilak Municipal)
General Hospital, Sion Mumbai)
and residing at : 601 / 602, A – 9,)
Shivsagar City, Sun City Road,)
Anand Nagar, Pune 411 041 … Respondents

ALONGWITH
WRIT PETITION No.1001 OF 2014

Felice Faizal Mohammed Ebrahim)
Kutty, Aged 27 years, Occupation :)

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Doctor, Indian Inhabitant and having)
his present address at Room)
No. 507, P. G. Students Hostel, New)
OPD Building, LTMMC & GH)
(Sion Hospital), Sion, Mumbai 400 022 … Petitioner

Vs.

1. State of Maharashtra)
Through Assistant Government)
Pleader Original Side, High Court,)
Bombay)
2. The Medical Council of India)
Having its address at Pocket 14,)
Sector 8, Dwarka Phase – I)
New Delhi – 110 077)
3. Maharashtra University of Health)
Sciences, though the Controller of)
Examinations, having its address at)
Wani Road, Mhasrul, Nasik 422 004)
4. The Directorate of Medical Education)
And Research, having its address at)
St. George Hospital, Fort, Mumbai.)
5. The Dean,
Lokmanya Tilak Municipal Medical)
College and Lokmanya Tilak)

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Municipal General Hospital)
(Sion Hospital), having its address)
at Lokmanya Tilak Municipal Medical)
College & Lokmanya Tilak Municipal)
General Hospital, Sion,)
Mumbai 400 022.)

6. Mohammed Unzer Khan Mohammed)
Umar, Occupation : Doctor, Adult,)
Indian Inhabitant and having his)
present address at : 2nd year resident)
Department of Pathology, Lokmanya)
Tilak Municipal Medical College &)
Lokmanya Tilak Municipal General)
Hospital, Sion Mumbai 400022 and)
residing at : Building P-1, Room)
No. 205, 2nd floor, Boris Compound,)
near Lite Life restaurant, Ram Mandir
Road, Goregaon (W), Mumbai 400062 … Respondents

Mr. Tanvir Abdul Hamid Shaikh for the Petitioners in both the Petitions.

Mr. Milind More, AGP for Respondent Nos. 1 and 4 in both the Petitions.

Mr. Ganesh Gole for Respondent No.2 in both the Petitions.

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Mr. Rajshekhar V. Govilkar for Respondent No.3 in both the Petitions.

Mr. Anil Singh, Senior Counsel a/w Ms. Shobha Ajitkumar for Respondent No.5/BMC in both the Petitions.

Mr. P.S. Dani, Senior Counsel a/w Mr. Rupesh Lanjekar for Respondent No.6 in both the Petitions.

CORAM: V.M. KANADE &
P. R. BORA, JJ.

DATE: 17th February, 2017

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1] Both these Petitions can be disposed of by a common judgment since facts as also the reliefs claimed in both these Petitions are more or less identical.

2] Rule. Rule is made returnable forthwith. Respondents waive service. By consent of Parties, Petitions are taken up for final hearing.

3] Petitioners, by filing both these Petitions under Article 226 of the Constitution of India, are seeking an appropriate writ, order and direction, directing Respondent Nos. 2 and 3 to include the names of the Petitioners in the roll of registered students of Respondent No.3 and make necessary corrections in respect of admission of the Petitioner in Writ Petition No.1001 of 2014 in MD (Pathology) degree

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course and in respect of the admission of the Petitioner in Writ Petition No.1234 of 2014 in MS (Orthopedics) degree course for the academic years 2012-15 in Lokmanya Tilak Municipal Medical College, Sion, Mumbai – Respondent No.5. Petitioners have sought for further direction, asking Respondent No.5 to submit all necessary details and records pertaining to their admission for the purpose of enabling Respondent Nos. 2 and 3 to comply with the directions in prayer clause (a)(i). Petitioners are also seeking an appropriate writ order and direction for quashing the letters dated 15/1/2014 and 4/1/2014 which are at Exhibits-H and M to the Petitions and to accept and register the dissertation viz the Title and Synopsis on "Clinico-Pathological correlation of Pediatric Cel Tumors" submitted by the Petitioner in Writ Petition No.1001 of 2014 and also the dissertation viz the Title and Synopsis on "Study of Post Operation Cardio Respiratory recovery in cases of spinal deformity undergoing surgical intervention for deformity correction" submitted by the Petitioner in Writ Petition No.1234 of 2014.

4] Both these Petitions have been amended and two further prayers are added to prayer clause (a) vide Rider-II and, thereafter, again, two further prayers are added to prayer clause (a) vide Rider-III. Vide Rider-II, in Writ Petition No.1234 of 2014, direction has been sought against Respondent No.3 to issue Degree Completion Certificate to the Petitioner in MS (Orthopedics) degree course for the Academic Year 2012-15 and a further direction has been sought

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against Respondent No.2 to issue registration certificate and recognize degree of the Petitioner in MS (Orthopedics) degree course. Similarly vide Rider II, in Writ Petition No.1001 of 2014, direction has been sought against Respondent No.3 to issue Degree Completion Certificate to the Petitioner in MD (Pathology) Degree Course for the Academic Year 2012-2015 and a further direction has been sought against Respondent No.2 to issue registration certificate and recognize degree of the Petitioner in MD (Pathology) course. Vide Rider -III, Petitioners are also seeking direction to call for the records and proceedings from Respondent No.2 with regard to the decision dated 26/07/2016 taken by the Monitoring Sub-Committee of Respondent No.2 and also further direction to set aside the decision dated 26/07/2016 taken by the Monitoring Sub-Committee of Respondent No.2.

5] Brief facts which are relevant for the purpose of deciding these Petitions are as under:-

6] Both the Petitioners appeared for All India Post Graduate Medical Entrance Examination, 2012 which was conducted by All India Institute of Medical Sciences, New Delhi for selecting Doctors to Higher Specialty M.D. & M.S. Courses throughout the country. The Petitioner in Writ Petition No.1001 of 2014 was placed in All India Open Merit List at Rank No.3835 on the basis of the result of the said examination and the Petitioner in Writ Petition No.1234 of 2014

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was placed at Rank No.33.

7] On 12/06/2012, Petitioner in Writ Petition No.1001 of 2014 and in Writ Petition No.1234 of 2014, based on the result of the subsequent online Counselling stages conducted by Respondent No.4 were allotted All India Quota Merit Seat in M.D. (Pathology) and M.S. (Orthopedics) respectively in Lokmanya Tilak Medical College, Sion, Mumbai. In view of the said decision, Medical College i.e. Respondent No.5 issued admission letter to the Petitioners dated 18/06/2012 and they joined the College on the next date. On 18/06/2012, Petitioner in Writ Petition No.1234 of 2014 and on 02/07/2012, Petitioner in Writ Petition No.1001 of 2014 paid tuition fees and other charges of the said College which came to about Rs 50,500/- each for the first year's course i.e. 2012. Petitioners were also issued identity cards by the said College. They completed their respective dissertations under the guidance of their respective Professors. They were informed subsequently that their dissertations were accepted. Surprisingly, almost after two years, Respondent No.5 on 15/01/2014 informed the Petitioner in Writ Petition No.1001 that it was brought to their notice that the acceptance of dissertation of the Petitioner should be cancelled since the name of the Petitioner did not find place in their Rolls of the registered students of M.D. (Pathology) 2012 batch from any Medical College. Similarly on the same date i.e. on 15/01/2015 Respondent No.5 informed the Petitioner in Writ Petition No.1234 of 2014 that it was brought to their notice that until the admission of

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excess students admitted by Respondent No.5 in MD (Pathology) and MS (Orthopedics) was regularized, the Respondent No.5 should not send the thesis of the said students for approval to Respondent No.3.

8] Thereafter, Respondent No.5, in the four letters which they had sent to Respondent No.2 viz letters dated 28/02/2013, 15/05/2013, 27/11/2013 and 17/12/2013 admitted that due to mistake on their part, they admitted two extra seats i.e. one each in M.D. (Pathology) and M.S. (Orthopedics) and request was made to regularize the same. Respondent No.3, by their letters dated 08/01/2014 and 15/01/2014 rejected the said request. Petitioners, thereafter, were constrained to file the present Petitions.

9] It is an admitted position that so far as Respondent No.5 is concerned, there were 7 seats for M.S. (Orthopedics) Course and 8 seats for M.D. (Pathology) Course. It is also not in dispute that the Petitioner in Writ Petition No.1001 of 2014 was at Serial No.2 and the Petitioner in Writ Petition No.1234 of 2014 was at Serial No.1 of the Merit List of the students who were admitted. It is also not disputed that the said process of giving admission was an online process and both the Petitioners being at Serial Nos. 1 and 2 in their respective Merit Lists, were entitled, as a matter of right, to be admitted and were accordingly admitted.

10] After the Petitions were filed, Respondent No.5 filed a detailed

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affidavit-in-reply in which they quite surprisingly stated that the clerk who had operated the online procedure did not mention the names of two Petitioners in the list of admitted students and added names of two other candidates viz. Respondent No.6 in both these Petitions. As a result of this goof up, though the seats available for giving admission for M.S. (Orthopedics) were 7, eight students appears to have been shown as admitted and in respect of M.D. (Pathology), though the seats available were 8, nine students appears to have been shown as admitted. The Dean of the said College Mr. Avinash N. Supe has filed the interesting affidavit-in-reply in which in para 3(c) he states that the Respondent No.5/College submitted final list of students admitted for the particular seat in the said year to the Maharashtra University of Health Sciences, Nashik and at the time of submission of the said list, the names of the Petitioners remained to be mentioned in the said list. Then in para 2(d) he states that through oversight the names of 2 candidates i.e. Petitioners herein remained to be included in the said list, though as per the list, 2 seats were vacant in the said College and therefore the concerned authority had given directions to fill up those 2 seats from the State quota. In view of this apparent mistake committed by the College, the names of the Petitioners, who were in the Merit List and who were entitled to be selected and were, in fact, selected, did not figure in the final list and the names of Respondent No.6 in both these Petitions were added.

11] Several orders were passed by this Court from time to time and

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the matter travelled back and forth from the said College Respondent No.5 to the University and to Respondent No.2 – Medical Council of India. Medical Council of India, in their letter dated 29/12/2016 addressed to the Secretary Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi, have also acknowledged that the Petitioners' names were inadvertently not mentioned in the list though they were in the Merit List. It is also mentioned in the said letter that both the Petitioners had successfully completed their P.G. Courses and have successfully passed the Examination conducted by the Maharashtra University of Health Sciences and it also gave reference to the Order dated 01/09/2016 passed by this Court recommending regularization of the admissions of both these Petitioners. Respondent No.2 therefore requested the Central Government to approve the admissions which were given to the Petitioners. No reply has been sent by the Central Government. When we asked the learned Counsel appearing on behalf of Respondent No.2 as to why Medical Council thought it necessary to seek approval of the Central Government, he invited our attention to Section 10-A and also to Sub-section (2) of Section 25 of the Indian Medical Council Act, 1956 in support of his submission.

12] Respondent No.2 – Medical Council of India also has filed their affidavit-in-reply dated 18/07/2014 through their Law Officer one Shikhar Ranjan. He has stated in the said affidavit that the directions which are sought by the Petitioners are contrary to the Indian Medical

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Council Act, 1956 and the statutory regulations framed by the MCI. Reliance is also placed on the judgment of the Apex Court in *State of Kerala Vs. T.P. Roshna*[1] and also on other judgments of the Supreme Court. It is stated that by virtue of provisions of Section 33 of the said Act, MCI has been empowered with the prior approval of the Central Government to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of Medicine Courses. Reliance is also placed on the judgment in *MCI vs. State of Karnataka*[2] and in *Dr. Preeti Srivastava vs. State of M.P. & Ors*[3] and on other judgments in *State of Maharashtra vs. K.S. Bhoir*[4], *MCI vs. Madhu Singh & Ors*[5] and in *Mridul Dhar (Minor) and Anr. vs. UOI & Ors.*[6]. Reference is made to section 10-A of the said Act. It is submitted that the directions sought by the Petitioners are contrary to Section 10-A of the said Act. Reference is also made to the judgment in *State of Punjab & Ors vs. Renuka Singla & Ors*[7]. It is submitted that by virtue of this provision and the judgments of the Apex court, it was not permissible for Medical Council of India to create any seat over and above the sanctioned intake capacity of any Medical College save and except in accordance with the provisions of Section 10-A of the said Act. Mr. Gole, the learned Counsel appearing on behalf of Respondent No.2 submitted that the directions as sought by the

1 (1979) SCC 580
2 (1998) 6 SCC 131
3 (1999) 7 SCC 120
4 (2001) 10 SCC 264
5 (2002) 7 SCC 258
6 (2005) 2 SCC 65
7 (1994) 1 SCC 175

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Petitioners may not be granted and the directions may be given to the Central Government to consider the representation made by the MCI and to grant permission for addition of two new seats.

13] After having heard all the Counsels at length and after having gone through the record, we have no manner of doubt and hesitation in holding that the question of regularization of two seats in the present case does not arise since the Petitioners were at Serial Nos. 1 and 2 of their respective Merit Lists and, as such, they were entitled to get admission as a matter of right and therefore there is no question of seeking permission of the Central Government. Both the sections on which reliance is placed by the learned Counsel appearing on behalf of MCI have no application to the facts of the present case. Section 10-A reads as under:-

> **"10A. PERMISSION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE, NEW COURSE OF STUDY ETC.**
>
> 1. Notwithstanding anything contained in this Act or any other law for the time being in force:-
>
> (a) no person shall establish a medical college; or
>
> (b) no medical college shall -
>
> (i) open a new or higher course of study or training (including a postgraduate course of study or training) which

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would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1 - For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2 - For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2)(a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-

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section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may -

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council.

(b) consider the scheme, having regard to the factors referred to in sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Govt. may after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard;

Provided further that nothing in this sub section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such

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scheme, as if such scheme has been submitted for the first time under sub-section (2).

5. Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

6. In computing the time-limit specified in sub-section (5), the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

7. The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be under section 20 in the case of postgraduate medical education;

(b) whether the person seeking to establish a

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medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned."

The said provision, in our view, will be applicable only where new

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seats are being created or sought to be created. In this case, there is a clear mistake which is admitted by Respondent No.5/College in their affidavit in reply that inadvertently names of the Petitioners though they were entitled to be admitted according to Merit List and they were given admission after acceptance of admission fees, their names were not sent by the College to the concerned authorities. For the mistake committed by Respondent No.5/College, Petitioners cannot be held responsible. We do not want to dwell on further explanation which is sought to be given by Respondent No.5/College. It is difficult to accept the contention of Respondent No.5 that this has happened inadvertently. The sanctioned strength in respect of M.D. (Pathology) Course was 8 and that of M.S. (Orthopedics) Course was 7. The Petitioner in Writ Petition No.1001 of 2014 was at Serial No.2 on the Merit List and was entitled to get admission as a matter of right. Same is the case with the Petitioner in Writ Petition No.1234 of 2014 who was at Serial No.1 on the Merit List. It is inconceivable that these students who have successfully completed their respective Course and have passed the Examination are being deprived of the results of their completion of the said Courses because of the alleged mistake committed by Respondent No.5. In our view therefore the question of regularization of their admissions does not arise since they were entitled as a matter of right to be admitted and were in fact admitted. Since more than 2/3 years have passed, we do not wish to give any direction for further investigation to find out the reason as to why this lapse was committed by the clerk as alleged, who was operating the

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online system and, secondly, as to how the College gave admission to the Petitioners, accepted fees, issued identity cards and yet did not inform their names to the concerned authorities. The entire exercise therefore of obtaining the permission from Central Government is not necessary. The Medical Council of India in the said letter dated 29/12/2016 in concluding paragraph themselves have admitted this fact. They have stated in the last para of the said letter dated 29/12/2016 as under:-

> ".....Keeping in view the peculiar facts and circumstances wherein both these students have completed their PG course and have successfully passed the examination conducted by the Maharashtra University of Health Sciences and the order dated 01.09.2016 of the Hon'ble Bombay High Court in the above mentioned writ petition, the Postgraduate Medical Education Committee decides that the admissions of both these candidates namely Dr. Prateek Chandrashekhar Patil and Dr. Felice Fisal Mohammed Ebrahim Kutty be regularized. Therefore, the Committee decided that

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> recommendations be made to be Central Govt to approve the excess admissions made of Dr. Felice Faizal Mohammed Ebrahim Kutty & Dr. Prateek Chandrashekhar Patil in MD (Pathology) MS (Orthopedics) in the academic year 2012-13 at LTM Medical College, Sion, Mumbai."

In our view, the only incorrect observation made by the Medical Council of India is for creation of two seats. As mentioned hereinabove, we do not propose to address the said issue since we have come to the conclusion that the Petitioners have been properly admitted as they were on merit list and they have successfully completed their respective course. All the judgments which have been relied upon by the Medical Council of India in their affidavit-in-reply therefore, under these circumstances, will not apply to the facts of the present case. We are inclined to allow these Petitions because this is not a case, in our view, of increase in the intake capacity of the College. For the same aforesaid reasons, we are of the view that, at this stage, Respondent No.6 in both these Petitions who also took admission in the said College, their admission process cannot be racked up by any authority.

14] In the result, we allow both these Petitions in terms of prayer

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clauses (a)(i) to (a)(vii), (b) and (c). Since the Petitioners have successfully passed the Examination and their dissertations have been accepted, they be issued Degree Completion Certificate of their respective MD (Pathology) Degree Course and MS (Orthopedics) Degree Course for the academic year 2012-2015 expeditiously. Petitioners have already completed their internship for a period of one year. Rule in both these Petitions is made absolute accordingly.

(P. R. BORA, J.) **(V. M. KANADE, J.)**

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