

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 12341 of 2015

Reserved On: 21.09.2015

Date of Decision: 14.10.2015

The Punjab Private Self Financed Dental and Medical Colleges
Association

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present: Mr. M.K.Singla, Advocate,
for the petitioner(s).

Mr. Aman Bahri, Additional Advocate
General, Punjab, for respondents No.1 & 2.

Ms. Dolly Mehta, Advocate,
for respondent No.3.

Mr. Manish Dadwal, Advocate,
for respondent No.4.

G.S.Sandhawalia, J.

The challenge in the present writ petition by the petitioner-
Association is to the action of respondent No.2-Director, Research and
Medical Education, Punjab, who issued letters dated 8.6.2015

(Annexures P5 & P6) vide which the admissions to MDS course of 2015 are to be made only on the basis of AIPGDEE-2015, while placing reliance upon the letter dated 29.5.2015 (Annexure P3) directing that the admissions are to be done only on the basis of counselling of the respondent No.4-University and no college would make admission at its own level. Further direction has been prayed for that the respondents should ensure that 100% seats of the private institutions be filled up by themselves and if any seat remains vacant, the respondents should pay the full fees for the vacant seats and the petitioner-Association be allowed to admit the students on the basis of the cumulative performance of the candidates in BDS course for the left over seats irrespective of the fact that whether they appeared in the AIPGDEE-2015 or not.

The petitioner claims that it is an Association, which imparts education in the State of Punjab through various medical and dental colleges and thus, seeks to invoke jurisdiction of this Court. The pleaded case of the petitioner-Association is that respondent No.1-State of Punjab had issued a notification dated 25.2.2015 (Annexure P1) regarding admission to post graduate degree courses in the Health Sciences Educational Institutions (Medical/Dental) and six months training of Ultrasonography in the State of Punjab-Session 2015. The said notification was superseded by the subsequent notification dated 25.3.2015 (Annexure P2). As per the said notification, respondent No.1

authorized the respondent No.4-Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as "the University") to conduct centralized counselling on the basis of the AIPGDEE-2015, which was to be conducted by the National Board of Examination, New Delhi and the All India Institute of Medical Sciences, New Delhi for 50% State quota seats as per the procedure laid down by the Dental Council of India (hereinafter referred to as "DCI") and notified under the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 (hereinafter referred to as "2006 Act"). The eligibility criteria as per Clause 5 of the notification (Annexure P2) was that the candidate had to obtain minimum of 50% marks in the said test and for the reserved categories cut off marks were to be 40% or as notified by the DCI-respondent No.3. If the seats still remained vacant, then the remaining seats were to be filled up on merits on the basis of the individual cumulative performance at the first, second, third and final BDS examination passed from the respondent No.4-University.

The seats of the Government as well as private institutions were to be filled up on the basis of centralized counselling under Clause 12. As per Clause 28(I), 50% of the seats were of management/minority quota which included 15% NRI quota and preference was to be given to the candidates who were residents of Punjab. The last date of counselling, before the impugned letters dated

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8.6.2015 were issued, was 10.6.2015 for the said course. On 29.5.2015, letter (Annexure P3) was sent by the respondent No.4-university that the admissions be made only to the qualified candidates of AIPGDEE-2015 and then from the candidates, who appeared in the said examination but could not qualify, on merits on the basis of marks obtained in the BDS course and thirdly if the seats still remain vacant then the candidates outside the Punjab State. The State, on 1.6.2015 (Annexure P4), issued corrigendum whereby it was notified that if the seats still remain vacant after considering all the eligible candidates from the AIPGDEE-2015 merit list, then the remaining seats were to be filled up on merit on the basis of the individual cumulative performance at the first, second, third and final BDS examinations passed from all other recognized/reputed universities of the country. The subsequent letters were issued by respondent No.2 on 8.6.2015, as mentioned above, wherein admission was then restricted only to the students who had appeared in the entrance test and it was to be done only on the basis of the counselling of respondent No.4-University and the colleges were not entitled to make admission at their own level. The authority of respondent No.2 to issue the said letters has been questioned in the present writ petition. Accordingly, by placing reliance upon the provisions of the 2006 Act, contention has been raised that the management category seats can be filled by the institution in a fair and transparent manner on the basis of the qualifying examination and in presence of the representative of the authority conducting the entrance

test, the impugned letters are challenged.

In the written statement filed by the State of Punjab, it has been averred that the admission process was completed on 10.6.2015 as per the orders of the Hon'ble Apex Court and the DCI had directed all the States not to admit the students in MDS course without appearing and qualifying in the respective competitive examinations vide letter dated 7.5.2015 (Annexure R1). The non-joinder was pleaded on account of which this Court had directed impleadment of Dental Council of India on 11.8.2015.

The respondent No.4-University was, thereafter, impleaded on its application on 21.8.2015. In its reply, reference has been made to the letter issued by DCI dated 7.5.2015 and the corrigendum dated 1.6.2015. On 4.6.2015, the third round of counselling for the MDS course was held at the GGS Medical College, Faridkot under the Chairmanship of Dr. Kusum Gupta, Principal, Government Dental College, Amritsar, along with other 11 members of the concerned colleges and the universities. On 10.6.2015, all the dental colleges had been informed that they were not allowed to conduct counselling at their own level. The vacancy position was also asked to be intimated vide Annexure R4/7 and the practice of Common Entrance Test was being made for the welfare of the student community. Reliance was also placed upon the decision of this Court in ***Civil Writ Petition No. 6549 of 2015*** titled as "***Jaspreet Singh Cheema and Others v.***

State of Punjab and others” decided on **15.6.2015** and the dismissal of the letters patent appeal on 2.7.2015 which had been further upheld by the Hon'ble Apex Court.

In the replication filed, the plea taken was that the university could only fill up 50% of the State quota seats and 50% of the management seats were to be filled up by the institution. The petitioner had not filled up any seat after 10.6.2015 and the seats still remained vacant. The State Government had issued corrigendum dated 1.6.2015 permitting them to admit the students from the other universities on the strength of the BDS course. The impugned letters were issued after the third counselling and the petitioner was deprived of the valuable rights and the seats remained vacant. It is further pleaded that the DCI and the University were not necessary parties.

Mr. M.K.Singla, Advocate, counsel for the petitioner has accordingly submitted that as per the prospectus and the notification dated 25.3.2015, the petitioner-Association was allowed to admit the students who had failed to obtain minimum 50% marks and if the seats still remained vacant, then they could be filled up on the basis of marks obtained in the BDS examination. The Revised MDS Course Regulations, 2007 were relied upon to submit that admission could also be made on the basis of marks obtained in the BDS course. Reference is also made to the admission given to one Ranchana Garg, by the respondents, on the basis of the BDS performance which was subsequently cancelled

and it was the subject matter of ***Civil Writ Petition No. 12282 of 2015*** titled as ***"Ranchana Garg v. State of Punjab and Others"***.

The decision of the DCI dated 26.3.2015 through its Executive Committee was questioned in view of the Dentists Act, 1948 and the directions issued by respondent No.2 was without basis and the petitioner had decided to admit the students after associating the officials but the officials had refused.

The issue which arises for consideration before this Court is that whether the admissions, made by the petitioner-Association of Colleges in MDS course, of the students who had not qualified the AIPGDEE-2015 test and have been given admission on the strength of their marks obtained in the BDS course and belonging to other universities and without associating respondent No.4 in the admission process is valid?

It is also to be noticed that vide interim order dated 10.6.2015, a Co-ordinate Bench of this Court permitted the petitioner-Association to go ahead with the admissions provided they fulfill the mandate of the notification (Annexure P2) and the corrigendum dated 1.6.2015 along with the DCI Regulations, 2007 apart from the provisions of the 2006 Act. The admissions were to be purely provisional, subject to the final decision of the writ petition. In reference to resolve the above said question, the relevant clauses of notification dated 25.3.2015 (Annexure P2) have to be taken into

consideration and the same read as under:-

2. The Governor of Punjab is pleased to authorize Baba Farid University of Health Sciences, Faridkot to conduct centralized counselling for admissions on the basis of All India Post Graduate Medical/Dental Entrance Examination-2015 AIPGEE/AIPGDEE-2.015 to be conducted by National Board of Examination New Delhi and All India Institute Medical Sciences, New Delhi for 50% State Quota Seats and for six month training in Ultrasonography as per procedure laid down by MCI/DCI and notified under The Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act 2006.

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4. AIPGMEE/AIPGDEE-2015 is eligibility-cum-ranking examination which is a single entrance examination to various MD/MS/PG Diploma/ MDS courses **and six month training In Ultrasonography** with the approval of the Ministry of Health & Family Welfare, Govt. of India. AIPGMEE/AIPGDEE-2015 is to be conducted by National Board of Examination and All

India Institute Medical Sciences, New Delhi for Medical/Dental Courses and for six month training in Ultrasonography.

5. *In order to be eligible for admission to a Post Graduate course it shall be necessary for a candidate to obtain minimum of 50% marks in AIPGMEE/AIPGDEE-2015. However, in respect of candidates belonging to scheduled castes, scheduled tribes and other backward classes, the minimum marks shall be at 40% or as notified by MCI/DCI.*

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in AIPGMEE- 2015, Government in consultation with MCI, may at its discretion, lower the minimum marks required for candidates belonging to respective categories. However in case of MDS, after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will filled on merit on the basis of the individual cumulative performance at the first, second, third and B.D.S. examination passed from Baba Farid University of Health

Sciences, Faridkot.

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12. All the seats in Govt. as well as Private Institutions
will be filled by Centralized counselling.

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28. I. Distribution of seats in Private Institutions would
be :

Govt. Quota Seats - 50%

Management/Minority Quota Seats - 50% (including
15% NRI Quota)

Candidates seeking admission in Private Institutions
should be residents of Punjab. However, in case
adequate number of candidates having Punjab
resident status aren't available only then the seats
will be offered to other State candidates.

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30. Procedure for all seats remaining vacant after 2nd counselling including NRI seats.

a. The candidate can apply or fill the form at the university BFUHS or institution level. The fee for the forms shall be same as that of the University.

b. Applications received at institution level or at the University level will be considered for counselling together.

c. The counselling will be held by the respective institutions in the presence of Punjab Govt. & University representatives after adopting due procedure and wide publicity. The date of counselling will be fixed in consultation with Baba Farid University of Health Sciences, Faridkot.

d. The admission will be made as per AIPGMEE/AIPGDEE-2015 merit in transparent manner.”

Perusal of the abovesaid clauses of the notification (Annexure P2), which is part of the prospectus would go on to show

that for the Post-Graduate courses, it is necessary for a candidate to obtain minimum 50% marks in the AIPGDEE-2015, for the General Categories and 40% for the Reserved Categories. In the case of the MDS course, with which the present writ petitioner is concerned, in case there were not enough eligible candidates and the seats still remained vacant, remaining seats were to be filled on the basis of the result of the BDS examination passed from the Baba Farid University, as per merit.

A deviation was sought to be made from the procedure and notification prescribed by the State vide letter dated 29.5.2015 (Annexure P3), contents thereof reads as under:-

- "1. Qualified candidates of AIPGDEE-2015 be only admitted.*
- 2. Candidates, who have appeared in AIPGDEE-2015 but could not qualify, be considered, on merit, on the basis of marks in BDS Course.*
- 3. If still seats remained vacant then while complying with the conditions, as mentioned above at Sr. No. 1 and 2, candidates from outside Punjab State be also considered."*

Thereafter, corrigendum dated 1.6.2015 (Annexure P4) was issued by the State wherein it was stated that the individual seats could

be filled up from the candidates from the other recognized/reputed universities of the country on the basis of their marks obtained in the BDS examination. The relevant portion thereof reads as under:-

"In partial modification of the notification No. 5/33/2014-5HGB-III/483 dated 25.03.2015, the para 5 of this Notification is hereby amended as under:-

"However, after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of the individual cumulative performance at the first, second, third & final B.D.S. examinations passed from all other recognized/reputed universities of the Country."

Thereafter, the impugned decision was taken that only the candidates who had appeared in the Common Entrance Test and only on the basis of counselling of the respondent No.4-university were permitted to get admission. The relevant portion thereof reads as under:

"In reference to this office letter No. Admissions-15/09125 dated 29.05.2015.

*In connection with above said subject and in reference to your note dated 08.06.2015, it is informed that for admissions in MDS course 2015 **Not Appeared AIPGDEE-2015** be not considered.*

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"While sending copy of letter No. admissions-15/09125 dated 29.05.2015, sent to Registrar Baba Farid University of Health Sciences, Faridkot, alongwith this letter it is written to you that whatever admissions is to be made in BDS/MDS Course 2015, that is to be done only on the basis of counselling of Baba Farid University of Health Sciences, Faridkot. No college will make admission, at its own level."

The Dental Council of India Revised MDS Course Regulations, 2007 (hereinafter referred to as "2007 Regulations") also provides that admission to the MDS course is to be made on the basis of the Common Entrance Test conducted by the State Government or by the competent authority appointed by the State Government, the university/group of universities in the same State. Secondly, it could be on the basis of merit as determined by the centralized competitive test held at the national level and thirdly on the strength of the graduation marks obtained in the BDS examinations passed from the same

university. The relevant regulations read as under:-

"SELECTION OF POSTGRADUATE STUDENTS:

(1) Students for postgraduate dental courses (MDS) shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the university/ institution may adopt any one of the following procedures both for P.G. Diploma and MDS degree courses.

(i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of universities in the same state; or

(ii) On the basis of merit as determined by a centralized competitive test held at the national level; or

(iii) On the basis of the individual cumulative performance at the first, second, third & Final B.D.S. examinations, if such examinations have

been passed from the same university; or

(iv) Combination of (i) and (iii);

Provided that wherever entrance test for postgraduate admissions is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate Dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes.

Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent, by the management of the institution on the basis of merit."

It is not disputed that the DCI had also written to the respondent-State and to the Principals of all the Dental Colleges on 7.5.2015 (Annexure R1) that admissions on the basis of graduation marks of the BDS examination without appearing in the Common Entrance Test was not permissible in view of the 2007 Regulations and no admissions should be permitted in violation of the said Regulations. The relevant portion of the letter reads as under:-

"2. The above regulations clearly indicates that the competitive examination is mandatory for admissions to BDS and MDS Courses except, for BDS Course, in states having only one Dental College and one university board/examination body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration, and for MDS Course, on the basis of the individual cumulative performance at the first, second, third & Final B.D.S. Examinations, if such examination have been passed from the same university;

3. It has been observed from the past several years that many of the dental colleges, in various states even having more than one Dental College and one university board/examining body conducting the qualifying examination, are admitting students in BDS Course on the basis of marks of their qualifying examination (10+2) and in MDS Courses on the basis of individual cumulative performance at the first, second, third & Final B.D.S. Examinations even if such examination have not been passed from the same University, without appearing/qualifying competitive examinations, which is mandatory as per Revised BDS Course Regulations, 2007 and Revised MDS Course Regulations, 2007 respectively.

4. *In this connection, the Executive Committee of the DCI in its meeting held on 26.03.2015 at New Delhi, considered the legal opinion dated 16.03.2015 furnished by Council's Advocate, on the issue as to whether the dental colleges can admit students in BDS Course, who are Non Qualified/ Non Appeared Students in CET Examination.*

The Executive Committee after discussion & deliberations decided as under:-

The Principal of all Dental Colleges and other competent authorities viz, concerned State Governments, Universities, Director Medical Education be requested to strictly follow the provisions of Selection of Students for admission to BDS/MDS Courses as prescribed in Revised BDS Course Regulations, 2007 and Revised MDS Course Regulations, 2007, respectively, failing which the Council shall take necessary action against such dental colleges, under Section 10B of the Dentists (Amendment) Act, 1993 and Section 16A of the Dentists Act, 1948, as the case may be.

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6. *In view of the above, the decision of the Executive Committee is communicated to you with a request to follow the provisions of Selection of Students for admissions to BDS/MDS Courses as prescribed in Revised BDS Course Regulations, 2007 and Revised MDS Course Regulations, 2007, respectively, to maintain the highest standard of dental education in the country, and the dental colleges shall not be allowed to admit students in BDS/MDS Courses in violation of DCI Regulations and without appearing/qualifying in respective competitive examination, which is mandatory as per DCI Regulations."*

A perusal of the Regulations of 2007 would go on to show that as per the mandatory regulations, the eligibility criteria is 50% obtained in the Common Entrance Test and there is an option under Clause 2(iv). Learned counsel for the respondents were also well justified in submitting that a prospectus has a force of law and as per the settled principle, the admissions could not be made amongst the students who had not studied the under graduate course i.e. BDS from the respondent No.4-university. The Apex Court in **P.A.Inamdar & others Vs. State of Maharashtra & others 2005 (6) SCC 537** answered the question as to what extent the State can regulate admission to Unaided Minority or Non-Minority Educational Institutions. It was, accordingly, held that education being a dynamic field, it would be permissible to regulate the admission to the Unaided Educational

Institutions in order to promote merit, achieve excellence and curb mal-practices, by a centralized and single window procedure. It was, accordingly, directed that it was for the Central Government or the State Government to come out with a detailed well thought legislation, which is long awaited. The Act was, thereafter, notified by the State, keeping in view the observations made by the Constitutional bench, which has further been upheld by the Full Bench of this Court in **Navdeep Kaur Gill & others Vs. State of Punjab 2014 (3) SCT 110.**

The 2006 Act which deals with the admissions to the Private Health Sciences Educational Institutions lays down that the admission should be in a fair and transparent manner, on the basis of *inter se* merit, to be determined by the CET or the qualifying examination. The Government had taken a decision that the admission in the course had to be on the strength of the AIPGDEE-2015 and notified the same. Once the decision had been taken under Section 2(e) and Section 3 of the Act, even resort to the qualifying examination on the strength of the BDS marks of candidates not belonging to the Baba Farid University, was not justified. The eligibility criteria was determined under Section 4(1) and had also to be in consonance with the regulations of 2007, issued by the DCI, which is the parent body. Sections 2(e), 3 & 4 read as under:

“2. xxxx xxxx xxxx

[(e) “Management Category” means a category comprising such seats out of the sanctioned intake of a private health

sciences educational institution, as may be allocated to the management of such institution by the State Government by notification in the Official Gazette, for filling up those seats by that institution in a fair and transparent manner on the basis of the *inter se* merit, determined by a Common Entrance Test or Qualifying Examination, in the presence of the representative of the authority conducting the Common Entrance Test.]

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3. (1) The State Government shall regulate admission, fix fee and make reservation for different categories in admissions to private health sciences educational institutions.

(2) For the purpose of determining the fee, the State Government may require any private health sciences educational institution to furnish such information, as it may deem appropriate.

(3) The State Government shall ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of the *inter-se* merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure, notified by the State Government in the Official Gazette :

Provided that the State Government may, by notification in the Official Gazette, exclude the diploma or certificate courses, offered by the private health sciences educational institutions from the purview of the provisions of this sub-section.

(4) Notwithstanding anything contained in sub-section (3), the State Government may, exempt minority institutions from the purview of that sub-section.

(5) Consequent upon the exemption granted under sub-section (4), a common authority of the respective minority

institutions, shall conduct a separate test in a fair, transparent and non-exploitative manner for admission of students in minority institutions in accordance with the merit, determined by the said authority.

(6) In case, it is found that the aforesaid separate test has not been conducted in a fair, transparent and non-exploitative manner, the State Government shall have the power to cancel the same and direct the concerned authority to re-conduct the test.]

4. (1) The eligibility criteria for admission to a private health sciences educational institution shall be such, as may be determined and notified by the State Government from time to time.

[(2) The State Government or any other authority, authorised by it, shall conduct the Common Entrance Test for making admissions to all private health sciences educational institutions in the State of Punjab, except for those, which are specifically exempted from such test.

(3) Admission in all private health sciences educational institutions, except in those, which are specifically exempted under this Act, and in the case of Foreign Indian Students, shall be made on the basis of the inter se merit of the candidates. determined in accordance with the Common Entrance Test.]

5. (1) An aided minority private health sciences educational institution may resxerve for itself, up to the maximum of thirty three per cent seats of the total sanctioned intake as a management category quota of seats.

(2) An aided private health sciences educational institution, other than a minority institution may reserve up to the maximum of fifteen per cent seats of the total sanctioned intake as a management category quota of seats.

[(3) (*****)]

(4) An unaided private health sciences educational institution other than a minority institution, may reserve up

to fifty per cent seats of the total sanctioned intake as a management category quota of seats.”

It is not in dispute that the Dental Council of India is the paramount medical agency at the national level whose regulations are binding upon the State Governments also. Reference in this regard can be made to the judgment of the Hon'ble Apex Court in ***Dr. Preeti Srivastava and Others v. The State of Madhya Pradesh and Others 1999(7) SCC 120***. In the said authority, the benefits of the entrance examination and the qualifying marks were examined and it was held that Common Entrance Test provides a uniform evaluation criterion for judging the merit of all the candidates who come from different universities. The difference in the standard of marking and teaching was noticed by the Hon'ble Apex Court and the need for having competent students for specialized education and the purpose of the Common Entrance Test was felt and the argument that there need not be any qualifying marks for the common entrance test was rejected. The relevant observations read as under:-

"Entrance Examination for post-graduate courses and qualifying marks:

27. When a common entrance examination is held for admission to postgraduate medical courses, it is important that passing marks or minimum qualifying marks are prescribed for the examination. It was, however, contended

before us by learned counsel appearing for the State of Madhya Pradesh that there is no need to prescribe any minimum qualifying marks in the common entrance examination. Because all the candidates who appear for the common entrance examination have passed the M.B.B.S. examination which is an essential per-requisite for admission to postgraduate medical courses. The PGMEET is merely for screening the eligible candidates.

28. This argument ignores the reasons underlying the need for a common entrance examination for post-graduate medical courses in a State. There may be several universities in a State which conduct M.B.B.S. courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the M.B.B.S. examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the M.B.B.S. examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with

lesser knowledge may be able to secure passing marks in the M.B.B.S. examination; while it may also be easier for candidates to secure marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the M.B.B.S. examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the M.B.B.S. examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the M.B.B.S. examination from more "generous" universities, may not qualify at the entrance examination where a better and

uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialized education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialized education and the need to provide for some room for the backward even at the stage of specialized post-graduate education which is one step below the super specialties.

29. The submission, therefore, that there need not be any qualifying marks prescribed for the common entrance examination has to be rejected. We have, however, to consider whether different qualifying marks can be prescribed for the open merit category of candidates and the reserved category of candidates. Normally passing marks for any examination have to be uniform for all categories of candidates. We are, however, informed that at the stage of admission to the M.B.B.S. course, that is to say, the initial course in medicine, the Medical Council of India has permitted the reserved category candidates to be admitted if they have obtained the qualifying marks of 35% as against the qualifying marks of 45% for the general

category candidates. It is, therefore, basically for an expert body like the Medical Council of India to determine whether in the common entrance examination viz. PGMEET, lower qualifying marks can be prescribed for the reserved category of candidates as against the general category of candidates; and if so, how much lower. There cannot, however, be a big disparity in the qualifying marks for the reserved category of candidates and the general category of candidates at the post-graduate level. This level is only one step below the apex level of medical training and education where no reservations are permissible and selections are entirely on merit. At only one step below this level the disparity in qualifying marks, if the expert body permits it, must be minimal. It must be kept at a level where it is possible for the reserved category candidates to come up to a certain level of excellence when they qualify in the specialty of their choice. It is in public interest that they have this level of excellence."

Accordingly, the decision of the Dental Council of India/Medical Council of India over the State decision was preferred and it was held that the standard of education would be affected and the Dental Council Regulations were held to have statutory force and were mandatory in nature. The relevant portion reads as under:-

"57. In **State of Madhya Pradesh & Anr. v. Kumari Nivedita Jain & Ors. (supra)**, the provisions of Indian Medical Council Act and the regulations framed for undergraduate medical courses were considered by the Court. The Court said that while regulation 1 was mandatory, regulation 2 was only recommendatory and need not be followed. We do not agree with this line of reasoning for the reasons which we have set out above.

58. In the case of **Medical Council of India v. State of Karnataka & Ors. ([1998] 6 SCC 131)** a bench of three judges of this Court has distinguished the observations made in *Kumari Nivedita Jain (supra)*. It has also disagreed with *Ajay Kumar Singh & Ors. v. State of Bihar & Ors (supra)* and has come to the conclusion that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with admissions to the M.B.B.S. course and the Regulations framed by the Indian Medical Council relating to admission to the M.B.B.S. course. The Court took note of the observations in *State of Kerala v. Kumari T.P. Roshana & Anr. ([1979] 1 SCC 572 at page 580)* to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has

implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to post-graduate medical courses. We are in respectful agreement with this reasoning.”

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62. In *Post Graduate Institute of **Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr.** ([1997] 6 SCC 283)* there are observations to the effect that the reservation of seats at the post-graduate and doctoral courses in medicine would not lead to loss of efficiency and would be permissible under Article 15(4). There are also observations to the effect that since all appear for the same final examination, there is no downgrading of excellence. These observations, in our view, cannot be accepted for reasons set out earlier. The judgment of the Court in *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr.* (*supra*) in so far as it lays down these propositions is overruled.

63. *In the premises, we agree with the reasoning and conclusion in **Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. (supra)** and we overrule the reasoning and conclusions in *Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra)* and *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. (supra)*. To conclude:*

1. *We have not examined the question whether reservations are permissible at the post-graduate level of medical education;*
2. *A common entrance examination envisaged under the Regulations framed by the Medical Council of India for post-graduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.*
3. *Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of medical education is a question which must be decided by the Medical Council of India since it affects standards of post-graduate medical*

education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the post-graduate level and contrary to public interest.

4. *At the level of admission to the super specialty courses, no special provisions are permissible, they being contrary to national interest. Merit alone can be the basis of selection."*

A similar issue was raised for consideration in the year 2014 before this Court in ***Jaspreet Singh Cheema's case*** (*supra*) whereby the admissions were being made to the course of Bachelor of Dental Surgery by the private colleges on the strength of their 10+2 marks and the said students had failed to qualify the common entrance test and the special test held thereafter to fill up the seats. It was accordingly held that the admissions were being made contrary to the mandate of

Indian Medical Council Act, 1997 and reference was also made to the letter dated 7.5.2015 issued by the Dental Council of India and Section 10B and Section 16 of the Dentists Act, 1948 to hold that the students would not be granted registration by the said medical councils and the admission granted was cancelled. The said decision was unsuccessfully tested before the Division Bench of this Court in ***Letters Patent Appeal No. 919 of 2015*** titled as "***Aditi Sharma and Others v. State of Punjab and Others***, decided on **2.7.2015** wherein the following questions were framed:-

"(i) *That BDS Course Regulations – 2007 framed by the Dental Council of India are beyond the scope of authority conferred on the Dental Council of India to frame such Regulations under Section 20 of the Dentists Act, 1948. Reliance is placed upon the judgments of Hon'ble Supreme Court in State of M.P. & another Vs. Kumari Nivedita Jain & others AIR 1981 SC 2045 and Christian Medical College, Vellore & others Vs. Union of India (2013) 14 SCC 539.*

(ii) *The Regulations contemplating competitive entrance examination, where there are more than one University in one State, is a directory provision, which is apparent from the expression used in sub-clauses 2 & 4 of Regulation II. It is contended that*

competitive entrance examination is mandatory in the cases of institutions of All India character, but in respect of institutions located in Punjab, which are not of All India character, the holding of competitive entrance examination is directory. Therefore, the admission on the basis of marks obtained in the qualifying examination cannot be said to be in contravention of Regulations of the Dental Council of India.

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(iv) It is also argued that availability of 455 vacant seats in the State of Punjab is an exceptional circumstance, which entitles the private institutes to admit students on the basis of marks obtained in the qualifying examination. Reliance is placed upon sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014.

(v) It is further contended that the Section 3(3) of the Act prescribes admission on the basis of marks obtained in the qualifying examination; therefore, the admission carried on the basis of the marks obtained in the qualifying examination cannot be said to be illegal.

(vi) In any case, the students cannot be blamed, as they have acted in a bona fide manner on the representation of the Institutes. They have spent their valuable time and money on prosecuting their course and, thus, cancellation of admission at this stage causes serious loss to the academic life of the students. It is, thus, contended that in the light of the judgments of Hon'ble Supreme Court in Rajan Purohit & others Vs. Rajasthan University of Health Science & others (2012) 10 SCC 770; Chowdhury Navin Hemabhai & others Vs. State of Gujarat & others (2011) 3 SCC 617 and Deepa Thomas & others Vs. Medical Council of India & others (2012) 3 SCC 430, the appellant-students should be permitted to complete their education on payment of cost payable to the State as may be deemed appropriate."

The Division Bench, accordingly, held that the Dental Council of India has implicit powers to supervise the qualifications or eligibility standards for admission into the medical institutions and the Regulations framed could not be beyond the legislative competence. Similarly, holding of the common entrance test was held to be a mandatory provision especially where there were different Boards conducting the qualifying examination and numerous private dental

colleges. The argument that there were vacant seats which could not be filled up and there were some exceptional circumstances which would permit them to fill up the seats was also rejected on the ground that it was a commercial decision of the private institutes to start dental education and merit in the common entrance test could not be wished away. The decision of the State Government to chose common entrance test as a platform to admit the students was recognized and, therefore, the argument that the provision for admission on the basis of qualifying marks under the Act was also held not to be applicable. Rather in the appeal filed by the institutes, a sum of ₹ 50,000/- was made payable by them per student as interim compensation for wasting the academic life of the student with liberty to avail every remedy.

In the present case also, as per communication dated 10.6.2015, the petitioner-Association was specifically informed that the colleges were not permitted to conduct counselling at their own level and the vacant seat position was asked for.

Resultantly, keeping in view the mandatory nature of the notification/prospectus read with the MDS Regulations, 2007 and the 2006 Act, no fault can be found in the impugned letters dated 8.6.2015 (Annexures P5 & P6) issued by the State of Punjab though by the Director, which are only in consonance with the notification of the Regulations of the Dental Council of India and the provisions of the 2006 Act.

Civil Writ Petition No. 12341 of 2015

SAILESH RANJAN
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Accordingly, the present writ petition is dismissed and the interim order dated 10.6.2015 stands vacated and admissions made by the petitioner-Association, without associating the students in the centralized counseling by the respondent-University, are in violation of the notification and the Regulations of the Dental Council of India. The candidates had not appeared in common entrance test and belong to other Universities and their admissions shall stand cancelled.

(G.S.Sandhawalia)
Judge

October 14th, 2015
"sailesh"