

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CWP No. 17538 of 2015

Rajat Jain & anotherPetitioner(s)

Versus

Union Territory, Chandigarh & another ...Respondent(s)

(2) CWP No. 17569 of 2015

Parneet Kaur GroverPetitioner(s)

Versus

Union Territory, Chandigarh & another ...Respondent(s)

Reserved on: 14.09.2015

Pronounced on: 22.09.2015

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.G.S.Bal, Sr.Advocate
with Mr.Deepak Gupta, Advocate, for the petitioners
(in CWP No.17538 of 2015).

Mr.S.S.Brar, Advocate, for the petitioner
(in CWP No.17569 of 2015).

Mr.Vishal Sodhi, Advocate, for respondents No.1 & 2.

Mr.Yagyadeep, Advocate, for respondent No.3.

Mr.D.S.Patwalia, Sr.Advocate
with Mr.Sehaj Bir Singh, Advocate, for respondents No.4 to 8.

Mr.Piyush Kant Jain, Addl.A.G., Punjab.

G.S.SANDHAWALIA, J.

1. This judgment shall dispose of CWP Nos.17538 & 17569 of 2015, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP No.17538 of 2015 titled *Rajat Jain & another Vs. Union Territory, Chandigarh & another.*

2. Challenge in the present writ petition is to the notice dated 18.08.2015 (Annexure P15) whereby respondent No.2-Principal, Government Medical College & Hospital, Sector 32, Chandigarh took a decision that the criteria followed in the year 2014 for admission to MBBS NRI seats would govern the selections made for the year 2015. The said decision was stated to be on the basis of a letter issued by the Medical Council of India (for short, the 'MCI') on 28.07.2015 and purportedly, is on the ground that since the circular dated 16.01.2015 stands quashed by the Division Bench of the Karnataka High Court in W.P. Nos.102916-102917/2015 titled *Shri Dharmasthala Manjunatheshwara Education Society Vs. SDM College of Medical Sciences & Hospital, Dharwad*, decided on 17.04.2015, which was upheld by the Supreme Court in SLP(c) nos.16229-16230 of 2015 and therefore, the decision of respondent No.2-College to admit the NRI students on the basis of the Common Entrance Test (for short, the 'CET') stands scrapped.

3. The resultant effect of the above communication, in short, is that the petitioners, in both the cases, who are 3 NRI candidates, had given the CET and were successful, were held to be eligible and the merit has been recalculated on the basis of the qualifying marks in the +2 examinations against the 6 seats reserved for NRI and 5 candidates, namely, respondents No.4 to 8, who have been subsequently impleaded, on their application, have become eligible for admission, after having remained unsuccessful in the CET.

4. The pleaded case of the petitioners are that petitioner No.1 (in CWP No.17538 of 2015) is alleged to be Non-Resident Indian having citizenship of Canada whereas petitioner No.2 is holder of Indian Passport but residing in Kuwait for the last 3 years. Petitioner No.1 has passed his Sr.School Certificate Examination while studying at the school at District Ludhiana, as per the mark-sheet dated 25.05.2015 (Annexure P4) whereas petitioner No.2 has passed her All

India Sr.School Certificate Examination from the CBSE while studying in Fahaheel Al-Watanieh Ind P School Ahmadi, Kuwait, as per her certificate of even date (Annexure P5). Similarly, the petitioner (in CWP No.17569 of 2015) is a Canadian citizen and a Non-Indian Resident and has passed her +2 examination from the Central Board of Secondary Education while studying in Rose Mary Convent School, Bathinda. It is the case of the petitioners that they have obtained more than 50% marks in the Sr.Secondary Examinations and therefore, are eligible to be admitted to the MBBS course under the Medical Council of India Act, 2002 (for short, the 'Act') and the rules framed thereunder. Respondent No.2-College, which has 100 sanctioned seats, issued a notification dated 01.05.2015 (Annexure P6), passed on the strength of the letter of the MCI dated 16.01.2015 (Annexure P7), whereby the CET on the subjects of Physics, Chemistry and Biology was to be held on 01.06.2015 for admission to the NRI category seats given in the Centralized Admission Prospectus, 2015. As per the prospectus, 6 seats were reserved for Foreign Indian Citizens (NRI seats) and the eligibility as per Clause A-8 was that the candidates must be of Indian origin who should fulfill the general eligibility criteria. Persons of Indian origin who were citizens of countries other than India and holding passport of the country concerned were eligible and even children who are not citizens of countries other than India, provided they had resided in the country other than India for a minimum period of 3 years, immediately preceding the year of admission, were also eligible.

5. Apart from the said conditions, the candidates had to pass the subjects of Physics, Chemistry Biology/Bio-technology and English, individually in the qualifying examination (equivalent to 12th standard) in the first attempt and having secured minimum 50% in the aggregate in the science subjects and the admission was on the basis of merit in the CET. The equivalent certificate was also to be got from the Panjab University, Chandigarh and the date and venue of the test was to

be notified, which has already been noticed above. The candidates were further divided into 2 categories, one with ancestral background of Chandigarh wherein the parents/grand-parents had to be resident for a minimum period of 5 years or had owned property for the said period since the origin of Chandigarh and this necessary certificate was to be got from the Deputy Commissioner. Category 2 was of NRI candidates who had ancestral background of other States and first preference, as per Clause 12, was to be given to ones belonging with the ancestral background of Chandigarh and would be admitted first even if Category 2 were higher in merit, as per Clause 13. Clause 15 further provided that the seats going vacant would be filled from UT Chandigarh pool general category candidates. Relevant portion of the clause reads as under:

“A-8): Eligibility criteria and admission procedure for Foreign Indian Student (NRI Category seats):

1. The candidates must fulfill relevant General Eligibility Criteria (Page 6-10)
2. The Candidates must be of Indian origin.
3. These seats are not open to foreign nationals who are of non-Indian origin.
4. Admission for Foreign Indian Student (NRI Category seats) will be based on the guidelines issued by Panjab University, Chandigarh vide letter No.Misc./A-6/6126-6376 dated 13.06.2008 and 10042-13042 dated 16.07.2012. The candidates meeting any of the following criteria will be eligible to apply for admission under this category:
 - I. Persons of Indian origin who are citizens of countries other than India and hold the passport of the country concerned.
 - II. Children i.e. sons and daughters of persons of Indian origin (who may, or may not be citizens of countries other than India), provided they have resided in a country other than India means actual, physical residence on a regular basis. Notional, Deemed or constructive residence of any kind shall not be considered for this purpose. Accordingly, possession of a green card will ipso facto not confer eligibility or entitlement for admission.
5. The candidates must have passed in the subject of Physics, Chemistry, Biology/Bio-technology & English individually in the

qualifying examination (equivalent to 12th standard) in the first attempt securing minimum percentage of 50% marks in the aggregate of Physics, Chemistry and Biology/Biotechnology.

6. The candidate must provide the certificate of 10+2/pre-medical/of 10+2+3 system qualifying examination from any university/board showing detailed marks/explanation sheets of grade. The candidates must provide the percentage marks in Physics, Chemistry, Biology/Biotechnology as well as English of both Class 10+1 and 10+2 level.

7. NRI candidates will have to obtain the eligibility and equivalence certificates for the qualifying examination (equivalent to 10+2 examination) from Panjab University, Chandigarh.

8. State level entrance test will be conducted for candidates seeking admission against NRI category seats by Panjab University, Chandigarh on the pattern AIPMT. Date and venue of this entrance test will be notified separately on GMCH website.

9. A candidate must have secured not less than 50% marks in the aggregate of Physics, Chemistry and Biology taken together in the entrance test to be eligible.

10. Admission will be made strictly on the basis of the merit/rank obtained in this entrance test.

11. Admission to NRI category seats will be conducted in accordance with the instructions/guidelines issued by the Chandigarh Administration from time to time. These candidates will be divided into two categories while are as follows:

a) Category-I: this category includes NRI candidates with ancestral background of Chandigarh. To be eligible for this category candidate should fulfill one of the following criteria:

i. Grandparents/parents/self should have been resident of Chandigarh for a minimum period of 5 years at anytime since the origin of Chandigarh.

ii. Own/owned immovable property in the name of grandparents/parents/self in Chandigarh for at least 5 years at anytime since the origin of Chandigarh.

Important Note: A certificate to the effect of either of the above mentioned criteria is required from DC-cum-Estate Officer/Municipal Corporation of Chandigarh or any other competent Government authority.

b) Category-II: This category includes NRI candidates who have ancestral background of States/UTs other than UT Chandigarh. A certificate to this effect from competent Government authority has to

be submitted.

12. First preference will be given to Category-I candidates.

13. If sufficient number of candidates under Category-I are eligible and available then they will be admitted first even if candidates under Category-II are higher in merit.

14. NRI category candidates should submit printout of online application form alongwith additional requirement available at Appendix E alongwith application for relevant course.

15. In case a seat under the NRI category remains vacant, the same shall be filled from UT Chandigarh Pool General category candidates as per merit/rank in AIPMT-2015.

16. All relevant clauses of Counseling and Admission (Page No.10-13) will be applicable to NRI category candidates.”

6. On 17.04.2015, the Division Bench of the Karnataka High Court struck down the circular dated 16.01.2015, which had been issued by the MCI (Annexure P7), whereby the instructions had been issued that the NRI students would be admitted on the basis of the CET for the academic year 2015-16, on the strength of the decision of its Executive Committee, while drawing strength on the judgments of the Supreme Court in **P.A.Inamdar & others Vs. State of Maharashtra & others 2005 (6) SCC 537**. The said judgment was upheld by the Apex Court on 06.07.2015 (R1/1) since the SLPs were dismissed in limine.

7. A total number of 24 NRI candidates applied, out of which only 22 sat in the examination and only 4 qualified, as per Annexure P10 and the three petitioners are amongst those 4 candidates whereas respondents No.4 to 8 are the ones who did not make the cut as they did not have the necessary 50% marks in the CET, as per Clause 9, reproduced above. Petitioner No.1 secured 4th rank whereas petitioner No.2 got the 3rd rank and the petitioner in CWP No.17569 of 2015 got the 1st rank. The notice issued by the respondent-College dated 25.06.2015 (Annexure P11) shows that the said petitioners qualified the examination which was conducted by the Panjab University, Chandigarh. A clause was, however, incorporated in the result that it did not guarantee admission

which will be further made after the verification of the necessary documents, at the time of counselling. In pursuance of the said result, vide a communication dated 07.07.2015 (Annexure P12), the petitioners were asked to proceed with their applications, since they fell in Category 2 and get certificates from the competent Government authority from states other than UT, Chandigarh, apart from the fact that proof had to be submitted that they resided in a country other than India for a minimum period of 3 years, immediately preceding the year of admission.

8. However, respondent No.2-College wrote to the MCI on 17.07.2015 (Annexure R1/2), seeking advice as to whether the circular dated 16.01.2015 was still in order. The same reads as under:

“Sub: Conduct of Entrance Examination for NRI students for admission in MBBS course.

Kindly refer to your letter no.MCI-34(MC) 2014/149869 for admission in MBBS course.

It is informed that the Karnataka High Court vide its orders dated 17.04.2015 issued in W.P. Nos.102850-102851/2015 has quashed the circular dated 16.01.2015 as referred above.

Hence, you are requested to intimate whether the circular dated 16.01.2015 regarding conduct of Entrance Examination for NRI students for admission in MBBS course is still in order/valid.”

The response of the MCI, vide the letter dated 28.07.2015 (Annexure R1/3) was in the following terms:

“With reference to your letter No. GMCH/TA-1/(4)/2015/26567, dated: 17/07/2015, the Medical Council of India, circular no.MCI-34 (MC)/2014-149869, dated 16/01/2015 has been quashed and set aside by the Hon'ble High Court of Karnataka vide its judgment dated 17/04/2015. The Special Leave Petition filled by the Council before the Hon'ble Supreme Court in this regard has also been dismissed on 09/07/2015.”

9. In pursuance of the said communication, the impugned order dated 18.05.2015 (Annexure P15) was passed as under:

“On the basis of MCI letter no. MCI-34(MC)/2014/149869 dated 16.01.2015, the GMCH has conducted the entrance examination of NRI students for admission in MBBS course 2015.

Now, as per communication received from MCI vide letter no. MCI-34(MC)2014/124200 dated 28.07.2015, the circular dated 16.01.2015 stands quashed as per orders of Hon'ble Supreme Court of India in SLP (c) nos.16229-16230 of 2015 (upholding the judgment of Karnataka High Court).

Hence, the criteria followed in 2014 for admission to MBBS NRI seats will govern the selections in 2015.”

10. The said order is now subject matter of challenge in the present writ petitions, mainly on the ground that firstly, the conditions in the prospectus could not be altered having a binding force of law and the circular dated 16.01.2015 was addressed to all colleges including Government Colleges and the judgment of the Division Bench of the Karnataka High Court was not applicable since it only applied to the rights of the Private Unaided Medical Colleges. The Medical Council of India Regulations on Graduate Medical Education, 1997 (for short, the '1997 Regulations') (Annexure P16) were relied upon, especially Regulation 5 to submit that the private-respondents who had not qualified and never challenged the procedure and accepted the same, having failed to make the cut, could not make the entry via the backdoor. It was submitted that the petitioners are not residents of Chandigarh or having ancestral background and would come into Category 2 and the private-respondents being from Category 1, having ancestral background of Chandigarh, would consume all the seats and the petitioners' case would not even be considered.

11. In the written statement filed on behalf of respondent No.2, reference was made to Clause 8(5) of the prospectus that once the circular dated 16.01.2015 had been quashed by the Division Bench, admission to NRI quota could not exist on the strength of the CET. The answering respondent was competent to hold the admission process under its own instructions. Reliance has been placed upon the

Division Bench judgment of the Karnataka High Court to submit that the circular had not been issued as per the directions given in the case of **P.A.Inamdar** (supra). It was pleaded that there was no infirmity in the decision taken by the answering respondent to set up their own criteria, as per the impugned notice. Reference was made to the consultation made with the MCI and the proposition that the petitioners were informed that their candidature was of Category 2 and they had to submit their proof of ancestral background other than the UT Chandigarh. The petitioners were still eligible for consideration on the basis of the merit-list, which would be prepared as per the marks obtained in the qualifying examination but the merit of CET had been given up. The criteria followed was fair and transparent. Reliance was also placed upon the decision of the State of Punjab (Annexure R1/4) wherein they had also taken a decision to give admission to NRI candidates, who had not even passed the CET.

12. Mr.Sodhi, counsel for the UT Administration, submits that there was no promissory estoppel in the present case as admission had not been granted to the petitioners and placed reliance upon the Full Bench judgment of the Bombay High Court in **Ashwin Prafulla Pimpalwar Vs. State of Maharashtra 1992 AIR (Bombay) 233**. Reliance was also placed upon the judgment of the Apex Court in **Sandeep Barar & another Vs. State of Punjab & others 1993 (1) RSJ 323** to submit that the instructions could be modified by the Government. Reliance has been placed upon the Division Bench judgment of this Court in **Saroj Rani Vs. State of Haryana 1996 (2) RSJ 688** that the non-implementation of the instructions were bound to prove counter-productive and not to be in the interest of the society. The quashing of the circular meant that it was nonest and the same had been upheld by the Apex Court and therefore, it was binding upon this Court also. The decision of the Administration was not an arbitrary decision and based on reasoning and logic.

13. The private respondents through Shri Deepinder Singh Patwalia, Senior Advocate, to support the said action, submitted that as per Clause 7 (b) and (c) of the terms of the prospectus, the orders/directions of Government/Courts/regulatory bodies, would be binding on all the candidates, for governing admissions to any of the course and the rules and regulations are subject to revision and amendments, from time to time, which would be applicable irrespective of those given in the prospectus. Similarly, Clause A-8 (11) provides that admission to the NRI Category seats were to be conducted in accordance with the instructions/guidelines issued by the Chandigarh Administration, from time to time. Clause 7 (b) & (c) and Clause A-8 (11) are reproduced as under:

“7. All legal disputes relating to admission of students will be subject to courts having jurisdiction in Chandigarh.

Important Note:

xxxx xxxx xxxx

b) Any directions/order governing admissions to any of the course from the Government/Hon'ble courts/Regulatory bodies will be binding on all candidates.

c) The Rules and Regulations, including fee to be charged, are subject to revision and amendment from time to time and the revised decision will be applicable irrespective of those given in this prospectus.

Clause A-8

xxxx xxxx xxxx

11. Admission to NRI category seats will be conducted in accordance with the instructions/guidelines issued by the Chandigarh Administration from time to time.”

14. Therefore, the proposition that the prospectus could not be altered at all, was propagated and reliance was placed upon the judgment passed in CWP No.6333 of 2011 titled *Dr.Pooja Gahlot & others Vs. State of Haryana & others* decided on 24.05.2011, which had further been upheld by the Division Bench in LPA No.983 of 2011 on 02.06.2011. Reliance has also been placed upon the judgment of the Apex Court in **Rajeev Kapoor Vs. State of Haryana 2000 (9)**

SCC 115 to submit that the effect of the Full Bench's judgment in Amar Deep Singh Sahota Vs. State of Punjab & others 1993 (2) PLR 212 had been watered down. It was submitted that the offending circular dated 21.05.1997 had itself been quashed by the Division Bench and it had been held specifically that MCI had no right and the said judgment was in rem and not in personam and was binding upon all persons. Reliance was placed upon the judgment of the Apex Court in State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava 2015 (1) SCC 347 that the benefit would accrue to all and the right was not restricted only to the petitioners, in the said case.

15. The MCI did not file any reply. However, Shri Gurminder Singh, learned Senior Counsel, appearing on behalf of the MCI, submits that in view of the regulations, since NRI candidates come from a wide spectrum of educational backgrounds and in the absence of any uniform affiliation system, the competitive CET was a necessity for admission. It was submitted that there were different standards of education by different Boards and the criteria in the prospectus should have been that the students should have taken part in the AIPMT and the merit achieved in the said examination would have been an ideal assessment of the ability of the students. It was submitted that even if the circular dated 16.01.2015 had been quashed, the 1997 regulations still stood and it provided that the admission should be solely on the merit of the candidates, on a uniform criteria and apart from the minimum number of marks obtained in +2, there was a provision that there should be a competitive entrance examination in addition, in which also not less than 50% marks were to be obtained. Resultantly, the stand of the petitioners were supported rather than the action of the Administration.

16. The legal issues that thus arise for consideration are as under:

- (i) Whether the terms of the prospectus have a force of law and are binding on the Administration also and on applicants and

whether the decision to resort to admission on the strength of +2 marks would be totally contrary to what had been held out and whether the petitioners had a vested right?

(ii) Whether the judgment of the Karnataka High Court dealt only with the issue of admissions made to the Private Unaided Medical Colleges and whether the observations made therein would also affect the Aided Medical Colleges and Government Medical Colleges and whether the circular dated 16.01.2015 still holds the field?

(iii) Whether the private-respondents, having taken the CET and having failed to qualify and being satisfied with the procedure prescribed, could now justify their consideration for their admission on a separate criteria, which was contrary to the prospectus itself?

(iv) Whether the procedure of having a Common Entrance Test was a better mode to get more meritorious candidates for admission and whether the respondents stood at a higher pedestal and were entitled for admission?

Issue No.1: Whether the terms of the prospectus have a force of law and are binding on the Administration also and on applicants and whether the decision to resort to admission on the strength of +2 marks would be totally contrary to what had been held out and whether the petitioners had a vested right?

17. The proposition of law that the prospectus has a binding force and would govern the parties stands established beyond a cavil of doubt. Six Full Benches of this Court in Amardeep Singh Sahota Vs. State of Punjab 1993 (2) PLR 212, Raj Singh Vs. Maharishi Dayanand University 1994(2) S.C.T. 766, Sachin Gaur Vs. Punjabi University 1996(1) S.C.T. 837, Rahul Prabhakar Vs.

Punjab Technical University, Jalandhar 1997(3) S.C.T. 526, Indu Gupta Vs. Director of Sports, Punjab 1999(4) S.C.T. 113 and Rupinder Singh and others Vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh and others 2001(2) S.C.T. 726 have held to that effect. The relevant observations made in **Rahul Prabhakar's** case (supra) read as under:-

“7. A Full Bench of this Court in [Amardeep Singh Sahota v. State of Punjab](#), (1993) 4 SLR 673 : 1993(4) SCT 328 (P&H) (FB) had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In [Raj Singh v. Maharshi Dayanand University](#), 1994 (4) RSJ 289 : 1994(2) SCT 766 (P&H) (FB) another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in [Sachin Gaur v. Punjabi University](#), 1996 (1) RSJ 1 : 1996 (1) SCT 837 (P&H) (FB) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under [Article 226](#) of the Constitution of India.”

The said proposition was further examined by the Apex Court in **Rajiv Kapoor's case** (supra) wherein the issue was of admission to Post Graduate Degree and Diploma Courses in Medicine from amongst Haryana Civil Medical Services was the subject matter and this Court had followed the Full Bench Judgment in the case of **Amar Deep Singh Sahota** (supra). The appeals were

allowed by the Apex Court by noticing that the State, vide order dated 21.05.1997 was only following the orders dated 20.03.1996 and 21.02.1997, which had been forwarded to the University to make necessary entries in the prospectus and the syllabus. Vide the said instructions, the pattern for allotment of marks under various heads of in service candidates had been modified and the manner of assessment of merit was to be done by the Selection Committee after interview which could not have been given a complete go by, as had been ordered. In such circumstances, the appeals were allowed by holding that the Government had the power. However, it is to be noticed that the judgment in the case of **Amardeep Singh Sahota** (supra) was never set aside on the issue that the prospectus has a force of law and therefore, the said judgment is distinguishable.

18. Similarly, in the case of **Dr.Pooja Gehlot** (supra), the issue was also of in service candidates and admission was to MD/MS/PG Diploma/MDS courses. The challenge was to the policy issued after the last date of submission of applications, as per the prospectus which refixed 5 years criteria from 2 years for in service candidates to have for making them eligible for consideration. The power of the State to issue instructions was, accordingly, upheld while noting that the State Government had consciously chosen to invest in human resources, in which they were deficient and the criteria had been laid down which did not smack of allegations of *mala fides*, especially when it was dealing with the right of the candidates who were pursuing higher studies. Rather, it was specifically noticed, as has been discussed above, that **Rajeev Kapoor's case** (supra) did not overturn the decision of the Full Bench in the case of **Amardeep Singh Sahota** (supra). Rather reliance was placed upon the Division Bench judgment of this Court in **Parmveer Singh Vs. Punjab University & others AIR 2000 (P&H) 291** wherein also, the judgment of the Apex Court in **Rajeev Kapoor's case** (supra) was discussed and it was held that it was entirely on different facts and the view of the

Full Bench that the prospectus has the force of law, had not been reversed.

Relevant observation of the Division Bench reads as under:

“4. Before concluding, we may refer to the latest judgment of the Supreme Court in *Rajiv Kapoor v. State of Haryana* (2000) 2 Serv LR 603 : (AIR 2000 SC 1476) to which reference was made by the respondents during the course of arguments to contend that the provisions contained in the prospectus are not sacrosanct and, therefore, the respondents were justified in entertaining the sports gradation certificate of respondents No.4 even after the last date of receipt of applications. We have carefully gone through the judgment of the Apex Court and are of the view that the learned Judges have not held that the provisions contained in the prospectus can be given a go by. In that case the dispute was in regard to admission to Post Graduate Degree and Diploma Courses in Medicines from amongst the Haryana Civil Medical service candidates for the academic session 1997. This Court held that the instructions issued by the State Government on 21.5.1997 were in contravention of the prospectus and could not, therefore, be relied upon for granting admissions to the candidates. The Apex Court found that the order of 21.5.1997 was only in continuation of the earlier instructions issued on 20.3.1996 and 21.2.1997 which had not only been forwarded to the University for making entries in the prospectus but had been issued prior thereto which had to be followed for granting admissions to the candidates. The view of this Court in *Amardeep Singh Sahota v. State of Punjab* 1993(3) P.L.R. 212 (supra) that the prospectus issued for admission to a course of study has the force of law and that it was not open to the State Government to issue instructions contrary thereto has not been reversed. *Rajiv Kapoor's case* (AIR 2000 SC 1476) (supra) is entirely on different facts and does not advance the case of the respondents.”

As noticed above, the said view was upheld by the Division Bench and therefore, the said judgment is of no help to the respondents.

19. Similarly also, a Division Bench of this Court in **Mamta Bansal & others Vs. State of Punjab & others 2002 (4) RSJ 277** quashed the notification dated 21.08.2001 and directed the authorities to make admission on the basis of

the instructions dated 25.05.2001 to the Medical Courses by noticing that the prospectus issued is a complete and composite document and ineligible candidates could not be made eligible and substantial and material alteration in previous notification could not be done. The candidates who had already earned the bar of ineligibility could not be made eligible. The judgment in Rajeev Kapoor's case (supra) was also discussed and it was held that there was an apparent contradiction in the said notification and the earlier notification which would have the affect of disturbing the admission and would cause disadvantage to the students at large and therefore, could not be sustained because of radical change of doing away with the requirement of minimum qualifying marks of various reserved categories.

20. The answer, thus, necessarily has to be given in favour of the petitioners that by issuing notice dated 18.08.2015, the authorities have taken a total summersault regarding the terms and conditions as to how admissions were to be granted to NRI students and such an alteration was beyond their power. Instructions could have been issued to supplement the decision making but not to reverse the decision altogether and create a new modum of admission. The submission that the petitioners had no right as admission having been granted, is without any basis. Once they had given the test and had qualified and result had been declared on 25.06.2015 and the official-respondents themselves had asked them to submit the necessary documents, as per letter dated 07.07.2015 (Annexure P12), it would not lie in the mouth of the Administration to submit that the petitioners had no vested right and therefore, there was no estoppel against the action of the authorities. The issue of vested right was noticed by the Division Bench in the case of Mamta Bansal (supra) wherein it was held that the declaration of result was a settlement of right and cannot be unsettled by abrupt and capricious decision. Relevant portion of the judgment reads as under:

“50. It is true that there is no indefeasible vested right in the petitioners in the present cases, but the declaration of result, obviously, is a settlement of a right for admission to M.B.B.S./B.D.S. courses. This settled position cannot be permitted to be unsettled by an abrupt and arbitrary decision of the Government to do away with the condition of minimum qualifying marks prescribed for such courses. Principle of equity and fairness would demand that the candidates in whose favour a right has accrued and they have exercised their permissible options based on the terms and conditions of the brochure existing at the relevant time, should not be exposed to avoidable prejudice.

51. For this reasoning, we do not find any sustainable ground for the Government to issue the impugned notification in the midst of the counselling. The State Government has exceeded its jurisdiction in issuing the notification without prior approval of the Medical Council of India. The extreme emergency shown by the State in issuing the impugned notification is beyond any reasonable comprehension. Accordingly, we answer this contention of the parties.”

Keeping in view the above discussion, the judgment in **Ashwin Prafulla Pimpalwar (supra)** would not be applicable in the present case, since admission had been offered to the petitioners and therefore, the state had gone beyond the stage of mere consideration and the binding precedent of the Division Bench of this Court would come into play.

Similarly, the judgment in the case of **Sandeep Berar (supra)** would not be applicable since in the said case, it was held by the Apex Court that the High Court was not justified in directing a different procedure than the one notified by the State Government could be made applicable and the direction that the admission be made under the 1984 instructions and not the 1986 instructions, was not justified, since the later instructions were never under challenge.

Thus, accordingly, the issue is held in favour of the petitioner by holding that the terms of the prospectus has a binding force of law on the

Administration and on the applicants and the petitioners having a vested right on the declaration of the result having qualified, cannot be divested of their right of admission.

Issue No.(ii) Whether the judgment of the Karnataka High Court dealt only with the issue of admissions made to the Private Unaided Medical Colleges and whether the observations made therein would also affect the Aided Medical Colleges and Government Medical Colleges and whether the circular dated 16.01.2015 still holds the field?

21. A perusal of the judgment of the Karnataka High Court would show that though it was dealing with the rights of the Private Unaided Colleges and the rights to admit students under the NRI quota and there was a State legislation in that State which provided that admission to Unaided Professional Colleges except the seats of NRI was to be made on the basis of the CET. However, the said judgment also examined the power of the MCI to issue the instructions dated 16.01.2015 and came to the conclusion that prior sanction of the Central Government was to be taken for making specific regulations and no such procedure had been followed which was contrary to the nature of power invested with the Committee and the procedure prescribed with the Act. Resultantly, the circular had been quashed and therefore, the argument of the counsel for the petitioners that the decision would not bind the Government Medical Colleges, is without any basis. Once the circular had been struck down by the High Court, it would be nonest and void, as such, since the Division Bench had not restricted the effect only to the Private Unaided Medical Colleges.

22. It has been time and again held that factual situation has to be seen and one additional fact makes the world of difference. The judgment as a whole has to be seen as to what was the issue in context and not merely a word here and there and it is to be seen what actually was decided and a careful reading of the

decision has to be done. Reliance can be placed upon the observations of the Apex Court in *Padmasundara Rao (Dead) Vs. State of Tamil Nadu & others* 2002 (3) SCC 533 wherein it was noticed that direction issued by the Court has to be taken into consideration and if it is specific, simply and clear and not vague or sweeping, the same has to be taken into consideration. Relevant observation reads as under:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

23. The decision, as such, was a decision in rem and binding on all and the observations in the case of *Arvind Kumar Srivastava* (supra), would be applicable wherein it was held that the intention of the judgment was to be examined. Relevant portion of the judgment reads as under:

“However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India* (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

Accordingly, keeping in view the above discussion, it can be safely held that the circular dated 16.01.2015, as such, does not hold the field any longer and the petitioners cannot urge that reliance on the same can continue. However, for reasons otherwise, this Court does not agree with the change of procedure at the far end of the admission process.

Issue No.(iii): Whether the private-respondents, having taken the CET and having failed to qualify and being satisfied with the procedure prescribed, could now justify their consideration for their admission on a separate criteria, which was contrary to the prospectus itself?

24. The facts have been noticed in detail above. Admittedly, 24 candidates, out of which, only 22 had given the examination, who had the NRI background/eligibility had applied on the strength of the said prospectus and had accepted the terms of the prospectus. They had sat in the said examination and the private respondents had failed to make the cut. They had never raised any objection and had accepted their fate. As per the prospectus, admission schedule of the first counselling was to take place on 01.06.2015 for all the UT General Pool/SC/Physically Disabled/NRI seats. The second counselling was to be held on 24.07.2015. It is only on account of the fact that the AIPMT, which was held on 03.05.2015 was cancelled on account of unfair means and fresh test was ordered by the Apex Court in Tanvi Sarwal Vs. Central Board of Secondary Education & others (2015) 6 SCC 573. The private-respondents, thus, got a fresh lease of life since the Apex Court dismissed the SLPs of the MCI on 06.07.2015 and the UT Administration, started plowing the furrow against the terms of the prospectus after seeking information whether the circular dated 16.01.2015 was still in force. It is important to note that as per the information sought also, as has been reproduced above, the query to the premier medical agency was only whether the circular was valid or not and neither any advice was sought as to what would

be the affect on the persons who had sat in the examination and become successful. The information, as noticed above, was also that the SLPs had been dismissed and no such advise was given by the MCI that any test conducted would stand scrapped altogether which is now the defence taken that consultation was made with the MCI. The private-respondents were totally ineligible and are being declared eligible in view of a policy decision dated 18.08.2015, after having failed to make the cut. Thus, it does not lie in their mouth that the decision of the Administration was justified.

25. The defence of the respondents is that they have not approached this Court and are getting admission on the basis of the criteria of the prospectus wherein two categories have been fixed of NRI's, one having the ancestral background of Chandigarh and the other from other countries and therefore, they being eligible, having obtained the minimum qualifying marks and on account of two methods of selection being present, there was no fault on their part if they fall within the zone of consideration.

26. This Court in *Akansha Sharma Vs. State of Punjab & others 2015 (1) SLR 689* noticed the aspect of the limitation of the candidates to challenge the criteria once having accepted the procedure for admission. Relevant observation reads as under:

“5. The point for consideration is whether the prescription in a Government notification setting out the requirement of pass in the entrance test and further stipulation of minimum marks could be complained of by a candidate who takes the examination and having not made the grade to come with the complaint through the writ petitioners. To me, the answer would have to be simply 'No', for, having taken part in the examination, it will be impermissible for a candidate complain that the criterion laid down was arbitrary. Indeed there could be nothing arbitrary about requirement of passing an entrance examination and stipulating also a minimum bench mark, both of which find place as modes of enlistment of meritorious candidates even under the the MCI Regulations. The

petitioners, if at all, could have a case only if the requirement was made compulsorily subsequent to the selection which in this case it is not. I would even find that the entrance test is a secure method of standardizing the merit of candidates who come from various streams of school education.”

27. This Court has time and again held that where a procedure prescribed has not been challenged, then the applicants would be estopped from laying challenge to the procedure which had been followed, after having failed to make the cut. Reliance can be placed upon the observations made by this Court in CWP No.14399 of 2015 titled *Swati Bishnoi Vs. Panjab University & another*, decided on 12.08.2015. The same reads as under:

“Apart from the fact that principle of estoppel would also apply to the petitioner and therefore, having participated in the said process without any demur she cannot now turn around and challenge the process itself. Reference can be made to the judgment of the Apex Court in **Dhananjay Malik and others Vs. State of Uttaranchal & others 2008(3) RSJ 223** wherein it was held that a candidate having taken calculated chance cannot turn round and contend that the process was unfair. Advertisement and the selection process had to be challenged without participating in the selection process. Similarly a Division Bench of this Court in **Yoginder Singh Yadav Vs. State of Haryana 2002(2) S.C.T. 281** also held to the same effect.”

The defence of the private-respondents that they are not seeking any relief, is not acceptable as the action of the Administration is under challenge and as noticed, under issue No.1, is patently against the settled procedure prescribed and therefore, cannot be approved of, especially keeping in view the observations of the Apex Court wherein it has been held that the manner of doing a thing in a particular manner excludes all other methods of doing the same thing. In **State of U.P. Vs. Singhara Singh, AIR 1964 SC 358**, the Hon’ble Supreme Court held as under:

“7. In *Nazir Ahmed vs. King Emperor AIR 1936 PC 253*, the Judicial Committee observed that the principle applied in *Taylor vs. Taylor (1876) 1 Ch.D 426* to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that “it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves”.

Later a Constitution Bench in a judgment reported as *A.R. Antulay Vs.*

Ramdas Srinivas Nayak, (1984) 2 SCC 500, held as follows:

“22. Once the contention on behalf of the appellant that investigation under Section 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from *Taylor v. Taylor (1876) 1 Ch.D 426*; *Nazir Ahmad v. King-Emperor AIR 1936 PC 253* and ending with *Chettiam Veetil Ammad v. Taluk Land Board Air 1979 SC 1573*, laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

Issue No.(iv): Whether the procedure of having a Common Entrance Test was better mode to get more meritorious candidates for admission and whether the respondents stood at a higher pedestal and were entitled for admission?

28. The 1997 regulations specifically provided that there should be a uniform evaluation of students who have sat in different qualifying examination and would have different standards of proficiency. Regulation 5 reads as under:

“5 Selection of Students: The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:

(1) In states, having only one Medical College and one university / board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration.

(2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

(3) Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges.

(4) A competitive entrance examination is absolutely necessary in the cases of Institutions of All India character.

(5) Procedure for selection to MBBS course shall be as follows :-

i) In case of admission on the basis of qualifying examination under Clause(1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in Clause(2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry & Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates

belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.”

A perusal of the above said regulation would go on to show that in order to avoid the variation of standards in qualifying examinations, conducted by different agencies, the MCI has made it mandatory to hold a competitive entrance test in which minimum 50% marks have to be secured.

29. The Apex Court in P.A.Inamdar's case (supra), while discussing the issues of admission to NRI candidates and granting reservations of 15% to the said category specifically laid down that *bona fide* NRI candidates should be admitted and that merit should not be given complete go by and there should be proper legislation in place. The triple test theory was, thus, laid down that there should be transparency and merit and the CET was necessary in the interest of achieving the said objective and saving the student community from harassment and exploitation. Relevant observation reads as under:

“131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students

admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to Islamic Academy's direction to regulate."

30. This Court in **Punjab Private Self Financed Dental College Association Vs. State of Punjab & others 2015 (1) SCT 571**, decided on 02.09.2014, while deciding the issue of the right of the unaided institutes, to hold an independent CET for admission to medical courses, noticed the binding precedent of the Full Bench of this Court in **Desh Bhagat Dental College & Hospital, Muktsar Vs. State of Punjab 2004 (1) PLR 166**, wherein public notice had been issued for conducting admission to the BDS course. The petitioner therein had made admission prior to the public notice and being aggrieved by the public notice, wherein it had been included in the counselling process challenged the same, wherein it was held that it was not open to the petitioner-College, conducting a professional course to make admission thereto, in a manner other than merit, determined through the CET, held by an agency nominated by the State

Government. Accordingly, it was held that merit is not to be the casualty and the virtues of the CET were noticed so that the students are not exploited and harassed. The Division Bench, while upholding the judgment dated 02.09.2014, in LPA No.2154 of 2014, on 22.07.2015, noticed the regulations of the DCI to hold that where there are multiple Boards conducting qualifying examinations, the CET is the only mode for admission. Relevant observations read as under:

“In terms of the Regulations of the Medical/Dental Council of India, the entrance test is required to be conducted, if the qualifying examination is conducted by different Boards in the same State and the admissions are in more than one college. The relevant Regulations of the Dental Council of India read as under:

“ADMISSION, SELECTION AND MIGRATION:

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II. Selection of Students: The selection of students to dental college shall be based solely on merit of the candidate and for determining merit, the following criteria shall be adopted uniformly throughout the country:

1. In States having only one Dental College and one University board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

2. In States, having more than one university/board/examining body conducting the qualifying examination (or where there are more than one dental colleges under the administrative control of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;

3. Where there are more than one college in a State and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

4. A competitive entrance examination is absolutely necessary in the cases of institutions of All India character;

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xxx”

Since in Punjab, there are multiple Boards conducting qualifying examination and also multiple Medical Institutes conducting degree courses, the common entrance test is the only mode for admission in terms of the Regulations of the Medical/

Dental Council of India.

In view of the above discussion, we do not find any patent illegality or irregularity in the order passed by the learned Single Judge, which may warrant any interference by this Court in the present appeal.

Dismissed.”

31. A Division Bench of this Court in LPA No.1267 of 2010 titled *State of Punjab Vs. Self Financed B.Ed. Colleges Association, Punjab (Regd.) & another*, decided on 10.08.2015, noticed the benefits of admission made through CET. The said action would only further go towards achieving the objects as laid down in **P.A.Inamdar's case** (supra) so that the meritorious and *bona fide* students from the said category are admitted and the triple test principle is achieved.

32. The factum of the petitioners having qualified and having made the cut has already been noticed. Another aspect which is also to be seen is that the petitioners are also, apparently, more meritorious in their +2 examinations, which would be clear from the marks obtained by the petitioners and the private-respondents, detailed hereunder:

<i>Sr.No.</i>	<i>Name of petitioners</i>	<i>Percentage of marks obtained in +2</i>
1	Rajat Jain	79
2	Shivani Gupta	97.6
3	Parneet Kaur Grover	86.3

<i>Sr.No.</i>	<i>Name of private respondents</i>	<i>Percentage of marks obtained in +2</i>
1	Manhar Kaur Randhawa	96.3
2	Karanvir Gosal	85
3	Ameek Singh Sidhu	71.6
4	Mehtaab Singh Dhillon	67.6
5	Gina Kaur Gill	65.3

33. The overall chart also, thus, goes on to show that apart from private respondents No.4 & 5, figuring at Nos.1 & 2 above, the other three private-

respondents have got less merit than the petitioners but would be stealing a march over them. Keeping in view the regulations also, it is apparent that the ends of justice would be served if the petitioners, who have been successful in the CET which was held under the supervision of the Panjab University, Chandigarh, are entitled for admission on the strength of the settled procedure which had been notified, advertised, adopted and followed, rather than in the midst, a deviation which the Administration has done, leading the candidates unnecessarily to litigate and approach this Court.

34. Resultantly, the present writ petitions are allowed, the notice dated 18.08.2015 (Annexure P15) is quashed and the official-respondents are directed to admit the petitioners as per the terms of the prospectus. The petitioners will be entitled to admission under the NRI seats and also the offer will be made to the 4th candidate who qualified. In case of any vacancy of the NRI seats, admission will be given to candidates of General Category, as provided under Clause A-8(15) of the prospectus.

22.09.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE