

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 17704 of 2015

Reserved on:28.09.2015

Pronounced on:29.09.2015

Krishma Bansal

....Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

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

Present: Ms.Supriya Garg, Advocate, for the petitioner.

Mr.Aman Bahri, Addl.A.G., Punjab.

Mr.Nitin Kaushal, Advocate, for respondent No.2-University.

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

Mr.D.S.Patwalia, Sr.Advocate
with Mr.B.S.Patwalia, Advocate, for respondent No.4.

Mr.Anand Chhibbar, Sr.Advocate
with Mr.G.S.Ghuman, Advocate, for respondents No.5 & 6.

G.S.SANDHAWALIA, J.

1. The present writ petition has been filed for quashing the public notice dated 06.08.2015 (Annexure P6) whereby the State has, in view of the judgment of the Apex Court in SLP Nos.16307 & 16308 of 2015 titled *Medical Council of India Vs. Shri Basaveshwar Vidya Vardhak Sangha & another*, decided on 06.07.2015, revised the admission criteria for the MBBS/BDS courses, for the session 2015 and opted for filling the vacant seats of NRI category on the basis of the marks obtained in 10+2 (qualifying examination) instead of selecting the candidates from the merit list of Pre Medical Entrance Test (for short, the 'PMET'). Further direction has been prayed for to fill the vacant seats of the MBBS/BDS in NRI category, on the basis of the PMET, given by the candidates of the general category, on the strength of Clause 23(vi) of the prospectus.

2. The pleaded case of the petitioner is that she had appeared in the PMET, 2015 held by the respondent No.2-University, for the 920 seats available in the State of Punjab and was ranked at 1069 (after revision:1136) in the merit list, in pursuance of the notification dated 30.03.2015 (Annexure P1) which had authorised respondent No.2 to conduct the said examination and to conduct centralized counselling. As per the said notification, 15% of the seats were reserved for the NRI candidates apart from other reservations and the last date of submission of the application was 29.04.2015 with late fees till 04.05.2015/07.05.2015. The petitioner claimed right on the ground that under Clause 23(vi) of the notification, being a General Category candidate was entitled to stake a claim to the NRI vacant quota seats since the said clause provided that counselling for the said quota seats was to be held earlier and in case of any seat remaining vacant, it was to go to the General Category and in Unaided Private Colleges/Minority Colleges to the General Category of Management/Minority quota. It was alleged that prior to the conduct of the PMET, the notification had been challenged, which was dismissed as withdrawn, at that stage, on 30.04.2015 (CWP No.8285 of 2015 titled *Sanjana Goyal & others Vs. State of Punjab & others*). The notification and the prospectus were again challenged in CWP No.10903 of 2015 by the said petitioners wherein the plea taken was that the admission were being made in violation of the Rules 4 & 5 of Regulations of Medical Education, 1997, issued by the Medical Council of India (for short, the 'MCI') by respondent No.3. This Court had issued directions that the respondents would strictly adhere to the terms of the prospectus and the notification and could fill up the seats by candidates who had secured marks in the PMET examination. Resort to filling up the seats would be taken by adhering to the 10+2 qualifying examination, when the quota of PMET was exhausted. Reference was made to the circular dated 16.01.2015 (Annexure P5), issued by the MCI in which it was

directed that NRI seats would be filled up by holding the Common Entrance Test (for short, the 'CET') and that the said circular was quashed by 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 on 06.07.2015.

3. The factual aspect regarding the number of seats, as per the impugned notice was that there were 102 seats in the NRI quota, in view of the 15% reservations in all private institutes and 13 seats in Government Medical Colleges at Patiala and Amritsar and 3 seats in Government Dental College, Amritsar and 4 seats in the Government Dental College, Patiala in the BDS course. Only 64 eligible NRI candidates had applied and out of that, only 52 had appeared and as per the qualifying criteria, since 50% marks had to be obtained in the PMET, only 17 candidates had qualified. The State, by its impugned notice dated 06.08.2015, was proposing to fill up the 85 balance seats from the NRI's who had not qualified in the PMET, 2015, only on the basis of their 50% marks in the 10+2 or equivalence examination or to those NRI candidates who merely belong to the State of Punjab or other states only on the strength of their 10+2 marks, in the descending order of preference and who had not even sat in the PMET.

4. In the written statement filed by the State of Punjab, the defence taken is that as per the circular dated 16.01.2015, it was mandatory to fill the NRI quota seats through the CET and therefore, as per the notification dated 30.03.2015, the admission was to be on the basis of the marks obtained in the PMET. However, as per Clause 4, there was a condition that if the seats are still vacant, then the seats would be filled on the basis of the qualifying marks obtained in the 10+2. Reliance was placed upon Clause 22 that for the left over seats, the admission would be made on the basis of the merit in the PMET or the *inter se* merit, on the

basis of the qualifying examination and the applicability of Clause 23(vi), which provided that the seats remaining vacant under the NRI quota were to go to the General Category and in the Unaided Private Colleges/Minority Colleges, were to go to the Management/Minority quota. It was further pleaded that in view of the circular dated 16.01.2015, the State Government had decided to give maximum benefits to the NRI candidates as it was to encourage them to take active part for boosting the Indian economy. It was submitted that only 28 candidates had applied for the MBBS course and 13 were PMET qualified and 8 had appeared in the said examination whereas 7 had applied on the basis of the 10+2 qualifying examination. In the BDS course, there were 167 seats and only 3 candidates applied for the BDS course and the remaining seats would be made available to the remaining candidates, as per notification dated 30.03.2015. The gap of the petitioner and between the last selected candidate and the private management quota was of 575 ranks as the last candidate was ranked at 561. The NRI seats had been introduced to tide over the finances to generate the increase from ₹4.20 crores to ₹10.80 crores, after the approval of the Cabinet and taking opinion of the Department of Legal and Legislative Affairs and the matter stood settled by this Court in CWP No.17724 of 2013 titled *Sonalika Kaushal Vs. State of Punjab & others*, decided on 18.11.2013.

5. A Committee was appointed by the Dean of the Panjab University, Chandigarh to suggest criteria to determine the merit of the NRI candidates seeking admission in the MBBS course in the meeting held on 27.07.1994 (Annexure R1) and admissions were being done on the basis of merit obtained by equivalence certificate issued by the University. The same criteria was opted by the respondent-University and for the session 2015, two members had been appointed from DMC, Ludhiana and Guru Gobind Singh Medical College, Faridkot which helped to prepare the common merit of the students who had done

their 10+2 examinations from different countries and from different Boards. The criteria, thus, took care of the MCI Act which provides that there should be a CET for the students coming from different Universities or Boards.

6. Counsel for the petitioner has, thus, argued on the principle that the prospectus has the force of law and the criteria cannot be changed and once the Government had taken a decision that the admission was to be made to the NRI seats on the basis of the PMET merit and the provisions of 2006 Act. Candidates who had secured 50% minimum marks, both in the qualifying examination and in the CET were eligible and the prospectus itself provided that the admission was to be done on the basis of the marks obtained in the PMET and in view of the 1997 regulations of the MCI. That the triple test was the criteria to be fulfilled as laid down by the Apex Court in **P.A.Inamdar & others Vs. State of Maharashtra & others 2005 (6) SCC 537** and the State could not change the criteria and give admission to the persons who had not made the cut and the seats had to be given to the General Category students. A decision had been taken under the Punjab Private Health Sciences Educational Institutes (Regulations Of Admission, Fixation Of Fees And Making Of Reservation) Act, 2006 (for short, the '2006 Act'). By the present decision, merit was a casualty as not only persons who had not made the cut were going to be admitted but even persons who had not given the examination under Clauses (c) & (d) and not even applied within the cut off date, were being offered admission. Reliance was placed upon the judgment of this Court in **Jaspreet Singh Cheema & others Vs. State of Punjab & others 2015 SCC OnLine P&H 2216** which was upheld by the Division Bench in LPA No.915 of 2015 on 30.06.2015 and the SLP was also dismissed on 08.07.2015 wherein the letters dated 06.05.2015 of the MCI and dated 07.05.2015 of the Dental Council of India (for short, the 'DCI') had also been taken into consideration which had directed the State not to follow Clause 4 as it was in violation of the MCI

regulations.

7. Counsel for the State, Mr. Aman Bahri, Addl.A.G., Punjab, has sought to justify the action of the State by arguing that the NRI category was a separate quota and as per Clause 4, there was a provision if the seats were still vacant, then admission could be done on the basis of the 10+2 examination and there was no violation of the prospectus. The judgment in Jaspreet Singh Cheema's case (supra) was sought to be distinguished, on the ground that it was not a case pertaining to the NRI students. The 2006 Act was not challenged which provided that the students could be admitted on the basis of the qualifying examinations and it permitted students to be admitted on the strength of the result of such an examination, being Management Category seats. Reference was made to the Equivalence Committee set up which would ensure that there was a proper equivalence given to the NRI candidates and the merit would be maintained *inter se* the NRI category, which was the observation of the Apex Court and the merit had to be within the NRI quota, which was not given a go by and the letter of the MCI dated 06.05.2015 was for the General Category. It was further submitted that the State is only following the directions passed by this Court in *Sanjana Goyal's case* (supra) decided on 27.05.2015 (Annexure P4) and filling up the seats as per the terms of the prospectus.

8. MCI choose not to file reply but did not support the action of the State and on the other hand, placed reliance upon paras 26 & 27 of the judgment of the Apex Court in P.A.Inamdar's case (supra) to submit that there could be no exemption from the CET and the NRI category was not a special category and no exemption could be granted and they were to go through the grind of the entrance test. Reference was made to the letters issued by the MCI/DCI dated 06.05.2015/07.05.2015 (which were taken on record as Annexures R3/1 & R3/2) and reliance was placed upon the 1997 Regulations to submit that the CET was a

uniform evaluation process. Reliance upon the judgment of the Apex Court in *Dr.Preeti Srivastava Vs. State of M.P. (1999) 7 SCC 120* and the judgment in *Rajan Purohit Vs. Rajasthan University of Health Sciences (2012) 10 SCC 770* was made to submit that the MCI Regulations were paramount and the State could not override the same by resorting to the qualifying marks for making admission.

9. On an application filed for impleadment of respondent No.4, by Mr.D.S.Patwalia, Senior Advocate, and Mr.Anand Chhibbar, Senior Advocate, for respondents No.5 & 6, the said respondents were allowed to intervene since their claim was that they had been called for counselling on 24.09.2015 on the basis of the notice dated 06.08.2015, on the strength of their marks obtained by them in the 10+2 examination. Learned Senior Counsels submitted that in the absence of the challenge to the prospectus and the 2006 Act, the petitioner could not question the action of the State, since the prospectus itself provided that resort to 10+2 marks could be done. It is submitted that Clause 4 talked about all the categories and there were different types of categories like NRI's, sports persons, terrorist affected/riot affected, which had been specifically set aside and if the seats were not filled on the basis of the marks obtained in PMET, the resort to Clause 4 could be taken. In case those seats were still not filled on the basis of the marks obtained in 10+2, then Clause 23(vi) was to be applied and the seats were to be offered to the General Category candidates. The said two clauses had to be read together since it was a special quota and if Clause 23(vi) was to come into play earlier, then admission could never be done on the basis of the marks obtained in 10+2. It was further argued that the NRI candidates bring precious foreign currency and therefore, help to provide colleges to supplement their infrastructure and therefore, the said seats cannot be filled by the General Category and preference has to be given to the NRI category candidates, firstly.

10. The questions, which thus, arise for consideration before this Court are:

(i) Whether the prospectus has a force of law and whether the Government is bound by the prospectus, instructions and the notifications issued by it?

(ii) Whether there is any violation by the State of the terms of the prospectus since both the parties are reading the prospectus to their benefit?

(iii) Whether the State, while issuing the public notice is violating the mandatory regulations of Graduate Medical Education, 1997, issued by the MCI and whether merit is a casualty on account of the State's action in granting admission to the NRI candidates who had not even applied by the cut-off date and whether the same is justifiable?

(iv) Whether the NRI candidates are special category and the petitioners would have no claim to the said seats under the 2006 Act and whether the NRI's were exempted and could be admitted on the basis of their qualifying marks and the State Government was competent to drop the bar of eligibility?

Issue No. (i): Whether the prospectus has a force of law and whether the Government is bound by the prospectus, instructions and the notifications issued by it?

11. 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.”

12. The said proposition was further examined by the Apex Court in **Rajeev Kapoor Vs. State of Haryana 2000 (9) SCC 115** 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.

13. In **Parmender Kumar & others Vs. State of Haryana & others (2012) 1 SCC 177**, the issue of the judgment in **Rajiv Kapoor's case** (supra) and the judgment of the Full Bench in **Amardeep Singh Sahota** (supra) were also examined while examining the power of State of issue instructions. The change of conditions one day prior to the counselling was not accepted by the Apex Court. The question which was framed by the Apex Court was whether the State Government would be competent to effect change in the criteria relating to the eligibility of admission once the process had started. The relevant observations read as under:

“26. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the Post-Graduate or Diploma Courses in the different disciplines in medicine which had earlier been indicated in the prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the prospectus, was it within the competence

of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the prospectus been started, but also when counselling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing the Post-Graduate or Diploma Courses in the reserved HCMS category.

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29. As has also been pointed out hereinbefore, this Court took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the Government Orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage." In fact, this is what has been contended on behalf of the Appellants that once the process of selection of candidates for admission to the Post-Graduate and Diploma Courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by Government Orders to alter the provisions contained in the prospectus. If such Government Orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses."

Resultantly, under issue No.(i), it is held that the Government is bound by its prospectus and the instructions and the public notice cannot be issued in violation of the said prospectus at the last moment, making ineligible candidates eligible.

Issue No. (ii): Whether there is any violation by the State of the terms of the prospectus since both the parties are reading the prospectus to their benefit?

14. The relevant clauses which parties have relied upon are reproduced below:

“4. The admission to the MBBS/BDS courses in all the categories will be based on marks obtained in PMET-2015. However if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam).”

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6. Candidate must have passed in the subjects of Physics, Chemistry, Biology/Biotechnology and English individually and must have obtained a minimum of 50% marks (45% for Persons with Locomotor Disability of Lower Limbs and 40% for SC/BC) taken together in Physics, Chemistry and Biology/ Biotechnology (PCB) in 10+2 examination or other equivalent examination of 10+2.

7. Candidate should have passed qualifying examination as under:

a. The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry and Biology after the introduction of the 10+2+3 years education structure as recommended by the National Committee of Education;

OR

b. Any other examination which, in scope and standard is found to be equivalent to the Intermediate Science examination of an Indian University/Board, taking Physics, Chemistry and Biology/Biotechnology including a practical test in each of these subjects and English;

8. In order to be eligible for admission to MBBS/BDS course, it shall be necessary for the candidate to obtain minimum of 50% marks (45% for Persons with Locomotor Disability of Lower Limbs and 40% for SC/BC categories} in PMET-2015.

The inter-se-merit of candidates for tie-breaking in PMET-2015 shall be determined in the following manner:

a. Candidates obtaining higher marks in Biology (Botany & Zoology) in the PMET-2015.

b. Candidates obtaining higher marks in Chemistry in the PMET-2015.

c. Candidates older in age.

9. After the declaration of the PMET -2015 result, the candidates will apply on the specific proforma for all seats except All India quota seats to Baba Farid University of Health Sciences, (BFUHS), Faridkot. Admission will be made by the selection committee through a centralized counselling by BFUHS, Faridkot on the basis

of inter-se merit of PMET-2015. However if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam). Merit will be prepared on the basis of PCB (Physics, Chemistry and Biology/Biotechnology) marks in 10+2 examination. In case two or more candidates securing equal marks in PCB, their inter-se merit will be determined as under:

- i) Candidates having higher percentage In the subject of Biology/Biotechnology
- ii) Candidate having higher percentage in the subject of chemistry
- iii) Candidate, older in age.

10. Admission to private institutions shall be made as per the provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee & Making of Reservations) Act 2006.

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23. Non Resident Indian (NRI) SEATS 15% seats in all private Institutes/University College and 13 seats each in Govt. Medical College, Patiala and Amritsar and 3 seats in Govt. Dental College, Amritsar and 4 seats in Govt. Dental College, Patiala shall be earmarked for the Non Resident Indians in the following order:

Category I: NRI's/Children of NRI's who originally belong to the State of Punjab.

Category II: NRI's/Children of NRI's who originally belong to an Indian State other than Punjab.

(i) A person who originally belongs to India and holds Foreign Country Passport or Green Card or Permanent Resident Card or Proof of Residency of Foreign country issued by competent authority shall be considered under NRI quota,

(ii) The eligibility of the candidates will be determined by the Baba Farid University of Health Sciences, Faridkot, who will issue an eligibility certificate to each such candidate.

(iii) Seats under NRI quota would be firstly filled by Category-I candidates. In case seats remain vacant only then Candidates of Category-II would be considered. In other words if sufficient number of candidates under Category-I are eligible and available then they will be admitted first even if students under subsequent category i.e. category- II are higher in merit.

(iv) The fee notified for NRI category will be applicable to NRI candidates getting admission to Government Medical/Dental colleges also.

(v) The NRI students will have to give a bank guarantee/surety bond for the balance of fee, if they opt to pay the fee in installments as provided.

(vi) The centralized counseling of NRI quota seats will be held before the counseling for other categories. In case of any seat remaining vacant under NRI quota, during / after 2nd centralized counselling of NRI quota in state colleges, shall go to General category and in the unaided-private colleges/minority colleges shall go to General Category of the management/minority quota. The NRI left over seats converted into Government quota/ Management/ Minority quota will be filled by the Counselling Committee from amongst the eligible Candidates."

15. Clause 23 is pertaining to NRI category, which goes on to show that the NRI's are clubbed into two categories-one belonging to the State of Punjab and the other belonging to the Indian States other than Punjab. The person should originally belong to India and hold a foreign country passport or Green Card or permanent resident or proof of residency of a foreign country, to be considered for the said quota. The eligibility was to be determined under clause 23(ii) by the respondent-University and preference was to be given to Category-I, who belong to the State of Punjab and if any seats are available, then those seats are to be offered to the other candidates belonging to the other States even if they are higher in merit. As per clause 23(vi), the counselling was to be held before the counselling for other categories.

16. It is not disputed, as per the reply of the State, that in view of only 64 candidates having applied against total of 102 seats, only 13 had qualified and therefore, the remaining 89 seats were going abegging from the said category. As per the said clause, the seats were to go to the General Category after the 2nd centralised counselling and in the cases of Unaided Private Colleges/Minority Colleges were to go to the Management/Minority quota and the left over seats were to be filled amongst "eligible candidates". The issue which, thus, arises is that who are the "eligible candidates" which the respondent-University was

entitled to consider for filling up the seats. Clause 6 specifically provides that 50% marks are to be there in the 10+2 examination or equivalent examination and the qualifying examination is either the Higher Secondary Examination or the Indian School Certificate Examination or any other examination under clause 7(b), which is found equivalent to the Intermediate Science Examination having Science subjects. Clause 8 further provides that in order to be eligible for admission, it is necessary to obtain minimum 50% marks (45% for persons with locomotor disability of lower limbs and 40% for Scheduled Caste/Backward Caste categories) in PMET, 2015. Thus, the eligibility criteria has already been defined to the extent that the minimum of 50% marks in the PMET is the requirement, over and above the 50% marks obtained in 10+2 examination or its equivalent. As per clause 9, the candidates could only apply on the basis of the *inter se* merit of PMET, 2015. However, a condition was put that if the seats are still vacant, then the admissions would be done on the basis of the marks obtained in 10+2 qualifying examination. Similar provision was there in clause 4. The admission to private institutes was to be made on the basis of the provisions of the 2006 Act. It is, thus, apparent that as per the notification of the State itself, the eligible candidates were the one who had got 50% marks in the PMET, 2015. The admission was, thus, to be made on the strength of the said criteria. Under clause 23(vi), specifically it was notified that an effort would be first made to fill up the NRI quota seats before counselling of the other categories and the vacant seats were to go to the General Category of the Management quota in Unaided Private Colleges and similarly, to the General Category quota of the Government Colleges. It is, thus, apparent that the General Category candidates were to benefit as the ones' who had qualified the PMET, 2015 with 10+2 examination result with minimum of 50% marks. The argument that the seats first had to be offered to the NRI candidates who had obtained marks in the 10+2 and then be given to the General quota, if they remained vacant,

cannot be accepted, as the persons who are being, now, offered the seats are those persons who are not even eligible, as per the terms of the prospectus and the notification. The relevant portion of the public notice dated 06.08.2015, vide which the ineligible candidates would be getting admission, reads as under:

“(a) Those NRI's/Children of NRI's who originally belong to the State of Punjab and who have appeared in PMET-2015 and scored 50% Marks in 10+2 or equivalence examination.

(b) Those NRI's/Children of NRI's who originally belong to Indian States other than Punjab and who have appeared in PMET-2015 and scored at least 50% Marks in 10+2 or equivalence examination.

(c) Those NRI's/Children of NRI's who originally belong to the State of Punjab and scored at least 50% Marks in 10+2 or equivalence examination.

(d) Those NRI's/Children of NRI's who originally belong to Indian States other than Punjab and scored at least 50% Marks in 10+2 or equivalence examination.

Note: Rest of all the terms & conditions shall remain the same for NRI category admissions.”

17. Admittedly, private respondents, who are now seeking to support the action of the State, are such candidates who are seeking admission on the strength of the 10+2 marks and as per their application for impleadment, have neither sat in the PMET, 2015 nor had even applied for admission within the cut off period. Therefore, by virtue of resorting to public notice, the State is considering totally ineligible candidates to make the mark, over and above the candidates who have obtained at least 50% marks and a large number of vacant seats, as many as 89, would thus, firstly, be offered to the students who had secured more than 50% marks in the 10+2 and only if any left over seats are there, the balance would go to the General Category. A similar issue arose for the admission for the year 2014 in the case of **Jaspreet Singh Cheema** (supra), regarding admission in the Bachelor of Dental Surgery (BDS). The controversy involved therein was also the admissions made on the basis of 10+2 marks on account of the non-filling up of

the seats as the requisite number of candidates had not qualified in the 50% marks, conducted by the AIPMET, 2014. A special test was also, thereafter, held by the State to fill up the remaining seats, after issuing a corrigendum. Even then, the seats could not be filled up and the private institutes sought to fill up the seats on the basis of 10+2 marks. The said action was not approved by the State which issued a letter dated 13.02.2015 wherein the admission of the candidates who had not qualified the AIPMET, 2014 or the special test of the BDS course were not regularized and the colleges were directed to strike off the names of such candidates from the rolls of the colleges. The petitioners, in the said case, had also placed reliance upon the present notification dated 30.03.2015, to submit that admissions could be made on the basis of the marks obtained in the 10+2 qualifying examination. A Coordinate Bench of this Court had relied upon the letters issued by the MCI and the DCI on 06.07.2015/07.07.2015 to hold that the admissions have been made in violation of the prospectus and the regulations of the DCI and the MCI. Reliance had also been placed upon the judgment of the Apex Court in *Priya Gupta Vs. State of Chhattisgarh 2012(3) SCT 231* to come to the conclusion that the colleges had to choose their option by 30th April of the relevant year whether they were to be governed by the test conducted by the nominated State authority. Resultantly, the writ petitions were dismissed with liberty to the students to avail their civil and criminal remedies, in accordance with law, against the management of the respective colleges.

18. The said judgment was upheld by the Division Bench in LPA No.919 of 2015 titled *Aditi Sharma & others Vs. State of Punjab & others*, decided on 30.06.2015. The Division Bench formulated seven questions which squarely cover the issue against the State and the private respondents. The same read as under:

“(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.

(iii) It is also contended that only in the State of Punjab for the academic session 2014-15, the admission process has been based upon marks of All India Entrance Test, whereas earlier the admissions were based upon the marks obtained in the qualifying examination. Even in the neighbouring States, the admissions are conducted on the basis of marks obtained in the qualifying examination. Therefore, the action of the State Government in restricting admission only on the basis of marks obtained in All India Competitive entrance Test is illegal, discriminatory and arbitrary.

(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.

vii) Mr. M.K.Singla, learned counsel appearing in one of the appeals, relied upon a Division Bench judgment of this Court in CWP No.9495 of 2007 titled '*Sukhmeet Kaur Deol & others Vs. State of Punjab & others*' decided on 10.10.2007, to contend that since no timely action has been taken and that impugned order having been passed without complying with the principles of natural justice, therefore, the registration of the students cannot be denied."

19. It was, accordingly, held that the premier medical bodies would be competent to control and prescribe the minimum standards of medical education and to regulate their observance. The eligibility standards and qualifications and the regulations framed could not be said to be beyond the legislative competence. The CET was held to provide a uniform method of evaluation for the purpose of admission, especially where different Boards had conducted the qualifying examinations so that the variation of standards in the qualifying exams could be levelled out. The provisions of the 2006 Act were taken into consideration to come to the conclusion that once the State Government had chosen the CET as a method of fair and transparent admission process and not the qualifying examination in the year in question, admissions could not be made on the basis of the marks obtained in the qualifying examination and rather the issuance of the notification was an exercise by the State Government, in compliance of the provisions of Sections 3 & 4 of the Act. The said judgment was upheld by the Apex Court on 20.07.2015, by the dismissal of the Special Leave Petitions. The argument of the State Counsel that Clauses 4 & 9 give it the power to admit, is also contrary to the public notice issued, which goes on to show that the variation was

only on account of the judgment passed by the Division Bench of the Karnataka High Court and the dismissal of the SLP and the quashing of the circular dated 16.01.2015. The Division Bench of the Karnataka High Court had quashed the circular on the ground that there was a special legislation in place which excluded the NRI seats to be made basis of the CET. As noticed in the present case, the 2006 Act is already in place which gives the power to the State to decide whether the admission is to be made on the basis of the CET or the qualifying examination and a decision has already been taken. The prospectus, thus, has to be read in such a manner wherein the benefit of the vacant NRI seats has to be given to the General Category on account of the non-qualifications and the non-availability of the NRI candidates who have failed to secure the minimum 50% marks in the PMET, 2015.

Issue No. (iii): Whether the State, while issuing the public notice is violating the mandatory regulations of Graduate Medical Education, 1997, issued by the MCI and whether merit is a casualty on account of the State's action in granting admission to the NRI candidates who had not even applied by the cut-off date and whether the same is justifiable?

20. A perusal of the mandatory regulations of the MCI would go on to show that there should be uniform evaluation of the students who had given different qualifying examinations and would have different standards of proficiency. The argument that there was an Equivalence Committee by the State is of no help. The MCI being the premium medical agency and its regulations are binding upon the State and especially keeping in view the letters of the MCI/DCI dated 06.05.2015/07.05.2015, which specifically kept clause 4 in mind and had barred the State from making admissions on the basis of the 10+2 marks. Rather the MCI had specifically held that no such person was entitled for registration by the State Medical Council and given a mandate to the State not to enforce the said

clause. Relevant portion of the letter dated 06.05.2015, which was issued to the Directorate of Medical Education, Chandigarh and the Secretary(Health) reads as under:

“In view of the settled statutory position, the condition laid down by the Government of Punjab in its notification dated 30.03.2015 that “However, if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying examination)” is contrary to the mandate prescribed by the Graduate Medical Education Regulations, 1997. The consequence of any admission that is made contrary to the norms laid down by Graduate Medical Education Regulations, 1997 is that the qualification awarded to such person cannot be considered as a recognized medical qualification under the Indian Medical Council Act, 1956. Accordingly, such person is not entitled to granted registration by any State Medical Council.

Therefore, you are called upon to forthwith remove the aforesaid condition from the Notification and ensure that all admissions are made strictly in conformity with the provisions of Graduate Education Regulation, 1997 and is notified to all concerned. This may be treated as Most Urgent.

This issues with the approval of President, MCI.”

21. Similarly, the DCI had also issued letter to the Secretary of all States and to the Director of Medical Education, along with the Registrar of all concerned Universities and the Principals that the admission should be on the basis of the BDS course, Regulations 2007 which provided for a competitive examination, while referring to the provisions of the Dentists Act, 1948 also. Relevant portions 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."

22. The last date to apply for PMET, 2015 was 29.04.2015 and the same with late fees had to be deposited by 07.05.2015. The examination was held on 17.05.2015 and therefore, persons who had not even applied for the PMET have become eligible, as per the public notice and a set of ineligible NRI candidates are sought to be admitted over and above persons who have qualified the eligibility requirement by securing the requisite 50% marks in the PMET, though belonging to the General Category. By virtue of Clause 23(vi), they are entitled for admission against the said vacant seats and cannot be denied the benefit which the State is wanting to do, by resorting to the public notice, which is, accordingly, held to be impermissible.

23. Reliance upon the observations of the Apex Court in Dr.Preeti Srivastava's case (supra) by the MCI, is well justified. The primacy of the MCI was reiterated in the said case and it was held that to prevent sub-standard entrance qualifications for the medical courses, it was an expert body to set up to control the minimum standards of the medical education and regulate their observance and primacy was given over the State. The benefits of the CET were also highlighted on the ground that it would lead to a uniform criteria for judging the merits of candidates coming from different Universities. 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 pre-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 specialised 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 specialised education and the need to provide for some room for the backward even at the stage of specialised post-graduate education which is one step below the super specialities.

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 speciality of their choice. It is in public interest that they have this level of excellence.

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57. 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.

58. The Regulations governing post-graduate medical education already referred to earlier, provide for admission on the basis of merit. The Regulations, however, have not clearly spelt out whether there can or cannot be, any reservations for Scheduled Castes, Scheduled Tribes and/or backward class candidates at the stage of post-graduate medical admissions. Whether such a reservation would impinge on the standards or not would depend upon the manner in which such reservation is made, and whether the minimum qualifying marks for the reserved categories are properly fixed or not. It is for the Medical Council of India to lay down proper norms in this area and to prescribe whether the minimum qualifying marks for the admission of students in the reserved category can be less than the minimum qualifying marks for the general category students at the post-graduate level; and if so, to what extent. Even if we accept the contention of the respondents that for the reserved category candidates also, their inter se merit is the criterion for selection, although for the reserved category of candidates lower minimum qualifying marks are prescribed, the merit which is envisaged under the [Indian Medical Council Act](#) or its Regulations is comparative merit for all categories of candidates. For admission to a post-graduate course in medicine, the merit criterion cannot be so diluted by the State as to affect the standards of post-graduate medical education as prescribed under the Regulations framed by the Indian Medical Council. It is for the Indian Medical Council to consider whether lower minimum qualifying marks can be prescribed at the post-graduate level for the reserved category candidates. We have already opined that the minimum qualifying

marks of 20% as compared to 45% for the general category candidates appear to be too low. This would make it difficult for the reserved category candidates to bring their performance on a par with general category candidates in the course of post-graduate studies and before they qualify in the post-graduate examination. It is also necessary in public interest to ensure that the candidates at the post-graduate level have not just passed the examination, but they have profited from their studies in a manner which makes them capable of making their own contribution, that they are capable of diagnosing difficult medical conditions with a certain degree of expertise, and are capable of rendering to the ill, specialised services of a certain acceptable standard expected of doctors with specialised training.”

Issue No. (iv): Whether the NRI candidates are special category and the petitioners would have no claim to the said seats under the 2006 Act and whether the NRI's were exempted and could be admitted on the basis of their qualifying marks and the State Government was competent to drop the bar of eligibility?

24. The NRI candidates are no doubt special category candidates for whom 15% seats have been reserved, in pursuance of the observations of the Apex Court in **P.A.Inamdar's case** (supra). 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.”

In the said para of the judgment, it was itself noted that students who get admission under this category are usually less meritorious students who can afford to get in money and could get admission for the benefit of the educational institutions. Accordingly, the observations were made to create a reservation not exceeding 15%, subject to the utilization of the seats from *bona fide* NRI's and for their children or wards and within the quota merit was not to be given a complete go by. The regulations needed to be framed as per the Apex Court and the State of Punjab has specifically framed the 2006 Act in which the 15% seats have been set aside in private institutes, apart from the 13 seats in the Government Medical Colleges and 7 seats in the Government Dental Colleges which have to be filled. The Act specifically provides under Section 3(3) that admissions made in the Private Health Institutes should be in a fair and transparent manner, on the basis of *inter se* merit, determined by the CET or the qualifying examinations, as per the decision of the Government, in accordance with the procedure notified in the

official Gazette. It is not disputed that the State took a decision to hold the CET for the NRI's also. The argument of the counsel for the State that under Section 4 (3), there was an exemption provided and the NRI's could be admitted under Section 5(5), on the basis of the qualifying examination, is without any basis. Once the decision has been taken on the basis of the notification under Section 3 (3), resort to the qualifying examination was not the right move by the State. As noticed earlier, it would also be violative of the mandatory provisions of the MCI Regulations, which is the parent body. Sections 2(e), 3, 4 & 5 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 reserve 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.

[(5) In the case of admission of Foreign Indian Students,-

(a) a private health sciences educational institution may admit such students in undergraduate courses against such number of seats and such courses, as may be notified by the State Government,

after recording reasons therefor in writing :

Provided that the total number of seats for the Foreign Indian Students shall not exceed fifteen per cent of the total sanctioned intake ;

(b) admission shall be made, against the seats, notified as management category ; and

(c) admission shall be made as per the procedure, notified by the State Government in a fair and transparent manner in the presence of the representative of the University to which it is affiliated, in accordance with the inter se merit, determined on the basis of the Qualifying Examination or its equivalent as may be notified by the State Government.]”

25. Merely because the NRI candidates are special category and 15% seats are reserved under the Act would not entitle them for admission regardless of the merit. The sheer money power paying capacity is not the only criteria which would entitle them for admission and only on account of their financial weight, they cannot bully their way in irrespective of the fact that they do not have the minimum qualifications prescribed by the MCI and as noticed, the private-respondents have not even applied in pursuance of the PMET, 2015 and are, now, flocking to make the cut on the strength of their 10+2 examinations, which the State is, unfortunately, encouraging.

26. This Court in CWP No.7785 of 2014 titled *Dr. Guninder Singh Guron & others Vs. State of Punjab & others*, dismissed the writ petition on 27.05.2015 against the order of the MCI whereby it had rejected the representation of the State to grant relaxation of 5% marks in the All India Post Graduate Medical Entrance Examination, regarding the category of 60% quota candidates (PCMS In-service Doctors). It was, accordingly, held that the minimum percentage provided of 50% would not be lowered by the University or the Government than what had been set out by the MCI. Reliance was placed upon the judgments of the Apex Court in *State of Punjab Vs. Dayanand Medical College & Hospital & others (2001) 8 SCC 664* and *State of Madhya Pradesh Vs. Gopal D. Tirthani (2003) 7*

SCC 83. It can be noticed that the conditions in Clauses 4 & 9 may have been incorporated by the State, on its experience of last year's seats going vacant in the BDS course. However, such a clause cannot be inserted and the eligibility bar cannot be dropped beyond the norms prescribed by the MCI, as has been held by the Apex Court.

27. Once there is a State legislation in place which provided that admission to the NRI category could be by both the modems and the State had taken a decision as per the statute itself that the NRI seats were to be filled on the basis of the PMET, eligible candidates would be one who had secured 50% marks and it would not lie in the mouth of the State, now, that they could resort to eligibility of 10+2 and thus, admit NRI students who had failed to make the cut. The petitioner would, thus, have a right to stake a claim, in view of Clause 23(vi) and the reserved seats would necessarily have to flow to the General Category candidates. Accordingly, issue No. (iv) is decided in favour of the petitioners and against the State.

28. Accordingly, the writ petition is allowed and the public notice dated 06.08.2015 (Annexure P6) is quashed. The State is directed to fill up the vacant NRI category seats as per Clause 23(vi) by calling the candidates from the General Category, who have got 50% marks in the PMET, 2015, firstly, who are the eligible candidates.

29.09.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE