

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. Civil Writ Petition No.21777 of 2015
Reserved on 19.11.2015.
Date of decision: 2.12.2015**

Punjab Private Self Financed Dental College Association ...**Petitioner**

Versus

State of Punjab and others ...**Respondents**

2. Civil Writ Petition No.21074 of 2015

Anhadraj Singh ...**Petitioner**

Versus

State of Punjab and others ...**Respondents**

3. Civil Writ Petition No.21078 of 2015

Amandeep Kaur and others ...**Petitioners**

Versus

State of Punjab and others ...**Respondents**

4. Civil Writ Petition No.23692 of 2015

Bhavika and others ...**Petitioners**

Versus

State of Punjab and others ...**Respondents**

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

Present: Mr. Rupinder Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate for the petitioners
(in CWP No.21777 of 2015).

Mr. Deepak Sabherwal, Advocate for the petitioner
(in CWP No.21074 of 2015).

Mr. K.V.Aggarwal, Advocate for the petitioners
(in CWP No.21078 of 2015).

Ms. Anu Chaudhary, Advocate for the petitioners
(in CWP No.23692 of 2015).

Mr. A.P.S.Mann, Additional Advocate General, Punjab

Mr. Rohit Samhotra, Advocate for the respondents.

Mr. Manish Dadwal, Advocate.

Ms. Shivangi Sharma, Advocate for DCI.

G.S.SANDHAWALIA, J.

This order shall dispose of Civil Writ Petitions No.21777, 21074, 21078 and 23692 of 2015 as common question of facts and law are involved in these three writ petitions. However, for dictating the judgment, the facts have been taken from Civil Writ Petition No.21777 of 2015.

The petitioner association is said to have 12 colleges as members who are aggrieved by the action of the State.

Challenge in the present writ petition is to the corrigendum dated 29.9.2015 (Annexure P/5) whereby the State has deleted clauses by which admission to MBBS/BDS courses in the Medical/Dental Institutes in the State of Punjab for the session 2015-16 could be made on the basis of the marks obtained in 10+2 (qualifying exam) pertaining to the vacant seats. A writ of mandamus is also prayed for to allow the petitioner colleges to admit the students against the vacant seats in accordance with the procedure prescribed in the prospectus issued by respondent no.2-University or pay the whole financial loss due to the respondents act for survival of the colleges.

As per pleadings it is the case of the petitioner that on 30.3.2015 (Annexure P/1), a notification has been issued regarding admission to MBBS/BDS course for the session 2015-16. The said notification provided that admissions to vacant seats of MBBS/BDS courses could be done on the basis of marks obtained in 10+2 (qualifying exam) as per clauses 4,9 and 22. The PMET-2015 was conducted by the respondent no.2-University on 17.5.2015 and result was declared on

18.5.2015. On account of litigation before this Court, final list could only be prepared on 8.9.2015 and after second round of counselling large number of seats to the extent of 600 remained vacant in BDS course. Respondent no.2 conducted third round of counselling on 29.9.2015 which was in violation of the notification dated 30.3.2015 since seats have to be filled up on the basis of interse merit in the qualifying exam. The petitioner association made a request that in case the University failed to give 100 % seats candidates be invited by invoking clause 15 of the Prospectus. However, a corrigendum dated 29.9.2015 (Annexure P/5) was issued deleting portion of Clauses 4,9 and 22 wherein there was a provision for admitting the candidates on the basis of marks obtained in the 10+2 (qualifying exam). Therefore, the petitioner association was aggrieved since 1100 seats were available in the colleges of the petitioner association which were vacant and therefore well established infrastructure was going waste. Resultantly the present writ petition has been filed seeking extension of the period of admission and striking down of the said clauses.

The State in its short reply took the plea that after 30th September no admission could be made in view of the order of the Apex Court. The provisions for admission on the basis of marks obtained in 10+2 (qualifying exam) have been made on account of the fact that interest of the institutes had to be kept in mind. Last year less number of students could qualify the entrance exam and the State had to conduct special test for admission to BDS course. However, the Dental Council of India-respondent no.3 had taken a serious view of this public notice and warned against violation of the provisions as prescribed in the Revised BDS Course Regulations, 2007. Similar letter dated 22.9.2015 was issued and keeping in view the same, corrigendum dated 29.9.2015 has been issued. If the admissions to the BDS Course were made on the basis of the marks

Civil Writ Petition No.21777 of 2015 & connected petitions. **-4-**

obtained in 10+2 (qualifying exam) the degrees would not be recognised by the Dental Council of India. Reference was made to the controversy of the last year where more than 400 students were admitted on the basis of marks obtained in 10+2 (qualifying exam) at their own level against the guidelines by the private colleges. The said admissions were not recognised and students could not get the relief even from the Apex Court.

The Dental Council of India in its reply filed in Civil Writ Petition No.21078 of 2015 which was adopted in other cases placed reliance upon the Dental Council of India Revised BDS Course Regulations, 2007 (Annexure R-3/1 (hereinafter referred to as “the BDS Regulations, 2007)). The plea taken was that merit was the criteria for admission and letter dated 7.5.2015 (Annexure R-3/2) had been issued to all the Secretaries (Health) and Directors of Medical Education of the all States/UTs to bring to their notice that admissions being made on the strength of marks obtained in 10+2 (qualifying exam) was in violation of the BDS Regulations, 2007. Where there were more than one Universities and Boards conducting the qualifying examination, competitive entrance examination should be held so that a uniform evaluation can be achieved. Reliance was placed upon the judgment in **Civil Writ Petition No.6549 of 2015-Jaspreet Singh Cheema and others Vs. State of Punjab and others** decided on 15.6.2015 (Annexure R-3/3) wherein for the year 2014 admissions had been made to the BDS Course on the basis of marks obtained in 10+2 (qualifying exam) since requisite number of candidates had not qualified in the AIPMET-2014. A special test had also been conducted thereafter by the State after issuing corrigendum. Even then the seats could not be filled up and thereafter the private institutes had again sought to fill up seats on the basis of marks obtained in 10+2 (qualifying exam). The said action had not been approved by the State which had issued letter dated 13.2.2015

and the colleges were directed to strike off the names of such candidates from the rolls of the colleges. The said writ petition challenging the action of the State was dismissed by this Court which was upheld by a Division Bench of this Court in **LPA No.919 of 2015-Aditi Sharma and others Vs. State of Punjab and others** decided on 2.7.2015 (Annexure R-3/4). Reliance was also placed upon the letter dated 22.9.2015 (Annexure R-3/5) issued by the Dental Council of India.

Senior counsel for the petitioner has thus submitted that the prospectus has a binding force of law and that there was a provision in the notification and prospectus itself that students could be admitted on the strength of marks obtained in 10+2 (qualifying exam) also. Therefore at the last moment change made was not justified. It is submitted that the BDS Course Regulations, 2007 has also provided a fall back on the marks of 10+2 exam and thus the colleges should be permitted to make admissions on the basis of marks obtained in 10+2 (qualifying exam).

Mr. APS Mann, Addl. Advocate General, Punjab on the other hand on behalf of the State submitted that students who had not qualified by getting the requisite number of marks in the combined entrance test were not eligible for admissions. It was submitted that provisions which had been deleted by the corrigendum had been inserted in view of the last year problem and therefore, the petitioner has no right to claim admissions to be made on the strength of marks obtained in 10+2 (qualifying exam). It was further submitted that the notification could be duly amended to bring it in consonance with the mandatory regulations of the DCI.

The question thus arises is as to whether the State could amend the notification dated 30.3.2015 which is part of the prospectus and whether admissions could be made in violation of the BDS Regulations, 2007.

Relevant clauses of the notification 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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22. Procedure for filling left over seats in private/minority institutes:

For all the leftover seats in Private or Government Medical/Dental Colleges the counselling will be held at GGS Medical College Faridkot with the same merit as that of PMET-2015 or inter se merit on the basis of qualifying exam. No fresh applications will be called by individual institutions.”

A reading of the aforesaid Clause 10 would go on to show that the provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee & Making of Reservations) Act 2006 (hereinafter referred to as “the 2006 Act”) would prevail for making admissions to private institutions. The said Act was enforced in view of the judgment of the Apex Court in **P.A.Inamdar & others Vs. State of Maharashtra & others 2005(6) SCC 537** wherein the

Apex Court answered the question as to what extent the State can regulate admission to Unaided Minority or Non-Minority Educational Institutions. It was, accordingly, held that education being a dynamic field, it would be permissible to regulate the admission to the Unaided Educational Institutions in order to promote merit, achieve excellence and curb malpractices, by a centralized and single window procedure. It was, accordingly, directed that it was for the Central Government or the State Government to come out with a detailed well thought legislation, which is long awaited. The Act was, thereafter, notified by the State, keeping in view the observations made by the Constitutional bench, which has further been upheld by the Full Bench of this Court in **Navdeep Kaur Gill & others Vs. State of Punjab 2014 (3) SCT 110.**

The 2006 Act specifically provided under Section 3(3) that admissions to be made in private health Institutes should be in fair and transparent manner on the basis of interse merit determined by the CET or qualifying exams as per the decision of the Government in accordance with the procedure notified in the official gazette. The notification dated 30.3.2015 was thus a decision taken to resort to the common entrance test and it was specifically mentioned under Clause 8 the candidate was to obtain minimum of 50% marks to be eligible for admission to the BDS Course. A candidate could only apply in a specific proforma after being eligible on the basis of interse merit of PMET-2015. Relevant portion of the provisions of the 2006 Act reads 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.]”

The eligibility criteria for admissions was thus determined and notified by the State and a decision to conduct centralised counselling for admission on the basis of 50% marks obtained in the PMET-2015 was taken.

Reference to Sections 4(2) and (3) would go on to show that common entrance test is the criteria under the Act and 50% marks had to be obtained in the PMET-2015. The purpose of putting in the condition of 50% marks was to ensure that there was merit of the students who are admitted which is the criteria which has also been laid down by the Constitutional Bench in **P.A. Inamdar's case** (supra) wherein it has been held that merit is not to be sacrificed and admissions had to be on the basis of fair, transparent and non-exploitative **method** which was the triple test to fulfill the objective of learning at the graduate and post-graduate levels. Relevant observations read as under:-

“118. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may

itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralized counseling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit inter se of the students so chosen.

119. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit- based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

120. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.”

The State, however, as noticed has deleted the clause whereby the merit of qualifying exam 10+2 had been laid down. This alteration has been since under the 2007 BDS Regulations there were similar provisions that the students should get 50% in the competitive examination (CET). The deletion which was made on 29.9.2015 reads as under:

“In partial modification of the notification No.5/35/2014-5HB-III/559 dated 30.3.32015.

1. The following part of clause 4 is hereby deleted:-
However if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam)”
2. The following part of clause 9 is hereby deleted:-
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.
3. The following part of clause 9 is hereby deleted:-
“or inter-se merit on the basis of qualifying exam”

Note: These deletions are made as per MCI/DCI guidelines.”

A perusal of the above would go on to show that it was done as per MCI/DCI guidelines and thus even if the alteration was done it was in view of the binding nature under 2007 BDS Regulations and no fault can be found with the action of the State.

Though it is not disputed that there was provision in Clauses 4,9 and 22 that if seats remain vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam). Yet the BDS Regulations, 2007 provides that the eligibility criteria for admissions to BDS course can be by 10+2 requirement subject to only one Board being available. In Clause II selection of the students is to be done by adopting uniform procedure through out the country. Clause II(2) provides that the States having more than one University/Board or examining body conducting the qualifying examination, a competitive entrance examination should be held for achieving a uniform evaluation. The relevant provisions read as under:-

“II. Selection of students: The selection of students to dental colleges 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.
5. Procedure for selection to BDS 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 BDS 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. 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 and must have passing marks in English.
 - 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 and Biology at the qualifying examination 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.
 - 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 and Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination

and in addition must have come in the merit list prepared as a result of such competitive entrance examination at securing not less than 50% in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Caste, Scheduled Tribes or any other categories notified by the Government 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 BDS course, he shall not be admitted to that course until he fulfills the eligibility criteria as per above regulations.”

In view of these provisions, it is not disputed that the State had been informed vide letter dated 7.5.2015 regarding the mandatory nature of competitive examination and the exception was only where the State had only one Dental College and one University/Board/examining body conducting the qualifying examination. Resultantly, the Dental Colleges were directed not to admit the students in violation of the BDS Regulations, 2007 without them appearing/qualifying in the respective competitive examination. The said issue was further clarified on 22.9.2015 (Annexure R-3/5) and the Secretaries Health and the Principals of All the Dental Colleges were informed that admissions could not be made beyond 30.9.2015. The details of the students who had been admitted by 30.9.2015 were to be uploaded. Relevant part of the letter reads as under:-

“I am directed to say 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 without qualifying competitive entrance examination(CET) which is mandatory as per Revised BDS Course Regulations, 2007, whereas the Revised BDS Course Regulations, 2007 clearly indicates the the competitive entrance examination (CET) is **MANDATORY** for admissions to BDS Course, **except** 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. It is also stated that as per Time Schedule annexed to DCI Regulations, 2006 the last date for admitting students to BDS Course is 30th September, 2015 for the academic session 2015-16 or any other date as the Hon'ble Supreme Court may extend for the academic year 2015-16 as prescribed in Time Schedule laid down by the Hon'ble Supreme Court in para 31 of Mridul Dhar Vs. UOI (2005) 2 SCC 65.

3. Accordingly, all the dental colleges are under statutory obligation to furnish the list of the students admitted by them in BDS Course (Both under Govt. & Management Quotas) in the prescribed format to this Council.

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5. In view of the above, the college authorities of all dental colleges are hereby directed to upload the details of students, admitted in BDS Course at their dental institutions for the academic session 2015-16 on DCI Website, using their already allotted login credentials, by **30.9.2015 (12.00 midnight) positively**, or any other date as the Hon'ble Supreme Court may extend for the academic year 2015-16 and the online module for uploading the details of students shall be disabled at 12.00 mid-night on 30.9.2015, failing which it will be presumed that the colleges authorities have not admitted any student in BDS Course at their college for the academic session 2015-16. In case of any problem, you may contact DCI for technical support at helpdciindia@gmail.com or call DCI on

011-28238542.

6. In case any admission(s) is/are made in violation of Revised BDS Course Regulations, 2007 as mentioned in para one and the Time Schedule for the academic session 2015-16 as mentioned in para 2 and non compliance of uploading the details of the students on DCI Website as mentioned in para 5 and/or in violation of the provision of the Dentists Act and Regulations made thereunder, the provisions of the Section 10B of the Dentists (Amendment) Act, 1993 providing for non-recognition of dental qualification in respect of such students or the provisions of Section 16A for withdrawal of recognition for violation of conditions of admissions as the case may be, would be initiated against such erring dental college(s).

7. The earlier circular No. DE-BDS(Gen) Students-2015/8645 dated 18.9.2015 on the subject cited above is hereby withdrawn as cancelled with immediate effect. Inconvenience caused, if any, is deeply regretted.

8. This issue with prior approval of the competent authority.”

Thus, it is apparent that the Clauses 4,9 and 22 providing admission on the basis of marks obtained in 10+2 (qualifying exam) were in violation of the provisions of BDS Regulations, 2007. The State had been warned well within time on 7.5.2015 itself but failed to take remedial action immediately.

It is not disputed that the Dental Council of India is the paramount medical agency at the national level whose regulations are binding upon the State Governments also. Reference in this regard can be made to the judgment of the Hon'ble Apex Court in **Dr. Preeti Srivastava and Others v. The State of Madhya Pradesh and Others 1999(7) SCC 120**. In the said authority, the benefits of the entrance examination and the qualifying marks were examined and it was held that Common Entrance Test provides a uniform evaluation criterion for judging the merit of all the candidates who come from different universities. The difference in the

standard of marking and teaching was noticed by the Hon'ble Apex Court and the need for having competent students for specialized education and the purpose of the Common Entrance Test was felt and the argument that there need not be any qualifying marks for the common entrance test was rejected. The relevant observations read as under:-

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

27. When a common entrance examination is held for admission to postgraduate medical courses, it is important that passing marks or minimum qualifying marks are prescribed for the examination. It was, however, contended before us by learned counsel appearing for the State of Madhya Pradesh that there is no need to prescribe any minimum qualifying marks in the common entrance examination. Because all the candidates who appear for the common entrance examination have passed the M.B.B.S. examination which is an essential per-requisite for admission to postgraduate medical courses. The PGMEET is merely for screening the eligible candidates.

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

entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the M.B.B.S. examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the M.B.B.S. examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the M.B.B.S. examination from more "generous" universities, may not qualify at the entrance examination where a better and is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialized education and the need to provide for some room for the backward even at the stage of specialized post-graduate education which is one step below the super specialties.

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

India has permitted the reserved category candidates to be admitted if they have obtained the qualifying marks of 35% as against the qualifying marks of 45% for the general category candidates. It is, therefore, basically for an expert body like the Medical Council of India to determine whether in the common entrance examination viz. PGMEET, lower qualifying marks can be prescribed for the reserved category of candidates as against the general category of candidates; and if so, how much lower. There cannot, however, be a big disparity in the qualifying marks for the reserved category of candidates and the general category of candidates at the post-graduate level. This level is only one step below the apex level of medical training and education where no reservations are permissible and selections are entirely on merit. At only one step below this level the disparity in qualifying marks, if the expert body permits it, must be minimal. It must be kept at a level where it is possible for the reserved category candidates to come up to a certain level of excellence when they qualify in the specialty of their choice. It is in public interest that they have this level of excellence.”

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

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

58. In the case of **Medical Council of India v. State of Karnataka & Ors. ([1998] 6 SCC 131)** a bench of three judges of this Court has distinguished the observations made in Kumari Nivedita Jain (supra). It has also disagreed

with Ajay Kumar Singh & Ors. v. State of Bihar & Ors (supra) and has come to the conclusion that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with admissions to the M.B.B.S. course and the Regulations framed by the Indian Medical Council relating to admission to the M.B.B.S. course. The Court took note of the observations in State of Kerala v. Kumari T.P. Roshana & Anr. ([1979] 1 SCC 572 at page 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.”

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

63. In the premises, we agree with the reasoning and conclusion in **Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. (supra)** and we overrule the reasoning and conclusions in Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra) and Post Graduate Institute of Medical

Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. (supra). To conclude:

1. We have not examined the question whether reservations are permissible at the postgraduate level of medical education;
2. A common entrance examination envisaged under the Regulations framed by the Medical Council of India for post-graduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.
3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of medical education is a question which must be decided by the Medical Council of India since it affects standards of post-graduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the post-graduate level and contrary to public interest.
4. At the level of admission to the super specialty courses, no special provisions are permissible, they being contrary to national interest. Merit alone can be the basis of selection.”

The Dental Council of India was well justified in placing reliance upon **Jaspreet Singh Cheema's case** (supra) wherein similar issue cropped up though there was no such provision in the prospectus but admissions had been made in violation of the prospectus. In the present case as noticed the provisions had been incorporated which are contrary to the BDS Regulations, 2007. It is settled position that there can no estoppel

against the statute and the petitioner thus cannot fall back upon the provisions of the notification/prospectus and submit that the State had no jurisdiction and vary the same if they were conflict in the terms of the statute.

Accordingly, the corrigendum dated 29.9.2015 is not open to challenge.

The claim of not filling up the seats and petitioner facing loss was also subject matter of consideration before the Division Bench in **Aditi Sharma's case** (supra). The non-filling of the seats was held not to be an exceptional circumstance and it was held that it was commercial decision of the private institutes/Dental Colleges and on account of statutory regulations they were not allowed to admit the students. The eligibility of merit in the common entrance test could not be wished away as has now been contended. Relevant questions framed and answer given by the Division Bench reads as under:-

“(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.”

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According to the learned counsel for the appellants in respect of the fourth argument, the vacant seats available with some of the dental institutions in the State is an exceptional circumstance, which could be filled up by the Principals of the concerned institutions in terms of sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014. Firstly, mere availability of seats is not an exceptional circumstance. The private institutes have been set up keeping in view their perception that students would be available for admission. If particular numbers of students are not available as per the Regulations framed under the

Statute, it will not be a case of exceptional circumstance. It is commercial decision of the private institutes to start dental education. Merely because they are not able to admit students in terms of the statutory regulations, such fact cannot be treated as an exceptional circumstance. Secondly, even if availability of seats is an exceptional circumstance, sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014 does not empower a private institute to admit students otherwise on the basis of merit in the competitive entrance examination. After the second counselling, the Principal of the Institute concerned is competent to admit students after associating the representatives of the Government and the University, but on the basis of merit in the common entrance test alone. Therefore, even if exceptional circumstances exist, the merit in the common entrance examination cannot be wished away. The admission to the course can be only on the basis of entrance test as per the notification dated 7.3.2014 issued in terms of Section 3 and 4 of the Act. It is an absolute condition in sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014 as well. Therefore, no admission by a private institute could be made other than on the basis of common entrance test.”

The above said discussion answers the question against the petitioner regarding claim of admission to the vacant seats and the loss being suffered by them. Resultantly no relief can be granted to the petitioner.

Another factor which prevails with this Court at this point of time is that period of more than two months have gone by since the last date of admissions i.e. 30.9.2025 as per the schedule laid down by the Apex Court in **Medical Council of India Vs. Madhu Singh (2002) 7 SCC 258**, **Neelu Arora Vs. Union of India (2003) 3 SCC 366**, **Mridul Dhar Vs. Union of India (2005) 2 SCC 65** and **Medical Council of India Vs. Naina Verma (2005) 12 SCC 626** . Thus at this point of time , no relief can

also be granted to the petitioners on this account.

Accordingly, all the four writ petitions are dismissed.

A photo copy of this order be placed on the record of each connected case file.

December 2nd , 2015
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(G.S.SANDHAWALIA)
Judge