

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1545 of 2014 (O&M)
Date of Decision: 02.12.2015

Dr. Vibha Hans and others

....Appellants

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Puneet Bali, Senior Advocate with Mr. Vibhav Jain,
Advocate and Ms.Vandana, Advocate for the appellants.

Mr. Gaurav Pathania, Advocate and Mr. Bhuvnesh Satija,
Advocate for appellant in LPA No.1929 of 2014.

Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Arjun Partap Ram, Advocate for appellant in LPA
No.1790 of 2014 and for respondent No.9 and with Sh.
Vikas Kathuria, Advocate for respondent No.6.

Mr. Vikas Kathuria, Advocate for respondent No.5.

Mr.Ashok Aggarwal, Senior Advocate with
Mr. Kamal Sehgal, Advocate and Mr.Rajesh Hooda,
Advocate for the appellant in LPAs No.1935 & 1936 of
2014 and for respondent No.8.

Mr. R.K. Makkad, DAG, Haryana, with
Mr.Vivek Saini, Assistant Advocate General,
Haryana for respondents No.1 and 4.

Mr.Gurminder Singh, Senior Advocate with
Mr.J.S.Gill, Advocate for respondent No.2-
Dental Council of India.

Mr.Ramesh Hooda, Advocate for respondent No.3 -
Pt. B.D. Sharma, University of Health Sciences, Rohtak.

Mr.Arun Gosain, Advocate for respondent No.1 in
in LPA No.1790 of 2014 and LPA No.1936 of 2014 -
Union of India.

S.S. Saron, J

This order will dispose of LPA No.1545 of 2014 filed by Dr. Vibha Hans and 27 other doctors; LPA No.1929 of 2014 filed by Dr. Gunjan Satija; LPAs No.1935 and 1936 of 2014 filed by Sri Govind Tricentenary Dental College, Hospital and Research Institute now SGT University, Gurgaon and LPA No.1790 of 2014 filed by Sudha Rustagi, College of Dental Science and Research, Faridabad and J.N. Kapoor DAV Centenary Dental College, Yamuna Nagar as these arise out of the common judgment and order dated 21.08.2014 passed by the learned Single Judge in the respective writ petitions filed by the appellants.

The appellants in LPA No.1545 of 2014 Dr. Vibha Hans and others and appellant in LPA No.1929 of 2014 Dr. Gunjan Satija were candidates seeking admissions to the Masters of Dental ('MDS' – for short) Course being conducted by the Pandit B.D. Sharma, University of Health Sciences, Rohtak ('Pt. B.D. Sharma University' – for short) for the academic Session 2010-11. They all are qualified doctors in the field of Dental surgery having passed their Bachelor of Dental Surgery ('BDS' – for short) examinations and obtained a degree from a recognized University. They all are registered as Dental Surgeons with the State Dental Council. They secured more than 50% marks in the BDS examinations.

The appellants in LPAs No.1935-36 and 1790 of 2014 namely Sri Govind Tricentenary Dental College, Hospital and Research Institute now SGT University, Gurgaon; Sudha Rustagi, College of Dental Science and Research, Faridabad and J.N. Kapoor DAV Centenary Dental College, Yamuna Nagar, respectively, are

private Dental Colleges in the State of Haryana. They formed an Association of Post Graduate Dental Colleges of Haryana (Regd.) ('Association' – for short). The said Association was to conduct their own entrance test for admissions to the three years MDS Course of the Pt. B.D. Sharma University. The State Admission Committee formed by the Haryana State Government vide its letter dated 19.02.2010 and 07.04.2010 allowed the Association to conduct its own entrance test for admissions to the MDS Course for the academic Session 2010-11. The Association accordingly issued a prospectus cum application form, which was advertised on 13.04.2010. In terms of the prospectus that was issued, the date for conducting the entrance examination for candidates seeking admissions to the MDS Course for the session 2010-11 in the University was fixed as 09.05.2010. However, the State Government/State Admission Committee did not facilitate in the conduct of the test, which was not held on the date fixed. The Association accordingly approached this Court by way of Civil Writ Petition No.9078 of 2010 titled 'Association of Post Graduate Dental Colleges of Haryana v. State of Haryana and others' praying for directing the State of Haryana to facilitate the holding of the entrance test for the MDS Course. This Court vide interim order dated 18.05.2010 allowed the Association to conduct the entrance test for the MDS Course for the Session 2010-11 subject to certain conditions. It was observed that the State Admission Committee, which was appointed in accordance with the directions of the Supreme Court in Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 had issued guidelines dated

07.04.2010 for the conduct of entrance test. It was noticed that there were some discrepancies in the guidelines that were issued, which were required to be rectified for which sometime was also required. However, keeping in view the urgency for the conduct of the examinations on account of the time schedule, it was deemed necessary that immediate directions were issued for the fair and smooth conduct of the examinations in the colleges represented by the Association. There seemed to be difference of perception between the State Admission Committee and the Association. However, for the time being certain directions were issued, which included that the Association shall nominate two of the four members of the State Admission Committee, who shall be associated by the said Committee at the time of opening question papers, collection of answer-sheets, question papers after the conduct of the examination; besides, answer-sheets were to be evaluated at the examination centre itself on the same day by an agency nominated by the State Admission Committee for the purpose of evaluation at the examination centre. The result was to be prepared and declared on the same day in the presence of the nominees of the Association. The State Admission Committee was to adhere to the guidelines dated 07.04.2010 as far as practical and subject to the directions. The admissions to the MDS Course were to be made in accordance with the guidelines on merits of the candidates in the entrance examination. The case before this Court was adjourned to 30.07.2010.

The entrance test was conducted on 23.05.2010 in consequence of the interim order dated 18.05.2010 passed by this

Court. The result was declared on the same day. A total of 96 candidates appeared for 64 seats of the MDS Course and only 12 candidates out of the total of 96 candidates who appeared cleared the entrance examination. The 12 candidates who cleared the examinations secured more than 50% marks in the entrance test, which was a condition in the prospectus issued by the Association.

A public notice was then issued in the newspaper 'Amar Ujala' on 28.05.2010 stating that counselling for admissions to the MDS Course would be held at Karnal on 29.05.2010. A press note also appeared in 'The Tribune' on 29.05.2010 under the caption 'MDS counselling today'. According to the news item, the counselling for filling the MDS seats in private Dental Colleges of the State of Haryana was fixed to be held at SBS Senior Secondary School, Railway Road, Karnal on 29.05.2010. It was to start at 12.00 noon as was stated by a spokesman of the Pandit B.D. Sharma University of Health Sciences. All candidates, who had secured 50% or above marks in the above referred entrance examination were eligible to appear for the counselling. Out of the 12 candidates, who qualified the entrance examination with 50% and above marks, two of them dropped out and ten candidates claimed admissions and were admitted.

The Government of Haryana had also conducted an entrance test for four seats in the Post Graduate Institute of Dental Sciences, Rohtak, which is under the Pandit B. D. Sharma University. Fifteen candidates, who appeared for the examination conducted by the State of Haryana but did not qualify to the four seats were permitted to appear in the counselling held on

29.05.2010 for admissions to the private Dental Colleges of the Association; besides, counselling was also held for the seven seats earmarked for the NRI quota. The fifteen candidates who had taken the examination conducted by the State of Haryana and seven NRI candidates were granted admissions in the private Dental Colleges. In this manner, out of 64 seats 32 seats were filled and 32 seats remained vacant.

For the said 32 vacant seats, the Association on its own conducted another round of counselling on 29.05.2010 from 8.00 pm onwards after the first round of counselling. This counselling was conducted from amongst the candidates who were present in the first counselling. The counselling was conducted by the Association on its own as the last date for admitting students to the MDS Course was 31.05.2010 as had been fixed by the Hon'ble Supreme Court in Mridul Dhar v. Union of India, (2005) 2 SCC 65. The appellants Dr. Vibha Hans and others as also Dr. Gunjan Satija were selected and given admissions against the vacant 32 seats on the basis of their cumulative performance in the BDS examination. After selection the Association intimated the result to the Chairman of the State Admission Committee.

The Pt. B.D. Sharma University thereafter in terms of its letter dated 10.6.2010 addressed to the Principals of Sudha Rustagi College of Dental Sciences and Research, Faridabad; BRS Institute of Medical Sciences Dental College and Hospital, Panchkula; Sri Govind Tricentenary Dental College Hospital and Research Institute, Gurgaon and JN Kapoor DAV Centenary Dental College, Yamuna Nagar conveyed that the State Admission Committee had never

allowed the Association to fill up the unfilled seats. Besides, the admissions made by the said Colleges were without the presence of any observer authorized/deputed by the Pt. B.D. Sharma University in this regard. In the said manner the second counselling conducted by the Association and admissions of 32 students so made were not as per the University norms. In the circumstances, the Pt. B.D. Sharma University would not register the said candidates. The Colleges were requested to explain their positions in this regard.

The State Admission Committee vide its letter dated 17.6.2010 informed the Dental Council of India with reference to its letter dated 4.6.2010 and it was requested to take action against the Dental Colleges namely Sudha Rustagi Dental College, Faridabad, SGT (Sri Govind Tricentenary) Dental College, Budhera (Gurgaon) and BRS Dental College, Yamuna Nagar for making illegal and unauthorized admissions in the MDS Course from amongst the failed candidates of entrance examination but nothing had been received so far. It was intimated that a meeting of the State Admission Committee under the Chairmanship of a retired Chief Justice was held on 16.6.2010 in which it was decided to approach the Dental Council of India for taking strict actions against the defaulting Institutions by cancelling the unauthorized and illegal admissions made by the Institutions in contraventions of law. It was requested that the illegal admissions made by the private Dental Colleges may be cancelled being bad in law and these Institutions may be suitably proceeded against.

The Dental Council of India in response to the letter dated

17.6.2010 of the Chairman State Admission Committee addressed letters dated 1.7.2010 to the Principals of the three aforementioned Dental Colleges regarding admissions in the MDS Course in private unaided Post Graduate Dental Institutions in Haryana for the Session 2010-11. A reference was made to the provisions of Section 16-A (1) of the Dentists Act, 1948. It was directed that in order to maintain the standards of dental education in the country and in the best interest of the students, the Colleges discharge the MDS students who had been admitted by them in violation of the provisions of the Revised MDS Course Regulations, 2007 ('2007 Regulations' – for short) from amongst the failed candidates of the entrance examination within three days from the issue of the letter and send its compliance report to the Dental Council as well as the authority concerned failing which necessary action for initiating de-recognition process under 16-A of the Dentists Act would be taken by the Dental Council against the Institution without any further reference and notice in this matter.

The appellants in LPA No.1545 of 2014 and sole appellant in LPA No.1929 of 2014, Dr. Vibha Hans and others by way of CWP No.17171 of 2010 filed in this Court assailed the said letter dated 10.6.2010 of the Pt. B.D. Sharma University stating that it would not register the 32 students that had been admitted by the Association; the letter dated 17.6.2010 of the Chairman of the State Admission Committee addressed to the Dental Council of India requesting the latter to cancel the admissions of 32 students who had been admitted to the MDS Course and suitably proceed against the Dental Colleges concerned and the letter dated 1.7.2010 of the

Dental Council of India addressed to the Principals of Sudha Rustagi Dental College, Faridabad, SGT (Sri Govind Tricentenary) Dental College, Budhera (Gurgaon) and BRS Dental College, Yamuna Nagar for discharging MDS students who had been admitted in violation of the provisions of the MDS Regulations 2007 from amongst the failed candidates of the entrance examination.

Similarly, the appellant in LPAs No.1935 and 1936 of 2014 Sri Govind Tricentenary Dental College, Budhera (Gurgaon) by way of CWP No.2611 of 2011 assailed the letter dated 10.6.2010 of the Pt. B.D.Sharma University addressed to the Principals of Sudha Rustagi Dental College, Faridabad, SGT (Sri Govind Tricentenary) Dental College, Budhera (Gurgaon) and BRS Dental College, Yamuna Nagar as also Principal J.N. Kapoor DAV Centenary Dental College, Yamuna Nagar stating that the State Admission Committee had not allowed the Association to fill up the unfilled seats and the admissions made by them were without the presence of any observer authorized/deputed by the Pt. B.D. Sharma University in this regard; therefore, the second counselling conducted by the Association and admissions of 32 students so made were not as per the University norms and under the circumstances, the Pt. B.D. Sharma University would not register the said candidates; the letter dated 17.6.2010 of the State Admission Committee informing the Secretary, Dental Council of India about the illegal admissions made and for cancelling the same being bad in law; letter dated 1.7.2010 of the Dental Council of India directing the Dental Colleges to discharge the MDS students who had been admitted; the letter dated 27.10.2010 of the Haryana State Government addressed to

the Ministry of Health and Family Welfare, Government of India requesting the latter to take appropriate suitable action for cancellation of all unauthorized admissions as per law and instructions and letter dated 15.12.2010 of the Union of India directing the private Dental Colleges that in view of the 'procedural lacunae' to discharge the students who had been illegally admitted in the MDS Course of Pt. B.D. Sharma Univeristy during the academic session 2010-11 in violation of the 2007 Regulations.

The appellants in LPA No.1790 of 2014 titled Sudha Rustagii College of Dental Sciences and Research, Faridabad and J.N. Kapoor, DAV Centenary Dental College, Yamunanagar were co-petitioners with Sri Govind Tricentenary Dental College, Hospital and Research Institute, Village Budhera, District Gurgaon before the learned Single Judge.

It may also be noticed that two other writ petitions i.e. CWP No.10911 of 2010 and CWP No.11429 of 2010 were filed by two candidates namely Dr. Shikha Jindal and Dr. Vidhi Munjal respectively who claimed that they had higher marks in their respective BDS Courses than the appellants Dr. Vibha Hans and others as also Dr. Gunjan Satija. The admissions by the Association according to them i.e. Dr. Shikha Jindal and Dr. Vidhi Munjal were made in respect of candidates who were lower than them in order of merit, if the marks in BDS alone were to be reckoned. Therefore, these were bad in law. They prayed that they should be granted admissions. The petitioners Dr. Vibha Hans and others in CWP No.17171 of 2010 prayed for regularization of the admissions already made.

During the pendency of the writ petition in the case of Dr. Vibha Hans and others CWP No.17171 of 2010, the learned Single Judge in CM No. 9345-CWP-2013 passed the following order on 19.4.2013:-

"This is an application filed by the petitioners for seeking directions to the respondent no.3-University to declare result of the petitioners who had participated in annual examination for the MDS Course conducted in the month of April/May 2013.

Counsel for the applicant-petitioners submits that the writ petition is already admitted and is on the regular board of this Court. The necessity to file this application arose because the applicant-petitioners are apprehensive that on the one hand the University has not declared the result and on the other hand their chance for appearing in the supplementary examination may not go waste, which is scheduled to be held in the near future. He further submits that the result of all the petitioners may not be declared but the result of the applicant-petitioners, who have not cleared particular subject (s) and are required to re-appear, may be declared so that they may take their supplementary examinations.

Shri Gurminder Singh, who is appearing on behalf of respondent no.2, submits that he has

no objection if the application is allowed because the application is to be contested by the University but the counsel for the University is not present.

Be that as it may, the prayer made by the applicant-petitioners appears to be logical and hence, the University is directed to declare result of those applicant-petitioners who are required to take supplementary examination and communicate the same to them by tomorrow. Result of the other students be retained.

C.M. stands disposed of.

Copy of this order be given to learned counsel for the parties under signatures of the Special Secretary attached to this Bench. "

Thereafter, another learned Single Judge in the said writ petition in CM No.5811 of 2013 on 25.4.2013 passed the following order:-

"Applicants seek directions to the Pandit B.D. Sharma University of Health Sciences, Rohtak, to register the applicants-petitioners and to issue roll numbers allowing them to participate in the final examination of MDS course which is going to commence from 26.4.2013.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the

rival contentions raised, this Court is of the considered opinion that since the applicants-petitioners have already undergone the three years MDS course and their examination is going to commence from 26.4.2013, it would be unjust, if they are not allowed to take the examination.

In view of the above, Pandit B.D. Sharma University of Health Sciences, Rohtak-respondent No.3, is directed to register the applicants-petitioners, who are 32 in number, without any further loss of time. The applicants-petitioners shall be issued their roll numbers forthwith and in any case before 11.00 a.m. tomorrow, i.e. 26.4.2013 allowing them to take the examination, which is going to commence at 2.00 p.m. on 26.4.2013. It is further directed that for tomorrow's examination, i.e. 26.4.2013, the roll numbers issued by the respondent-University shall be collected at Rohtak on behalf of the applicants-petitioners and shall be sent through FAX to the students, which shall be accepted by the Incharge of the respective examination centre allowing them to take their examination.

However, this interim direction shall not create any equity in favour of the applicants-petitioners and their result shall be subject to the

final decision of the writ petition.

C.M. stands disposed of accordingly.

A copy of this order, under the signatures of Court Secretary attached to this Bench, be supplied to the learned counsel for the applicants-petitioners for onward transmission to the authorities concerned for meticulous compliance thereof.

Main Case

To be heard on the date already fixed i.e. 17.5.2013.”

The appellants Dr. Vibha Hans and others in LPA No.1545 of 2014 and Dr. Gunjan Satija in LPA No.1929 of 2014 have since cleared their MDS Course examinations.

The learned Single Judge, however, in terms of the impugned judgment dated 21.08.2014 has dismissed all the writ petitions and directed refund of admission expenses with 12% interest, Rs.20,000/- for purchase of books, Rs. one lac as compensation for mental suffering and Rs. one lac as litigation expenses to the students. It was held that the students were partly to be blamed in securing admissions in a questionable way. The learned Single Judge deprecated the Association in proceeding to admit on its own 32 students to the vacant seats from amongst the candidates who had gathered at a different venue at some resort, which according to the Association were on the basis of merit in the qualifying BDS examination marks. It was observed that the Registrar of the Pt. B.D. Sharma University had taken notice of

these irregular admissions and served notices on the Principals of the Dental Colleges stating that the State Admission Committee had never allowed the Association to fill the unfilled seats and further the admissions had been made without the presence of any observer deputed by the Pt. B.D. Sharma University. The Pt. B.D. Sharma University in its notice stated that the admissions of 32 candidates were not as per University norms and the Pt. B.D. Sharma University would not register the candidates. Besides, Chairman of the State Admission Committee had also addressed a communication dated 17.06.2010 to the Dental Council of India requesting it to take appropriate action against the illegal and unauthorized admissions to MDS Course from amongst the candidates who had failed in the entrance examination. The Dental Council it was observed had informed the Colleges of the Association on 01.07.2010 to discharge the students who had been admitted to the MDS Course and if there was a breach of compliance, action would be initiated for de-recognizing the Colleges in the manner contemplated by Section 16-A of the Dentists Act, 1948. The Financial Commissioner-cum-Secretary to Government had also informed the Ministry of Health and Family Welfare of 27.10.2010 about the alleged unauthorized admissions and for taking appropriate actions for cancellation of the unauthorized admissions made by the Association.

The learned Single Judge was also not impressed with the stand of the learned Senior Counsel appearing for the candidates that they had cleared their examinations and a period of time had passed, therefore, their results should be declared and degrees

issued. The learned Single Judge felt bad that the candidates who had paid through their nose had come to a stage that their own academic life of three years learning in the Colleges had come to a naught. It was observed that the students must have known what they were bargaining for. If they could chase the Colleges representatives to an unknown destination, they surely allowed themselves to be led by sneaky noses with reckless abandon. They had allowed the Colleges to inveigle them to a questionable bargain that was not above board. It was further observed that one expects a greater level of maturity and understanding from them. The manner in which the seats were filled by the Association and the admissions taken by the students was deprecated.

The learned counsel for the appellants in the respective appeals have assailed the judgment and order of the learned Single Judge.

It is submitted by Mr. Puneet Bali, Senior Advocate appearing with Mr. Vibhav Jain and Ms. Vandana, Advocates for the appellants-students that the learned Single Judge has not gone into the question of eligibility of the appellants for admissions to the MDS Course and has primarily considered the fact that the method and procedure adopted by the Association for admitting them was improper and bad. It is submitted that the appellants in his appeal namely Dr.Vibha Hans and others being students and eligible for the MDS Course on the basis of the criteria for admissions and they having passed their MDS examinations albeit on the interim directions of the Court, it would be improper at this stage to deny them the MDS degrees. It is submitted that the future of the

students should not be jeopardized merely because some irregularity has been adopted or an irregular procedure followed by the Association in carrying out the admissions and that too solely because the seats were going waste and the last date for admitting the students had approached.

Sh. Ashok Aggarwal, Senior Advocate with Sh. Kamal Sehgal and Sh. Rajesh Hooda, Advocates and Mr. Rajiv Atma Ram, Senior Advocate with Mr. Arjun Partap, Advocate appearing for the Private Dental Colleges, have assailed the judgment of the learned Single Judge on the grounds that have been urged on behalf of the students and have further submitted that the admissions that were made to the MDS Course were based on eligibility of each student who was admitted. It is submitted that the Colleges have to run and for that admissions are needed. In fact it was due to the complete inaction and non-cooperation by the State Government and the State Admission Committee that the process for admitting the students was followed, otherwise the seats would have gone waste which would not only have deprived the students for admissions to the MDS Course but would have also affected the effective running of the Colleges. It is submitted that there has been no illegality in the admissions that were made as these were made in compliance with the norms that were laid down by the Dental Council of India and also the eligibility criteria provided for in the prospectus that was issued. Besides, even according to the letter dated 15.12.2010 of the Union of India directing the Dental Colleges to discharge the students was mentioned due to 'procedural lacunae' and not due to any illegality.

In response, Sh. Gurminder Singh, Senior Advocate with Sh. J.S. Gill, Advocate appearing for the Dental Council of India has strongly opposed the appeals that have been filed by the students as also the private Dental Colleges that were part of the Association stating that the admissions to the MDS Course were made in a totally arbitrary and surreptitious manner at a private resort at Karnal after the admissions had closed. There was no authorised representative of the Pt. B.D. Sharma University or that of the State Admission Committee for admitting the students to the MDS Course. These admissions, it is stated, were made in violation of the 2007 Regulations and conditions provided for in the prospectus. However, during the course of hearing it is somewhat accepted by the learned Senior Counsel that whatever is the grouse of the students does indeed stand diluted with the passage of time but he has emphasized that in any case strict action needs to be taken against the private Dental Colleges for making clandestine admissions which may be in the form of a cut in the Management Quota seats of the MDS Course in the subsequent years and/or payment of costs so that they do not indulge in this irregular procedure for admitting candidates in future and adhere to the norms that have been provided for. In support of his contentions, learned Senior Counsel cites Monika Ranka and others v. Medical Council of India and others, (2010) 10 SCC 233 and Desh Bhagat Dental College and Hospital and others v. State of Punjab and others, 2004 (1) ILR (P&H) 265 (FB). It is submitted that the admissions to the MDS Course for the session 2010-11 were made in violation of the own guidelines of the Association.

Sh. Ramesh Hooda, Advocate appearing for Pandit B.D. Sharma, University of Health Sciences and Sh. R.K. Makkad, DAG, Haryana and Sh. Vivek Saini, Asst. Advocate General for Haryana appearing for the State of Haryana have also strongly opposed the appeals filed by the appellants. According to Sh. Hooda, Advocate the decision of the Pandit B.D. Sharma University in not registering the students who are appellants and not conferring them the degree of MDS Course is just and proper and does not call for any interference. According to Sh. Makkad and Sh. Saini, Advocates appearing for the State, the admissions that were made to the MDS Course were in complete and gross violations of the procedure that was advertised.

We have given our thoughtful considerations to the entire matter and with the assistance of the learned counsel have gone through the records.

The case relates to the MDS Course admissions in three private Dental Colleges for the Session 2010-11. The private Dental Colleges formed an Association and an Admission Committee for selection of students to the MDS Course of Pandit B.D. Sharma University in the private Dental Colleges in the State of Haryana. There were 64 Management Quota seats which were to be filled by competitive tests. For the said 64 seats, there were 96 applicants and 93 appeared. Only twelve candidates secured the qualifying 50% marks and above. Two of the candidates dropped out and ten claimed admissions and were granted admissions. The Government of Haryana had conducted admission tests for four seats to the Govt. Dental College which is under the Pt. B.D. Sharma University.

Fifteen of the candidates who had taken the State examination but were not selected for the four Govt. Dental College seats were permitted to be admitted to the private Dental Colleges of the Association. There were seven seats for the NRI quota. They also joined the counselling and seven students out of the NRI quota seats were admitted. In this manner, 32 students were admitted through the counselling and 32 seats remained vacant out of the 64 Management Quota Seats. It is these 32 vacant Management Quota seats that have been filled by the Private Dental Colleges of the Association on their own. According to the Dental Council of India, the State of Haryana and Pt. B.D. Sharma University, these admissions are in violation of the guidelines for appearing in the Entrance Test.

It may be noticed that the provisions for admission to the MDS Course is provided for by the 2007 Regulations. The following criteria for selection has been provided for :-

"Selection of Post Graduate students:-

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

1. For determining the academic merit, the University/Institution may adopt any one of the following procedures both for PG Diploma and MDS Degree Courses:

(i) On the basis of merit as determined by a competitive test

conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of Universities in the same State; or

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

(iii) On the basis of the individual cumulative performance at the first, second, third and Final BDS examinations, if such examinations have been passed from the same University; or

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

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

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

(Emphasis added)

The Pt. B.D. Sharma, University of Health Sciences issued a prospectus for entrance examination 2010 for candidates seeking admissions to MD/MS/PG Diploma, MDS and M.Ch. The conditions for eligibility for entrance examination for the MD/MS/PG Diploma, MDS and M.Ch. Courses were as follows:-

"1. A candidate for appearing in the Entrance Examination for MD/MS/PG Diploma, MDS and M.Ch. Courses will be eligible if he/she:

(i) is a citizen of India.

(ii) Has passed MBBS/BDS examination from Pt. BD Sharma PGIMS, Rohtak/M.A.M.C. Agroha (Hisar)/Govt. Dental College, Rohtak as a bona fide resident of Haryana or has passed MBBS/BDS examination from any other Medical/Dental College/Institution recognized by the Medical Council of India/Dental Council of India and who/whose parents produce(s) a Haryana Resident Certificate as per Govt. instructions given in Annexures A&B.

(iii) Has completed satisfactorily one year compulsory rotating internship from centres recognized by the Medical Council of India/Dental Council of India for this purpose by 30.04.2010.

(iv) Possesses a certificate of good conduct from the head of the institution last attended."

It is not in dispute that the appellants in LPAs No.1545 of 2014 and 1929 of 2014 Dr. Vibha Hans and others as also Dr. Gunjan Satija fulfill the said eligibility conditions/criteria for appearing in the entrance examination to the MDS Course. Besides, the selection procedure for Post-Graduate Dental Courses (MDS) students, as has been noticed above, envisages that the students shall be selected strictly on the basis of their academic merit. For determining the academic merit, the University/Institution is to adopt one of the procedures for MDS Degree courses as is provided for by the 2007 Regulations. That is to say, the procedure for selection to the MDS Degree Courses, which is to be adopted is to be; (i) on the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of Universities in the same State; or (ii) on the basis of merit as determined by a centralized competitive test held at the national level; or (iii) on the basis of the individual cumulative performance at the first, second, third and Final BDS examinations, if such examinations have been passed from the

same University; or (iv) combination of (i) and (iii). In terms of the proviso, it has been provided that wherever entrance test for Postgraduate admissions is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate Dental Courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes. The second proviso further provides that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent, by the management of the institution on the basis of merit.

Sh. Gurminder Singh, Senior Advocate for the Dental Council of India has laid strong emphasis on the first proviso and contended that since the entrance tests for Post-Graduate admissions has been provided for, the minimum percentage of marks for eligibility for admission to post graduate dental courses is to be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes. This according to the learned Senior Counsel is mandatory in nature.

However, Sh. Rajiv Atma Ram, learned Senior Counsel appearing for the private Dental Colleges in LPA No.1790 of 2014 has submitted that the said proviso is for the purpose of selection only to the MDS course and is merely directory and not mandatory. It is submitted that the requirement of securing 50% marks in the combined entrance test is only for the purpose of determining the merit and short listing the candidates where their number is large

and it cannot be a basis for determining the eligibility for admission to the MDS Course. Strong reliance has been placed by him on a Division Bench judgment of the Hon'ble Gauhati High Court in the case of Shri Simmons Debbarma v. The State of Tripura, MANU/GH/ 0518/ 2011.

The provisions of the 2007 Regulations by way of a proviso envisages that wherever entrance test for postgraduate admissions is held by a State Government or State University or any other authorised examining body, the minimum percentage of marks for eligibility for admissions to postgraduate dental courses shall be 50% for general category candidates and 40% for candidates belonging to the Scheduled Castes and Scheduled Tribes would be inapplicable where seats are available for the candidates seeking admission and such candidates have the eligibility for the MDS Course on the basis of their qualifying examination. The purpose of securing 50% marks for general category candidates and 40% for candidates belonging to Scheduled Castes and Scheduled Tribes is for preparing merit and for short listing the candidates where the number of candidates seeking admissions is substantial and large but it cannot be for the purpose of determining the eligibility to the MDS Course. This is more so for the reasons that admissions can be made to the MDS Course on the basis of the individual cumulative performance at the first, second, third and final BDS examinations if such examinations have been passed from the same University as provided for by clause (iii) of the Selection Procedure for the MDS course by the 2007 Regulations. In fact, even for NRI quota seats there is no requirement of securing 50% marks for

general category candidates and 40% marks for candidates belonging to the Scheduled Castes and Scheduled Tribes in the entrance examination. This is clearly indicative of the fact that the purpose of the 2007 Regulations is for having uniformity in determining the merit of candidates seeking admissions to the MDS Course so that in case examinations are held by different Universities, Boards or Examining Bodies at the qualifying level then there is no variance in merit *inter se* the candidates. In fact even clause (iv) of the Selection Procedure of the 2007 Regulations provides that selection to the post graduate MDS course can also be made on the basis of combination of clauses (i) and (iii). The providing of a common entrance test to determine the *inter se* merit of candidates seeking admissions to the MDS course where candidates have passed their BDS examinations from different Universities, Boards or Examining Bodies is a good and proper method; however, when a combination of clauses (i) and (iii) is also mentioned as one of the methods for the purposes of admissions to the post graduate MDS course, then where the post graduate MDS seats are vacant after a competitive test has been held in accordance with clause (i) of the Selection Procedure of the 2007 Regulations and candidates who had appeared in the said test had secured less than 50% marks, resorting to the criterion of marks obtained in the BDS examinations to fill up the vacant MDS course seats can not be said to be illegal.

It is not in dispute that the candidates who were admitted to the MDS course of the Pt. B.D. Sharma University in the private Dental Colleges had duly recognized BDS degrees. They had the

minimum or more than the minimum 50% marks for general category candidates and 40% in respect of the candidates belonging to the Scheduled Castes and Scheduled Tribes for being eligible for seeking admissions to the MDS Course. Then for such candidates to be admitted to the MDS course when the seats otherwise would have remained vacant cannot be said to be bad.

In the circumstances the requirements in the 2007 Regulations for determining inter se merit amongst candidates on the basis of a competitive entrance test would be inapplicable where the seats are vacant and available; besides, the requirement of securing 50% marks in the combined entrance examination in such a situation is liable to be read down.

In State of Maharashtra v. Ravdeep Singh Sohal, (2007) 9 SCC 184 in case of admissions to Medical Colleges the rule framed by the State of Maharashtra provided for reservations in admission to MBBS/BDS Course 1995-96, for children of those defence service personnels who were transferred to Maharashtra in public interest on or after 1.7.1994. The respondent candidate having passed the qualifying examination was denied admission because his father an Army officer had been transferred to the State of Maharashtra in October 1993 i.e. before the cut-off date. It was held that the cut-off date of 1.7.1994 cannot be strictly applied and the rule is to be read down accordingly as otherwise the object of providing reservation to children of defence service personnel would be defeated.

In the present case, as well the requirement of securing 50% for general category candidates and 40% for the candidates

belonging to Scheduled Castes and Scheduled Tribes in entrance test for admissions to postgraduate dental course where seats are available for the candidates who fulfill the basic eligibility conditions in the qualifying examination is to be read down especially when the students have already completed their MDS course and the result only is to be declared. It is to be noticed that clause (iii) of the Selection Procedure for admissions to the MDS course provided by the 2007 Regulations is one of the modes for selecting candidates and if admissions are made on the said basis when seats are vacant it cannot be said to be illegal although the manner adopted by the Association may be improper and irregular.

A Division Bench of the Hon'ble Gauhati High Court in Shri Simmons Debbarma v. The State of Tripura (Supra) inter alia considered the question as to where no cut-off marks, for allotment of seats to the candidates for the MBBS Course as prescribed by the Medical Council of India was insisted upon in the past by the Tripura Board for candidates seeking admissions to the MBBS Course but all of a sudden the State-respondent at the time of counselling informed the candidates that none of them had secured 40% marks in the Joint Entrance Examination (JEE), which were the prescribed cut-off marks for the candidates of Scheduled Tribes in the JEE and hence no seat for admission to the MBBS Course could be allotted to such candidates. As a result of the decision, out of 25 total seats reserved for candidates of Scheduled Tribes in the State of Tripura, as many as 23 seats remained vacant. The candidates in the said case inter alia contended that the requirement of fulfilling minimum 40% prescribed under the Regulations of MCI was merely directory

and not mandatory. As against this the respondents submitted that the MCI Regulations which prescribed securing of 40% marks for candidates of the reserved category as the minimum marks for admission to the MBBS Course was mandatory in nature and the State Government did not have the power to admit candidates to its Medical College contrary to the said Regulations. With the result that the prescription of securing minimum percentage of marks in the JEE even by candidates belonging to the Scheduled Castes and Scheduled Tribes was mandatory in nature.

A learned Single Judge of the Hon'ble Gauhati High Court dismissed the writ petition filed by the candidates holding that their failure to secure 40% marks in the JEE would not entitle them for admissions to the MBBS Course. In appeal the High Court considered the relevant provisions of Regulations 4 and 5 of the MCI Regulations, as applicable in the said case, which inter alia provided for conditions for selection to the MBBS Course, which are similar to the provisions provided for by the 2007 Regulations; the Hon'ble High Court also considered the question whether the prescription of securing of 40% marks in Physics, Chemistry and Biology by candidates belonging to Scheduled Castes and Scheduled Tribes, in the said three subjects, in the combined competitive examination, is a valid condition, when a counterpart of such a candidate would be qualified to be admitted to the MBBS Course if his name falls in the inter se merit list prepared on the basis of marks obtained in the qualifying examination alone provided that he has obtained 40% marks, in the said three subjects, in the qualifying examination. Besides, the vires of Regulation 5 (5) (ii)

of the MCI Regulations was considered, which provided that in case of admissions on the basis of competitive entrance examination, 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. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, it was provided that the marks obtained in Physics, Chemistry and Biology taken together in the qualifying examination and competitive entrance examination would be 40% instead of 50%.

It was held that a minute reading of Regulation 5 (5) (ii) of the MCI Regulations left no room for doubt that combined competitive examination was insisted upon and rightly so in order to achieve a uniform evaluation as there may be variation of standards at various qualifying examinations conducted by different agencies. Thus it was merely to bring uniformity in the evaluation that the combined competitive examination was conducted so that inter se merit list of these candidates could be prepared who had passed, with the minimum required marks, the qualifying examination from various Universities/Boards/Examining Bodies and had sought admissions to the MBBS Course. It was further held that ordinarily on the basis of the merit list prepared by holding combined competitive examination admission to the MBBS Course

ought to be granted because the candidates who participate in the combined competitive examination already have obtained the minimum required marks of 40% in the three subjects of Physics, Chemistry and Biology in the qualifying examination as is done in the case of State where there is only one University, Board or Examining Body conducting the qualifying examination. It was noticed that it was not discernible from the MCI Regulations as to why the Regulations insisted on securing 40% marks by a candidate in the combined competitive examination too when there was no such restriction or required in a case where there was only one University, Board or Examining Body which conducts the qualifying examination. It was held that there was no reason as to why a candidate appearing in the combined entrance examination who had already satisfied the requirement of obtaining minimum 40% marks in Physics, Chemistry and Biology in the qualifying examination must also obtain 40% marks in the said three subjects in the combined competitive examination. Logically speaking it was held that if in the combined competitive examination such a candidate falls within the merit list prepared on the basis of the marks obtained in the combined competitive examination, he ought to be granted admission to the MBBS Course and if he is to be denied admission then the MCI must explain for doing so and the reason assigned must be rational. In the said case the MCI had completely failed to assign any reason, far less convincing and plausible reason, for insisting upon securing of minimum 40% marks by Scheduled Castes and Scheduled Tribes candidate in the combined entrance examination too. It was further held that the

purposes of holding combined competitive examination ought to have been only to prepare an inter se merit list of the various candidates, who had appeared in the qualifying examination conducted by various University/Board/Examining Bodies. No reasons could be assigned, as had already been indicated, as to why there should be insistence of obtaining 40% marks by a candidate in Physics, Chemistry and Biology in the combined competitive examination for getting admissions to the MBBS Course.

The vires of the Regulation 5 (5) (ii) was also considered and it was held that the MCI Regulation 5 (5) (ii) was in violation of Article 14 which guarantees equality of treatment. Insofar as the said Regulation 5 (5) (ii) required securing of 40% marks in the combined competitive examination as the basis for selection for admission to the MBBS Course.

The Medical Council of India has assailed the said decision by filing SLP (C) 20918-20919 and the Hon'ble Supreme Court on 27.07.2012 passed the following order:-

“Learned counsel appearing for the Medical Council of India (MCI) submitted that they are not disturbing the students already admitted. According to them, they are aggrieved by the general directions given by the High Court striking down Regulation 5 (5) (ii) which is violative of Article 14. That part of the judgment would stand stayed for a period of three months from today.
List for hearing on non-miscellaneous day.”

The interim order dated 27.07.2012 was ordered to continue till further orders vide order dated 17.04.2013.

In the present case, we have without going into the vires of the 2007 Regulations read down the proviso requiring the securing of 50% marks in the entrance examination for the MDS Course as the seats were available and candidates who were admitted to the MDS Course of Pt. B.D. Sharma University had the eligibility in the qualifying examinations for admissions to the said course; besides, there was no one higher than them in merit or who had come forward to seek admissions except two candidates i.e. Dr. Shikha Jindal and Dr. Vidhi Munjal, who as already noticed, had got admissions elsewhere and even otherwise have not assailed the judgment of the learned Single Judge by way of appeal.

It may also be noticed that the conditions of securing 50% marks for general category candidates and 40% marks for candidates belonging to Scheduled Castes and Scheduled Tribes in the entrance test is provided for by a proviso to the 2007 Regulations. The proviso to the 2007 Regulations is to be limited by interpretation to the subject matter of the enacting provision. In Dwarka Prasad v. Dwarka Das Saraf, AIR 1975 SC 1758 it has been held that if on fair construction the principal provision is clear, a proviso cannot expand or limit it. A proviso must be limited to the subject matter of the enacting clause. A proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment.

In S. Sundaram Pillai v. V.R. Pattabiraman, AIR 1985 SC 582 the Supreme Court considered the functions of a proviso. It

was held that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself. The effect of proviso was summed up as follows:-

“To sum up, a proviso may serve four different purpose:-

- (1)qualifying or excepting certain provisions from the main enactment;
- (2)it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- (3)it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4)it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”

Applying the principle as enunciated in the context of the proviso to the 2007 Regulations relating to “selection of postgraduate students”, it is quite evident that the purpose of the same is to determine the merit of candidates seeking admissions to PG Diploma and MDS degree courses. It is to be used as contemplated by principle (4) above merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision. The real intendment of the 2007 Regulations relating to “selection of postgraduate students” is for determining and maintaining uniformity in the preparation of merit and not for eligibility to the MDS Course. The modes of determining the merit for selection have been provided by Clauses (i) to (iv). The selection procedure in terms of the 2007 Regulations is, therefore, for preparation of merit and is not an eligibility test, which is independent of merit. In fact the selection procedure, provides for adopting one of the four methods of selection or even a combination of (i) and (iii). Selection on the basis of individual cumulative performance at the first, second, third and final BDS examinations, if such examinations have been passed from the same University is one of the methods for selecting the candidates for the MDS Course; besides, on the basis of merit, as determined by competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the

University/group of Universities in the same State.

The question of merit in fact would arise if there were more number of students than the seats that were available. No other candidates except for Dr. Shikha Jindal and Dr. Vidhi Munjal who filed separate writ petitions i.e. CWP No.10911 of 2010 and CWP No.11429 of 2010 respectively claimed that they were higher in merit than the appellants Dr. Vibha Hans and others as also Dr. Gunjan Satija. The learned Single Judge has non-suited the appellants-students holding that since the selection of the candidates other than through the test was impermissible and that the selection in the absence of representatives from the University/State was not fair and transparent, the petitioners in the said writ petitions i.e. Dr. Shikha Jindal and Dr. Vidhi Munjal in CWP No. 10911 of 2010 and CWP No.11429 of 2010 respectively could also secure no relief and the said petitions were dismissed. The said petitioners Dr. Shikha Jindal and Dr. Vidhi Munjal are not shown to have filed any appeals against the order of the learned Single Judge dismissing their writ petitions. Besides, learned Senior Advocate appearing in LPA No.1936 of 2014 has submitted that they had got admissions in other Institutions and were no longer claimants for the seats to which the appellants-students were admitted. A reference has been made to the affidavit dated 15.12.2014 filed in the said LPA by Shri C.S. Bhardwaj, Registrar, Sri Govind Tricentenary University, Budhera, Gurgaon in which it is inter alia stated that Dr. Shikha Jindal petitioner in CWP No.10911 of 2010 and Dr. Vidhi Munjal petitioner in CWP No.11429 of 2010 did not disclose before the learned Single Judge that they had secured

admissions to the MDS Course in Subharti Dental College and Hospital, Meerut which showed that no prejudice had been caused to them. Further they have since completed their MDS Course in May, 2014 and copies of the certificates dated 01.12.2014 (Annexures A-1 and A-2 with the said affidavit) from Dr. Nikhil Srivastava, Principal and Dean, Subharti Dental College and Hospital (Swami Vivekanand Subharti University) certifying that they have passed their MDS final year University Examination in May, 2014 and would be receiving their degrees in the forthcoming convocation, have been placed on record.

The primary reason for non-suiting the appellants-students has been that the Association of the Private Dental Colleges had on their own filled up the vacant seats from amongst the students who had failed in the Common Entrance Test. Although there is no serious dispute that they had the necessary eligibility and were eligible for the MDS Course. The manner in which the counselling was held by the Association has been the main reason for them being non-suited.

The appellant in LPA No.1936 of 2014 has placed on record admission notifications of subsequent years issued by the Health and Medical Education Department of the Haryana Government. Notification dated 18.04.2011 (Annexure A-3) has been placed on record. The relevant extract of the said notification reads as follows:-

"Notification

The 18th April, 2011

No.16/11/2010-3HB-IV.- Whereas, Hon'ble

Supreme Court of India in the case of P.A. Inamdar versus State of Maharashtra had ruled that the State Admission Committee may be constituted as a stop gap or ad hoc arrangement until a suitable legislation or regulation framed by the State steps in; and

Now the Governor of Haryana is pleased to issue the following regulations for making admission in Private Dental & Medical Institutions in the Academic Session 2011-12.

Admission in MDS Course

1. 60% seats shall be filled up by way of a Combined Admission Test exclusively conducted for the Private Dental Colleges. This test will be conducted by the State Agency i.e. Pt. B.D. Sharma University of Health Sciences, Rohtak. Counselling for admission on the basis of aforesaid test shall be conducted on a centralized basis by the State Agency only.

2. Remaining 40% seats shall be filled up in the following manner:-

(a) On the basis of merit list obtained through the test conducted by the Association of Private Dental Colleges. Such a test will be conducted under the supervision of State Admission Committee.

(b) If the Association is not desirous of

conducting its own test, then on the basis of merit list of the marks obtained in qualifying examination i.e. BDS, subject to the condition that basic eligibility criteria prescribed by the Dental Council of India will be strictly adhered to.

(c) The admissions shall be done strictly on the basis of merit after following a transparent procedure. The State Admission Committee will oversee the counselling process for filling up of these seats.

3. Apportionment of 60% and 40% seats in MDS in various Dental Colleges for the academic Session 2011-12 shall be as follows:-

XXXXXX

Admission in MBBS and BDS Course

XXXXXX

Rajan Gupta

Financial Commissioner and Principal
Secretary to Government, Haryana,
Health and Medical Education Department”
A perusal of the above notification shows that in

the next academic session after 2010-11, i.e. 2011-12 the State Government had itself provided that if the Association was not desirous of conducting its own test then admissions could be made on the merit list of marks obtained in the qualifying examinations i.e. BDS, subject to the condition that the basic eligibility criteria prescribed by the Dental Council of India is strictly adhered to. This evidently shows that the qualifying examination of BDS is an eligibility criteria for securing admission to the MDS Course which,

however, is to be made on the basis of merit. As already noticed except for the two students, who have even otherwise got admissions elsewhere, there is no other claimant of higher merit than the appellants-students Dr. Vibha Hans and others as also Dr. Gunjan Satija. In terms of the subsequent notification dated 04.05.2012 (Annexure A-4) issued by the Haryana Government for admissions to the Management category, it has inter alia been provided as follows:-

“The merit would be prepared by the colleges on the basis of the marks obtained in PGET Exam conducted by the Association or the eligible qualifying exam i.e. BDS.”

Another notification dated 28.05.2012 has also been placed on record. The said notification reads as follows:-

“Notification

The 28th May, 2012

Subject: Admission to MDS/Post Graduate Degree/Diploma Courses in Private Dental Health Sciences Institutions-Session 2012 onwards.

No.1/1/2012-6HBIV.- Under the provisions of the Haryana Private Health Sciences Educational Institutions Section 4 (1), the Government is to notify the procedure for filling up the vacancies in open merit category.

It has been decided that the open merit categories seats which remains (sic. remain) vacant after the second counselling, on the basis

of Common Entrance Examination for Private Self Financing Dental Institutions will be filled in the following manner by the Government:-

1. The left over seats will be filled by the State Admission Committee on merit drawn on the basis marks obtained in the last qualifying exam i.e. BDS. Counselling for these seats will be held after advertisement in the newspaper.

2. If any seat still remain vacant then they will be filled by the respective colleges/authorities through counselling on merit drawn on the basis of the last qualifying examination in the respective colleges under the supervision of an observer appointed by the Government. Counselling for these seats will be also held after advertisement in the Newspaper.

Navraj Sandhu
Secretary to the Government, Haryana,
Health and Medical Education and
Research Department."

The above notification dated 28.05.2012 of the Haryana Government again clearly brings out that the candidates who have passed the BDS Course, that is, the last qualifying examination are eligible for admissions to the MDS Course. In fact even for the 2010-11 admissions which are the admissions in question, it was not necessary for the candidates seeking admissions to the MDS Course from the NRI quota seats to sit or appear in the Common Entrance Test and they could be given admission on the basis of their qualifying the BDS Course, which was the eligibility. The

requirement of filling the seats on the basis of merit in the qualifying examinations i.e. BDS in case the seats remain unfilled has also been provided for by notification dated 16.05.2013 (Annexure A-5) of the Haryana State Government for the Session 2013-14 and similar is the position in the notification dated 27.03.2014 (Annexure A-6) for the Session 2014-15. In the circumstances, there is no valid reason or justification to hold that the candidates who were admitted to the MDS Course for the Session 2010-11 to which the present case relates would be ineligible for admissions on the basis of their marks obtained in the qualifying examination i.e. BDS.

An additional affidavit dated 04.03.2015 of Dr. Akshay Bhargava, Principal Sri Govind Tricentenary Dental College, Hospital and Research Institute, Budhera, Gurgaon has been filed in LPA No.1936 of 2014. It is stated in the said affidavit that two Common Entrance Tests were conducted for admissions to the MDS Course for the academic Sessions 2010-11 viz:-

- (i) test conducted by the Association for Self Financed Colleges for the purpose of admission to private Dental Colleges.
- (ii) test conducted by Pt. B. D. Sharma University of Health Sciences for the purpose of admission to Government Colleges.

It is stated that 15 students who had cleared the test conducted by Pt. B.D. Sharma University also applied for admissions to the Private Dental Colleges and all of them were given admissions. Insofar as the Common Entrance Test conducted by

the Association was concerned only 12 candidates qualified the Common Entrance Test and 10 were admitted to Private Dental Colleges on the basis of the said test. The marks of BDS examinations of 96 students who had taken the Combined Entrance Test conducted by the Association on the basis of BDS Cumulative Merit/Entrance Examination score, status of admission and/remarks has been attached as Annexure A in a tabulated form with the affidavit. Besides, merit list of 96 students on the basis of entrance examination marks for academic session 2010-11 has been appended as Annexure B. The merit list Annexure A is on the basis of BDS cumulative marks. It mentions the entrance exam score, status and remarks of the 96 candidates. The said merit list Annexure A on the basis of BDS cumulative marks shows that there are no such students who may be higher in merit than the appellants except for Dr. Shikha Jindal and Dr. Vidhi Munjal, who have not made any claim for admissions; besides, the remarks column shows that the candidates higher in merit have either been admitted/qualified the entrance test or have done their MDS from elsewhere or there is no response. Therefore, 32 students i.e. Dr. Vibha Hans and others and Dr. Gunjan Satija were having the necessary qualification of BDS examination for being eligible to get admissions in the MDS Course.

Mr. Gurminder Singh, learned counsel for the Dental Council of India as also learned counsel for the Pt. B.D. Sharma University and the State of Haryana have, however, stated that the Private Dental Colleges conducted themselves improperly by making admissions in a private resort without any representative of the

State Admission Committee or the University for which they are liable to be penalized either by imposition of costs or by way of reduction in the number of Management seats for future years.

The manner in which the Private Dental Colleges have conducted themselves is somewhat improper but for that the appellants-students are not to suffer. Even otherwise, the grouse of the Private Dental Colleges has been that there was inaction on the part of the State Admissions Committee and there was no clear policy or directions for admitting students who were qualified and seats were available. In fact the date 31.05.2010 was the last date for making admissions to the MDS Course, which time schedule is to be adhered to. The Private Dental Colleges were, therefore, left with only one day to fill up the vacant seats after the counselling was held on 29.05.2010 and in the said circumstances, they conducted counselling in a hurried manner, which though may be somewhat improper but cannot be said to be illegal or bad. Besides, it is also to be noticed that the Dental Colleges are to run and no useful purpose would be served either for the students or the colleges, if seats were to remain vacant. It is also to be noticed that after the 2010-11 session subsequent admissions have been made by the Private Dental Colleges for the years 2011-12, 2012-13, 2013-14 and 2014-15; however, there has been no complaint of any irregularity in the admission process by the Colleges. Therefore, at this stage it would be quite improper for this Court to go into the question as to whether for the irregularities committed by the Private Dental Colleges some penalties are liable to be imposed. Even otherwise, the letter dated 15.12.2010 of the Union

of India directing the Dental Colleges to discharge the students was mentioned due to 'procedural lacunae' and therefore, apparently there has been lapse on their part as regards the procedure and not that there is any illegality. In the circumstances, the judgments in the case of Monika Ranka v. Medical Council of India (Supra) and Desh Bhagat Dental College and Hospital v. State of Punjab (Supra) would be inapplicable.

The appellants-students Dr. Vibha Hans and others in LPA No.1545 of 2014 and Dr. Gunjan Satija in LPA No.1929 of 2014 have completed their MDS Course and are stated to have cleared their examinations even. As such, it would now not be proper to withhold the declaration of their results and in case they pass their MDS examinations, the degrees for the same are to be conferred on them.

The appeals are, accordingly, allowed. The judgment and order of the learned Single Judge is set aside and the writ petitions filed by the appellants are allowed and the MDS result of the appellants-students be declared and in case they pass the examination, the MDS degree be conferred on them. There shall, however, be no order as to costs.

(S. S. Saron)
Judge

02.12.2015
amit

(Amol Rattan Singh)
Judge

Note: Whether to be referred to the Reporter : Yes/No.