

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1448 of 2015 (O&M)

Date of decision:11.12.2015

Jagraj Singh Dosanjh and others

...Appellants.

Versus

Krishma Bansal and others

...Respondents.

Coram: Hon'ble Mr. Justice S.S. Saron
Hon'ble Mr. Justice Amol Rattan Singh

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Manhar S. Saini, Advocate and
Mr. G.S. Ghuman, Advocate
for the appellants No.1 to 10.

Mr. Naresh Dilawari, Advocate
for appellant No.11.

Ms. Supriya Garg, Advocate
for respondents No.1, 6 and 12.

Mr. Aman Bahri, Addl. Advocate General, Punjab
for respondent No.2-State of Punjab.

Mr. Nitin Kaushal, Advocate
for respondent No.3-Baba Farid University.

Mr. R.P.S. Basra, Advocate for Mr. M.S. Longia, Advocate
for respondent No.4-Medical Council of India.

Mr. Sehajbir Singh, Advocate
for respondent No.5.

Mr. Gurminder Singh, Senior Advocate with
Mr. Pankaj Gupta and Mr. Abhinav Gupta, Advocates
for respondents No.7, 8, 13 and 14.

Mr. M.K. Dogra, Advocate
for respondent No.9.

Mr. Ashok Bhardwaj, Advocate
for respondent No.10.

Mr. Vikas Mohan Gupta, Advocate
for respondent No.11-Sahil Gupta.

Mr. Jagtar Singh, Advocate
for respondents No.15 to 20.

Mr. Ashok Sharma Nabhewala, Advocate
for respondent No.21 – Sri Guru Ram Dass
Institute of Medical Sciences.

Mr. Manuj Nagrath, Advocate
for respondent No.22.

Mr. B.D. Sharma, Advocate
for respondent No.23.

S.S. Saron, J.

This Letters Patent Appeal has been filed by the appellants against the judgment and order dated 29.09.2015 passed by the learned Single Judge in CWP No.17704 of 2015 titled 'Krishma Bansal v. State of Punjab and others'.

Krishma Bansal (respondent No.1) filed a petition in this Court seeking quashing of the 'public notice' dated 06.08.2015 (Annexure P6) by which the criteria for admissions to MBBS/BDS Courses for the Session 2015-16 for the category of Non-Resident Indian ('NRI' - for short) students was changed by allowing the vacant seats of the said category to be filled on the basis of marks obtained in the 10+2 qualifying examination instead of selecting the candidates from the merit list of Pre-Medical Entrance Test ('PMET' - for short). A further prayer was made to fill the vacant MBBS/BDS seats of the NRI category from amongst the candidates of the General category on the basis of marks obtained in the PMET in view of Clause 23 (vi) of the Prospectus that was issued.

The said petition of respondent No.1 has been allowed by the learned Single Judge vide impugned order dated 29.09.2015, which is now assailed by the appellants. The effect of the decision of the learned Single Judge is that the NRI quota seats which were to

be filled from amongst the NRI category students have now been filled by the General category candidates on the basis of marks obtained by them in the PMET.

The admission process for selecting students for the MBBS/BDS Courses in the Medical and Dental Colleges in the State of Punjab affiliated to the Baba Farid University of Health Sciences, Faridkot (respondent No.3) ('Baba Farid University' - for short) for the session 2015-16, was initiated with the issuance of notification dated 30.03.2015 (Annexure P1) by the Government of Punjab, Department of Medical Education and Research (respondent No.2). Baba Farid University (respondent No.3) was authorized to conduct the PMET-2015. It was also authorized to conduct centralized counselling for admissions on the basis of the marks obtained in PMET-2015. Clause 4 of the said notification (Annexure P1) envisaged that admissions to the MBBS/BDS Courses in all the categories would be based on marks obtained in PMET-2015; however, if the seats were still vacant then admissions would be made on the basis of the marks obtained in 10+2 (qualifying examinations). The other necessary conditions were that the candidates must have completed the age of 17 years on or before 31st December of the admission year; besides, the candidates must have passed in the subjects of Physics, Chemistry, Biology/Bio-Technology (PCB) and English individually and must have obtained a minimum of 50% marks (45% for persons with Locomotor Disability of lower limbs and 40% for Scheduled Castes and Backward Classes i.e. SC/BC) taken together in the said subjects (PCB) in 10+2 examination or other equivalent examination.

Clauses 7, 8, 9, 10 and 11 of the notification dated 30.03.2015 (Annexure P1), which are relevant for the purposes of the present appeal are as follows:-

"7. Candidates 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

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

(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/Bio-Technology including a practical test in each of these subjects and English.

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/Bio-Technology) 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/Bio-Technology.

ii) Candidate having higher percentage in the subject of Chemistry.

iii) Candidate older in age. (Emphasis added)

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.

11. A candidate from reserved category shall have the right to compete for admission in open merit or General category seats as per his/her merit on the day of counselling and candidate so selected will not be counted towards admission in the reserve category."

Clause 21 relates to admission to Private Institutes including NRI quota and reads as follows:-

"21. Admission to Private Institutes:

(i) The distribution of seats in private medical institutions would be:-

Government quota seats 50%

Management/Minority
quota seats 50% (including
15% NRI quota)

Note: Regarding minority seats in the SGPC Institutions namely Sri Guru Ram Dass Institute of Medical Sciences and Research and Sri Guru Ram Dass Institute of Dental Sciences and Research, Amritsar, the NRI seats be divided equally between the Government quota and Minority quota as per Government Notification No.5/19/ 2004-5HB-III/424 dated 07.02.2005.

(vi) The reservation in private institutes (for Government/Management quota seats) will be as under:-

(i) Scheduled Caste 25%

(ii) Backward Classes 5%

Note: The Backward Class Certificate must be as per the latest instructions of the Government of Punjab in which the annual income of the family is specifically certified.

(vii) Physically handicapped/
orthopedically handicapped 3%

(x) Migrants from Jammu &
Kashmir due to terrorist
violence. 1%

iii) The vacancy, if any, generated due to exceptional circumstances or surrender of seats after the 2nd centralized counselling would be filled by the admission committee headed by the Principal of Dayanand Medical College and comprising of the representative each of the Government and the University, strictly on the basis of merit of the corresponding year. This counselling will be held at GGS Medical College, Faridkot.

iv) The minority quota seats shall be filled on the basis of *inter se* merit of the candidates in the test conducted by the minority institute, or on the basis of marks obtained in PMET-2015. The institutions will also upload the admission form on institute website.

v) The representative of the University would be at liberty to place on record the copies of

applications received in the BFUHS directly for admission to the institutes for consideration by the Committee.

Clause 22 relates for filling left over seats in Private/ Minority Institutes and Clause 23 relates to NRI seats. The said clauses read as under:-

"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. (* deleted on 29.09.2015)

23. Non Resident Indians (NRI) seats

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

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

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

- (i) A person who originally belong to India and holds Foreign Country Passport or Green Card or Permanent Resident Card or Proof of Residency of Foreign Country issued by competent authority shall be considered under NRI quota.
- (ii) The eligibility of the candidates will be determined by the Baba Farid University of Health Sciences, Faridkot, who will issue an eligibility certificate to each such candidate.
- (iii) Seats under NRI quota would be firstly filled by Category-I candidates. In case seats remain vacant only then Candidates of Category-II would be considered. In other words if sufficient number of candidates under Category-I are eligible and available then they will be admitted first even if students under subsequent category i.e. category-II are higher in merit.
- (iv) The fee notified for NRI category will be applicable to NRI candidates getting admission to Government Medical/Dental Colleges also.
- (v) The NRI students will have to give a bank guarantee/surety bond for the balance of fee, if they opt to pay the fee in installments are provided.
- (vi) The centralized counselling of NRI quota seats will be held before the counselling for other categories. In case of any seat remaining vacant under NRI

quota during/after 2nd centralized counselling of NRI quota in State colleges, shall go to General category and in the unaided-private colleges/minority colleges shall go to General Category of the management/minority quota. The NRI left over seats converted into Government quota/ Management/Minority quota will be filled by the Counselling Committee from amongst the eligible Candidates." (Emphasis added).

The said provisions of the notification (Annexure P1) were also incorporated in the Prospectus that was issued for admissions to the MBBS/BDS Courses in the Medical and Dental Colleges in the State of Punjab for the session 2015-16.

The dispute in the present appeal relates to the NRI category/quota seats for the MBBS/BDS Courses-2015. In this regard it may be noticed that 15% seats in all private Institutes/University colleges and 13 seats each in the Govt. Medical Colleges at Patiala and Amritsar; besides, 3 seats in Govt. Dental College, Amritsar and 4 seats in Govt. Dental College, Patiala were reserved or earmarked for NRIs.

The Medical Council of India ('MCI' – for short) (respondent No.4), before issuance of notification dated 30.03.2015 (Annexure P1) and the Prospectus by the Baba Farid University (respondent No.3), issued a circular dated 16.01.2015 (Annexure P5) regarding conduct of Entrance Examinations for NRI students for admission in MBBS Course. In the said circular a reference was made to para 131 of the Supreme Court judgment in P.A. Inamdar and others v.

State of Maharashtra, (2005) 6 SCC 537, wherein it has been held as follows:-

“A limited reservation of such seats, not exceeding 15%, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by.”

It was observed in the said circular dated 16.01.2015 (Annexure P5) issued by the MCI that a reading of the aforesaid would show that the Hon'ble Supreme Court held that for admission under NRI quota, merit cannot be compromised. Besides, according to Regulation 5 (ii) [sic. 5 (5) (ii)] of the 'Regulations on Graduate Medical Education, 1997,' which have been amended by the 'Regulations on Graduate Medical Education (Amendment), 2010' notified on 7.10.2010 ('1997 Regulations' - for short), stipulates that in States having more than one University/Board/Examining Body a competitive entrance examination should be held so as to achieve uniform evaluation for the reason that there 'should be' (sic. 'may be') variation of standards at qualifying examinations conducted by different agencies. It was further observed that the principle embodied in Regulation 5 (ii) [sic. 5 (5) (ii)] would also be attracted to admissions being made in the NRI category. Hence, it would be compulsory to have an Entrance Test for NRI students so as to determine their *inter se* merit in order to enable them to exercise preference for admissions to the various Medical Colleges. It was further observed that since NRI students were normally

making applications on State wise basis, it may even be feasible to have the test individually for each State so that there could be a common merit list for NRI students who apply to that particular State. In view of the aforesaid position, the Executive Committee of the MCI decided that from the Academic Year 2015-16 onwards all admissions in NRI category shall be made on the basis of merit which shall be determined through a Common Entrance Test ('CET' – for short). All concerned were directed to ensure that admissions in NRI category were made through a CET from the merit list drawn from the CET from the Academic Year 2015-16.

The said circular dated 16.01.2015 (Annexure P5) of the MCI was assailed before the Hon'ble Karnataka High Court in the case of Shri Basaveshwar Vidya Vardhak Sangha and others v. Medical Council of India W.P. No.102850-102851/2015 (EDN-MED-ADM), 102852-102853/2015 No.102916-102917/2015 decided on 17.04.2015 and reported in MANU/KA/1015-2015. The Hon'ble Karnataka High Court in Shri Basaveshwar Vidya Vardhak Sangha and others v. Medical Council of India (supra) *inter alia* held that the foundation of the impugned circular dated 16.01.2015 (Annexure P5) was a portion of para 131 of P.A. Inamdar's case (supra) and the words used in the said case were very specific and these were "legislation" or "regulation". Therefore, according to the pronouncements of the Supreme Court, it was held that it was either for the Central Government or the State Governments to bring in legislations, if any, to regulate the admissions. The issue with regard to admission of students in unaided private medical colleges having been considered by the Supreme Court on more

than one occasion, it was held that their right to admit NRI students by evolving their own method of assessing the *inter se* merit among the applicants had been recognized pending any legislation on the point to be brought in by the State. The said circular (Annexure P5) in the considered opinion of the Hon'ble Karnataka High Court in Shri Basaveshwar Vidya Vardhak Sangha and others v. Medical Council of India (supra) was held to be contrary to the pronouncements of the Supreme Court and ran counter to the tenor of the directions contained therein. It was, therefore, held to be un-sustainable. It was *inter alia* held that Section 33 of the Indian Medical Council Act, 1956 dealt with the powers of the MCI to make Regulations which were clear that prior sanction of the Central Government was to be obtained for making Regulations, in respect of matters provided for therein. Without following any such procedure, the issuance of circular dated 16.01.2015 (Annexure P5), it was held that the MCI had sought to introduce Entrance Test for NRI category students as per the report of the Executive Committee of the MCI, which was apparently contrary to the nature of powers invested with the Committee and the procedure prescribed under the aforesaid Act.

On the question of there being arbitrariness in not subjecting the NRI students through a Common Entrance Test and leaving it to the discretion of the Private Medical Colleges, it was held that the right of Private Medical Colleges to fill up small percentage of seats by the NRI students was now fairly well settled. Besides, freedom to run private institutions and their right to conduct examinations for admitting students was also

recognized. However, it was added that the recognition of this right was subject to future "legislation" or "regulation" by the State. The impugned circular (Annexure P5) was held to be un-sustainable in view of P.A. Inamdar's case (supra) and other judgments referred to in the order. Accordingly, the circular dated 16.01.2015 (Annexure P5) was quashed.

In, Medical Council of India v. K.L.E. University and another, Special Leave to Appeal petition (C) No.16229-16230/2015 with SLP No.16307-16308/2015 arising out of the said final judgment and order dated 17.04.2015 of the Hon'ble Karnataka High Court, was dismissed by the Hon'ble Supreme Court on 06.07.2015. The said circular (Annexure P5) has since also been withdrawn by the MCI on 18.09.2015.

In view of the said Supreme Court order, the Registrar of Baba Farid University (respondent No.3) issued the impugned 'public notice' dated 06.08.2015 (Annexure P6), which provided the Revised Admission Criteria for NRI candidates for MBBS/BDS Courses Session 2015. The impugned 'public notice' dated 06.08.2015 (Annexure P6) issued by Baba Farid University (respondent No.3) reads as under:-

"PUBLIC NOTICE

(Revised Admission Criteria for NRI Candidates for MBBS/BDS Courses Session 2015 in the light of the judgment passed by Hon'ble Supreme Court in SLP No.16307-16308/2015).

In continuation of Punjab Govt.'s initial Notification and in reference to the letter No.

Admissions-15/13054 dated 29.7.2015 (available on University website), it has been decided by the Govt. that the NRI seats of MBBS course, which amounts to 102 in number are to be filled in the larger interest of the NRIs of Punjab as per the following criteria:-

There are 102 total seats in NRI quota in MBBS Course and in response to PMET-2015, only 64 candidates had applied, out of which 52 candidates appeared in PMET and only 17 candidates have qualified the Exam i.e. they attained 50% marks or above in PMET-2015 and 35 candidates could not qualify the Exam i.e. their marks are less than 50% in the said Exam.

The eligibility criteria for applying for PMET-2015 was minimum 50% marks in 10+2, which means that all those candidates who have applied under NRI Quota, which were 64 in number were eligible to get admission in the Medical Colleges of Punjab.

Since only 17 candidates out of 52 appeared candidates have qualified PMET-2015 as per the initial criteria, it is proposed by the Govt. of Punjab that rest of the seats of MBBS/BDS Courses under NRI category shall be filled on the basis of:-

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

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

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

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

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

REGISTRAR"

An Admission Notice for MBBS/BDS Courses with respect to NRI Category candidates was also displayed on the website of Baba Farid University (respondent No.3), which reads as follows:-

"In the light of the judgment passed by the Hon'ble Supreme Court in SLP No.16307-16308/ 2015, revised admission criteria of NRI candidates for MBBS/BDS Courses session 2015 is available on University website. Keeping in view that, to provide opportunity to the NRI candidates seeking admission to MBBS/BDS Courses, the candidates who are eligible as per the revised admission criteria may apply on the prescribed application

proforma along with requisite fee, after getting Eligibility Certificate from the university. Last date for submission of application form is 31/08/2015. Candidates who have applied earlier need not to apply again. For details updates visit at www.bfuhs.ac.in

The said 'public notice' it is contended on behalf of the private respondents who are general category candidates and have secured admissions on the strength of the order passed by the learned Single Judge that it had been issued by the Registrar of the Baba Farid University (respondent No.3) at his own level only and not by any competent authority of the State Government, which alone was competent to issue such an amendment to the admission criteria.

Sh. Aman Bahri, learned Additional Advocate General, Punjab appearing for the State of Punjab has produced the Government files in this regard and on the basis of the notings therein submitted that the process for issuing the 'public notice' (Annexure P6) was initiated by the Director, Research and Medical Education, Punjab on 17.07.2015. It is *inter alia* mentioned therein that the Karnataka High Court had invalidated the MCI circular dated 16.01.2015 (Annexure P5) and SLP against the same had also been dismissed. In this situation, it is recorded that it would be appropriate that the NRI quota seats be filled on the basis of merit. Mr. Bahri, has even otherwise justified the issuance of the said 'public notice' (Annexure P6) and has filed an affidavit dated 20.11.2015 of Dr. Manjit Kaur Mohi, Director Medical Education and Research, Punjab in this regard.

The position, therefore, is that in terms of the initial notification dated 30.03.2015 (Annexure P1) issued by the Govt. on the basis of which the Prospectus was also issued, the NRI quota seats were to be filled on the basis of Common Entrance Test i.e. PMET-2015 conducted by the Baba Farid University (respondent No.3) and the candidates were required to attain 50% marks or above in PMET; however, the NRI seats could now in view of the 'public notice' (Annexure P6) even be filled on the basis of merit based on the marks obtained in the qualifying examination i.e. 10+2.

The said 'public notice' dated 06.08.2015 (Annexure P6), as already noticed, was assailed by Krishma Bansal (respondent No.1) by way of CWP No.17704 of 2015. According to Krishma Bansal (respondent No.1), she had appeared in the PMET-2015 conducted by Baba Farid University for seeking admission to the 920 available seats for the MBBS Course. She ranked at No.1069 and after revision of results at No.1136 in the merit list. The seats reserved for NRI candidates apart from other reservations were to the extent of 15%. The NRI category seats were to be filled according to the Prospectus (Annexure P3) by such candidates who appeared in the PMET and had secured 50% minimum marks in it. It was contended that the vacant seats of the NRI category were to be filled in accordance with Clause 23 (vi) of the Prospectus, which is based on the notification dated 30.03.2015 (Annexure P1).

According to the State of Punjab, in terms of the circular of the MCI dated 16.01.2015 (Annexure P5), it was initially mandatory to fill the NRI quota seats through a Common Entrance

Test. Therefore, according to the notification dated 30.03.2015 (Annexure P1), the admissions were to be made on the basis of marks obtained in the PMET. However, according to clause 4 of the said notification dated 30.03.2015 (Annexure P1) it was provided that if the seats were still vacant, then these would be filled on the basis of qualifying marks obtained in 10+2 qualifying examinations. Reliance was also placed on clause 22 of the notification dated 30.03.2015 (Annexure P1), which provided that for the left over seats, the admissions would be made on the basis of merit in the PMET or the *inter se* merit on the basis of the qualifying examinations and the applicability of clause 23 (vi) of the notification dated 30.03.2015 (Annexure P1), which provided that the seats remaining vacant under NRI category were to go to general category and in the unaided private colleges/minority colleges were to go to the management/minority quota.

The State of Punjab submitted that it had decided to give maximum benefits to NRI category candidates so as to encourage them to take active part for boosting the Indian economy. After re-inviting fresh applications only 28 candidates had applied for MBBS course from amongst them 13 were PMET qualified and 8 had appeared in the PMET and 7 candidates had applied on the basis of the 10+2 qualifying examination. In the BDS Course there were 167 seats and only 3 candidates applied for BDS Course and the vacant seats were to be made available to the remaining candidates as per notification dated 30.03.2015 (Annexure P1).

The rank of Krishma Bansal (respondent No.1) in the

PMET-215 was 1136 and the gap between her and the last selected candidate against private management quota seats was 575 ranks as the last candidate ranked at 561. To a query raised on behalf of Krishma Bansal (respondent No.1) that NRI seats were given to private medical colleges and not to Government colleges, it was submitted that the State Government introduced NRI quota in Government Medical Colleges from the year 2000 onwards with the permission of the competent authority in order to tide over the finances to generate an increase from Rs.4.20 crores to Rs.10.80 crores. This was done after cabinet approval headed by the Chief Minister on 25.02.2000 and after taking opinion from the Department of Legal and Legislative Affairs vide opinion dated 09.02.2000. Besides, the matter stood settled by this Court in the case of Sonalika Kaushal v. State of Punjab and others, CWP No.17724 of 2013, decided on 18.11.2013.

It was further stated by way of an additional affidavit that a Committee had been appointed by the Dean of Instructions, Panjab University to suggest the criterion to determine the merit of the NRI students seeking admissions to the MBBS Course. The minutes of the meeting dated 27.07.1994 (Annexure R1) have been placed on record. The Committee went in depth to determine the merit of NRI students seeking admissions to the MBBS Course at Dayanand Medical College, Ludhiana and suggested the criterion as is mentioned therein. Since then the admissions were being made on the basis of merit obtained by 'Equivalence Certificate' issued by the Panjab University. The same criteria was adopted by the Baba Farid University (respondent No.3). The members of the Committee

to determine the merit of the NRI students for admissions in the Session 2015 were Dr. R.K. Soni, Prof. (SPM), Dayanand Medical College, Ludhiana and Dr. Harminder Singh, Associate Professor, Pharmacology, Guru Gobind Singh Medical College, Faridkot. The equivalence criteria, it is submitted, helps to prepare common merit of the students who passed their 10+2 examinations from different countries and from different Boards such as CBSE, ICSE, PSEB and other State Boards. The said criteria takes care of the MCI Regulations which provides that there should be a Common Entrance Test for the students coming from different Universities or Boards.

The Medical Council of India did not file any reply before the learned Single Judge but at the same time did not support the action of the State. Reliance was placed on paras 26 and 27 of the Supreme Court judgment in P.A. Inamdar's case (supra) to submit that there could be no exemption from the Common Entrance Test and the NRI category was not a special category. The students of the said category were to go through the entrance test. Reliance was also placed on the letters dated 06.05.2015/07.05.2015 (Annexures R3/1 and R3/2); besides, the provisions of the 1997 Regulations to submit that the Common Entrance Test was a uniform evaluation process.

Krishma Bansal, who was the petitioner in the writ petition (now respondent No.1), did not implead the NRI candidates who were to be affected by the decision, as parties. However, an intervention application i.e. CM No.12837 of 2015 was filed before the learned Single Judge by Gina Kaur Gill (now respondent No.5)

for being impleaded as respondent No.4; besides, intervention application by way of CM No.12893 of 2015 was also filed by Jagraj Singh Dosanjh and Sukhnoor Singh (now appellants No.1 and 2) for being impleaded as respondents No.5 and 6 in the writ petition before the learned Single Judge. These applications were filed when the hearing in the case had almost concluded before the learned Single Judge.

The writ petition before the learned Single Judge was initially taken up for hearing on 26.08.2015, on which notice of motion was issued. It was then listed for 24.09.2015. On the said date, Gina Kaur Gill (respondent No.5 herein) was to appear for counselling on the basis of the 'public notice' dated 06.08.2015 (Annexure P6), which was subject matter of the petition. The CM was also filed on the said date. Jagraj Singh Dosanjh and Sukhnoor Singh (appellants No.1 and 2) filed their application on 28.09.2015 so as to become parties before the learned Single Judge. The writ petition was, however, decided by the impugned order on 29.09.2015. Therefore, according to Jagraj Singh Dosanjh and Sukhnoor Singh (appellants No.1 and 2), they were unable to put forth their entire case in an effective hearing.

Ms. Supriya Garg, Advocate, learned counsel appearing for Krishma Bansal (respondent No.1), however, submits that in fact when the writ petition was filed she was unaware as to who were the affected candidates as the admission process for the NRI seats had not commenced.

Be that as it may, the learned Single Judge allowed the writ petition holding that the Government was bound by the

Prospectus, which was issued and the 'public notice' dated 06.08.2015 (Annexure P6) could not be issued in violation of the Prospectus at the last moment making ineligible candidates eligible. It was also held that the prospectus was to be read in such a manner that the benefit of the vacant NRI seats was given to the general category candidates on account of non qualification and non availability of the NRI category candidates, who had failed to secure minimum 50% marks in the PMET. It was further held that merely because the NRI category candidates were a special category and 15% seats were reserved for them would not entitle them for admissions regardless of merit. The sheer money power paying capacity, it was observed, was not the only criteria which would entitle them for admissions. Only on account of their financial weight they could not bully their way in irrespective of the fact that they did not have the minimum qualifications prescribed by the MCI. It was also noticed that the private respondents had not even applied in pursuance of the PMET-2015 and were now flocking to make the cut on the strength of their 10+2 qualifying examination, which the State was unfortunately encouraging. The writ petition was accordingly allowed and the petitioner (now respondent No.1) was held entitled to stake a claim in view of clause 23 (vi) of the notification dated 30.03.2015 (Annexure P1) and the reserved seats, it was held, would necessarily have to flow to the general category candidates. Besides, the 'public notice' dated 06.08.2015 (Annexure P6) was quashed and the State was directed to fill the vacant NRI seats as per Clause 23 (vi) by calling the candidates from general category who had got 50% marks in the PMET-2015

and were the eligible candidates.

The Baba Farid University (respondent No.3) in consequence of the order of the learned Single Judge passed on 29.09.2015 has admitted the private respondents/students who are from amongst the general category candidates to the MBBS Course for the Session 2015 on the basis of their merit in PMET-2015. They have been admitted against the NRI category quota seats. The said admissions have been made on 30.09.2015 immediately after passing of order dated 29.09.2015, which was the last date in terms of the Supreme Court directions for making admissions.

The appellants have assailed the order of the learned Single Judge. The Letters Patent Appeal was filed by the appellants on 30.09.2015.

According to Mr. Anand Chhibbar, Senior Advocate appearing with Mr. Manhar S. Saini and Mr. G.S. Ghuman, Advocates submitted that the appeal has been filed on the next day after the order of the learned Single Judge and in fact a request was made before this Bench on 30.09.2015 for fixing the case on the said date. However, he was asked to file it in the Registry. The appeal was filed by appellants No.1 to 5 and out of them appellants No.1 and 2 namely Jagraj Singh Dosanj and Sukhnoor Singh, were impleaded as respondents before the learned Single Judge. The appellants No.3 to 5 namely Karam Jog Singh Gill, Bhaskar Thapar and Arpita Kapoor were not a party before the learned Single Judge but they assail the order as they are affected by it.

The appeal was taken up on 01.10.2015 on which date a civil miscellaneous application was filed by Abhimanyu Sharma for

being impleaded as appellant No.6 in the appeal. The civil miscellaneous application was taken on record and was allowed.

Notice of motion was issued on 01.10.2015.

Mr. Salil Sablok, Advocate for Ms. Supriya Garg, Advocate put in appearance on behalf of Krishma Bansal (respondent No.1), Mr. Aman Bahri, Additional Advocate General, Punjab put in appearance on behalf of State of Punjab (respondent No.2), Mr. Nitin Kaushal, Advocate put in appearance on behalf of Baba Farid University (respondent No.3), Mr. Jagyadeep, Advocate put in appearance on behalf of MCI (respondent No.4) and Mr. Sehajbir Singh, Advocate put in appearance on behalf of Gina Kaur Gill (respondent No.5).

Learned Senior Counsel appearing for the appellants submitted that all the six appellants fulfilled the necessary eligibility and had obtained Eligibility Equivalence Certificates for Foreign Indian Students (NRI) from Baba Farid University (respondent No.3) for seeking admissions to the MBBS Course for the Session 2015-16 against the NRI category quota seats. It is submitted that in terms of Section 4 (3) of the Punjab Private Health Sciences Educational Institutes (Regulations of Admission, Fixation of Fees and Making of Reservations) Act, 2006 (as amended by Punjab Act No.24 of 2006) ('2006 Act' – for short), admissions to all category of seats in Private Health Sciences Institutes except in case of Foreign Indian Students (NRIs) were to be made on the basis of *inter se* merit of the candidates who appeared in the Common Entrance Test. Therefore, according to him candidates seeking admissions to MBBS Course for the Session 2015-16 against NRI

category quota seats were statutorily not required to appear in the Common Entrance Test.

In view of the said position, learned counsel for Baba Farid University (respondent No.3) was asked to intimate the names of the last six general category candidates who had been admitted against the NRI category quota seats. Besides, other information was also asked for as mentioned in the order dated 01.10.2015. The case was adjourned to 05.10.2015.

Civil miscellaneous applications No.3156 and 3157-LPA-2015 were filed for impleading Shubhika Singh as appellant No.7 and impleading Prabhdeep Kaur Mann, Krishma Rathore and Jannat Khanna as appellants No.8 to 10 respectively.

Notices of the said CMs were issued to the counsel for the non-applicants/respondents. They had no serious objection of their being impleaded as appellants. Accordingly, they were impleaded as appellants No.7 to 10 on 05.10.2015 and the amended memo of parties was taken on record.

Mr. Nitin Kaushal, Advocate for Baba Farid University (respondent No.3) filed a short reply of Dr. Darshan Singh Sidhu, Registrar of Baba Farid University (respondent No.3) which was taken on record. A list of the names of the last six candidates who were admitted against the vacant NRI category quota seats transferred to the general category of management quota seats was given. The said six candidates were impleaded as respondents No.6 to 11. The Registry was asked to carry out necessary corrections in the amended memo of parties. Mr. Nitin Kaushal, Advocate for Baba Farid University (respondent No.3) further informed that he shall

furnish a list of four more candidates in order of merit above the last admitted candidates who had been impleaded as respondents so that they may be impleaded as respondents No.12 to 15.

Notices were issued to the newly added respondents No.6 to 11 through the Registrar of the Baba Farid University (respondent No.3). The case was adjourned to 13.10.2015. On the said date, it was submitted by the learned counsel for the Baba Farid University (respondent No.3) that the names of six students who were impleaded as respondents No.6 to 11 had been wrongly recorded. In fact, the names of those who were to be impleaded were correctly dictated but by mistake the names from the list, which was not the correct list had been typed. Accordingly, the names of respondents No.6 to 11 who were impleaded vide order dated 05.10.2015 were deleted and the correct names of ten candidates submitted by Mr. Nitin Kaushal, Advocate for the Baba Farid University (respondent No.3) were inserted. Gina Kaur Gill (respondent No.5), it was submitted had got admission elsewhere. The students from serial No.2 to 10 of the fresh list that was submitted namely Navjiwan Singh Bhandal, Ajay Deep Syal, Ikshvaku Garg, Kritika Dogra, Sahib Sharma, Sahil Gupta, Navpreet Kaur, Gaurav Chopra and Ishita Gupta Kaushal were impleaded as respondents No.6 to 14 vide order dated 13.10.2015.

It was also brought to the notice of the Court on 13.10.2015 that the MCI (respondent No.4) had vide circular dated 18.09.2015 withdrawn the circular dated 16.01.2015 (Annexure P5), by which it was provided that all admissions in NRI category shall be on merit which shall be determined through a Common

Entrance Test. In fact, the setting aside of the MCI circular dated 16.01.2015 (Annexure P5) by the Hon'ble Karnataka High Court in Shri Basaveshwar Vidya Vardhak Sangha and others v. Medical Council of India (supra) and SLP of the MCI (respondent No.4) against the said decision being dismissed by the Supreme Court was the basis for issuing the 'public notice' dated 06.08.2015 (Annexure P6). The copy of the circular dated 18.09.2015 issued by the MCI (respondent No.4) was submitted in Court, which was taken on record. It was submitted that the fact that the circular dated 16.01.2015 (Annexure P5) had been withdrawn, was not brought to the notice of the learned Single Judge during the course of hearing, which culminated in the passing of the order dated 29.09.2015. In fact, learned counsel for the MCI (respondent No.4) submitted that even he was unaware of the circular dated 18.09.2015 by which the circular dated 16.01.2015 (Annexure P5) was withdrawn by the MCI. Accordingly, an affidavit was asked to be filed of a responsible high ranking officer of the MCI (respondent No.4) as to why the circular dated 18.09.2015, withdrawing the circular dated 16.01.2015 (Annexure P5), was not brought to the notice of the learned Single Judge or to the notice of the learned counsel representing it and also make submissions regarding their stand. The case was adjourned and in the meantime the attendance of classes by respondent No.1 and respondents No.6 to 14, it was ordered, shall be subject to the outcome of the appeal. The case was then taken up on 19.10.2015 for completing services.

Mr. Gurminder Singh, learned Senior Counsel appearing with Mr. Pankaj Gupta and Mr. Abhinav Gupa, Advocates, for

respondents No.7, 8, 13 and 14 submitted that according to the affidavit of Baba Farid University (respondent No.3), 12 seats were available against NRI category in Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar regarding which the Baba Farid University (respondent No.3) had not shown as to whether these were converted to general quota seats. The Baba Farid University (respondent No.3) was asked to verify this position and specify whether any candidates lower in merit than those whose list had been given were admitted against the 12 NRI seats of Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar in case the said seats had been converted for general category candidates.

Affidavit of Shri Ashok Kumar Harit, Deputy Secretary, MCI (respondent No.4) was filed which was taken on record. The said affidavit was filed for the purpose of explaining as to why the fact that the circular dated 16.01.2015 (Annexure P5) had been withdrawn vide circular dated 18.09.2015 issued by the MCI (respondent No.4), was not brought to the notice of the learned Single Judge during the course of hearing and also to the learned counsel for the MCI (respondent No.4). The affidavit of Shri Ashok Kumar Harit, Deputy Secretary, MCI (respondent No.4) that has been filed is quite evasive on the issue and except for tendering apology does not state as to why the circular dated 18.09.2015 was not brought to the notice of the learned Single Judge or the learned counsel appearing for the MCI (respondent No.4).

An affidavit of Dr. Manjit Kaur Mohi, Director Medical Education and Research was filed on behalf of State of Punjab which

was taken on record. In terms of the affidavit that was filed permission to place on record the corrigendum dated 29.09.2015 (Annexure R2/2) issued by the Department of Medical Education and Research, Punjab was prayed for. The said corrigendum, in fact, was issued one day before the admissions to the MBBS Course were to be completed i.e. 30.09.2015 in terms of the Supreme Court orders. It is stated that the corrigendum (Annexure R2/2) was issued in view of a public notice dated 29.09.2015 (Annexure R2/1) published in the Tribune. In terms of the said notice (Annexure R2/1) the Private Dental Colleges Association had invited applications for admission to BDS Course on the basis of qualifying examinations i.e. 10+2. It is submitted that the Dental Council of India ('DCI' - for short) vide letter dated 22.09.2015 had already conveyed that no admission shall be made on the basis of 10+2 qualifying examinations. The last date for admissions as per Supreme Court order was 30.09.2015, therefore, keeping in view the urgency of the matter and future of the students, the corrigendum dated 29.09.2015 (Annexure R2/2) was issued.

Liberty was given to the respondents who had been served to file their replies.

CM No.3232-LPA of 2015 was filed by Kushpreet Kaur Chhina for being impleaded as appellant No.11.

Baba Farid University (respondent No.3) filed affidavit of Shri Darshan Singh Sidhu, Registrar of the University *inter alia* mentioning the names of eight candidates who were admitted in Guru Ram Dass Institute of Medical Sciences and Research, Amritsar. The PMET marks of the last candidate namely Ishita

Gupta Kaushal who had been impleaded as a respondent had secured 528 marks.

Mr. Anand Chhibbar, learned Senior Counsel for the appellants submitted that the students/candidates, who are lower in merit than Ishita Gupta Kaushal from amongst the list of eight candidates admitted in Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar were liable to be impleaded in the appeal as respondents.

Accordingly, Komal Kamalpreet Dasuwal, Sakul Kapahi, Nidha Naib, Manjot Kaur, Mankirat Kaur and Harleen Kaur were impleaded as respondents No.15 to 20; besides, Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar through its Principal was impleaded as respondent No.21. The added respondents No.15 to 20 were ordered to be served through the Principal of Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar (respondent No.21). The other services were complete; besides, replies of some of the respondents were filed.

The case was taken up on 29.10.2015 on which date learned counsel for respondents No.1, 6 and 12 submitted that in consequence of the order dated 21.10.2015 passed in CWP No.21348 of 2015, two more candidates namely Akhilesh Sharma and Sheenam Garg, who ranked at serial No.1199 and 1207 of the PMET-2015 merit list had been granted admissions in the MBBS Course at Punjab Institute of Medical Sciences, Jalandhar and Gian Sagar Medical College and Hospital, Banur respectively. It was submitted that since the last candidate admitted from candidates other than those admitted to Sri Guru Ram Dass Institute of Medical

Sciences and Research, Amritsar (respondent No.21) namely Ishita Gupta Kaushal, who ranked at serial No.1193 had been impleaded as respondent No.14; therefore, Akhilesh Sharma and Sheenam Garg were liable to be impleaded as respondents No.22 and 23 respectively. They were accordingly impleaded as respondents No.22 and 23 respectively. The added respondents No.15 to 21 could not be served due to vacations. Therefore, fresh notices were issued to them as also notices to newly added respondents No.22 and 23, who were ordered to be served through the Principals of their respective Institutes.

Mr. Ashok Sharma Nabhewala, Advocate on 02.11.2015 put in appearance for Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar (respondent No.21); besides, Mr. Jagtar Singh, Advocate put in appearance for respondents No.15 to 20. Fresh notices were ordered to be served to respondents No.22 and 23.

The provisional result of Khushpreet Kaur Chhina, who ranked at serial No.11835 of the PMET-2015 merit list was taken on record on 02.11.2015. Besides, the corrigendum dated 29.09.2015 (Annexure R2/2) issued by the Punjab Government, the public notice (Annexure R2/1), the provisional result (Annexure R1/3) of Krishma Rathore and Jannat Khanna (appellants No.9 and 10) were taken on record. The letter dated 06.05.2015 (Annexure R1/4) from the MCI addressed to Directorate of Medical Education Chandigarh, letter dated 07.05.2015 (Annexure R1/5) and letter dated 22.09.2015 (Annexure R1/6) issued by the DCI and the application for obtaining 'Equivalence/Eligibility Certificate' (for admission under

NRI quota only) (Annexure R1/7) were taken on record subject to just exceptions.

Counter affidavit of Smt. Geeta Sharma, Director Principal Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar (respondent No.21) was filed in Court on 06.11.2015, which was taken on record; besides, counter affidavit of Sakul Kapahi (respondent No.16) on behalf of respondents No.15 to 20 was filed in Court, which was taken on record. An affidavit of Kritika Dogra (respondent No.9) was also filed and taken on record. According to learned counsel for the appellants, respondents No.22 and 23 had been served and he had furnished the 'dasti' notices of their service in the Registry. The Registry was asked to make a report in this regard.

Mr. Manuj Nagrath, Advocate put in appearance for Akhilesh Sharma (respondent No.22) and Mr. Bhrigu Dutt Sharma, Advocate put in appearance for Sheenam Garg (respondent No.23) on 16.11.2015. They prayed for time to file counter affidavits, for which liberty was given to be filed during the course of hearing.

Mr. Naresh Dilawari, Advocate appearing for Khushpreet Kaur Chhina on 19.11.2015 pressed for impleadment of Khushpreet Kaur Chhina as an appellant. He submitted that she secured rank of 11835 and NRI rank of 46 in the PMET-2015 examination. Besides, a reference was made to her academic record. Learned counsel for the appellants and also learned counsel for the respondents did not have any serious objection to her being impleaded as an appellant. Accordingly, CM No.3232 of 2015 was allowed and Khushpreet Kaur Chhina was impleaded as appellant

No.11 in the appeal.

It may be noticed that the State of Punjab initially vide clause 4 of the notification dated 30.03.2015 (Annexure P1) had laid down that the admission to MBBS/BDS Courses in all categories would be based on marks obtained in PMET-2015. However, if the seats were still vacant then admission would be made on the basis of marks obtained in 10+2 (qualifying exam). In terms of clause 9 it was provided that after the declaration of the PMET-2015 result, the candidates would apply on a specific proforma for all seats, except All India quota seats, to the Baba Farid University (respondent No.3). Admission would be made by the Selection Committee through a centralized counselling by the Baba Farid University on the basis of *inter se* merit of PMET-2015. However, if the seats were still vacant, then admission would be done on the basis of marks obtained in 10+2 (qualifying exam). Merit would be prepared on the basis of Physics, Chemistry and Biology (PCB) marks in 10+2 examinations. In case, two or more candidates secured equal marks in the PCB subjects, then their marks would be determined in the manner as provided by sub-clauses (i), (ii) and (iii) as mentioned therein. Therefore, the vacant seats in terms of aforesaid clauses 4 and 9 were to be filled on the basis of marks obtained in the qualifying examinations i.e. 10+2.

In terms of the 'public notice' dated 06.08.2015 (Annexure P6) issued by the Registrar of the Baba Farid University (respondent No.3), a revised criteria for NRI candidates seeking admissions to MBBS and BDS Courses for the Session 2015 was set out. However, later the State of Punjab (respondent No.2) issued a

corrigendum dated 29.09.2015 (Annexure R1/1), i.e. one day before the admissions to the MBBS/BDS Courses were to be completed and finalized.

In terms of the said corrigendum, the notification dated 30.03.2015 (Annexure P1) was modified by deleting the clauses 4, 9 and 22 thereof pertaining to admissions on the basis of qualifying marks i.e. on the basis of marks obtained in 10+2. The corrigendum mentions that the deletions were made as per the MCI/DCI guidelines. It was, therefore, in terms of order dated 19.11.2015 passed by this Court in the present appeal, considered desirable that the State of Punjab (respondent No.2) clears its position in this regard by filing an affidavit and particularly regarding the 'public notice' dated 06.08.2015 (Annexure P6) issued by the Registrar of the Baba Farid University (respondent No.3) and the corrigendum dated 29.09.2015 (Annexure R1/1). It was also asked to be clarified as to whether the participation in the PMET-2015 was compulsory for NRI candidates seeking admissions in MBBS and BDS Courses in view of the provisions of the 2006 Act and the stipulations provided in the prospectus 2015.

In consequence of the order dated 19.11.2015, an affidavit of Dr. Manjit Kaur Mohi, Director Research and Medical Education, Punjab dated 20.11.2015 on behalf of the State (respondent No.2) has been filed. It is clarified that the intention of the Government in issuing the corrigendum dated 29.09.2015 (Annexure R1/1) was only to restrain the Private Dental Colleges from admitting general category students on the basis of 10+2 qualifying examination. There was no such intention of the

Government qua the NRI category.

The MCI (respondent No.4) has filed additional affidavit dated 26.11.2015 of Shri Shikhar Ranjan, Law Officer, MCI. It is submitted that the additional affidavit is being filed in pursuance to order dated 20.11.2015. In the said order dated 20.11.2015, it is recorded that Mr. Gurminder Singh, learned Senior Counsel for respondents No. 7, 8, 13 and 14 submitted that in para 45 of the affidavit dated 17.10.2015 of the MCI, it was submitted that after quashing the circular dated 16.01.2015 (Annexure P5) it was stated that all admissions under NRI quota seats shall be made in consonance with the State enactments in this regard. It may be noticed that the earlier affidavit dated 17.10.2015 on behalf of the MCI (respondent No.4) was deposed by Shri Ashok Kumar Harit, Deputy Secretary, MCI. The said affidavit, in fact, was in consequence of the order passed by this Court as to why the circular dated 18.09.2015 withdrawing the circular dated 16.01.2015 (Annexure P5) was not brought to the notice of the learned Single Judge or its learned counsel representing it before the learned Single Judge. In the affidavit dated 17.10.2015, as already noticed, no specific reply was given in this regard; however, in para 45 thereof, it was submitted that after the quashing of the circular dated 16.01.2015 (Annexure P5), all the admissions, under the NRI quota in the States shall have to be in consonance with the respective State enactments in this regard.

In the affidavit dated 26.11.2015 deposed by Shri Shikhar Ranjan, Law Officer, MCI on behalf of the MCI (respondent No.4), in para 14, it is submitted that after quashing of the circular

dated 16.01.2015 (Annexure P5), all admissions under the NRI quota in the State shall be in consonance with the respective State enactments in this regard. It is further submitted that in accordance with the time schedule fixed by the Hon'ble Supreme Court in *Mridul Dhar and another v. Union of India and others* (2005) 2 SCC 65, *Priya Gupta v. State of Chhattisgarh* (2012) 7 SCC 433 and *Royal Medical Trust v. Union of India* (2015) 9 Scale 68, the teaching and training MBBS Course must commence from 2nd August and the last date for making admissions to MBBS Course against any stray vacancy is 30th of September of each academic year and no admissions are permissible by any authority thereafter.

Therefore, it is evident that after the circular dated 16.01.2015 (Annexure P5) had been invalidated by the Hon'ble Karnataka High Court and the SLP against the same had also been dismissed; besides, the MCI itself had withdrawn the same on 18.09.2015, the NRI quota seats were to be filled on the basis of the respective State enactments i.e. 2006 Act in the present case. However, it is sought to be contended that after 30.09.2015 the admissions would be mid-stream and, therefore, impermissible.

Mr. R.P.S. Basra, Advocate appearing for MCI (respondent No.4) has placed strong reliance on para No.50 of the affidavit dated 17.10.2015 deposed by Shri Ashok Kumar Harit, Deputy Secretary, MCI, wherein it is submitted that in view of the legal position as laid down by the Supreme Court, the relief sought in the present appeal being contrary to the statutory regulations and the various judgments of the various Courts, as submitted, would not be maintainable and deserves to be rejected. It is

submitted that the Regulations framed by the MCI are statutory in character and, therefore, binding and mandatory on all concerned Universities and Colleges conducting medical courses. A reference has been made clause 5 and particularly clause 5 (5) (ii) of the 1997 Regulations.

Mr. Chhibbar, learned Senior Counsel appearing for the appellants has, however, submitted that in case the 1997 Regulations provide that a candidate for being selected to the MBBS Course must pass the qualifying examination in the subjects of Physics, Chemistry, Biology/Bio-Technology and English individually and obtain a minimum of 50% marks taken together and in addition must come in the merit list prepared as a result of competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive entrance examination and 40% instead of 50% in respect of candidates belonging to scheduled castes, scheduled tribes or other backward classes, then there was no need for the MCI to issue the circular dated 16.01.2015 (Annexure P5), which has been considered and invalidated by the Hon'ble Karnataka High Court in Shri Basaveshwar Vidya Vardhak Sangha and others v. Medical Council of India (supra) and SLP against the same has also been dismissed on 06.07.2015.

During hearing of the case, Mr. Nitin Kaushal, Advocate appearing for the Baba Farid University (respondent No.3) submitted the number of vacant seats for the BDS Course for the session 2015-16. According to the chart submitted by him, seven NRI seats were vacant i.e. four in Government Dental Colleges;

besides, four seats for NRI quota under Government quota and 162 seats for NRI quota under Management quota in private Dental colleges.

Mr. Anand Chhibbar, learned Senior Counsel for the appellants submitted that the provision for NRI quota seats for admissions to MBBS/BDS Courses subject to eligibility has been held to be valid by the Hon'ble Supreme Court in P.A. Inamdar's case (supra), which are independent of the other seats. It was submitted that Karam Jog Singh Gill, Arpita Kapoor and Prabhdeep Kaur Mann (appellants No.3, 5 and 8) were candidates for admissions to BDS Course only from the NRI category quota seats and they had applied for the BDS Course only. Besides, Shubhika Singh (appellant No.7) though had applied for the NRI seat in the MBBS Course but there being a common entrance, she sought admission to the BDS Course against one of the NRI category quota seat.

Mr. Gurminder Singh, learned Senior Counsel for the respondents submitted that the judgment of the learned Single Judge invalidating the 'public notice' dated 06.08.2015 was correct and the vacant NRI seats were to be filled by the calling candidates from the general category, who obtained 50% in the PMET.

Mr. Aman Bahri, Additional Advocate General, Punjab appearing for the State (respondent No.2) submitted that he had no objection to the admissions being given to Karam Jog Singh Gill, Arpita Kapoor and Prabhdeep Kaur Mann (appellants No.3, 5 and 8) as also Shubhika Singh (appellant No.7) in the BDS Course but his concession and stand was restricted only with respect to NRI

category quota seats as the State Government has taken the stand that for NRI category quota seats, appearance in PMET was not necessary and admissions could be made on the basis of 10+2 qualifying examination or its equivalent examination. However, this should not be taken to be the stand or the position of the State Government in respect of seats other than the NRI category quota seats.

Mr. Nitin Kaushal, Advocate for the Baba Farid University (respondent No.3) submits that he adopts the stand taken by Mr. Bahri.

In the circumstances, provisional admissions were given to the BDS course against NRI quota seats to Karam Jog Singh Gill, Arpita Kapoor and Prabhdeep Kaur Mann (appellants No.3, 5 and 8) as also Shubhika Singh (appellant No.7), which was subject to verification and counselling by the Baba Farid University (respondent No.3) as also the outcome of the appeal. In case they were found eligible they were to be admitted which was without prejudice to the rights of the parties.

The concession had been given by the learned counsel representing the State of Punjab and the Baba Farid University (respondents No. 2 and 3) despite the fact that 30.09.2015 was the last date for concluding the admission process as the seats were lying vacant and no other student, who was studying, would be affected or dislodged. Besides, the appellants No.3, 5, 7 and 8 were not a party before the learned Single Judge but being affected by the impugned judgment and order dated 29.09.2015, they assailed the same by filing the present appeal for which permission was

granted and they were impleaded as appellants.

Thereafter, it was submitted on 30.11.2015 by Mr. Abhinav Gupta, Advocate for Shubhika Singh (appellant No.7) that in consequence of the order dated 27.11.2015 she had approached the Baba Farid University (respondent No.3), but she was informed that no seat of BDS Course in NRI category quota was vacant in the Government Dental Colleges at Amritsar and Patiala. This was, in fact, totally contrary to the chart submitted by the Baba Farid University (respondent No.3). Mr. Nitin Kaushal, Advocate for respondent No.3 was asked to clarify the position. The case was adjourned for further arguments to 01.12.2015.

An affidavit of the Registrar of the Baba Farid University (respondent No.3) was filed on 01.12.2015 stating that a mistake in the calculation of the vacant seats of the BDS Course for the Session 2015-16 had occurred which was a clerical error; besides, being inadvertent. The vacant seats of BDS Course in the Session 2015-16 as on 30.09.2015 had been submitted in Annexure R3/A attached with the affidavit. According to which there was no vacant seat of BDS Course in the NRI category quota in the Government Dental Colleges at Patiala and Amritsar, respectively.

Mr. Abhinav Gupta, Advocate for Shubhika Singh (appellant No.7) submitted that the said appellant was willing to take admission to the BDS Course against NRI category quota in a Government Dental College only either at Patiala or at Amritsar and not in any private college. Therefore, in view of the position clarified by the Baba Farid University (respondent No.3), as per the revised vacancy chart (Annexure R3/A); it was prayed that she be allowed

to revert to her earlier position i.e. of her claim for a seat in the MBBS course against the NRI category quota.

In view of the mistake that had occurred, the order dated 27.11.2015 was recalled insofar Shubhika Singh (appellant No.7) was concerned. She was permitted to pursue her claim for MBBS Course against the NRI category quota seat. The order dated 27.11.2015, however, was to remain operative insofar as appellants No.3, 5 and 8 were concerned as they had applied only for BDS Course against the NRI category quota seats. In this manner, out of the 11 appellants only 8 appellants remain and arguments have been heard at length.

The contentions raised on behalf of the appellants by Mr. Anand Chhibbar, Senior Advocate with Mr. Manhar S. Saini and Mr. G. S. Ghuman, Advocates for the appellants No.1 to 10 and of Mr. Naresh Dilwari, Advocate for appellant No.11 (Khushpreet Kaur Chhina) are that the learned Single Judge gravely erred in quashing the 'public notice' dated 06.08.2015 (Annexure P6) whereby the respondent-State of Punjab revised the criteria of candidates seeking admissions to the MBBS/BDS Courses. It is submitted that in fact the criteria was changed as the foundation for NRI quota candidates making it compulsory to appear in the Common Entrance Test in pursuance of notification dated 16.01.2015 (Annexure P5) had been invalidated by the Karnataka High Court vide its judgment dated 17.04.2015 in the case of Sri Basaveshwar Vidya Vardhak Sangha and others v. The Medical Council of India (supra) and SLP No.16307-16308 of 2015 had been dismissed by the Hon'ble Supreme Court on 06.07.2015. Thereafter, circular

dated 18.09.2015 was also issued by the MCI withdrawing the circular dated 16.01.2015 (Annexure P5). The 'public notice' dated 06.08.2015 (Annexure P6) in fact had been issued in consequence of the circular dated 16.01.2015 (Annexure P5) being invalidated by Court orders. This, it is submitted, was more so necessary as NRI seats to which the appellants were claimants and entitled were lying vacant. Clause 23 (vi) of the prospectus it is submitted would be applicable only in case the seats of NRI category are vacant after applying the necessary criteria for admissions to MBBS/BDS Courses. Besides, the NRI seats are separate and distinct from the other seats as held by the Supreme Court in P.A. Inamdar's case (supra).

Mr. Aman Bahri, Additional Advocate General, Punjab, appearing for the State of Punjab has supported the case of the appellants insofar as the NRI category quota seats are concerned. It is submitted that for candidates seeking admissions to MBBS/BDS Courses against the NRI category quota seats it is not necessary to appear in the PMET and admissions can be made on the basis of 10+2 or its equivalent examination. This, however, is not the stand of the State Government in respect of seats other than the NRI category quota seats.

Mr. Nitin Kaushal, Advocate appearing for the Baba Farid University (respondent No.3) adopts the stand taken by Mr. Aman Bahri, Advocate.

Mr. R.P.S. Basra, Advocate for MCI (respondent No.4) submits that the procedure for selection to MBBS Course as provided by Regulation 5 (5) (i) and (ii) of the 1997 Regulations is

to be followed. However, it is accepted by the learned counsel for the MCI that the circular dated 06.01.2015 (Annexure P5) issued by the MCI making it compulsory for NRI students to appear in the entrance test has since been withdrawn by the MCI vide circular dated 18.09.2015 (Annexure R4/8). It is submitted that the relief claimed by the appellants is contrary to the statutory regulations and judgments of the Courts and the appeal is liable to be dismissed.

Mr. Gurminder Singh, Senior Advocate appearing with Mr. Pankaj Gupta and Mr. Abhinav Gupta, Advocates for respondents No.7, 8, 13 and 14; Ms. Supriya Garg, Advocate for respondents No.1, 6 and 12, Mr. M.K. Dogra, Advocate for respondent No.10; Mr. Vikas Mohan Gupta, Advocate for respondent No.11; Mr. Jagtar Singh, Advocate for respondents No.15 to 20; Mr. Manuj Nagrath, Advocate for respondent No.22 and Mr. B.D. Sharma, Advocate for respondent No.23 submitted that the judgment and order passed by the learned Single Judge is absolutely correct and warrants no interference.

Mr. Gurminder Singh, Senior Advocate has submitted that the prospectus issued by the State Government for admissions to the MBBS/BDS Courses is mandatory in nature and has the force of law. The same could not be changed in the mid-stream; besides, the cut off date for admissions to MBBS/BDS Courses has been fixed by the Supreme Court as 30.09.2015 and the same is not liable to be deviated from. In any case, it is submitted that the admissions already made from the general category are of such students/candidates who are more meritorious than the appellants

and they are mid-way through their MBBS Course, which is not liable to be varied.

Mr. Sehajbir Singh, Advocate for respondent No.5 submits that respondent No.5 has got admission elsewhere in an another institute and, therefore, she has not been admitted in consequence of the revised criteria.

Mr. Ashok Sharma Nabhewala, Advocate for Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar (respondent No.21) has submitted that the said Institute is an unaided, self financing Sikh Minority Institute. There are seven unaided medical colleges in the State of Punjab affiliated to the Baba Farid University (respondent No.3). Out of the said unaided medical colleges, there are two unaided minority institutes i.e. Sri Guru Ram Dass Institute, Amritsar (respondent No.21) and the Christian Medical College, Ludhiana. Sri Guru Ram Dass Institute (respondent No.21) has 150 sanctioned seats of MBBS, out of which 22 seats are for NRI and 64 seats stand divided equally between Sri Guru Ram Dass Institute (respondent No.21) and the Government. A reference has been made to earlier notifications issued by the Government in this regard. It is submitted that in fact Sri Guru Ram Dass Institute (respondent No.21) is excluded from the applicability of the Government notification dated 30.03.2015 (Annexure P1) and it is to conduct its own admissions being a minority institute.

The State Government had vide notification dated 07.02.2005 for previous years amended the earlier notification dated 17.06.2004 regarding Sri Guru Ram Dass Institute

(respondent No.21) to the effect that the NRI seats would be divided equally between the Government quota and minority quota. Thereafter, vide notification dated 24.04.2006, the State Government for admissions to MBBS and other Courses for the Session 2006-07 did not exclude Sri Guru Ram Dass Institute (respondent No.21) and it was provided that all institutions whether Government or private, aided or unaided, minority or non-minority shall be covered by the said notification. Then the Government for admissions to MBBS Course for the Session 2007-08 vide notification dated 21.05.2007, took a conscious decision and excluded the Christian Medical College, Ludhiana from the applicability of the said notification. It was provided that all institutions whether Government or private, aided or unaided, minority or non-minority except Christian Medical/Dental Colleges, Ludhiana shall be covered by the said notification. Sri Guru Ram Dass Institute (respondent No.21) was not excluded from the applicability of the said notification dated 21.05.2007. The State Government, however, issued a corrigendum on 18.06.2007 in partial modification of the notification dated 21.05.2007. The same was to the effect that regarding the minority quota seats in Sri Guru Ram Dass Institute of Medical Sciences and Research as also Dental Sciences and Research, Amritsar; the NRI seats shall be divided equally between the Government quota and minority quota. Besides, it was further clarified that the Principals of Sri Guru Ram Dass Institute of Medical Sciences and Research and Sri Guru Ram Dass Institute of Dental Sciences and Research, Amritsar would be full fledged members of the respective Counselling Committees in

regard to the seats of the respective institutes and representative of the Government/Baba Farid University of Health Sciences Faridkot would be observer for the smooth conduct of counselling of minority/NRI seats.

Then the notification dated 31.03.2008 for admissions to MBBS/BDS and BAMS/BHMS Courses in Medical, Dental and Ayurvedic/Homeopathic Institutes 2008 onwards was issued by the State Government notifying the admissions to Undergraduate Degree Courses, that is, MBBS/BDS and BAMS/BHMS for the year 2008 onwards in the Medical, Dental and Ayurvedic/Homeopathic Institutes in the State of Punjab. In terms of the said notification, the State Government again provided that all the institutions whether Government or private, aided or unaided shall be covered by the said notification except Christian Medical/Dental College, Ludhiana and Sri Guru Ram Dass Medical/Dental Institutes. As regards Sri Guru Ram Dass Medical/Dental Institute, it was mentioned that it had been modified vide corrigendum dated 27.04.2010. On the basis of the said notification, Sri Guru Ram Dass Institute (respondent No.21) stands at par with Christian Medical College, Ludhiana insofar as minority status was concerned. Earlier the distribution of seats was notified by the State Government in its notification itself. However, after 2008, the seats distribution was no more part of the State Government notifications and only Baba Farid University (respondent No.3) got it published in their prospectus. Due to unknown reasons, Baba Farid University (respondent No.3) did not exclude the MBBS/BDS seats of Sri Guru Ram Dass Institute (respondent No.21) like the Christian Medical

College, Ludhiana from the seat distribution table in their prospectus. In fact, Sri Guru Ram Dass Institute (respondent No.21) as well as Christian Medical College were excluded in the distribution of seats in the notification dated 23.02.2010. In the notification dated 23.02.2010, it was notified that all the institutions whether Government or private, aided or unaided except Christian Medical/Dental Colleges and Sri Guru Ram Dass Institute of Medical/Dental Sciences and Research shall be covered by the said notification. A reference was also made to order dated 15.05.2008 of the Hon'ble Supreme Court in SLP (C) No.7439 of 2008. Similar position as in the notification dated 23.02.2010, continued in the notifications dated 10.01.2011 and 05.06.2013.

The position regarding the said SLP (C) No.7439 of 2008 in the Supreme Court is that reservation of 50% seats for Sikh students in educational institutions run by the Shiromani Gurudwara Prabhandak Committee was quashed by a Division Bench of this Court in the case of Sahil Mittal v. State of Punjab 2008 (1) Service Cases Today 162. The Supreme Court in SLP (C) No.7439 of 2008 vide order dated 15.05.2008 had stayed the operation of the said judgment.

The Government of Punjab addressed memo dated 20.06.2014 (Annexure R-21/2) to the Secretary of the Sri Guru Ram Dass Charitable Hospital Trust, Amritsar ('Trust' - for short) regarding Post Graduate/Under Graduate Medical Courses admission notification. It was with reference to letter of the Trust dated 16.06.2014. It was brought to the notice of the Secretary of the Trust that in view of Section 3 (4) of the 2006 Act, as amended up

to 28.02.2007, and keeping in view the order passed by the Supreme Court of India in SLP (C) No.7439 of 2008, the minority quota seats in Sri Guru Ram Dass Institute (respondent No. 21) shall be filled at its own level and the Government notification for admissions to minority quota seats would not apply. The said letter, it is mentioned, had been issued with the approval of the competent authority.

In fact, Sri Guru Ram Dass Institute (respondent No.21) was impleaded as a party as during the course of hearing on 19.10.2015 it was submitted by Mr. Gurminder Singh, Senior Advocate appearing with Mr. Pankaj Gupta, Advocate for respondents No.7, 8, 13 and 14 that according to the affidavit filed on behalf of Baba Farid University (respondent No.3), 12 seats were available against the NRI category in Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar of which the Baba Farid University (respondent No.3) had not shown as to whether these were converted to General quota candidates seats. Accordingly, Baba Farid University (respondent No.3) was asked to clarify its position and specify whether any candidate lower in merit than the ten candidates whose list had been given by the Baba Farid University (respondent No.3) had been admitted against the said 12 NRI seats in case the said seats had been converted for General quota candidates. The Baba Farid University (respondent No.3) filed affidavit of Sh. Darshan Singh Sidhu, Registrar in which names of eight candidates who had been admitted in Sri Guru Ram Dass Institute of Medical Sciences and Research were mentioned. The six candidates namely Komal Kamalpreet Kaur Dasuwal, Sakul

Kapahi, Nidha Naib, Manjot Kaur, Mankirat Kaur and Harleen Kaur were admitted in Sri Guru Ram Dass Institute of Medical Sciences and Research and were lower in merit from the last candidate namely Ishita Gupta Kaushal from amongst the list of eight candidates who were impleaded as respondents No.15 to 20 on 21.10.2015. Besides, Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar through its Principal was also on the same date impleaded as respondent No.21.

The position is that Sri Guru Ram Dass Institute (respondent No.21) has been filling its minority quota as well as NRI seats by itself. During the course of hearing, there was some dispute between the Baba Farid University (respondent No.3) and Sri Guru Ram Dass Institute (respondent No.21) regarding the manner by which seats were filled by the latter. However, the same being an *inter se* dispute between co-respondents need not be gone into in this appeal and it would be proper that the same is resolved by mutual consultations and deliberations.

The question whether NRI quota seats for admissions to MBBS/BDS courses forms a separate category is not *res integra*. A seven Judges Bench of the Hon'ble Supreme Court in P.A. Inamdar and others v. State of Maharashtra (supra), in para 131 held as follows:-

“Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians (“NRI” for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher

amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs,

should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in *Islamic Academy* (2003) 6 SCC 697 to regulate.” (Emphasis added).

Therefore, indeed 15% seats, it was observed, have been earmarked for NRI students seeking admissions to the MBBS/BDS Courses. According to the Supreme Court, a limited reservation for NRI students seeking admissions to the MBBS/BDS Courses, not exceeding 15%, may be made available depending on the discretion of the management. This is subject to two conditions. First, that such seats are to be utilized by bona fide NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form, which is collected from such NRIs, is to be utilized for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent mis-utilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation, it was observed needs to be framed.

The State of Punjab has framed the 2006 Act. Insofar

as the NRI seats in terms of the said Act are concerned, Section 2 (d) of the 2006 Act defines that "Foreign Indian Student" means a student declared as such by the State Government by notification. Section 4 provides the 'Eligibility Criteria for Admission'. Section 4 (1) provides that 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. Section 4 (2) provides that the State Government or any other authority, authorized by it, shall conduct the Common Entrance Test for making admissions to all the private health sciences educational institutions in the State of Punjab, except for those, which are specifically exempted from such test. Section 4 (3) reads as under:-

Section 4 (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." (Emphasis added).

Section 5 of the 2006 Act provides for Allocation of seats. Sub-Section (5) thereof relates to admissions of Foreign Indian students. The same reads as under:-

Section 5. " Allocation of seats.-

(1) & (2) xxxxx

(3) Omitted by Punjab Act No.24 of 2006.

(4) xxxxxx

(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; (Emphasis added)

(6) Omitted by Punjab Act No.24 of 2006.

Clause (c) of Section 5 (5) of the 2006 Act (as amended by Punjab Act No.24 of 2006) provides that admissions shall be made in a fair and transparent manner in the presence of a representative of the University to which it is affiliated, in accordance with *inter se* merit, determined on the basis of qualifying examinations or its equivalent as may be notified by the

State Government. Besides, Section 4 (3) provides for admissions to all categories of seats in private health sciences educational institutions to be made on the basis of *inter se* merit of the candidates obtained in the Common Entrance Test, except in respect of those which are specifically exempted under the 2006 Act and also in the case of Foreign Indian Students or the NRIs.

The State of Punjab, therefore, has the necessary legislation i.e. the 2006 Act which also provides the method of assessing *inter se* merits amongst the applicants. The condition of passing the entrance test for NRI students was kept as a condition in the notification dated 30.03.2015 (Annexure P1) issued by the State Government and also in the Prospectus for admissions to the MBBS/BDS Courses in the State of Punjab because of the circular dated 16.01.2015 (Annexure P5) issued by the MCI. The said circular of the MCI being set aside and invalidated by the Hon'ble Karnataka High Court on 17.04.2015 in the case of Sh. Basaveshwar Vidya Vardhak Sangha and others v. The Medical Council of India (Supra) and SLP against the said order also being dismissed by the Supreme Court on 06.07.2015, the circular became inoperative. In fact, the MCI has itself vide circular dated 18.09.2015 (Annexure R2/8) withdrawn the MCI circular dated 16.01.2015 (Annexure P5). Unfortunately, the fact that the circular had been withdrawn by the MCI was not brought to the notice of the learned Single Judge while considering the case of the appellants. Even the learned counsel appearing for the MCI was unaware of the said fact that the circular had been withdrawn. The fact of the circular being withdrawn was submitted during the

course of hearing in this Court on 13.10.2015 before replies had been filed.

Shri Ashok Kumar Harit, Deputy Secretary, MCI, New Delhi has filed short response affidavit on behalf of MCI (respondent No.4) to a query raised by this Court in this regard. However, no specific reply has been given as to why the circular dated 18.09.2015 withdrawing the circular dated 16.01.2015 (Annexure P5) was not brought to the notice of the learned Single Judge or to its own counsel, although an apology has been tendered.

Be that as it may the position is that for appearing in the Common Entrance Test for NRI students was kept as a pre-condition for admissions to MBBS/BDS Courses against the NRI quota in view of the circular dated 16.01.2015 (Annexure P5) issued by the MCI (respondent No.4). The same has been invalidated by the Karnataka High Court. The learned Single Judge in its impugned order has *inter alia* held that the Prospectus that was issued had a binding force and would govern the parties. The Government, it was held was bound by its Prospectus and instructions. The 'public notice' dated 06.08.2015 (Annexure P6), it was held could not be issued in violation of the Prospectus at the last moment making ineligible candidates eligible. However, the same would not be the position where the criteria for admissions to the MBBS/BDS Courses is based on a circular issued by the MCI, which has been invalidated by the Court. This is for the reason that it is well known that the Courts do not legislate and only interpret the law and when a particular provision is interpreted then it declares the law and it is to be taken the law as it always had been. Even otherwise, 'Eligible

Candidate' has been defined in clause (v) under the heading; "Definitions" of the Prospectus issued by the Baba Farid University (respondent No.3) for the PMET-2015. 'Eligible Candidate' has been defined in the Prospectus issued by Baba Farid University (respondent No.3) as under:-

"Eligible Candidate" means a candidate who fulfils the requirements of eligibility as prescribed in the Prospectus/Government Notification as amended from time to time and other notifications issued for this purpose from time to time and the criteria of Baba Farid University of Health Sciences, Faridkot. (Emphasis added).

Therefore, the appellants would be eligible candidates as they fulfill the requirements of eligibility as prescribed in the Prospectus/Government notification, as amended from time to time. The 'public notice' dated 06.08.2015 (Annexure P6) has been issued in view of the MCI circular dated 16.01.2015 (Annexure P5) being invalidated and subsequently withdrawn. The appellants would, therefore, be entitled for admission to the NRI seats without having to appear for the Common Entrance Test in view of the 2006 Act. The MCI in its 'Short Response Affidavit' dated 17.10.2015 filed by Shri Ashok Kumar Harit, Deputy Secretary, MCI, New Delhi has accepted that after the circular dated 16.01.2015 (Annexure P5) was quashed, which has in fact even been withdrawn by subsequent circular dated 18.09.2015 (Annexure R4/8), all admissions under the NRI quota in the States shall have to be in consonance with the respective enactments in this regard. The State enactment clearly

entitles the appellants to seek admission to the MBBS/BDS Courses without appearing for the Common Entrance Test and on the basis of qualifying marks obtained in 10+2 examinations.

The contention of Mr. Basra, Advocate, appearing for the MCI is that the appellants would not be entitled for admission to MBBS/BDS Courses in view of the provisions of Regulation 5 (5) (ii) of the 1997 Regulations, which stipulates that in States having more than one University/Board/Examination Body a competitive entrance examination should be held, so as to achieve a uniform evaluation for the reason that there may be variation of standards at qualifying examinations conducted by the different agencies. Therefore, the principle embodied in Regulation 5 (5) (ii) would also be attracted to admissions made in the NRI category.

It may be noticed that the circular dated 16.01.2015 (Annexure P5) issued by the MCI made a reference to Regulation 5 (ii) [sic. 5 (5) (ii)]. In order to appreciate the contention raised by Mr. Basra, learned counsel for the MCI (respondent No.4), the provisions of Regulation 5 (5) (i) and (ii) of the 1997 Regulations may be noticed, which read as follows:-

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

(1) to (4) xxxxxxxx

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

i) In case of admission on the basis of qualifying

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

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

competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes the marks obtained in Physics, Chemistry and Biology/Bio-technology taken together in the 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 competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4."

The following has been added before the proviso to Clause 5 (5) (ii) in terms of notification published on 25.03.2009.

"Provided that the eligibility criteria for admission to persons with locomotor disability of lower limbs in terms of Clause 4 (3) above will be a minimum of 45% marks instead of 50% taken together in qualifying examination and competitive entrance examination for admission in MBBS course."

The above provisions were considered by the Hon'ble Karnataka High Court in the case of Shri Basaveshwar Vidya Vardhak Sangha and others v. The Medical Council of India (supra).

It was held that the 1997 Regulations, particularly Regulation 5, could not be made applicable to introduce Common Entrance Test for NRI category students. These Regulations cannot be read *de hors* the observation made in para 131 of the judgment in P.A. Inamdar's case (supra). It was further held that it was also necessary to point out here that the provisions contained in Section 19-A of the Indian Medical Council Act, 1956 provides for prescription of minimum standards of medical education and the method and manner of providing such Regulations. The Executive Committee of the Medical Council could not proceed to amend or interpret the Regulations by issuing the impugned circular i.e. the circular dated 16.01.2015 (Annexure P5) without following the prescribed procedure under Section 19-A of the Indian Medical Council Act. Besides, in terms of Section 33 of the Indian Medical Council Act, which deals with the powers of the Medical Council to make Regulations, makes it clear that prior sanction has to be obtained for making Regulations in respect of matters provided under said Section. Without following any such procedure, by issuing a circular i.e. circular dated 16.01.2015, it was held that the Medical Council of India had sought to introduce entrance test for NRI category students as per report of the Executive Committee of the Council, which was apparently contrary to the nature of the powers vested with the Committee and procedure prescribed under the Indian Medical Council Act.

The further question that was considered was whether there was any arbitrariness in not subjecting the NRI students to a Common Entrance Test and leaving it to the discretion of the

medical colleges. This issue, it was held, was no more *res integra*. With the exodus of students aspiring for joining medical courses and in the absence of commensurate number of medical colleges in the country, the private medical colleges came into existence. With the number of private colleges increasing, the State Government brought in legislation to prohibit capitation fee. The private medical colleges having agitated the issue up to the Supreme Court, the right of the private medical colleges to fill up small percentage of seats, it was held, was now fairly well-settled. Freedom to run the private education institutions and their right to conduct examinations for admitting students was also recognized. The Hon'ble Karnataka High Court in *Shri Basaveshwar Vidya Vardhak Sangha and others v. The Medical Council of India (supra)* hastened to add that the recognition of this right would be subject to future legislation or regulation by the State. As already noticed in the present case, the State of Punjab has enacted the 2006 Act.

As such, it was provided that it would not be compulsory to have an entrance test for NRI students so as to determine their *inter se* merit in order to enable them to exercise preference for admissions to various Medical Colleges. In the circumstances, the provisions of 2006 Act of the State would be applicable. The said Act, as already noticed, in terms of Section 4 (3) envisages that admission to all the categories of seats in private health sciences educational institutions, except in the case of Foreign Indian Students, shall be made on the basis of *inter se* merit of the candidates obtained in the Common Entrance Test. Therefore, the holding of Common Entrance Test for admissions to MBBS/BDS

Courses for the NRI quota seats is not required. Besides, Section 5 (5) of the 2006 Act, relating to allocation of seats, provides that in the case of admission of Foreign Indian Students or the NRI students, a private health sciences educational institution may admit such students against such number of seats, as may be notified by the State Government. In terms of the proviso, it has been provided that the total number of seats for the Foreign Indian Students, shall not exceed fifteen per cent of the total sanctioned intake of the management category; while making admission first preference is to be given to the Foreign Indian Students, who have ancestral background of the State of Punjab; admission is to be made against the seats, notified as management category; admission is to be made on the basis of centralized receipt of applications by making centralized counselling of such students in a fair and transparent manner in accordance with the *inter se* merit, determined on the basis of qualifying examination or its equivalent, as may be notified by the State Government. Therefore, according to the 2006 Act framed by the State, the merit is to be determined on the basis of qualifying examination.

The circular dated 16.01.2015 (Annexure P5) being no longer in force, the issuance of 'public notice' dated 06.08.2015 (Annexure P6) cannot be said to be unjustified, improper or incorrect. This, in fact, was the position that was to be followed for the NRI quota seats and would have been followed but for the circular dated 16.01.2015 (Annexure P5) issued by the MCI, which was invalid from its inception. In case the said procedure had been followed i.e. by making admissions to the MBBS/BDS Courses on

the basis of merit in the qualifying examinations in respect of NRI quota seats, the appellants would have been eligible for admissions and had they got admissions, the seats to which they were entitled to be admitted would not have been vacant. If that was so, the provisions of clause 23 (vi) of the Prospectus would be inapplicable at least insofar as the seats to which the appellants were entitled to.

The other aspect considered by the learned Single Judge was whether the State by issuing the 'public notice' dated 06.08.2015 (Annexure P6) violated the mandatory 1997 Regulations issued by the MCI and whether merit has been a casualty on account of the State's action in granting admissions to the NRI candidates who had not even applied by the cut off date and whether the same was justifiable. The further question that was considered by the learned Single Judge was whether the NRI candidates are a special category and the petitioner (now respondent No.1) would have no claim to the said seats under the 2006 Act and whether the NRIs were exempted and could be admitted on the basis of their qualifying marks and the State Government was competent to drop the bar of eligibility. As regards the 1997 Regulations, it is to be kept in mind that NRI quota seats for admissions to MBBS and BDS Courses are separate and distinct from the other categories.

A Division Bench of the Hon'ble Gauhati High Court in the case of Shri Simmons Debbarma v. The State of Tripura, MANU/GH/0518/ 2011 considered the question if Regulation 5 (5) (ii) of the 1997 Regulations was a valid piece of legislation. The question that was primarily in issue was as to where there were no cut-off

marks insisted upon in the past for admission of candidates to the MBBS Course by the Tripura Board but all of a sudden the State 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. 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 1997 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.

The Hon'ble Gauhati High Court considered the relevant provisions of Regulations 4 and 5 of the 1997 Regulations. 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 who had passed the qualifying examination from various Universities/Boards/Examining Bodies with minimum marks, could be prepared for admissions to the MBBS Course. It was 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 1997 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 requirement 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 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) of 1997 Regulations was also considered and it was held that the same was in violation of Article 14 which guarantees equality of treatment.

The Medical Council of India 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.

The position insofar as the NRI candidates seeking admissions to the MBBS/BDS Courses are concerned, however, is entirely different and for them to appear in the Common Entrance Test is not at all necessary keeping in view the invalidation of the circular dated 16.01.2015 (Annexure P5) by a Judicial pronouncement and also by Section 4 (3) of the 2006 Act framed by the State. The Baba Farid University (respondent No.3) by issuing the 'public notice' dated 06.08.2015 (Annexure P6), which was issued with the approval of the State Government had only regularized the initial defect and infirmity for the NRI candidates to appear in the Common Entrance Test.

Reliance was placed by the learned Single Judge on the judgment of the Supreme Court in the case of Preeti Srivastava v. State of M.P. (1999) 7 SCC 120, which relates to entrance examination for postgraduate courses and qualifying marks. The present case relates to the initial MBBS/BDS Courses. In any case, the NRI categories for the purposes of admissions to MBBS/BDS Courses are separate and distinct. In fact, the learned Single Judge in view of the judgment of the Supreme Court in P.A. Inamdar's case (supra) had held that NRI candidates are no doubt a special category candidate for whom 15% seats had been reserved.

As regards the admission of NRI candidates on the basis

of the qualifying marks, it is to be noticed that Clause 4 of the notification dated 30.03.2015 (Annexure P1) provides that the admissions 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 would be done on the basis of marks of 10+2 (qualifying examination), besides, in Clause 9 it is provided that; "After 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. Admissions will be made by 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 Bio-logy/Bio-Technology) 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 subject of Biology/Bio-Technology.
- (ii) Candidates having higher percentage in the subject of Chemistry.
- (iii) Candidate, older in age."

Therefore, for admission to the vacant MBBS/BDS Courses seats, 10+2 qualifying examination is to be taken as an eligibility. The PMET is only a test of evaluation of merit so as to maintain uniformity where there are more than one University/ Board/Examining Body and not for determining of eligibility.

Besides, insofar as NRI category students are concerned, there is no need for them to appear in the common entrance examination.

Learned counsel appearing for the private respondents have, however, submitted that the State Government issued a public notice dated 29.9.2015 (Annexure R2/2) which is a corrigendum to the notification dated 30.3.2015 (Annexure P1). In terms of the corrigendum, part of Clause 4, part of Clause 9 and part of Clause 22 of the notification dated 30.3.2015 (Annexure P1) relating to admissions being made on the basis of marks obtained in 10+2 (qualifying exam) in case of vacant seats have been deleted.

It is to be noticed that this notification dated 29.9.2015 (Annexure R2/2) was issued by the State Government on the same date the impugned judgment was pronounced by the learned Single Judge. Therefore, according to learned counsel representing the private respondents-students have submitted that the same cannot be applied to hold that the passing of the entrance test by those students seeking admission to MBBS/BDS Courses in the NRI category seats, is not a condition of eligibility.

In view of the notification dated 29.9.2015 (Annexure R2/2) being issued by the State Government, this Court vide order dated 19.11.2015, observed that it would be desirable that the State of Punjab (respondent No.2) clears its position in regard to the notification dated 29.9.2015 by filing an affidavit.

In consequence of the said order dated 19.11.2015, an affidavit dated 20.11.2015 of Dr. Manjit Kaur Mohi, Director Medical Education and Research has been filed. It is clarified that the State Government issued notification dated 30.3.2015 (Annexure P1) by

which it was made mandatory for all categories (including NRI candidates) to in the first instance appear in the PMET 2015 keeping in view the circular dated 16.1.2015 (Annexure P5) issued by the MCI. The Government was conscious of the fact that for admission to the BDS Course during 2014 almost 400 seats had remained vacant causing wastage of resource and adversely affecting the interest of all stakeholders like students, parents, teachers and institutions. Even for the MBBS admissions during 2014, about 84 seats meant for Scheduled Castes candidates were transferred to the General Category due to non-availability of AIPMT 2014 qualified candidates.

It is further stated that insofar as the NRI/Foreign Indian Students are concerned Sections 4 (3) and 5 (5) (c) of the 2006 Act specifically provide that admission for Foreign Indian Students is to be made on the basis of qualifying examination or its equivalent. In view of the aforesaid position, clauses 4, 9 and 22 of the Govt. notification dated 30.03.2015 (Annexure P1) also envisaged that vacant seats shall be filled on the basis of marks obtained in 10+2 qualifying examination. The circular dated 16.01.2015 (Annexure P5) issued by the Medical Council of India, it is submitted, has been quashed by the Hon'ble Karnataka High Court vide order dated 17.04.2015 against which SLP has also been dismissed on 06.07.2015. Keeping in view the aforesaid position, the State of Punjab (respondent No.2) directed the Baba Farid University (respondent No.3) to admit NRI students on the basis of 10+2 qualifying examination. In these circumstances, the 'public notice' dated 06.08.2015 (Annexure P6) was issued by the Registrar of the

University which was duly approved by the State Government for the reason that circular dated 16.01.2015 (Annexure P5) had been quashed and this gave rise to a new cause of action to NRI candidates to seek admission on the basis of qualifying examination only.

It is also submitted that the Punjab Private Self Financed Dental Colleges Association issued a public notice on 29.09.2015 for filling vacant seats on the basis of 10+2 qualifying examination and directed the students to reach Baba Farid University (respondent No.3) on 30.09.2015. This notice was issued without permission or consent of the State Government. Therefore, to save the general category students from undue harassment and exploitation by the Private Dental Colleges and keeping in view the objections of the MCI/DCI, the State Government issued corrigendum dated 29.09.2015 (Annexure R2/1). Had the State Government gone ahead as per provisions in the Prospectus, the DCI would not recognize the degrees of those general category students who would have taken admissions on the basis of qualifying examinations. It is stated that in the last year i.e. 2014, the private colleges admitted more than 400 students on the basis of qualifying examinations at their own level against the guidelines of the DCI. These admissions were not recognized and the students could not get relief even from the Hon'ble Supreme Court of India. It is also mentioned that a letter dated 29.09.2015 was also written to all Dental Colleges of the State to refrain from admitting students on the basis of 10+2 qualifying examination. There was no such letter sent to MBBS Colleges primarily for the reason that all seats in the

general category for the MBBS Course have been filled up on the basis of merit in the PMET-2015 only except the NRI quota seats which were left vacant due to stay on filling of seats. It is stated that the notification dated 30.03.2015 is common for MBBS and BDS examination but the intention of the Government in issuing the corrigendum dated 29.09.2015 (Annexure R2/1) was only to restrain the private dental colleges from admitting general category students on the basis of 10+2 qualifying examination and there was no such intention of the Government qua the NRI category. The third counselling for admission to MBBS Course was held on 29.09.2015 and 30.09.2015 and all vacant seats in NRI category were filled up from the general category PMET-2015 qualified, as 30.09.2015 was the last date for admissions in terms of the Supreme Court directions. It is stated that the State Government introduced Clauses 4, 9 and 22 permitting admissions of left over seats on the basis of 10+2 qualifying examination in the interest of students, parents and Institutes so that no seats were left vacant. However, the MCI and DCI did not agree with this proposal and kept directing the Government to delete this clause despite the fact that the circular dated 16.01.2015 (Annexure P5) issued by the MCI was withdrawn on 18.09.2015. The corrigendum dated 29.09.2015 does not mention anything about the NRI category. It is stated that the intention of the State Government has been clear that it wants NRIs to come to the State of Punjab and contribute to its financial resources. In fact, to make it clear, it is stated, that the corrigendum should have also mentioned that the admissions to NRI category seats shall be on the basis of qualifying examination

which was inadvertently left out and this would have been in consonance with the provisions of the 2006 Act. It is stated that the Baba Farid University (respondent No.3) issued public notice dated 25.09.2015 regarding filling up of vacant MBBS/BDS seats on 29.09.2015 and 30.09.2015 respectively only on the basis of competitive entrance test because of various communications received from the MCI and DCI, which are attached as Annexure R2/1. The corrigendum dated 29.09.2015 has been challenged by the Association of Private Dental Colleges by way of CWP No.21777 of 2015. However, no private Medical College had challenged the said corrigendum.

Therefore, according to the State Government, it is not mandatory for NRI students to appear in PMET-2015 for securing admissions in MBBS Course and they can be admitted on the basis of the marks in the qualifying/equivalent examination keeping in view the provisions of Section 4 (3) and Section 5 (5) (c) of the 2006 Act. The State of Punjab (respondent No.2), therefore, supports the plea of the appellants that it is not necessary for the NRI students to appear in the Common Entrance Test or the PMET which is consonance with the provisions of the 2006 Act enacted by the State of Punjab. The requirement of NRI students to appear in the PMET was only because of the circular dated 16.01.2015 (Annexure P5) which has been invalidated by the Hon'ble Karnataka High Court and subsequently, even withdrawn by the MCI on 18.09.2015. In the circumstances, it was/is not necessary for the NRI students to appear in the PMET or Common Entrance Test unless there is a legislation to that effect by the Central

Government or the Medical Council of India as the case may be. Therefore, the impugned judgment of the learned Single Judge is not sustainable and is liable to be set aside.

However, it is to be noticed that the students who are private respondents have been admitted in the Course as there was apparently complete confusion with respect of the NRI category seats. The Hon'ble Supreme Court in Mridul Dhar v. Union of India, (2005) 2 SCC 65 applied the schedule notified by the Medical Council of India and directed its strict adherence. The said Schedule *inter alia* provided that the last date up to which students could be admitted against vacancies which arises due to any reason was 30th September. The date of 30th September was stated not to be that of normal admission but was to give opportunity to grant admission against stray vacancies. It was clarified that adherence to the time schedule by everyone was of paramount concern. In Priya Gupta v. State of Chattisgarh, (2012) 7 SCC 433 the Supreme Court strongly disapproved and held that the State and Central Government or their authorities had no power to deviate from the schedule prescribed by the precedents and the MCI Regulations. In Asha v. Pt. B.D. Sharma University of Health Sciences and Others (2012) 7 SCC 389 held that relief of admission of after 30th September can be given if; (a) no fault is attributable to candidate in respect of the admission, (b) there is fault on the part of the authorities and, (c) there is violation of the principles of equality and rule of merit. The said conditions were satisfied Asha's case (supra).

In the present case, the appellants who are from the NRI category are entitled to be admitted against the NRI quota seats on

the basis of their qualifying marks obtained in 10+2 examination subject to equivalence certificate being issued by the Baba Farid University (respondent No.3). However, the private respondents/students who are from the general category and have been admitted are higher in merit even though they have been admitted against NRI quota seats. Besides, by the time services were completed in the case and the clarifications were obtained by asking the State Government and the MCI to file replies and hearing of the case considerable time had gone by. Even the first professional course of MBBS of the Session 2015 is now mid-way. Therefore, it would be improper at this stage to disturb or dislodge the students who are private respondents herein from pursuing their academic course.

In respect of BDS Course, there were only three appellants i.e. appellants No.3, 5 and 8, namely, Karamjog Singh Gill, Arpita Kapoor and Prabhjit Kaur Mann, who were given provisional admissions vide order dated 27.11.2015 against vacant NRI seats without disturbing any other candidate subject to the outcome of the writ petitions. Their admissions are liable to be confirmed. The remaining appellants i.e. appellants No.1, 2, 4, 6, 7, 9, 10 and 11 are those who are entitled for admissions against NRI quota seats on the basis of their qualifying examinations for which, it is stated, that the Baba Farid University (respondent No.3) has also issued 'Equivalence Certificates' after evaluation of the degrees. Therefore, it would be just and expedient in the peculiar facts and circumstances of the present case that they are given admissions against NRI quota seats in the next academic session of

2016-17. This course is not to be normally resorted to; however, in the present case, there has been no coordination between the MCI (respondent No.4) and the State Government (respondent No.2) with regard to the NRI quota seats for the MBBS/BDS Courses for the session 2015-16. Besides, there have, in fact, been complete inconsistencies in the case between the official co-respondents, which include; that the notification dated 16.01.2015 (Annexure P5) was contrary to the 1997 Regulations and has been invalidated by the Courts; the fact that the said circular dated 16.01.2015 (Annexure P5) had been withdrawn by the MCI on 18.09.2015 was not intimated to the learned counsel for the MCI or brought to the notice of the learned Single Judge for which there is no effective reply in the affidavit of Shri Ashok Kumar Harit, Deputy Secretary, MCI; the MCI in para 45 of its affidavit dated 17.10.2015 filed by Shri Ashok Kumar Harit, Deputy Secretary, MCI, stated that after the quashing of the circular dated 16.01.2015 (Annexure P5), all admissions under NRI quota in the States shall have to be in consonance with the respective State enactments in this regard, however, despite this it went on to press Regulation 5 (5) (ii) of the 1997 Regulations which was duly considered by the Hon'ble Karnataka High Court in the case of Shri Basaveshwar Vidya Vardhak Sangha and others v. Medical Council of India (supra); the Baba Farid University (respondent No.3) despite issuing the 'public notice' dated 06.08.2015 (Annexure P6) with the concurrence of the State Government yet the State Government issued the corrigendum dated 29.09.2015 just a day before the counselling was to be held and ordered part deletion of clauses 4, 9 and 22 of

the notification dated 30.03.2015 (Annexure P1) relating to filling the vacant seats on the basis of 10+2 qualifying examination; Sri Guru Ram Dass Institute (respondent No. 21) objecting to it being not excluded from the Prospectus issued by the Baba Farid University (respondent No.3). For these inconsistencies, the appellants/ students are not liable to suffer and deprived of their legal rights in law.

The directions for adjusting the appellants in the next academic session 2016-17 have also been issued in view of the very fair concession made by Mr. Ashok Sharma Nabhwala, Advocate, appearing for Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar (respondent No.21), who on instructions from its Registrar Dr. B.S. Khurana, submitted that the said Institute would admit/adjust the appellants in the 15% NRI seats to the MBBS Course for the academic session 2016-17, as per rules and regulations, subject to their getting necessary essentiality or its equivalent certificate from the Baba Farid University (respondent No.3), and if they approach the Institute.

These directions have been issued in the peculiar facts and circumstances of the case and in view of the changes in the procedure for admission to MBBS Course for the NRI quota seats at various stages, as have been noticed above.

In the circumstance, the appeal is allowed. The order of the learned Single Judge dated 29.09.2015 is set aside. However, the same shall not in any manner be construed to dislodge any of the private respondents or other students, who have already been admitted. This shall also not preclude the appellants to appear in

the next year selection process on the basis of the eligibility certificate already issued by the Baba Farid University (respondent No.3).

Mr. Anand Chhibbar, learned Senior Counsel appearing for the appellants submits that the appellants have been staying here and they have to go back, the verification of their documents may be done so that they are not left in any kind of uncertainty.

Mr. Ashok Sharma Nabhewala, Advocate, on instructions from Dr. B.S. Khurana, Registrar, submits that the Institute (respondent No.21) would have no serious objections to the same.

Mr. Anand Chhibbar, learned Senior Counsel, has submitted that the appellants have paid about \$2000 to the Baba Farid University (respondent No.3), i.e. \$1000 for counselling and \$1000 for eligibility certificate. It is submitted that in the circumstances, \$1000 paid for admission form/counselling is liable to be refunded.

Mr. Kaushal, learned counsel for the Baba Farid University (respondent No.3) submits that whatever would be permissible under the rules would be refunded.

(S. S. Saron)
Judge

11.12.2015
vcgarg/ramesh

(Amol Rattan Singh)
Judge

Note: Whether to be referred to the Reporter: Yes.