

IN THE PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH

Date of Decision: 02.07.2015

Reserved on: 30.06.2015

LPA No.919 of 2015 (O&M)
in CWP No.7195 of 2015

Aditi Sharma & others

...Appellants

Versus

State of Punjab & others

...Respondents

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. R.S.Kalra, Advocate, for the appellants.

Mr. Vinod S. Bhardwaj, Additional AG, Punjab,
for respondent Nos.1 & 2 - State.

Mr. Manish Dadwal, Advocate,
for respondent No.3 for Baba Farid University of Health
Sciences, Faridkot.

Mr. Gurminder Singh, Senior Advocate, with
Mr. Yagyadeep, Advocate, for respondent No.4 – Dental
Council of India.

LPA No.915 of 2015 (O&M)
in CWP No.6549 of 2015

Jaspreet Singh Cheema & others

...Appellants

Versus

State of Punjab & others

...Respondents

LPA No.916 of 2015 (O&M)
in CWP No.7364 of 2015

Jasleen Kaur & others

...Appellants

Versus

State of Punjab & others

...Respondents

LPA No.917 of 2015 (O&M)
in CWP No.7090 of 2015

Amandeep Singh Malhi & others ...Appellants

Versus

State of Punjab & others ...Respondents

LPA No.918 of 2015 (O&M)
in CWP No.6970 of 2015

Aishwarya Singh & others ...Appellants

Versus

State of Punjab & others ...Respondents

Present: Mr. M.K.Singla, Advocate,
for the appellants.

Mr. Vinod S. Bhardwaj, Additional AG, Punjab.

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

Mr. Manish Dadwal, Advocate, for respondent No.3 – Baba Farid
University of Health Sciences, Faridkot.

Mr. Sukhdip Singh Brar, Advocate, for respondent No.4 –
Adesh University, Bathinda.

Mr. Avlok Singh Sandhu & Mr. G.S.Benipal, Advocates,
for respondent No.5 – Guru Nanak Dev Dental College &
Research Institute, Sunam, District Sangrur.

LPA No.921 of 2015 (O&M)
in CWP No.7655 of 2015

Jujhar Singh Rana & others ...Appellants

Versus

State of Punjab & others ...Respondents

LPA No.922 of 2015 (O&M)
in CWP No.7499 of 2015

Aarushi Sharma & others

...Appellants

Versus

State of Punjab & others

...Respondents

Present: Mr. K.V.Aggarwal, Advocate, for the appellants.

Mr. Vinod S. Bhardwaj, Additional AG, Punjab.

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

Mr. Manish Dadwal, Advocate, for respondent No.3 – Baba Farid
University of Health Sciences, Faridkot.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL

HEMANT GUPTA, J.

All the afore-mentioned appeals preferred under Clause X of the Letters Patent arise out of an order passed by the learned Single Judge of this Court on 15.06.2015, whereby writ petitions filed by the appellants raising identical questions of law and facts were dismissed. However, for the facility of reference to decide these set of appeals, the facts are taken from LPA No.919 of 2015 arising out of CWP No.7195 of 2015.

Appellant Nos.1 to 64, the students in Sri Sukhmani College and Hospital, Dera Bassi, District SAS Nagar (Mohali) filed a writ petition through their attorney, who is an Administrative Officer of the private college, whereas appellant No.65 is an Association of Private Self - Financed Dental and Medical Colleges located in the State of Punjab. Appellant No.65 –

Association is said to have 12 member Colleges as mentioned in para 1 of the writ petition.

The issue in respect of admissions to the Medical and Dental Colleges and the fees charged has been subject matter of interpretation before different Courts. The Government of Punjab enacted ‘the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006’ (for short ‘the Act’). The said Act provides for regulation of admission; fixation of fee and making of reservation in the Private Health Sciences Educational Institutions situated in the State of Punjab and for the matters connected therewith. The relevant Sections from the said Act read as under:

“2. Definitions – In this Act, unless the context otherwise requires –

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(e) ‘Management Category’ means a category comprising such seats out of the sanctioned intake of a private health sciences educational institution, as may be allocated to the management of such institution by the State Government by notification in the Official Gazette, for filling up those seats by that institution in a fair and transparent manner on the basis of the inter se merit, determined by a Common Entrance Test or Qualifying Examination, in the presence of the representative of the authority conducting the Common Entrance Test;

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(h) ‘Open Merit Category’ means a category of seats comprising such seats out of the sanctioned intake of an institution, as may be allocated by the State Government by notification in the Official Gazette, for filling up those seats in a fair and transparent manner through a centralized receipt of applications and centralized counseling on the basis of the inter se merit, determined by a Common Entrance Test or Qualifying Examination, but excluding the seats of the management category or minority category;

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3. Regulation of admission, fixation of fee and making of reservation

(1) The State Government shall regulate admission, fix fee and make reservation for different categories in admissions to private health sciences education institutions.

(2) For the purpose of determining the fee, the State Government may require any private health sciences educational institution to furnish such information, as it may deem appropriate.

(3) The State Government shall ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of the inter se merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure, notified by the State Government in the Official Gazette;

Provided that the State Government may, by notification in the Official Gazette, exclude the diploma or certificate courses, offered the private health sciences educational institutions from the purview of the provisions of this sub-section.

(4) Notwithstanding anything contained in sub-section (3), the State Government may, exempt minority institutions from the purview of that sub-section.

(5) Consequent upon the exemption granted under sub-section (4), a common authority of the respective minority institutions, shall conduct a separate test in a fair, transparent and non-exploitive manner for admission of students in minority institutions in accordance with the merit, determined by the said authority.

(6) In case, it is found that the aforesaid separate test has not been conducted in a fair, transparent and non-exploitive manner, the State Government shall have the power to cancel the same and direct the concerned authority to re-conduct the test.

4. Eligibility criteria for admission – (1) The eligibility criteria for admission to a private health sciences educational institution shall be such, as may be determined and notified by the State Government from time to time.

(2) The State Government or any other authority, authorized by it, shall conduct the Common Entrance Test for making admissions to all private health sciences educational institutions in the State of Punjab, except for those, which are specifically exempted from such test.

(3) Admission in all private health sciences educational institutions, except 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.”

A perusal of sub-section (3) of Section 3 of the Act shows that the State Government is enjoined to ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of the inter se merit determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure, notified by the State Government. Thus, whether the admission is to be based upon Common entrance test or Qualifying Examination, is a decision to be notified by the State Government and also the procedure for such admission is to be notified by the State Government.

The State Government published a notification on 07.03.2014, which is part of the Prospectus (Annexure P-1) issued by the Baba Farid University of Health Sciences, Faridkot pursuant to the provisions of the aforesaid Statute. The Prospectus attached with the writ petition is in fact, for ‘Special Test for Admission to BDS Course’ for vacant seats after exhausting seats on the basis of All India Pre Medical Test – 2014 (AIPMT) qualified candidates. The notification dated 07.03.2014 is clear and categorical that admission to the MBBS/BDS courses in all the categories including NRI’s will be based on marks obtained in AIPMT. It also contemplates that in order to eligible for admission to MBBS/BDS course, it shall be necessary for the candidate to obtain minimum of 50% marks (45% for persons with locomotory disability of lower limbs and 40% for SC/BC categories) in AIPMT. For admission to BDS course, it further contemplates that firstly, seats would be offered to AIPMT qualified candidates, who are residents of Punjab and the remaining seats shall be offered to AIPMT qualified candidates of other States.

In respect of private institutions, it contemplates that 50% seats will be Government quota seats and the remaining 50% seats including 15% NRI quota will be Management/Minority quota seats. The relevant extract from the Notification dated 07.03.2014 reads as under:

- “1. The Governor of Punjab is pleased to notify the admissions to Under Graduate Degree courses i.e. MBBS/BDS for the year 2014 in the Medical/Dental Institutes in the State of Punjab including Medical/Dental Institutes affiliated to Private Universities.
2. The Governor of Punjab is further pleased to authorize Baba Farid University of Health Sciences, Faridkot to conduct centralized counseling for admissions on the basis of marks obtained in All India Pre Medical/Pre Dental Entrance Test – 2014 (AIPMT) to be conducted by the Central Board of Secondary Education, New Delhi.
3. The admission to the MBBS/BDS courses in all the categories including NRI’s will be based on marks obtained in AIPMT.

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7. In order to be eligible for admission to MBBS/BDS course, it shall be necessary for the candidate to obtain minimum of 50% marks (45% for persons with locomotory disability of lower limbs and 40% for SC/BC categories) in AIPMT – 2014.

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11. As regards admission to BDS course, the following procedure shall be adopted:

- i. Firstly, seats would be offered to AIPMT – 2014 qualified candidates and are residents of Punjab.
- ii. seats remaining vacant shall be offered to AIPMT – 2014 qualified candidates of other State.

12. In case, there aren’t adequate number of candidates having minimum prescribed marks in the AIPMT-2014 for filling of all the MBBS/BDS courses then Baba Farid University of Health Sciences, Faridkot may approach Government of India for the relaxation of the eligibility through Government of Punjab.

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23. 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)

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iii) The vacancy, if any, generated due to exceptional circumstances or surrender of seats after the 2nd centralized counseling would be filled by the admission committee headed by the Principal of the Institute concerned and comprising of the representative each of the Government and the University, strictly on the basis of merit in the AIPMT-2014 of the corresponding year. The Principals of the concerned Institutes will request the Government and the University well in advance for nominating their representatives.

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24. Procedure for filling left over seats in private/minority institutes

i) The institute shall intimate the date and time for admissions to the Director, Research & Medical Education, Punjab and Registrar, BFUHS at least two weeks before the date of counseling. The University shall prepare a calendar of admission to the management quota seats in such a way that admission dates do not clash.

ii) The private institutions would give wide publicity in at least three leading newspapers one each in English, Hindi and Punjabi before filling up seats and the candidates would be given at least 14 days to apply. Every effort shall be made to ensure that admissions are given on merit and not in a manner which is arbitrary and casts the shadow of favouritism.

iii) the applications shall be received by the institutions directly. Admission form shall not be denied to any candidate. Applications may also be received by Baba Farid University of Health Sciences, Faridkot.

iv) The institute shall not refuse the acceptance of form under any circumstances and shall be bound to issue a receipt of the same. In case of refusal by the institute, the Application Form may be sent to the Chairman Admission Committee / registrar BFUHS giving details of refusal in the forwarding letter.

v) The admissions made by any Institute on its own without giving due notice to Government / University shall not be treated as legal admission.

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28. GENERAL CONDITIONS

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j) There will be only two centralized counseling. No counseling will be permitted after 2nd centralized counseling, not even the extended 2nd counseling. Admissions are to be granted strictly as per the merit by 15th September of the corresponding year. During the period of 16th September to 30th September admission can be made against vacant seats resulting from exceptional circumstances or surrendered seats only.

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At this stage, it may also be noted that notification dated 07.03.2014 was modified vide corrigendum dated 16.07.2014, when the following proviso was added:

“2(a) However, after considering all the eligible BDS candidates from the AIPMT-2014 merit list, if seats in BDS course still remain vacant, then the remaining seats will be filled through special test conducted by Baba Farid University of Health Sciences, Faridkot. On the basis of merit of this test, the admission process should be completed in stipulated period as directed by the Hon’ble Supreme Court of India.”

It appears that there were 858 seats for admission for the BDS courses in the State of Punjab for which counseling was conducted on 24th & 25th of June, 2014 on the basis of Common Entrance Examination i.e. AIPMT. Out of 858 seats so available, 205 seats were filled up on the basis of such test leaving 653 seats as vacant. Baba Farid University of Health Sciences vide communication dated 27.06.2014 (Annexure P-2/A), sought relaxation in the norms fixed for the reason that even after admission to all the AIPMT qualified candidates, the number of seats are still vacant, therefore, on the basis of previous procedure in pursuance of notification dated 31.03.2008, the

admissions be permitted to be made on the basis of marks in the qualifying examination i.e. 10+2 marks. Admittedly, such request for relaxation was not accepted.

It is, thereafter, the State Government decided to conduct a Special Entrance Examination with a view to fill up the vacant seats. For such purpose, the notification dated 07.03.2014 was amended vide corrigendum dated 16.07.2014, as reproduced above. In pursuance of such corrigendum, the Special Entrance Test was conducted on 24.08.2014 and the result was declared on 29.08.2014. But even after centralized counseling, 455 seats remained vacant.

It appears that many private institutes sought to fill up vacant seats at the college level and requested the Government to send its officials for counseling. The Director, Medical Education and Research Department, vide communication dated 22.09.2014 (Annexure P-8/ R-3/4) communicated to the Baba Farid University of Health Sciences, Faridkot with the copies to six Institutes, who have sought admission on the basis of marks obtained in 10+2 examination, communicating that admission in the year 2014 will not be recognized and that counseling on the basis of such marks may be considered as cancelled. The relevant extract from the said communication reads as under:

“In regard to above mentioned conditions, it is written to you that for counseling admission in MBBS/BDS courses on the basis 10+2 numbers instead of minimum fixed marks in AIPMT may not be accorded recognized. That admission in year 2014 on the basis as based on 10+2 numbers instead of minimum fixed marks in AIPMT will not accord any recognition and that counseling on the basis of 10+2 number may kindly be considered as cancelled and in this regard orders passed by Hon’ble Court may kindly be properly implemented. Provisions mentioned in the notification of the Government, its implementation be made assured.”

Subsequently, a public notice (Annexure P-3/5) was published by the Director, Medical Education and Research Department, informing general public that State Government do not accord any recognition for the filling up of vacancy of MBBS / BDS courses in which counseling is done on the basis of 10+2 numbers instead of minimum marks obtained in AIPMT. It was also informed that any admission on the basis of 10+2 marks would be considered as cancelled and that admission by private institutions on the basis of 10+2 marks will not get any recognition from the State Government. In the face of such communication to the University as well as to the concerned Institutes, the private medical institutes went ahead with the admission process and admitted students on the basis of marks obtained in the qualifying examination.

It was on 13.02.2015, the institutes were informed that the candidates have been admitted, who have not even appeared in AIPMT or the Special Entrance Test, therefore, such admissions are in gross violation of the Punjab Government notification. It was also mentioned that the University has already informed on 01.10.2014 not to send registration return of the candidates, who have not qualified AIPMT or Special Test for BDS course. It is, thereafter, the writ jurisdiction of this Court has been invoked.

The learned Single Judge dismissed the writ petitions holding that the private institutions while granting admission to the appellant-students have violated not only the Prospectus and the Notification dated 07.03.2014, but also the Regulations framed by the Dental Council of India.

Before this Court, learned counsel for the appellants has raised the following arguments:

- (i) That BDS Course Regulations – 2007 framed by the Dental Council of India are beyond the scope of authority conferred on the Dental Council of India to frame such Regulations under Section 20 of the Dentists Act, 1948.

Reliance is placed upon the judgments of Hon'ble Supreme Court in State of M.P. & another Vs. Kumari Nivedita Jain & others AIR 1981 SC 2045 and Christian Medical College, Vellore & others Vs. Union of India (2013) 14 SCC 539.

(ii) The Regulations contemplating competitive entrance examination, where there are more than one University in one State, is a directory provision, which is apparent from the expression used in sub-clauses 2 & 4 of Regulation II. It is contended that competitive entrance examination is mandatory in the cases of institutions of All India character, but in respect of institutions located in Punjab, which are not of All India character, the holding of competitive entrance examination is directory. Therefore, the admission on the basis of marks obtained in the qualifying examination cannot be said to be in contravention of Regulations of the Dental Council of India.

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

(iv) It is also argued that availability of 455 vacant seats in the State of Punjab is an exceptional circumstance, which entitles the private institutes to admit students on the basis of marks obtained in the qualifying examination. Reliance is placed upon sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014.

(v) It is further contended that the Section 3(3) of the Act prescribes admission on the basis of marks obtained in the qualifying examination; therefore, the admission carried on the basis of the marks obtained in the qualifying examination cannot be said to illegal.

(vi) In any case, the students cannot be blamed, as they have acted in a bona fide manner on the representation of the Institutes. They have spent their valuable time and money on prosecuting their course and, thus, cancellation of admission at this stage causes serious loss to the academic life of the students. It is, thus, contended that in the light of the judgments of Hon'ble Supreme Court in Rajan Purohit & others Vs. Rajasthan University of Health Science & others (2012) 10 SCC 770; Chowdhury Navin Hemabhai & others Vs. State of Gujarat & others (2011) 3 SCC 617 and Deepa Thomas & others Vs. Medical Council of India & others (2012) 3 SCC 430, the appellant-students should be permitted to complete their education on payment of cost payable to the State as may be deemed appropriate.

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

On the other hand, Mr. Gurminder Singh, learned Senior Advocate appearing for the Dental Council of India, points out that the judgment in Nivedita Jain's case (supra) stands overruled by the later Constitutional Bench judgment in Dr. Preeti Srivastava & another Vs. State of Madhya Pradesh & others AIR 1999 SC 2894. In Dr. Preeti Srivastava's case (supra), it has been held that Medical Council or Dental Council are competent

to frame Regulations for regulating admission process. It is contended that in Christian Medical College, Vellore's case (supra), judgment rendered in Dr. Preeti Srivastava's case (supra) was referred to by the learned counsel for the appellants, but no finding contrary to the judgment in Dr. Preeti Srivastava's case (supra) was recorded. Therefore, the argument that the Dental Council of India is not competent to frame Regulations for admission is not tenable. It is contended that in any case, the Act mandates a procedure to be notified by the State Government for admission in a fair and transparent manner on the basis of inter se merit. Such procedure could be on the basis of common entrance test or the qualifying examination. Since the State Government has chosen the common entrance test, as the condition for fair and transparent manner of admission, the same cannot be violated by any person including the University and/or the private institutions.

We have heard leaned counsel for the parties at length and find no merit in the present set of appeals. In respect of the first argument, we find that Section 20 of the Dentists Act, 1948 empowers the Council to make regulations not inconsistent with the provisions of the Act. Sub-section (2) of Section 20 contemplates that in particular and without prejudice to the generality of the foregoing power such regulations may inter alia prescribe the standards of examinations and other requirements to be satisfied to secure for qualifications recognition under this Act. The relevant Section reads as under:

“20. Power to make regulations – (1) The Council may, with the approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may –

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(h) prescribe the standards of examinations and other requirements to be satisfied to secure for qualifications recognition under this Act;

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In Kumari Nivedita Jain’s case (supra), a three Judges’ Bench judgment of the Hon’ble Supreme Court held that the question of selection of candidates out of the candidates eligible to undergo the medical course does not appear to come within the purview of the Council. In other words, the admission process was not said to be part on which the Regulations could be framed.

However, in Dr. Preeti Srivastava’s case (supra), the Constitutional Bench recorded their reservation with the observations made in Kumari Nivedita Jain’s case (supra), to the effect that process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. The relevant extract from the judgment reads as under:

“46.We will examine the character of the regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges.....”

The Bench further held that the scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to

follow the standards laid down by the Indian Medical Council. The medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will not be able to practise. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the Council. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council Act. It was thus held that the standards of postgraduate medical education prescribed by the Medical Council of India are binding on the universities. The Court also held to the following effect:

“57. In the case of *Medical Council of India v. State of Karnataka AIR 1998 SC 2423*, a Bench of three Judges of this Court has distinguished the observations made in *Kumari Nivedita Jain (supra)*. It has also disagreed with *Ajay Kumar Singh v. State of Bihar 1994 AIR SCW 2515* and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in *State of Kerala v. T.P. Roshana (1979) 1 SCC 572* (SCC at p. 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.”

In Christian Medical College, Vellore's case (supra), the issue examined was in respect of common entrance test conducted by the Medical Council of India. The Court held that rights of MCI and the DCI to prescribe standards cannot be extended to controlling all admissions to MBBS, BDS and Post Graduate courses being run by different medical institutions in the country. A certain degree of control may be exercised in regard to aided institutions, where on account of the funds being provided by the Government. However, the rights of private individuals to establish and administer educational institutions under Article 19(1)(g) of the Constitution are now well-established.

We find that judgment in Christian Medical College, Vellore's case (supra), in fact, dealt with right of Medical Council of India to conduct one common national eligibility -cum- entrance test, whereby taking away the right of different medical colleges and institutions including those to make admission on the basis of their own rules and procedures was found to be unjustified. Such is not the situation in the present case, where the process of admission is regulated to maintain standards of excellence in the educational institutions imparting education in dental courses. Though in the said case, an argument was raised disputing the ratio laid down in Dr. Preeti Srivastava's case (supra), but the learned counsel for the appellants could not point out that the said judgment has either been distinguished or explained by the said three Judges' Bench judgment in any manner.

In fact, in Rajan Purohit's case (supra), the Hon'ble Supreme Court dealt with similar argument of admission on the basis of marks obtained in the qualifying examination to MBBS course in the State of Rajasthan. The Court found that such admission process violates the principles of merit, as laid down in T.M.A.Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481 and

as explained in P.A.Inamdar Vs. State of Maharashtra (2005) 6 SCC 537. The Court held as under:

“34. The stand of the College, however, is that the College had published an advertisement dated 26-9-2008 inviting applications from all the eligible candidates who had passed the 10+2 examination with minimum 50% marks in Physics, Chemistry and Biology individually in all the subjects and having English as compulsory subject for admission to its MBBS course and in response to such advertisement, students had applied and selection of students was done on the basis of their merits. It is, however, not disputed that the candidates, who had applied in response to the advertisement, had not passed the 10+2 examination from the same board or university but from different boards and universities. If that be so, the merit of the candidates who had applied in response to the advertisement could not be evaluated by a uniform standard and could only be evaluated by a competitive entrance examination of all these students who had applied pursuant to the advertisement of the College. It is not the case of the College that any competitive entrance examination of all the students, who had applied pursuant to the advertisement, was held by the College to determine their comparative merit. Hence, the principle of merit as the basis for selection for admission in the professional courses laid down by this Court in *T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481* and as explained in *P.A. Inamdar Vs. State of Maharashtra (2005) 6 SCC 537* has not been followed. Thus, even as per the law laid down by this Court in *T.M.A. Pai Foundation case (supra)* and *P.A. Inamdar case (supra)*, the College has not been able to establish that the admissions of 117 students to its MBBS course for the academic year 2008-2009 were within its right under Article 19(1)(g) of the Constitution.

35. Moreover, the College was bound to follow the MCI Regulations while making admissions to the MBBS seats. The Permission Letter dated 16-9-2008 stipulated that the admission process for the academic year 2008-2009 has to be completed within the time schedule indicated in the MCI Regulations. Hence, even if the College was required to complete the admission process by 30-9-2008, it could not violate the MCI Regulations on the ground that it had to complete the admission process by 30-9-2008.

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47.2. The admissions of 117 students to the MBBS course for the academic year 2008-2009 in the College were contrary to clause (2) of Regulation 5 of the MCI Regulations and were not within the right of the College under Article 19(1)(g) of the Constitution as explained by this Court in *T.M.A. Pai Foundation case (supra)* and *P.A. Inamdar case (supra)*.”

Section 20(1) of the Dentists Act empowers the Dental Council to frame regulations not inconsistent with the provisions of the statute. Sub Section (2) empowers the Dental Council to prescribe the standards of examinations and other requirements to be satisfied to secure for qualifications recognition under the said Act. The manner of holding common entrance examination by the Council is thus not inconsistent with the provisions of the Statute. It falls within the regulation making authority as well. Thus, we find that in view of the judgment in Dr. Preeti Srivastava’s case (supra), the Dental Council of India is competent to control and prescribe the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Therefore, the regulations framed by the Dental Council of India cannot be said to be beyond the legislative competence.

To examine the second argument, the relevant extract from the Regulations needs to be extracted. It reads as under:

“ADMISSION, SELECTION AND MIGRATION:

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

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

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

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

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

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We find that though Clauses 2 & 4 of the above regulation uses different expressions, but the intent and objective of both the clauses is same. Clause 2 deals with multiple boards conducting qualifying examinations and multiple institutes conducting dental education course in a State, whereas Clause 4 deals with similar situation, but at the National Level. Regulation II (1) deals with a situation such as in the States having only one Dental College and one university board/examining body, the marks obtained at qualifying examination could be made basis for admission. But where there are multiple boards conducting the qualifying examination and more than one Dental College, a competitive entrance examination is mandatory so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies. Therefore, use of different expression does not make any material difference in the mandatory nature of the entrance test. In fact, in Dr. Preeti Srivastava case (supra), the Court held that the relative merit for the purpose of admission to a postgraduate course has to be assessed on the basis of common entrance test, when the qualifying courses are not identical. The Court held as:

“44. On the facts before us, PGMEE is not just a screening test. Candidates, who have qualified from different universities and in courses which are not necessarily identical, have to be assessed on the basis of their relative merit for the purpose of admission to a postgraduate course. It is for proper assessment of the relative merit of candidates who have taken different examinations from different universities in the State that a uniform entrance test is prescribed. Such a test necessarily partakes of the character of an eligibility test as also a screening test.”

Keeping in view the objective to be achieved, the competitive entrance examination is mandatory in a State where there are different boards conducting qualifying examination and numerous private dental colleges. The competitive entrance examination is absolutely necessary in the cases of institution of All India character for the reason that there are different Boards conducting qualifying examination and numerous Dental colleges. Therefore, common entrance test provides a uniform method of evaluation for the purposes of admission. Mere fact that phraseology used in sub-clauses 2 & 4 is not same, it will not make Regulation II (2) as directory. Thus, the Regulations of the Dental Council of India contemplating that competitive entrance examination should be held in the State having more than one University is a mandatory provision.

In respect of third argument, suffice to state that the admissions for each year is based upon the prospectus issued for that year. The prospectus issued has the force of law. Reference may be made to Full Bench judgment of this Court in Amardeep Singh Sahota Vs. State of Punjab (1993) 2 PLR 212. Therefore, the basis of admissions in the previous years cannot be made basis to challenge the present admission process, which is in fact based upon the statutory provisions of the Act. The admission process in the other states is not the guiding factor for admission in the State of Punjab.

According to the learned counsel for the appellants in respect of the fourth argument, the vacant seats available with some of the dental institutions in the State is an exceptional circumstance, which could be filled up by the Principals of the concerned institutions in terms of sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014. Firstly, mere availability of seats is not an exceptional circumstance. The private institutes have been set up keeping in view their perception that students would be available for admission. If particular numbers of students are not available as per the Regulations framed under the Statute, it will not be a case of exceptional circumstance. It is commercial decision of the private institutes to start dental education. Merely because they are not able to admit students in terms of the statutory regulations, such fact cannot be treated as an exceptional circumstance. Secondly, even if availability of seats is an exceptional circumstance, sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014 does not empower a private institute to admit students otherwise on the basis of merit in the competitive entrance examination. After the second counseling, the Principal of the Institute concerned is competent to admit students after associating the representatives of the Government and the University, but on the basis of merit in the common entrance test alone. Therefore, even if exceptional circumstances exist, the merit in the common entrance examination cannot be wished away. The admission to the course can be only on the basis of entrance test as per the notification dated 7.3.2014 issued in terms of Section 3 and 4 of the Act. It is an absolute condition in sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014 as well. Therefore, no admission by a private institute could be made other than on the basis of common entrance test.

The fifth argument is again not tenable. Section 3 sub-section (1) of the Act empowers the State Government to regulate admission apart from fixing fee and to provide for reservation of seats for different categories. Sub-section (3) of Section 3 cast a duty on the State Government to ensure that admission in private health sciences educational institution is made in a fair and transparent manner on the basis of the inter se merit. Such fair and transparent manner can be determined by common entrance test or qualifying examination, as the case may be, as notified by the State Government. Therefore, the notification dated 07.03.2014 prescribing admission to be based on common entrance test is in exercise of the powers conferred under Section 3(3) of the Act. Sub-section (3) of Section 4 also contemplates that admissions in all private health sciences educational institutions shall be made on the basis of inter se merit of the candidates determined in accordance with the common entrance test. The State Government has chosen common entrance test as the method of fair and transparent admission process and not the qualifying examination in the year in question. Thus, admissions on the basis of marks obtained in the qualifying examination could not be carried out by the private institutions. The condition of making admission on the basis of common entrance test in the Notification dated 07.03.2014 is, in fact, in compliance of the provisions contained in Sections 3 & 4 of the Act.

The sixth argument that admission should be permitted to be regularized on payment of cost is not tenable. In Rajan Purohit's case (supra), the Court exercised the power under Article 142 of the Constitution so as not to disturb the admission of 117 students. That was a case where the admissions were made in the year 2008 and the matter came to be decided four years later in 2012.

In Chowdhury Navin Hemabhai's case (supra), the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, who have not obtained minimum of 40% marks in Physics, Chemistry and Biology in the qualifying examination, were admitted in violation of the MCI Regulations. The Court found that admissions of seven appellants took place due to the fault of the rule making authority in not making the State Rules in conformity off the MCI Regulations. Therefore, an order was passed to do complete justice for not disturbing the admissions made during the academic year 2008-09.

In Deepa Thomas's case (supra), the prospectus for admission issued by the Association of the Private Medical Colleges did not specify obtaining of minimum marks in the entrance examination. It was on account of such discrepancy between the eligibility criteria for admission prescribed by MCI Regulations and the eligibility criteria mentioned in the prospectus, the court did not disturb the admissions granted. Though the Court found that admissions are irregular, but as a special case, the students were allowed to continue and complete their course.

However, in the present case, the facts are absolutely glaring. The appellant-students were informed by a public notice not to seek admissions on the basis of marks obtained in the qualifying examination. The private institutions as well as the University were informed not to make admissions on the basis of marks in the qualifying examination in the month of September, 2014 itself. The University has informed the private institutions not to send even registration return of the students, who have not qualified All India Common Entrance Test or the special State common entrance test as well. Therefore, the students cannot claim any indulgence in the face of illegalities committed by the private institutes.

We do not find any merit in respect of the last argument as well. In Sukhmeet Kaur Deol's case (supra), a Division Bench of this Court found that cancellation of admission was not justified for the reason that no timely action was taken. In the present case, the University and the private institutions were informed on 22.09.2014 itself that admissions will not be regularized and would be cancelled. On 01.10.2014, the University has again informed the private institutions not to send registration return of the candidates. Apart from such fact, there was a public notice issued by the State Government warning the students of admission on the basis of marks obtained in the qualifying examination. Still, if the students have sought admission and private institutions have admitted them, it is at their own peril. It appears that private institute has filed the present petition in the names of the students through an attorney, who is an Administrative Officer of such private dental college.

We may also notice another argument raised. Learned counsel for the appellants argued that even the special entrance test conducted by the University in pursuance of the corrigendum dated 16.07.2014 is also illegal. We find that there is no challenge to the said special entrance test conducted in pursuance of corrigendum issued nor have the students so admitted been impleaded as parties to the writ petitions or in the letters patent appeals. In view of the fact that there is no challenge to such admissions nor the students likely to be affected are parties in these proceedings, therefore, such argument need not be examined in the present case.

Therefore, we find that the students are not entitled to any indulgence for permitting them to continue their courses, as their admissions were in violation of the Act and the notification issued thereunder.

However, we deem it appropriate to direct the institutes, who have admitted students in violation of directions of the State Government, to refund

the fee deposited alongwith a sum of Rs.50,000/- per student as an interim compensation for wasting the precious academic life of the students. Such compensation shall be without prejudice to any other remedy civil or criminal, which a student may wish to avail against the institutes concerned. The amount of fee and the compensation so determined shall be paid to the students within three months.

With the above observations and directions, all the appeals are dismissed.

(HEMANT GUPTA)
JUDGE

02.07.2015
Vimal

(LISA GILL)
JUDGE