

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1602 OF 2016

1. Mr. Ajit Murur	}	
residing at 13, Sanman CHS	}	
#93, Model Town, Andheri	}	
(W), Mumbai - 400 053.	}	
	}	
2. Mrs. Dr. Anupam A.	}	
Dudani	}	
residing at 801, Coste Belle,	}	
Opp. Brahmakumari Garden,	}	
Perry Cross Road, Bandra	}	
(West), Mumbai - 400 050	}	
	}	
3. Mr. Avinash K. Patil	}	
residing at A-1504, Twins	}	
CHS, Plot No. 57, Sector 20,	}	
Kharghar, Navi Mumbai -	}	
410 210	}	
	}	
4. Dr. Sadhana A. Vaidya	}	
residing at 601/602, Om	}	
Shiv CHS, Mogal Lane,	}	
Opp. Bafna Soc., Mahim (W),	}	
Mumbai - 400 016	}	
	}	
5. Mr. Vishavdeep Gautam	}	
residing at 1201, Blooming	}	
Dale, Hiranandani Estate,	}	
Thane (W) - 400 607	}	Petitioners

versus

1. The Commissioner	}
State Common Entrance Test	}
Cell, 305, Government	}
Polytechnic Building, 49,	}
Kherwadi, Ali Yawar Jung	}
Marg, Bandra (E),	}
Mumbai - 400 051.	}
2. Directorate of Medical	}

Education and Research	}	
Govt. Dental College and	}	
Hospital Building,	}	
St. George's Hospital	}	
Compound, Near CST,	}	
Mumbai 400 001.	}	
	}	
3. State of Maharashtra	}	
through the Secretary,	}	
Medical Education Ministry,	}	
Mumbai.	}	
	}	
4. Union of India	}	
through the Government of	}	
India, 276, Income Tax	}	
Officer Building M. K. Road,	}	
Mumbai.	}	
	}	
5. Medical Council of India	}	
having its address at	}	
Pocket-14, Sector 8, Dwarka	}	
Phase-1, New Delhi -	}	
110 077, India.	}	Respondents

Mr. Mihir Desai - Senior Advocate with Mr. Dehlvi, Mr. Amrut Joshi, Ms. Anisha Nair and Ms. Nishitha Nambiar i/b. M/s.India Law for the petitioners.

Mr. Rohit Deo - Acting Advocate General with Mr. L. M. Acharya - Special Counsel, Ms. Purnima Kantharia - Government Pleader, Mr. H. S. Venegaonkar - Additional Government Pleader and Ms. Deepali Patankar for the State.

Mr. Aniruddha A. Garge - for respondent no. 4 Union of India.

Mr. Ganesh K. Gole for respondent no. 5.

**CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATED :- JULY 19, 2016

ORAL JUDGMENT :-

1) By this petition under Article 226 of the Constitution of India, the petitioners are seeking the following reliefs:-

“a. That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other order or direction in the nature of a Writ of Certiorari and call for all the records and documents in relation to the Impugned Communication dated 10th June, 2016 (“**Exhibit C**”) hereto from the Respondents and upon perusal thereof, be pleased to quash and set aside the Impugned Communication dated 10th June, 2016 to the extent of Deviation Nos. 1 and 2 as stated in paragraphs 10(a) and 10(b) hereinabove;

b. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other order or direction in the nature of a Writ of Mandamus directing the Respondents to stay the operation and execution of the Impugned Communication dated 10th June, 2016 (“**Exhibit C**”) and to desist from taking any action in furtherance thereof;

c. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other order or direction in the nature of a Writ of Mandamus directing the Respondents to give effect to the Impugned Communication dated 10th June, 2016 being (“**Exhibit C**”) hereto, in so far as it is consistent with the Communication of February, 2016 being (“**Exhibit A**”) hereto i.e. without the Deviation No. 1 and Deviation No. 2 contained in the Impugned Communication dated 10th June, 2016;”

2) The petitioners before us are parents. They state that their children/sons and daughters are aspiring to join the courses in medicine. They have appeared at what is known as Maharashtra Common Entrance Test (MHT-CET 2016) held on 5th May, 2016. That was held pursuant to a scheme and which was propounded

by the Directorate of Medical Education and Research, Government of Maharashtra and the Department of Medical Education. The information for such examination is compiled in what is called as "brochure". Copy of this is at Annexure 'A'.

3) Now, the petitioners are challenging what is known as the impugned communication. That is dated 10th June, 2016, whereby, the respondents, according to the petitioners, introduced certain new stipulations. These were not included in the information brochure, which was issued earlier.

4) That is how the challenge to the impugned communication.

5) Very brief facts need to be referred to appreciate the contentions raised before us. The admission to the private unaided medical institutes/colleges was through the exams conducted by the respective associations of private medical colleges. Now, the Maharashtra State has enacted the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015, whereby, the respondents have been conferred with a power to conduct Common Entrance Test every year for the admissions to the institutions styled as medical colleges/institutes and mentioned in the petition, particularly in para 5(b). It is stated that the constitutional validity of this Act is challenged. Writ

Petition No. 2511 of 2015 involving that challenge is admitted. However, this court was not inclined to grant any interim relief. Since there was no interim order, the petitioners were aware that the Regulations on Graduate Medical Education came to be modified by the Government of India. The modified regulations were published in the Central Government Gazette. This proposed a National Eligibility cum Entrance Test (NEET) for admission to MBBS course in each academic year. We are not concerned with these regulations or modifications, simply because the Hon'ble Supreme Court of India was concerned with the larger challenge involving the validity and legality of these regulations and the NEET examinations. It is stated that recently, in April, 2016, the Hon'ble Supreme Court of India clarified that this examination would be the only source for admitting students. In other words, a single examination at the national level would be held for admitting students and in the order of merit. It is common ground that it is inconvenient to parents and children. We find that the petition is based on their reluctance to appear for the national level examination. That is how at the instance of interested parties including State Governments, a constitutionally permissible exercise of issuing an ordinance was resorted to by the Central Government. The ordinance promulgated on 24th May, 2016 reads thus:-

“MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 24th May, 2016/Jyaistha 3, 1938 (Saka)

**THE INDIAN MEDICAL COUNCIL (AMENDMENT)
ORDINANCE, 2016**

No. 4 OF 2016

Promulgated by the President in the Sixty-seventh
Year of the Republic of India.

An Ordinance further to amend the Indian Medical
Council Act, 1956.

WHEREAS Parliament is not in session and the
President is satisfied that circumstances exist which
render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers
conferred by clause (1) of article 123 of the Constitution,
the President is pleased to promulgate the following
Ordinance:-

1. (1) This Ordinance may be called the Indian
Medical Council (Amendment) Ordinance, 2016.

(2) It shall come into force at once.

2. In the Indian medical Council Act, 1956 (hereinafter
referred to as the principal Act), after section 10C, the
following section shall be inserted, namely:-

“10D. There shall be conducted a uniform entrance
examination to all medical educational institutions at
the undergraduate level and post-graduate level
through such designated authority in Hindi, English
and such other languages and in such manner as may
be prescribed and the designated authority shall
ensure the conduct of uniform entrance examination
in the aforesaid manner:

Provided that notwithstanding any judgment or order
of any court, the provisions of this section shall not
apply in relation to the uniform entrance examination
at the undergraduate level for the academic year
2016-17 conducted in accordance with any

regulations made under this Act in respect of State Government seats (whether in Government medical college or in a private medical college) where such State has not opted for such examination.”

3. In section 33 of the principal Act, after clause (ma), the following clause shall be inserted, namely:-

“(mb) the designated authority, other languages and the manner of conducting of uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level””

6) In the light of the same the petitioners urge that there was a choice available and the State Governments could have held their own examinations to fill up the seats. That is how the State Government and the respondents before us decided in the month of February, 2016 to go ahead and hold the test, which is called as Common Entrance Test. The petitioners' apprehensions are that in the light of the new stipulations and the impugned communication what would happen is that the results declared of the State test on 1st June, 2016 would be modified and to their detriment. It is in these circumstances that twin challenge is raised before us.

7) Mr. Mihir Desai learned Senior Counsel appearing for the petitioners would submit that the State Government having declared the test at the State level, it should have held it for filling up the seats in all medical colleges across the State. There was no warrant in then excluding from the purview of the State Entrance

Examination the admissions to the private institutions. The State is reading the ordinance and interpreting it to mean that it is obliged to exclude these colleges from the purview of the said test. There is no such mandate flowing from the ordinance and far from the amendments that the ordinance makes to the Indian Medical Council Act, 1956.

8) Secondly, it is urged that by the impugned communication, the State is now seeking to award marks and for the so called success in the field of sports and other achievements. As far as these activities are concerned, this was not what was originally proposed and therefore, by the impugned communication, the State Government would be altering the basis and the standards of the results and consequently the merit in terms of the State examination. This would, apart from being ultra vires, will also be unconstitutional. The students, who have been declared successful and placed at a particular serial number in the order of merit would lose some marks or percentage because of the impugned stipulations. In these circumstances, this court should, therefore interfere in writ jurisdiction. Mr. Desai invites our attention to paras 10(a) and (b) of the petition. These paras read as under:-

“10(a) The impugned communication provided that the procedure set out therein will only to selection of

candidates to be admitted at All State Government Colleges, all Municipal Corporation Colleges, all State Government Aided Colleges and all Health Sciences Unaided Private Professional Institutions in the State of Maharashtra except in so far as courses of MBBS and BDS are concerned [**Deviation No. 1**]

(b) The Impugned Communication also provided that there shall be an additional weightage claim that can be availed of by the medical aspirants on the basis of their achievements in sports and/or NCC or on the basis of having a parent who was involved in Hyderabad/Goa liberation or was a freedom fighter [**Deviation No. 2**]"

9) An affidavit in reply has been filed by respondent nos. 2 and 3 to the writ petition. The affidavit proceeds on the footing that the principal challenge is to the exclusion of MBBS and BDS seats in private unaided institutes from the purview of Common Entrance Test conducted by respondent no. 1 for academic year 2016-17. This would essentially depend upon the interpretation of the proviso to newly amended section 10D of the Indian Medical Council Act. It is submitted that the State Government has never changed its stand, but pursuant to the option granted by the proviso to section 10D, the State Government has opted not to go with the uniform entrance examination conducted at the undergraduate level by the Medical Council of India, namely, NEET for the academic year 2016-17. This stand of the State Government is in consonance with the applications moved before the Hon'ble Supreme Court and representations made by the State Government to the Union Government for exempting the State of Maharashtra from the purview of uniform entrance

examination (NEET) conducted by Medical Council of India for the current academic year 2016-17. It is based on the representations made by several State Governments and at the instance of the Central Government, the President of India promulgated the Indian Medical Council (Amendment) Ordinance, 2016 and on 24th May, 2016. However, according to the State and with greatest respect, there is ambiguity in the language of the proviso. As regards the reference in the proviso to the private medical colleges is concerned, it is only to State Government seats. As a matter of fact, there are no State Government seats in any of the private colleges. Therefore, the State Government took a decision to exclude MBBS and BDS courses from the purview of MHT-CET and common admission process conducted by respondent no. 1 for the current academic year. This is purely based on the interpretation of the proviso and there is nothing arbitrary and illegal about it. It is a possible and plausible interpretation and the court, therefore, should uphold it.

10) As far as the additional weightage and marks given to eligible candidate in Health Science courses are concerned, they are given for the categories, namely, Sports, NCC, Hyderabad Goa Liberation Movement Participants and Freedom Fighters. This additional weightage marks are granted to the candidates in

MHT-CET examinations since last more than 15 years. The Government is seeking to support this by relying on MHT-CET brochure of last three years. For current academic year, the MHT-CET was conducted in May, 2016. The information brochure was published in last week of February, 2016 by respondent no. 1. The information brochure contained that information which concerns conduct of examination only. Therefore, no detailed information pertaining to eligibility and additional weightage marks was included in the said information brochure. Though the provisional results were declared on 1st June, 2016, additional weightage marks were not included, since the application or request in that behalf was called for from the students/candidates by way of separate notice issued on 1st June, 2016. Exhibit - III to the affidavit in reply is relied upon to submit that it is self explanatory. The annexure to the notice sets out the eligibility criteria for the students seeking additional weightage marks in each of the above categories. A total of 919 candidates applied on-line. The mark-sheets of the students were made available on 10th June, 2016 after adding additional weightage marks in the original Physics, Chemistry and Biology marks of the candidates. It is in these circumstances that the State justifies that the schedule for preference form filing is ongoing from 14th June, 2016 till 2nd July, 2016. There would be

no prejudice because the additional weightage would be admissible only to those genuine and bonafide students who support their claim with documents. If the documents are deficient in any manner, the students would not obtain any benefit. Therefore, out of 919 students, who had applied for entrance exam, only 102 students (within the rank of 1 to 8600) have applied for additional weightage marks. Out of 102 students, after scrutiny and document verification, only 41 have been found to be valid from amongst 88 students who appeared at the centre. A chart Annexure IV is relied upon and that is stated to be center wise.

11) It is stated that recently, the Hon'ble Supreme Court of India, in the case of *Ashish Ranjan and Ors. vs. Union of India*¹, prescribed a new time schedule for the authorities to comply with in the matter of grant of permissions for opening new college/course and/or increase of intake capacity etc. Based on the schedule approved by the Hon'ble Supreme Court of India, the State has also prepared the schedule for conduct of common admission process in the State of Maharashtra. In such circumstances, it is submitted that there is no merit in the writ petition and it should be dismissed.

¹ I. A. No. 7 and 8 in WP No. 76 of 2015

12) Mr. Rohit Deo appearing for the respondents, in consonance with this affidavit, submitted that the petitioners suffer no prejudice by the interpretation of the ordinance by the State. The interpretation is bonafide and given the peculiar language of the proviso, it is permissible. Once it is a possible and probable interpretation of a legal provision and that too bonafide, then, the students and the parents suffer no prejudice. Pertinently, there is no right established much less a fundamental or legal one to admission and unconditional one to professional course. If the State could have prescribed an entrance test and that step is taken for the benefit of the students in the State of Maharashtra, then, merely because the State Government decides to exclude from the process certain institutions and does not include them will not violate any of the fundamental freedoms or legal provisions. Secondly, there is an Act of 2015 in place and thirdly, it is not as if the private educational institutions would exclude merit and fill up the seats in ignorance of the claim of meritorious students. There is a national entrance test and from the results of which the students would be admitted to these colleges. Therefore, their exclusion from the State admission process is justified.

13) Secondly, the State is going by a consistent practice adopted from the past on the additional weightage marks to be allotted. There is nothing arbitrary or irrational about it. There is no substance in the argument that the rules of admission have been changed midway. Merit is not sacrificed and the criteria of admission on merit is neither given a go by nor surrendered. In these circumstances, there is no substance in the challenge and the petition must fail.

14) With the assistance of learned counsel appearing for both sides, we have perused the petition, the annexures thereto and the affidavits placed on record. We have also perused the detailed compilation tendered by Mr. Desai.

15) The petition annexes the copy of what is styled as information brochure. Page 24 Annexure 'A' is the brochure, which has been issued by the Commissionerate, Common Entrance Test Cell, Mumbai. The Government of Maharashtra has issued this information brochure for Common Entrance Test 2016 for Health Science Courses. That reads thus:-

**“Government of Maharashtra
STATE COMMON ENTRANCE TEST CELL, MUMBAI
INFORMATION BROCHURE**

COMMON ENTRANCE TEST 2016 OF HEALTH SCIENCE COURSES
(MBBS/BDS/BAMS/BHMS/BPTh/BOTb/BASLP/BP&O/
B.Sc.[Nursing])/BVSc&AH

MHT-CET-2016

**COMMISSIONERATE, COMMON ENTRANCE TEST
CELL, MUMBAI**

305, Government Polytechnic Building, 49, Kherwadi, Ali
Yawar Jung Marg, Bandra (E), Mumbai 400 051. (M.S.)
TEL NO. +91-22-26476034 Fax No. +91-22-26476034/37

EMAIL ID : maharashtra.cetcell@gmail.com

WEBSITE: <http://www.sssamiti.org>

16) The index contains examination schedule, introduction, definitions, scheme of examination, eligibility, application form and informations brochures, preparation of merit list and declaration of result, revaluation of HSC marks, measures for prohibition of ragging and measures for prevention of ragging at the institution level.

17) The annexures contain the information about divisional authorities and notified colleges, Higher and Technical Education Department and such other agencies and persons, whose role is prominent in the conduct of this examination.

18) The schedule for the MHT-CET 2016 is indicated at page 26 of the paper book and with the cut off dates. The examination and bell schedule is also set out.

19) Page 27 contains the introductory clauses and the first introduction clause is that the Government has established Admissions Regulating Authority and State Common Entrance Test Cell as per the provisions of Maharashtra Unaided Private Professional Educational Institutes (Regulation of Admission and Fees) Act, 2015. The Commissioner has been designated as competent authority and clause 1.2 reads thus:-

“1.2 The Commissioner of State CET Cell, has been designated as Competent Authority for conducting MHT-CET 2016 and selection of candidates for admission to MBBS, BDS, BAMS, BUMS, BPTH, BOT, BASLP, BP&O, B.Sc.[Nursing] and B.vSc & AH courses various Health Science courses for the academic year 2016-17.

As per this act, MHT-CET 2016 is applicable for admission to Government, Municipal Corporation and Private aided, Unaided & Minority Health Science Institution/Colleges.

The merit list of MHT-CET-2016 will be utilised for the selection to Veterinary Colleges in Maharashtra. The Registrar, Maharashtra Animal & Fishery Science University (MAFSU), Nagpur, who is the Competent Authority for selection to Veterinary colleges, will notify the details of selection process separately.”

20) Then follows the definitions and the scheme of examination, which was to be conducted on 5th May, 2016. Thereafter, what follows is the eligibility for admission and clause 4 deals with that. Important is the eligibility criteria notified at clause 4.4 and Annexure 'B'. Relevant clauses 4.4 to 4.8 read thus:-

“4.4 Eligibility criteria for Qualifying Examination for various courses : please refer Annexure - B

4.5 CET-Marks Eligibility For Admission to MBBS & BDS Courses:

A candidate belonging to open category must secure not less than 50% marks in Physics, Chemistry & Biology (PCB) taken together at Common Entrance Test i.e. MHT-CET-2016. A candidate belonging to constitutional reservation and constitutional reservation with Person with Disability (PWD) must secure not less than 40% marks in Physics, Chemistry & Biology (PCB) taken together in the MHT-CET-2016. Person with Disability in General category must secure not less than 45% marks in Physics, Chemistry & Biology (PCB) taken together in the MHT-CET-2016.

4.6 CET Marks for Admission to BAMS/BHMS/BUMS/BPTh/BOTh/BASLP/BP&O and B.Sc. Nursing:

A candidate will be selected on the basis of merit in Common Entrance Test (MHT-CET-2016) to above stated courses.

4.7 Additional Eligibility For BUMS:

Candidate should have passed SSC (or equivalent) examination from the recognized board with *Urdu or Arabic or Persian Language* as one of the subject.

4.8 Admission to Health Science Courses is subject to the grant of eligibility by Maharashtra University of Health Science, Nashik.”

21) After setting out the complete procedure, then, there is a flow chart indicated at page 32. Clause 7 deals with the preparation of merit list and declaration of result. Clause 7 to the extent relevant, reads thus:-

“7.1 After the examination question booklet of all versions will be made available on website “www.dmer.org” from 16/05/2016. Provisional Answer key of each version will be made available on website

“www.dmer.org” from 18/05/2016. The OMR answer sheet of all the candidates will be made available on “www.mhtcet2016.co.in” website from 24/05/2016. The OMR Sheet will be available to each candidate after entering Password and Registration ID as mentioned in flow chart of registration process.

7.2 Preparation of Merit List for Selection to Health Science Courses : The detailed procedure will be declared later.

7.3 The downloadable marksheet will be made available on website “www.mhtcet2016.co.in” from 14/06/2016 till the last date of filling up of preference form.

7.4 Verification of Marks Obtained at MHT-CET 2016: If a candidate desires to get his/her Answer sheet evaluation verified, an application in prescribed proforma (Annexure 'L', along with self addressed unstamped envelope (9”X4.5”) should be submitted to any **Divisional Authority, within 4 days** of declaration of the result of MHT-CET-2016, along with Demand Draft/Pay Order of **Rs.1000/-** (Rs. One Thousand only) drawn on any scheduled commercial bank in favour of **“Commissionerate, State CET CELL, Mumbai”,** payable at Mumbai.

7.5 The candidate will be sent photocopy of the Answer sheet and model answer key, after due verification by the Commissioner State CET CELL through registered post.

7.6 Representations received after the specified period will not be entertained. The change if any, shall be communicated to the candidate. The decision of the Commissioner State CET CELL in this matter shall be final and binding.

7.7 The Rules and Regulation/procedure in detail will be notified in due course for MHT-CET 2016 examination and selection process to Health Science Courses for the academic year 2016-17. No promise is implied herein for the subsequent years and no expectations should be based on this for future.”

22) We are not concerned with the rest of the provisions of this brochure.

23) It is common ground that there is in place, in the State of Maharashtra, the Act 28 of 2015 and by that, it is permissible for the State to hold Common Entrance Test. The Act need not be referred in complete details; for its long title/heading itself indicates that it deals with the unaided private professional educational institutions and regulates admissions thereto and fees.

24) What we then have, as an annexure to the writ petition, is the notification of MHT-CET admission process. That is Annexure 'C' at page 70 of the paper book and at page 73 is the clarification that the procedure which has been set out in the brochure for the Common Entrance Test MHT-CET 2016 conducted by the Government on 5th May, 2015 for the academic year 2016-17 will exclude the MBBS and BDS courses from the purview of this test and a reference has been made to the Act of 2015.

25) Before we proceed further, it would be necessary to refer to the order passed by the Hon'ble Supreme Court of India on 11th April, 2016 in the case of *Medical Council of India vs. Christian Medical College Vellore and Ors.*² The Hon'ble Supreme Court passed the following order:-

² **Review Petition (C) No. 2159-2268 of 2013**

“ These review petitions have been filed against the judgment of this court dated 18th July, 2013 passed in Christian Medical College Vellore & Ors. vs. Union of India and Ors. reported in (2014) 2 SCC 305. The review petitions were placed before a Three-Judge Bench and notices were issued on 23rd October, 2013 and thereafter, it was brought to the notice of the Bench that Civil Appeal No. 4060/2009 and connected matters involving an identical issue, had been referred to a Five-Judge Bench. Accordingly, on 21st January, 2016, these review petitions were ordered to be heard by a Five-Judge Bench.

On 21st January, 2016, notice was ordered to be served through substituted service and in pursuance of the said order, necessary publication was made in two newspapers and proof thereof was filed on 15th February, 2016. Thereafter, we have heard the matters.

Civil Appeal No. 4060/2009 and its connected matters have been heard and order has been reserved on 16th March, 2016.

We have heard the counsel on either side at great length and also considered the various judgments cited by them, which include judgments cited by the no-applicants on the scope of review in Kamlesh Verma vs. Mayawati and Ors (2013) 8 SCC 320, Union of India vs. Namit Sharma (2013) 10 SCC 359 and Sheonandan Paswan vs. State of Bihar and others (1987) 1 SCC 288.

After giving our thoughtful and due consideration, we are of the view that the judgment delivered in Christian Medical College (supra) needs reconsideration. We do not propose to state reasons in detail at this stage so as to see that it may not prejudicially affect the hearing of the matters. For this purpose we have kept in mind the following observations appearing in the Constitution Bench judgment of this Court in Sheonandan Paswan (supra) as under:

“..... If the Review Bench of the apex court were required to give reasons, the Review Bench would have to discuss the case fully and elaborately and expose what according to it constitutes an error in the reasoning of the Original Bench and this would inevitably result in pre-judgment of the case and prejudice its re-hearing. A reasoned order allowing a review petition and setting aside the order sought to be reviewed would, even before the re-hearing of

the case, dictate the direction of the re-hearing and such direction, whether of binding or of persuasive value, would conceivably in most cases adversely affect the losing party at the re-hearing of the case. We are therefore of the view that the Review Bench in the present case could not be faulted for not giving reasons for allowing the Review Petition and directing re-hearing of the appeal. It is significant to note that all the three Judges of the Review Bench were unanimous in taking the view that “any decision of the facts and circumstances which ... constitutes errors apparent on the face of record and my reasons for the findings that these facts and circumstances constitute errors apparent on the face of record resulting in the success of the review petition, may have the possibility of prejudicing the appeal which as a result of my decision has to be re-heard.”

Suffice it is to mention that the majority view has not taken into consideration some binding precedents and more particularly, we find that there was no discussion among the members of the Bench before pronouncement of the judgment.

We, therefore, allow these review petitions and recall the judgment dated 18th July, 2013 and direct that the matters be heard afresh. The review petitions stand disposed of as allowed.”

26) A perusal of this order would indicate as to how the Hon'ble Supreme Court came to the conclusion that its judgment in the case of Christian Medical College needs reconsideration. The review petitions, therefore, were allowed.

27) Then, the Hon'ble Supreme Court of India passed a further order on 27th April, 2016, copy of which is at page 213 of the compilation handed in by Mr. Desai. There is an assurance given to the Hon'ble Supreme Court that the Central Board of Secondary

Education, Union of India is ready and willing to hold NEET examination for admission to MBBS and BDS courses for the academic year 2016-17. Then, the Hon'ble Supreme Court of India passed a further order directing holding of the Common Entrance Test styled as NEET. That order was passed on 28th April, 2016. It is thereafter that the interim applications were made and which are huge in number. These sought modification of the order passed on 28th April, 2016. The applications were made by private medical colleges and some State Governments. The Hon'ble Supreme Court of India clarified that there is no infirmity *prima facie* in the NEET Regulations. The Hon'ble Supreme Court concluded that it does not affect the right of the State or the private institutions. All the apprehensions were taken care of and the applications and writ petitions seeking modification to the order passed on 11th April, 2016 were disposed of by a detailed order on 9th May, 2016. It is then, the Indian Medical Council (Amendment) Ordinance, 2016 being Ordinance No. 4 of 2016 was promulgated, which we have reproduced hereinabove.

28) A bare perusal of the Indian Medical Council Act, 1956 would indicate that section 10-A deals with the permission for establishment of new medical college, new course of study etc.

Following it is section 10B, which deals with non-recognition of medical qualifications in certain cases. Then comes section 10-C, which provides for time for seeking permission for certain existing medical colleges etc. It is then section 10-D follows, which deals with invocation of a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level.

29) By the substantive provision, a uniform entrance examination to all medical educational institutions at the undergraduate and post-graduate level through such designated authority is mandated. It must be held in such manner as may be prescribed and the designated authority shall ensure that the conduct of uniform entrance examination is in the aforesaid manner. Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act in respect of State Government seats, whether in Government medical college or in a private medical college, where such State has not opted for such examination. Thus, if the State Government has not opted for examination contemplated by section 10-D, then, the uniform

entrance examination at the undergraduate level for academic year 2016-17 in respect of State Government seats, whether in Government medical college or private medical college are out of the purview of this substantive stipulation. The State Government, in this case, has understood this to mean that there is an option to conduct a State level examination which could be a common one for admissions to undergraduate medical courses for the academic year 2016-17. Initially, it included all the seats and in all institutions across the State within the purview of the said examination. Later on and in the light of this ordinance and amendment, the State deleted and excluded these private medical institutions from the purview of this examination, namely MBBS and BDS seats therein. That is because there is a substantive enactment i.e. Act 10 of 2015 and there was a national entrance test already prescribed for the same. These private institutions applied to the Hon'ble Supreme Court of India to exclude themselves from the purview of national test, but that application having been dismissed, the State Government thought that there is no need to include these institutions in the process initiated by it.

30) We are of the opinion that bearing in mind the larger challenge pending in the Hon'ble Supreme Court of India, the writ

petitions challenging the legality and validity of the ordinance though admitted but no interim stay was granted by the Hon'ble Supreme Court, the State Government could have gone with the process and held examination at the State level. It could also have, based on the interpretation noted by us, excluded certain seats and institutions from the purview of this examination. We do not think that in the absence of any malafides being alleged, this decision can be termed in any way arbitrary or irrational, as it is on a possible and plausible interpretation of the ordinance and the amended provision. We are in agreement with Mr. Deo that as far as this aspect of the matter, the State has based its interpretation on the ordinance, with which the petitioners may not necessarily agree. However, they must demonstrate an underlying right which they claim to be violated on account of this interpretation or the decision following it. We have no material in that behalf before us. The petitioners have not argued that it is their fundamental right to professional education much less higher education. There is no prejudice that the petitioners could establish by this decision of the State. The first contention of Mr. Desai, therefore, must fail.

31) The second aspect and which is final, as far as this matter, is with regard to the additional weightage marks. We have

extensively referred to the process and which was initiated by the information brochure, copy of which is at Annexure 'A'. By the information brochure at page 70 of the paper book, what the State has now done is that it has taken a decision based on the interpretation of the ordinance, which we have referred already. The second decision that has been indicated in this brochure is with regard to additional weightage marks. The Government has also indicated that the candidates, who have applied for MHT-CET 2016 examination for MKB Quota and not appeared for MHT-CET 2016 examination held on 5th May, 2016, should attend counselling, which will be notified at a later stage. During this counselling process, request for conversion in open to reserve category, claim of specified reservation, claim of additional weightage etc. will be considered. The claim of additional weightage marks will be verified at the time of counselling. The stipulation with regard to distribution of seats and eligibility is contained in the earlier clauses. The selection of candidates is also set out. Thereafter, the eligibility for the constitutional reservations is set out. Then, what follows and importantly is the procedure for additional weightage claim. That is to be found at page 115 of the paper book. To the extent it is relevant, it reads thus:-

“Benefit of additional marks is restricted to 1% of maximum obtainable marks in Physics, Chemistry and Biology at the MH-CET-2014 i.e. 2 marks per category and/or 2marks per sports/game as stated below, subject to the condition that the total number of additional marks under all the headings together, for consideration of weightage shall be limit to a maximum of 4% of maximum obtainable marks at the MH-CET-2014 i.e. 8 marks.

The certificate/s required for additional weightage claim must reach to the competent Authority at Mumbai on or before the notified date, failing which the claim will not be granted.

1. SPORTS

A candidate claiming the benefit of representing his/her Institution and actually participating in an inter-Institutional tournament/competition organized at State/national level **between the period of his/her passing of SSC (or equivalent) examination and HSC (or equivalent) examination**, in any of the following games will be given additional marks (2 marks per sports/ame as listed below as specified, provided he/she is,

a) Member of the team that participated in the tournament and **won the finals**.

(b) **Winner** of the Championship in games where there is individual participation.

For the claim of above weightage, a certificate from the organizers and from the Director of Sports, Pune or an Officer not below the rank of Under Secretary to Government of India who is authorized to issue such a certificate, should be submitted. **Compulsorily during preference from process**. (See the format on ext page)

Enumeration of games for the purpose of above weightage is as follows:

Participation as a member of team/individual, who won the final in the games/sports listed below (as per *Govt. Letter No. MED-1003/2108/CR-300/03/Edu-2, dated 6th June, 2003*):-

1) Athletics	2) Aquatic	3) Archery	4) Atyapatya	5) Badminton
6) Basketball	7) Billiards	8) Ball-Badminton	9) Bridge	10) Boxing
11) Body Building	12) Cricket	13) Cycling	14) Carrom	15) Chess
16) Football	17) Fencing	18) Gymnastics	19) Handball	20) Hockey
21) Judo	22) Karate	23) Sailing	24) Kho-Kho	25) Kenoying-Kayaking
26) Mallakhamb	27) Powerlifting	28) Rifle shooting	29) Ring Tennis	30) Soft Ball
31) Shooting Ball	32) Table Tennis	33) Tennis	34) Volley Ball	35) Wrestling
36) Weight Lifting	37) Yatching	38) Roller Skating	39) Rowing	40) Hand Gliding
41) Cycle Polo	42) Squash	43) Taiquondo	44) Tennis Ball Cricket	45) Contract Bridge
46) Swimming	47) Teniquite	48) Water Polo	49) Water Diving	50) Kabaddi/Hu-Tu-Tu
51) Baseball	52) Net Ball	53) Tug-of-war	54) Yoga	55) Cross Country
56) Kick Boxing	57) Throw ball	58) Wushu		

Separate certificate for each event is necessary.

2. HYDERABAD/GOA LIBERATION MOVEMENT PARTICIPANTS (HGS) CATEGORY: 1% i.e. 2 addition of marks will be considered if the candidate is a son/daughter of a participant or the child of the deceased son/daughter of the participant in Hyderabad/GOA Liberation Movement. The candidate must submit certificate from the Commissioner of Police/District Magistrate/Jail Authority, stating therein that the parent had participated in Hyderabad/Goa Liberation Movement and was imprisoned for six months or more.

3. FREEDOM FIGHTER (FF) CATEGORY: 1% i.e. 2 Addition Marks will be considered if the candidate is a son/daughter of a Freedom fighter or the **child of deceased son/daughter of the freedom fighter.**

The candidate must submit certificate from the District Magistrate of the District in which the Fireedom Fighter was sentenced to jail or has suffered in any other manner as mentioned in paragraph 4, Appendix (A) accompanying government Resolution, Education and Social Welfare Department, No MIS-1465/R dated 23rd November 1965. The Certificate must specify that the period of

imprisonment was not less than one month; or fine of not less than Rs.100/- or death in action; or award of Sanman-patra.

4. **NATIONAL CADET CORPS (NCC) CATEGORY: 1% i.e. 2** Addition of marks will be considered, if a candidate has been a member of the NCC **during the period between his passing SSC (or equivalent) and HSC (or equivalent) examination;** and is in possession of 'B' **Certificate** subject to the candidate having either represented the State at All India Level or put in two years in NCC with at least 70% attendance.

The Candidate must directly submit attested photocopies of the certificate(s) from concerned authority, in support of the claim, on or before the notified date, to the Competent Authority, failing which, **the claim for additional weightage will not be granted."**

32) A perusal of this clause would indicate that this benefit of additional marks is restricted to 1% of maximum obtainable marks in Physics, Chemistry and Biology at the MH-CET-2014 i.e. 2 marks per category and/or 2 marks per sports/game. The certificates required for additional weightage claim must reach the competent authority at Mumbai on or before the notified date. The categories for additional weightage and the claim based in relation thereto is completely new stipulation and which does not find place in the earlier information brochure. It is conceded before us even by the State that this has come on 1st/10th June, 2016. The stipulation was absent in the information brochure at Annexure 'A'.

33) Mr. Deo would place reliance upon clause 7.2 of this brochure at page 33 to urge that preparation of merit list and its

procedure could have been notified later. It is not possible to agree with him. The additional weightage cannot be equated with constitutional reservations. The word is understood as attaching importance or value to, plea or arrange so as to give someone or something an advantage. Once the criteria is merit and the marks obtained at CET alone are to determine the admissions so also except the constitutional reservations no other reservation, concession or relaxation is permissible, then, we do not find any legal justification for this additional weightage. No advantage or benefit compromising, interfering and diluting the merit can be sustained in law. In the case of *State of Andhra Pradesh vs. U. S. V. Balaram*³, the Hon'ble Supreme Court, in paras 23 to 25 and 38 and 51 held as under:-

“23. We have already referred to the fact that there is a proviso that the candidates excepting those belonging to the Scheduled Castes and Scheduled Tribes should have obtained in their qualifying examination not less than 50% of marks in Physical and Biological Sciences put together in their qualifying examination. There is no distinction made between a P. U. C. or Multipurpose candidate. Both of them in order to become eligible to appear in the entrance Test must have secured not less than 50% marks in their qualifying examinations in the two Physical and Biological Sciences put together. The only relaxation, or exception, if it may be so called, is regarding the candidates belonging to the Scheduled Castes and Scheduled Tribes. These candidates should have secured not less than 40% of the marks in those subjects in their qualifying examination.

24. Rule 4 emphasises that all eligible candidates who have applied for admission are, bound to take the

³ AIR 1972 SC 1375

Entrance Test conducted by the Director of Medical and Health Services. All the candidates, who take the Entrance Test, must take all the four papers, referred to therein. Here again, it will be seen that there is no distinction made between a P. U. C. and a Multipurpose candidate. Both of them must have obtained not less than 50% marks under rule 3 in Physical and Biological Sciences in their qualifying examinations, and both of them will have to appear for those subjects in the Entrance Test, which is common to all the candidates.

25. Rule 6 specifically provides for the admission being made on the basis of the results of the Entrance Test. Rule 7 regarding distribution of seats specifically refers to 552 seats being available to be filled up on the basis of merit in the Entrance Test. But when we come to rules 8 and 9, it is stated in the former that 40% each is to be allotted on the basis of qualifying examination to Multipurpose and P.U.C. students and the latter refers to distribution in the same proportion to the two seats of candidates on the basis of the result of the Entrance Test. This is so, notwithstanding the fact that rule 10 provides even in respect of candidates for whom reservation have been made, their selection will be in the order of merit of marks obtained in the Entrance Test. When the scheme of the rules clearly shows that the basis of selection for the Ist Year Integrated M.B.B.S. Course is according to the result of the Entrance Test, the question is whether the reservation of 40% of seats for the H.S.C. candidates under R. 9 is valid? Under this rule though a P. U. C. candidate may have got higher marks than a H.S.C. candidate, he may not be able to get admission because 40% of the seats allotted to the P. U. C. candidates would have been filled up; whereas a H.S.C. candidate who may have got lesser number of marks than a P.U.C. candidate may be eligible to get a seat because of 40% quota allotted to H.S.C. candidates has not yet been completed. Does this amount to an arbitrary discrimination violative of Art. 14? Prima facie having due regard to the scheme of the rules and the object sought to be achieved, namely, of getting the best students for the Medical Colleges, the provision is discriminatory and it has no reasonable relation to the object sought to be achieved.

.....

38. We have also pointed out that in respect of eligibility for applying for admission to the 1st Year Integrated M.B.B.S. Course, no distinction has been drawn between

P.U.C. and H.S.C. candidates, both of whom have to get at least 50% marks in Physical and Biological Sciences. So that clearly shows that they have been put on a par so far as eligibility is concerned. But the discrimination is made only after the Entrance Test is over by denying admission to the P.U.C. candidates who may have got higher marks than some of the H.S.C. candidates who get admission because of the 40% reservation.

.....

51. It is no doubt open to the State to prescribe the sources from which the candidates are declared eligible for applying for admission to the Medical College; but when once a common Entrance Test has been prescribed for all the candidates on the basis of which selection is to be made, the rule providing further that 40% of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such a classification is valid, the said classification has no reasonable relation to the object sought to be achieved, namely, selecting the best candidates for admission to the Medical Colleges. The reservation of 40% to the H. S. C. candidates has no reasonable relation or nexus to the said object. Hence we agree with the High Court when it struck down this reservation under Rule 9 contained in C. No.1648 of 1970 as violative of Article 14.”

34) To the same effect is the principle laid down in the case of *Kailash Chand Sharma vs. State of Rajasthan and Ors.*⁴. In that decision as well, the Hon'ble Supreme Court frowned upon the award of bonus marks as that dilutes merit. The court held as under:-

“33. The above discussion leads us to the conclusion that the award of bonus marks to the residents of the district and the residents of the rural areas of the district amounts to impermissible discrimination. There is no rational basis for such preferential treatment on the material available before us. The ostensible reasons put forward to distinguish the citizens residing in the State

4 (2002) 6 SCC 562

are either non-existent or irrelevant and they have no nexus with the object sought to be achieved, namely, spread of education at primary level. The offending part of the circular has the effect of diluting merit, without in any way promoting the objective. The impugned circular dated 10-06-1998 insofar as the award of bonus marks is concerned, has been rightly declared to be illegal and unconstitutional by the High Court.”

35) To the same effect are the observations and conclusions in the case of *Dr. Preeti Srivastava and Anr. vs. State of M. P. and Ors.*⁵. (See paras 27 to 29 and 62).

36) Finally, the Hon'ble Supreme Court, in the case of *Satyabrata Sahoo and Ors. vs. State of Orissa and Ors.*⁶ upheld merit at the CET to be the sole guiding criteria and factor. (See paras 24 to 26).

37) There is no indication as to why it was introduced midway and at a later stage. It may be that some changes or modifications, which are ancilliary or incidental to the main stipulations regarding marks and weightage could have been issued. However, what has been done is to provide additional weightage marks and we do not find there is any explanation for the same in the affidavit. All that the affidavit says is that insofar as these marks are concerned, they are given to eligible candidates and in the categories mentioned. They are at par with those for the last three years. Reliance is placed on the brochure

⁵ (1999) 7 SCC 120

⁶ (2012) 8 SCC 203

of MH-CET-2014. However, in the initial brochure of February, 2016, there could have been any indication as observed above with regard to these additional weightage marks. We do not find, therefore, the reliance on the earlier brochures to be well placed. The affidavit in reply indicates clearly that for the current academic year, the examination was conducted on 5th May, 2016. It is conceded that the brochure was published in last week of February, 2016, based on which, the examination was conducted. That was the only information brochure available on record. That concerns conduct of examination. Therefore, no information about the additional weightage marks was included in the brochure. This is factually incorrect statement; for we have completely scanned the Annexure 'A' to the petition; that brochure contains all the relevant information including the above aspects. It is not proper to then contend that no detailed information about the eligibility for additional weightage marks was included in the brochure. If there was no information included about the additional weightage marks, then, initially or at the threshold, the intent to award them ought to have been indicated. That was not indicated at any time from February, 2016 to March, 2016. The examinations were conducted, provisional results were declared and then the attempt is made to award additional weightage marks. This is vitally affecting the

rights of the students insofar as the criteria for eligibility and the marks which they are required to obtain. There is substance in the argument of Mr. Desai that this conduct of the State has also affected the results and the position of the candidates in the order of merit. In the circumstances, we do not think that the State was justified in introducing these additional weightage marks. The justification now given that the State will delete these additional weightage marks from the next academic year is no answer for justifying the award of the same in the ongoing process. Once the State is aware that these additional weightage marks and for sports, NCC, Hyderabad Goa Liberation Movement Participants and Freedom Fighters are not referable to any specific rules and which are common to such tests throughout and for all faculties, then, the State ought to have excluded these marks even for the current year. If the marks obtained at such entrance test were alone to judge and decide the merit and the position or merit list accordingly, then, there is no reason why any additional weightage marks have to be awarded. These marks have nothing to do with the performance of the students at the examination. It is not a reward which can be carved out for exam performance. If these extra curriculum activities have been undertaken besides the course, then, that is something very personal to the students and at best such achievements would be beneficial and

advantageous when they are successful in completing the courses and seek jobs whether in Government or Semi Government. There was no reason for this introduction midway. It is the marks at such test which alone have to be the criteria for the merit. In these circumstances we do not permit the State to resort to the additional weightage marks and allot them to the eligible candidates to the Health Science courses for the academic year 2016-17. Having found no justification in allotting additional weightage marks, we quash and set aside this exercise. The State shall not allot any additional weightage marks over and above the admission through CET scheme.

38) We have taken care of both aspects and having found substance in the second challenge, we conclude that the writ petition succeeds in part. To the extent indicated above, the State's decision is set aside. Now, the respondents shall give effect to this judgment and order and apply it to the ongoing process. The ongoing process shall be concluded strictly in accordance with the rules and without any additional weightage marks to be awarded to the candidates under the aforesaid categories.

39) In such circumstances, we do not award any costs. Before parting, we would like to observe that enormous judicial time is

consumed and every year such steps are challenged, either by students or parents. Whether it be the Principal Seat or the Benches of this court we are flooded with writ petitions involving similar challenges. We have to, then, in the interest of students and their academic pursuits, involve ourselves in these challenges and questions. The legal contentions do not project any fundamental right or freedom, but only center around some expectations. Though the Hon'ble Supreme Court has time and again observed that such expectations cannot be upheld, the challenges never stop but continue year after year. Added to the same is the confusion created by the State Government in trying to please the students and parents by short cut methods. If real talent is to be encouraged, merit has to be upheld or if the best must come to the aid of the nation, then, it is but natural that a single uniform test at national level is the only solution. However, we find that just as the parents and children resist such tests, surprisingly the State steps in to defeat the Hon'ble Supreme Court's orders and directions. This defiance of the State Government cannot be understood. It is but the duty of the State to hold examinations as directed by the Hon'ble Supreme Court of India. Yet, there is reluctance and at times there is a deliberate effort to defeat the orders and directions of the Hon'ble Supreme Court of India. We do not see what is achieved by the State when

they resort to such tactics. Today also, during the course of arguments, it is stated that the Gujarat Government follows a particular pattern. We would have welcomed if all the States had agreed to hold a national level test and facilitated it. However, our State has spent considerable time in having another test. We hope that the 2016-17 academic year brings an end to all this and permanently. Hereafter, We hope that wiser counsel will prevail and the State of Maharashtra would abide by the central pattern for admission to undergraduate Health Science courses. We say nothing more.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)