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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2559 of 2017.

WITH
CIVIL APPLICATION No. 2074 of 2017.
IN

WRIT PETITION No. 2559 of 2017.

(1) Sr. Lourdu Mary N,
Principal,
Indian Red Cross Society
Maharashtra State Branch
BEL-AIR College of Nursing
(Affiliated to Maharashtra
University of Health Science)
having its Office at Panchgani
Taluka Mahabaleshwar,
District Satara.

(2) Mrs. Shubhangi Sadashiv Dumbray
Principal,
Tehmi Grant Institute of Nursing
Education, 13 Tadiwala Road,
Pune 411 001.

..Petitioners.

Versus.

- 1) State of Maharashtra,
(Summons to be served on the
learned Government Pleader appearing
for State of Maharashtra under Order
XXVII, Rule 4 of the C.P.C.,1908).
- 2) The Registrar,
Maharashtra University of Health
Sciences Nashik, having its office at
Dindori Road, Mhasrul, Nashik 422004.
- 3) Admission Regulation Authority
having its office at :
Directorate of Medical Education & Research
4th Floor, Government Dental College Building,
St. Gorges Hospital Campus
Near CST, Fort, Mumbai 400 001.
- 4) The Secretary,
Medical Education and Drugs Department
Government of Maharashtra
Mantralaya, Mumbai 400 032.

(Summons to be served on the learned
Government Pleader appearing for State of
Maharashtra, under Order XXVII,
Rule 4 of the C.P.C.,1908).

- 5) The Director of Medical Education and
Research Mumbai.
(Summons to be served on the learned
Government Pleader appearing for State of
Maharashtra, under Order XXVII,
Rule 4 of the C.P.C.,1908).

- 6) Indian Nursing Council,
8th Floor, NBCC Center,
Plot No.2, Community Center 29-wp-8917-11
Okhla Phase-I,
New Delhi - 110020. .. Respondents.

WITH
WRIT PETITION No. 9099 OF 2017

BEL - AIR College of Nursing
run by Indian Red Cross Society,
Maharashtra State Branch
(Affiliated to Maharashtra
University of Health Science)
through the Principal
(Sr. Lourdu Mary N.)
Having the office at
Panchagani, Taluka Mahabaleshwar,
District Satara. ..Petitioner.

Versus.

- 1) State of Maharashtra
(Summons to be served on the learned
Government Pleader appearing for State of
Maharashtra, under Order XXVII,
Rule 4 of the C.P.C., 1908).
- 2) The Secretary,
Medical Education and Drugs Department
Mantralaya,
GT Hospital Campus,
9th Floor, Lokmanya Tilak Marg,
Mumbai-400 032.

- 3) The Director,
Directorate of Medical Education & Research
4th Floor, Government Dental College Building,
St. Gorges Hospital Campus,
Near CST- Fort, Mumbai -400 001.
 - 4) Admission Regulation Authority
Having the office at :
Room No. 305, Government Polytechnic
Building 49, Kherwadi, Ali Yawar Jung Marg,
Bandra (East), Mumbai – 400 051.
 - 5) Maharashtra University of Health Science,
Nashik, Dindori Road,
Mhasrul, Nashik 422004.
(Summons to be served on the learned
The Registrar, Maharashtra University of Health
Sciences, Govt. Dental College Building,
4th Floor, St. Georges Hospital Compound,
Near C.S.T.,MUMBAI 400 001.
 - 6) Indian Nursing Council,
8th Floor, NBCC Center,
Plot No.2, Community Center
Okhla Phase-I,
New Delhi – 110020.
- .. Respondents.

Mr. A. V. Anturkar, Senior Advocate a/with Rushikesh Bazge,
Advocate, a/with Mr. S.B.Deshmukh, Advocate for the Petitioners in
Writ Petition No. 2599 of 2017 and CAW No. 2074/2017 and W.P.
No.9099 of 2017.

Mr. C.P. Yadav, AGP for Respondent No. 1, 4 and 5.

Mr. R.V. Govilkar a/with Mr. Mihir Govilkar for Respondent No.2.
Mr. S.S. Patwardhan a/with Mr. Bhooshan Mandlik for Respondent No.3.
Mr. Amey Deshpande a/with Mr. Gaurang Jhaveri for Respondent No.6.

**CORAM : ANOOP V. MOHTA, & SMT.
BHARATI H.DANGRE JJ.**

DATED : 29th September, 2017.

RESERVED FOR JUDGMENT ON: 20th Sept. 2017.

(PRONOUNCED ON :- 29th Sept, 2017.)

JUDGMENT (Per:- Smt. Bharati H. Dangre, J)

1) Two writ petitions raises a common question of law as to whether it is permissible for the Private Unaided Educational Institution to admit students who have not participated in the Common Entrance Test (CET) prescribed by the State Government only on the spacious ground that if the admissions are not granted, the seats in the Institution would waste.

2) Since both the petitions revolve around the common

issue, we have heard the petitions together and dispose off by common judgment.

3) Two petitioners before us are the Nursing Colleges situated at Pachgani, taluka Mahabaleshwar, District Satara run by the Indian Red Cross Society, which is approved by Indian Nursing Council and affiliated by Maharashtra University of Health Science. It is not in dispute that the admissions to the said Colleges for B.Sc. (Nursing) Course is controlled by the Director of Medical College and Research and the Admission Regulating Authority, Mumbai. Both the petitioners Colleges are aggrieved by the communication issued to them by the Maharashtra University of Health Sciences by which the University had informed them that the names of the candidates who have been forwarded by the petitioners-colleges for registration to the Nursing Course cannot be granted since they were not admitted through the Common Entrance Test conducted by the Commissioner, CET and the said students had appeared in the NEET 2016 Examination instead of MHT-CET.

The said communications from the University are impugned in both the writ petitions and it is prayed that the said communications be set aside and direction is sought to treat the students admitted by the petitioner institution to the B.Sc. Nursing Course as “duly admitted students” and permit the petitioners to conduct their admission process for basic “B.Sc. Nursing Course” and their examination form be accepted and they be permitted to appear for the examination and their results be declared.

4) The writ petition came before this Court on 14th February, 2017 and was circulated for the first time on 15th March, 2017, when the students admitted by the Institution were to fill up their forms for appearing in B.Sc. Nursing Examination. The matter was listed before this Court on 22nd March, 2017 and this Court considered the prayer for interim relief, wherein it was prayed that the respondent authorities may be directed to accept the examination form from the petitioners-colleges and allow the students to appear for

examination and declare their result and continue with their studies subject to outcome of the petition. The interim relief was granted to the petitioners in terms of the prayer as mentioned above with the condition that the result of the students who have been admitted by the petitioners shall not be declared without leave of the Court and neither the petitioners nor the students shall be entitled to claim any equity on the basis of interim order allowing them to fill up the forms and to appear in the examination and it was also made clear that the same shall be subject to further orders of this Court.

5) On 21st August, 2017 Civil Application No. 2074/2017 is filed in Writ Petition No. 2559/2017 and Civil Application No. 2074/2017 was filed in Writ Petition No. 9099/2017. By the said Civil Applications, it is prayed that the Court be pleased to direct the Maharashtra University of Health Science to declare the result of 43 students who were admitted by the petitioners-institution in the respective colleges. When the matter was listed before us for hearing on the civil

application, we decided to hear the matter finally and accordingly directed the listing of the matter for final disposal by informing the parties that the matter will be heard finally.

6) We have heard learned Senior Advocate Mr. A. V. Anturkar, a/with Rushikesh Bazge, Advocate, a/with Mr. S.B.Deshmukh, Advocate for the Petitioners in Writ Petition No. 2599 of 2017 and W.P. No.9099 of 2017 Mr. R.V. Govilkar a/with Mr. Mihir Govilkar for Respondent No.2. Mr. S.S. Patwardhan a/with Mr. Bhooshan Mandlik, Advocate for Respondent No.3. Mr. C.P. Yadav, AGP for Respondent No. 1, 4 and 5. Mr. Amey Deshpande a/with Mr. Gaurang Jhaveri for Respondent No.6.

7) Learned Senior Counsel Shri Anturkar appearing on behalf of the petitioners contend that before enactment of the Maharashtra Unaided Private Professional Educational Institution (Regulation of Admission and Fees) Act, 2015 (hereinafter referred to as “Act of 2015”), the judgment of this

Court in Review Petition No. 120 of 2006 in Writ Petition No. 6332 of 2005 dated 10th August, 2006 was governing the field and this Court had framed a Scheme, by virtue of which Seats remaining vacant in the Nursing Courses were permitted to be filled in by the Colleges at their own level directly in accordance with the inter-se merit of the students and in a fair and transparent manner. This method, according to the learned Senior Counsel was known as “spot admissions” and this process was followed where the seats were filled at Institution Level, which was last round of admission, till 2015. According to the learned Senior Counsel, the Commissioner of Entrance Test, Mumbai who is the “Competent Authority” and also the “Admission Regulatory Authority” within the meaning of Section 2 (e) and 2(a) of the Act of 2015 issued an “Information brochure of the preference system for admission to Health Science Courses”. According to Shri Anturkar, the petitioners colleges participated in the various rounds of Centralized Admission Process (CAP) conducted by the Commissioner and at the fag end of the third round namely 27th October, 2016 as

against 40 intake for the petitioners in W.P. No.2559 of 2017, zero students joined in the CAP process and as far as petitioner in Writ Petition No. 9099/2017 is concerned only 15 students joined, leaving 25 vacancies out of the total sanctioned strength of 40. Learned Senior Counsel Shri Anturkar, further submitted that a notice was published to fill up the remaining Seats and on 30th October, 2016 the petitioners in Writ Petition No.2559/2017 could get 22 students who had passed MHT-CET Examination leaving 18 vacancies whereas in the petitioner institution in Writ Petition No. 9099/2017, 25 seats still remained vacant since 15 students had already joined. According to Shri Anturkar, thereafter it was open to the petitioners institution to fill the remaining seats through to candidates who are 'Eligible'. The dispute arises from this stage and about the "Eligibility".

8) According to Shri Anturkar, the eligibility of the candidates is already prescribed by the respondents vide Notification dated 3rd December, 2015 in exercise of powers

conferred by clause (r) of Section (2) read with sub-Section (1) & (2) of Section 3 of the Maharashtra Unaided Private Professional Educational Institution (Regulation of Admissions and Fees) Act, 2015 and the eligibility for B.Sc. Nursing Course prescribed is as follows :-

“A candidate should have passed in the subject of Physics, Chemistry and Biology (PCB) at qualifying examination (i.e. 10+2). Furthermore, the candidates belonging to SC/ST or other Other Backward Class (OBC) marks obtained in PCB taken with qualifying examination upto 40% instead of 45% as stated above. English is compulsory subject in 10+2 for admission in B.Sc. Nursing or as prescribed by Indian Nursing Council from time to time.”

9) According to the petitioners, the said criteria is the

one which is fixed by the Indian Nursing Council which is the Apex Body as far as Nursing Courses are concerned. The Counsel for the petitioners emphatically states that this is the only eligibility criteria which a candidate must possess while seeking admission to B.Sc. Nursing Courses. He did not consider appearance in the Competition Examination of MH CET to be a “criteria for eligibility”. He states that the Colleges of the petitioners participated in the CAP round and did get some students through the Commissionerate of CET. However, in the last round i.e. after the waiting list, in terms of Notification declaring the Schedule of MHT-CET 2016 process dated 24th October, 2016 the last stage was reflected as “eligible students to be admitted as per merit (spot admission round). He therefore argues that at this stage the petitioners-colleges have admitted students to fill up the seats by the candidates who had not appeared for MHT-CET but had appeared for NEET. According to Shri Anturkar, the eligibility criteria was not passing of Entrance Examination, since it was not prescribed by the Indian Nursing Council and it is not a

condition of eligibility and as such there is no breach of 'eligibility' in admitting the students without appearing for the MHT-CET. He placed reliance on the judgment in the case of State of Tamilnadu Vs. Adhiyaman Educational & Research Institute (1995) 4 SCC 104, to support his submission that the qualification prescribed by the Apex Body in the field of Education vide Entry 66 of List 1 would prevail over the qualification/ standards prescribed by the State Legislation. Thus, he submits that since the Indian Nursing Council had prescribed the basic eligibility criteria which is passing of 12th standard with 45% marks in PCB, appearance for MHT-CET is not one of the criteria which is prescribed as 'condition of eligibility' by the Indian Nursing Council and therefore insistence of MUWS that the students should have appeared for MHT-CET and in the absence thereof their admissions cannot be registered is totally unsustainable.

10) Shri Anturkar, the learned Senior Counsel further argued that both the colleges have admitted students in the last

academic year i.e. 2016-17 and in this Academic Year also the seats are likely go vacant if on conclusion of the rounds of CAP the petitioners are not permitted to admit students who have not appeared for MHT-CET but possess the basic eligibility criteria prescribed by the Indian Nursing Council.

11) Per contra, the Counsel for the University Shri Patwardhan invited our attention to the existing scenario in the field and according to him the enactment of the Maharashtra Unaided Private Professional Educational Institution (Regulation of Admission and Fees) Act, 2015 and the Rules framed thereunder vide Notification dated 19th August, 2016 regulate the admissions to the Full Time Professional Courses including the B.Sc. Nursing Courses. He placed reliance on Section 4 and 5 of the Act of 2015 and contend that as per the Rules of 2016 the eligibility for admission to first year of the Professional Courses would be one notified by the State Government under sub-Section (1) of Section 3 of the Act but the Rules mandate that the candidate

shall be selected to the above stated courses on the basis of merit in CET. The learned AGP Shri. Yadav appearing on behalf of the Directorate of Medical Education and Drugs Department also relies upon the Act of 2015 and the Rules and prays for dismissal of the writ petitions.

12) There is no dispute about the fact that the State Government has enacted the Act of 2015 with a view to provide for the Regulation of Admissions and Fees by the Unaided Private Professional Educational Institution in the State of Maharashtra and it has come into force on 12th May, 2015. The said Act defines Common Entrance Test in Section 2 (d), CAP in 2 (c), in the following manner:-

2(c):- It defines “Centralized Admission Process” (CAP) means :

The centralized process of admission carried out by the competent authority through single window system in a transparent manner for admitting the students for various professional

courses in educational institutions:

2.d) :- “Common Entrance Test (CET)” means the entrance test conducted for determination of merit of the candidates by Centralized Admission Process (CAP) for the purpose of admission to professional education courses through a single window system.

2 (e) :- Competent Authority means the Commissioner of State CET appointed by the Government under Section 10, for conducting CET through CAP for the admission into Private Professional Educational Institutions;

2 (q) :- **“Private Professional Educational Institution”** means any college, school, institute, institution or other body, by whatever name called, conducting any professional course or courses approved or recognized by the appropriate authority and affiliated to any university.”

2(r) :- “Professional Education” means any educational courses of study declared and notified as such, from time to time by the Government which includes a course leading to the award of an Under Graduate or Post-Graduate degree, diploma, by whatever name called and recognized by the appropriate authority.

It is not in dispute that Nursing B.Sc. Courses has been declared as professional courses by the State of Maharashtra in the year 2006 vide Notification dated 24/6/2006.

Section 2 (q) of the Act reads as under:-

Section 3 of the said Act provides that the eligibility conditions and requirements for the admission to a professional course at any private professional educational institution shall be such as may be notified by the Government from time to time, but shall not be less than, those stipulated by the appropriate authority and no student shall be admitted to a

private professional institution unless the student possesses such educational or equivalent qualification as may be notified.

Section 4 of the Act prescribes the manner of admission and it reads as below : The admissions to seats for professional course in every unaided institution shall be carried out in the following manner: —

(a) admission to seats in a Private Professional Educational Institution excluding institutional quota declared by Government from time to time, shall be made on the basis of merit by following the procedure of Common Entrance Test (CET) conducted in the manner, as may be prescribed by rules:

Provided that, the admission to institutional quota shall be on the basis of merit and after following the procedure specified by the appropriate authority :

Provided further that, the State Government may by order issued from time to time exempt any professional courses, from requirement of the Common Entrance Test (CET) thereto.

(b) admissions to such institution shall be carried

out by the competent authority through the Centralized Admission Process on the basis of Common Entrance Test (CET) and Centralized Admission Process (CAP);

(c) the Competent Authority shall supervise and guide the entire Centralized Admission Process in such manner as it may specify with a view to ensuring that the process is fair, transparent, merit-based and non-exploitative.

It is important to take note of Section 5 provides that any admission made in contravention of the provisions of this Act or the rules made thereunder shall be void.

In exercise of the powers conferred by Section 23 of the Act of 2015 the Government of Maharashtra has prepared Rules to regulate admissions to the first year of the Full Time Professional Ayurved, Unani, Homeopathy, Physiotherapy, Occupational Therapy, Speech Therapy, Prosthetic and Orthotics and B.Sc Nursing Courses Rules, 2016.

These Rules again define CET to mean the Common Entrance Test (CET) conducted for admission to the Courses

under this rule and the definition of the word “Courses” means the Undergraduate courses in Ayurved, Unani, Homeopathy, Physiotherapy, Occupational Therapy, Speech Therapy, Prosthetic and Orthotics and B.Sc. Nursing, as the case may be. As per Rule 3 of the said Rules of 2016 the Competent Authority shall invite online or offline application forms, in the form as prescribed by it, from the candidates for participating in Centralized Admission Process for seeking admission to the Courses for which the CET is required for the respective academic year. The Rule authorises the competent authority to declare the manner, mode, schedule and pattern of CET. The rule prescribes the types of candidature which categorises Maharashtra State candidature, Minority candidature, NRI candidature. The eligibility is prescribed in Rule 6 in the following manner:-

Eligibility :-

(a) Eligibility Marks for Admission to BAMS or

BHMS or BUMS or BPTb or BOTb or BASLP or BP&Q and B.Sc. Nursing. The eligibility for admission to the first year of the course shall be such as notified by the Government under subsection (1) of section 3 of the Act. Candidates shall be selected to above stated courses on basis of merit in CET.

Allocation of Seats is prescribed in Rule 8 to the different types of candidature and it is to be noted that if the seats reserved for NRI remains vacant they can be filled in by the institution from the eligible Maharashtra State candidature on the basis of inter-se merit of CET. The distribution of seats is also prescribed in the said rules along with the stages of CAP. Allotment of seats under CAP has to be made on the basis of inter-se merit in the CET whatsoever may be the type of candidature and Rule 13 makes it clear that the unaided private professional education institution shall admit candidates through the centralized admission process.

13) Thus, what is apparent from the conjoint reading of

the Act of 2015 and the Rules of 2016 is that after these enactment the admission to the private unaided professional courses has to be mandatorily done through CAP conducted by the competent authority on the basis of inter-se merit of the candidates in the common entrance test. We do not agree with the submission of the learned Senior Counsel for the petitioner and his reliance on the judgment in the case of State of Tamilnadu (cited supra) since what is apparent from the Act is that Section 3 prescribes the eligibility for admission and Section 4 prescribes for manner of admission. The eligibility criteria which the learned Senior Counsel has argued is the one which is prescribed under Section 3 is a part of the Act, 2015. However, Section 4 of the Act cannot be ignored and therefore Section 3 and 4 of the Act will have to be read together which are included in the Chapter relating to “Regulation of Admissions”. Section 5 further makes it clear that any admission made in contravention of provisions of this Act meaning thereby either for non satisfying the eligibility condition prescribed in Section 3 or non-compliance with the

manner of admission as prescribed in Section 4 would result into a “void admission”. As per Section 4 the admission to seats for professional courses in the unaided educational institution shall be carried out on the basis of merit by following procedure of CET with proviso that the admissions to the institutional quota shall be made on the basis of merit and after following the procedure prescribed by the Appropriate Authority. By virtue second proviso to Section 4 (a) the State Government is empowered to exempt any professional courses from requirement of CET. Institutional quota is defined as seats available for admission for eligible candidates to institutional level as declared by the Government or Appropriate Authority from time to time. If we accept statement statement of the Counsel for the petitioner, it means those seats which are left vacant after the CAP round they are to be treated as institutional quota. However, we are afraid that the said is not the intention of the legislature and institutional quota is the one which is displayed and carved out at the beginning of admission process and fixed by the State Government and left over not

the quota as claimed by the Counsel for the petitioner.

14) In furtherance of the Act and the Rules, the Commissionerate of Common Entrance Test Cell, Mumbai had published the information brochure for Common Entrance Test 2016 for Health Science Courses which included B.Sc. Nursing Course. It was made clear in the said brochure that MHCET 2016 is applicable to all Government Municipal Corporation and Private Aided and Unaided Minority Health Science Colleges and it would govern the admission to MBBS, BDS, BAMS, BHMS, BUMS, BPTh, BOTh, BASLP, BP&O, B.Sc. (Nursing) and B.VSc. & AH courses for the academic year 2016-17. It was also made clear that candidates will be selected on the basis of the merit in the MHT-CET, 2016 to the aforesaid courses. The petitioner is placing reliance on the Government Resolution dated 29th April, 2015 which prescribe the modality for admission to the B.Sc. Nursing Course and the manner in which the vacant seats after existing MHT-CET list. However, the said Government Resolution is governing admission

process of B.Sc. Nursing for the year 2015-16 and it is relevant to note that at that time the Act of 2015 and the Rules were not in existence. The State Government after taking into consideration the directions from the Hon'ble Apex Court in case of **Islamic Academy Vs. State of Karnataka, (2003) 6 SCC 697** which mandated conduct of common entrance test for professional examination, the State Government had specifically dealt with vacant seats as regards B.Sc. Nursing Courses are concerned and permitted them to be filled it at the last stage by candidates who did not appear for the CET examination. However, the said Government Resolution cannot prevail in the light of the Act of 2015 and the Rules framed thereunder, wherein the only manner in which the seats of B.Sc. Nursing can be filled in is in the manner prescribed in the brochure published by the Director, Medical Education for the year 2016-17. The contention of the petitioners is that if the seats were not filled in they would have gone vacant and therefore the petitioners institution had filled in the seats through student on the basis that they had appeared for NEET

examination. However, for the year 2016-17 the ordinance was specifically issued regulating admission process only through the State CET and NEET was not made applicable. In such circumstances, the petitioner institution could not have taken advantage of the peculiar situation of that year when NEET was conducted so also the CET was conducted by the State Government. However, the admission to the professional courses was made on the basis of CET conducted by the State and it was not therefore permissible for the petitioner to give a complete go-bye to the procedure prescribed by the Competent Authority on the same ground that the seats would have gone waste and therefore the petitioners-institution admitted students who had not even appeared for MHT-CET. We are of the firm view that such admissions are already 'void admissions' in terms of Section 5 of the Act of 2015 and the MHUS is perfectly justified in issuing impugned communication by it which has refused registration to the said school. This Court by interim order permitted the students of the petitioner institution to submit their examination form. However, the

results are not declared and this Court by its interim order dated 22/3/2017 had made it very clear that neither student shall be entitled to claim any equity on the basis of the interim order allowing them to fill up the form and appear in the examination. Since we are of the clear view that the admissions of those students who did not participate in the MHT-CET examination 2016-17 are void and cannot be regularized. We of of the conscious view that the students have appeared for the first year B.Sc. Nursing Course and have put in one year of their career. However, we are of the firm opinion that whatsoever may be, we cannot permit regularization of admissions of those students which are completely void in terms of Section 5 of the Act of 2015 and we would not permit regularization of such void admissions.

15) Learned senior counsel for the petitioner has placed heavy reliance on the judgment in the case of **State of Tamilnadu vs. Adhiyaman Educational & Research Institute**, cited supra, to emphasis that the Nursing Council

is a apex body and it had prescribed minimum qualification for a person seeking admission to B.Sc. Nursing, which merely requires the students to have passed 12th standard examination with physics, chemistry and biology. However, the Apex Body has never prescribed eligibility in the form of common entrance test, which the State Government has. According to the learned senior counsel, in the light of the observations of the Apex Court in the said case, the State could not have prescribed qualifications which are higher than the one prescribed by the Apex Body.

However, according to us, the said judgment is of no assistance to the petitioners as the Act of 2015, which is enacted by the State Legislature in exercise of the powers vested in it, has prescribed only the mode for admission to the professional courses in the unaided institutions. The eligibility conditions are also prescribed by the State Act and the Government has prescribed minimum eligibility conditions which are commensurating with the one which are prescribed by the Nursing Council of India. However, the conduct of the

common entrance test has been treated as recognized mode for the admissions to the professional courses by the Apex Court in various judgment. The common entrance test by the State or its agency ensures equal opportunity to all meritorious and suitable candidates and as such the candidates can be identified for being allotted to the institution, depending upon the courses of the State, number of students and other relevant factors. The Apex court in the case of **Modern Dental College and Research Centre & Ors. vs. State of Madhya Pradesh & Ors.** - [2016 (7) Supreme Court Cases 353], while deliberating on the right of occupation of the private unaided and minority and non-minority educational institutions has succinctly observed that such common entrance test by the State or its agency ensures twin object namely, fairness and transparency and merit apart from preventing mal-administration. The Apex Court has observed that having regard to the larger interest and welfare of the students community and to promote merit and achieve excellence and curb mal-practices, it would be permissible for

the State to regulate admissions by providing a centralized and single window procedure. This conduct of the common entrance examination is a well accepted mode for admission for the students and rather the departure from the same is frowned upon by the Hon'ble Apex Court.

The Hon'ble Supreme Court in the State of Maharashtra & Ors. vs. D. Y. Patil Vidyapeeth & Ors. [2016 (9) SCC 401], has, however, further clarified that for the Centralized / State conducted admission process held to be permissible in the judgment of the Modern Dental College & Research Centre (supra), encompasses not only central/state conduct entrance test but also centralized state conduct counseling.

16) In view of the aforesaid legal scenario, we are of the firm opinion that the petitioners' institutions cannot fill the seats meant for the Maharashtra State Quota candidates by surpassing the procedure of MHT-CET on the spacious ground that they participated in the cap rounds but at the fag end the

seats were going vacant and, therefore, the petitioners institutions resorted to the mechanism of filling those seats by candidates who have not appeared for MHT-CET examinations. We are of the opinion that the said procedure, if permitted to be carried out in Nursing Colleges would also be required to be followed in filling of the seats of MBBS, BDS and others health science courses since the conduct of the MHT-CET 2017 is for the all sciences courses. We are also unable to accept the submission of the learned senior counsel, in view of the observations of the Hon'ble Apex Court in the case of **Visveswaraiah Technological University & Anr. vs. Krishnendu Halder & Ors.** [2011 (4) SCC 606], wherein the Hon'ble Apex Court in para 17 observed as follows :

“17. No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of

such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or “adversely affect” the standards, if any, fixed by the central body under a Central enactment. The order of the Division Bench is therefore unsustainable.”

This view was taken by the Hon'ble Apex Court after considering the judgment in the case of State of Tamilnadu, cited supra.

17) In the result, the petitioners institution are not entitled for the relief prayed in the writ petition and the writ petition deserves to be dismissed. Petitioners institution to intimate the students whose admissions have been declared by us to be void admissions forthwith and release their original documents which would enable them to prosecute their further career as per their choice. Both the writ petitions are dismissed.

18)

18) Since we have dismissed both the writ petitions, civil application No. 2074 of 2017 is also rejected.

(SMT. BHARATI H.DANGRE J) (ANOO V. MOHTA, J)

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