

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 31.08.2017

Delivered on 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.18676 & 21152 of 2017
and
W.M.P.Nos.20214 to 20216 and 22021 to 22023 of 2017

W.P.No.18676 of 2017

1. S.Pranesh
Minor rep. by his Father & Natural Guardian,
A.Senthamilselvam,
26, Thiruvalluvar Street,
Dr.Radhakrishnan Nagar,
Kathirkamam, Pondicherry - 605 009.

2. R.P.Pugazhenth
Minor rep. by his father &
Natural Guardian,
P.Paramassivame,
Plot No.39, Mudaliarp
Pondicherry - 60500

3. R.Navendran,
Minor rep. by his Father &
Natural Guardian,
C.Ravi,
21, Vinayagar Koil Street,
Delaushpet,
Pondicherry

WEB COPY

4. RV.Ushayan
Minor rep. by his Father &
Natural Guardian,
S.Ramesh,
33, Peter Nagar, Near J.K.Tower,
Pondicherry -13.
5. P.Sivasankaran,
Minor rep. by his Father & Natural guardian,
M.Poonkundran,
Plot No.93, S.M.S.Nagar,
Ramana Street,
Merie Oulgareto,
Pondicherry- 605 010
6. S.Ragava Lakshmi
Minor rep. by her Father &
Natural Guardian,
R.Sundararajan
No.17, Subramaniya Koil Street,
Old Saram
Pondicherry - 605 013.
7. T.Pradeep,
Minor rep. by his father &
Natural Guardian
D.Taniguevelane,
No.209, IV Main Road, Magaveer Nagar,
Karuvadi Kuppam,
Pondicherry - 605 008
8. R.Hema,
D.O. A.Ramalingam,
No.602, Gangai Amman Koil street,
Thattanchavadi, Pondicherry - 605 009.
9. D.Kausalya
D/o S.Jeeva
No.3, Nethaji Street,
Mothilal Nehru Nagar,
Lawspet, Pondicherry - 605 008.

10. S.Nivetha,
D/O R.Rajendran
No.14, I Cross Street,
Krishna Nagar,
Pondicherry - 605 005.

11. K.Vishnu
M/o Sivakama Sundari
No.21, 11th cross,
Krishna Nagar,
Lawspet,
Puducherry - 605 008 ..Petitioners.

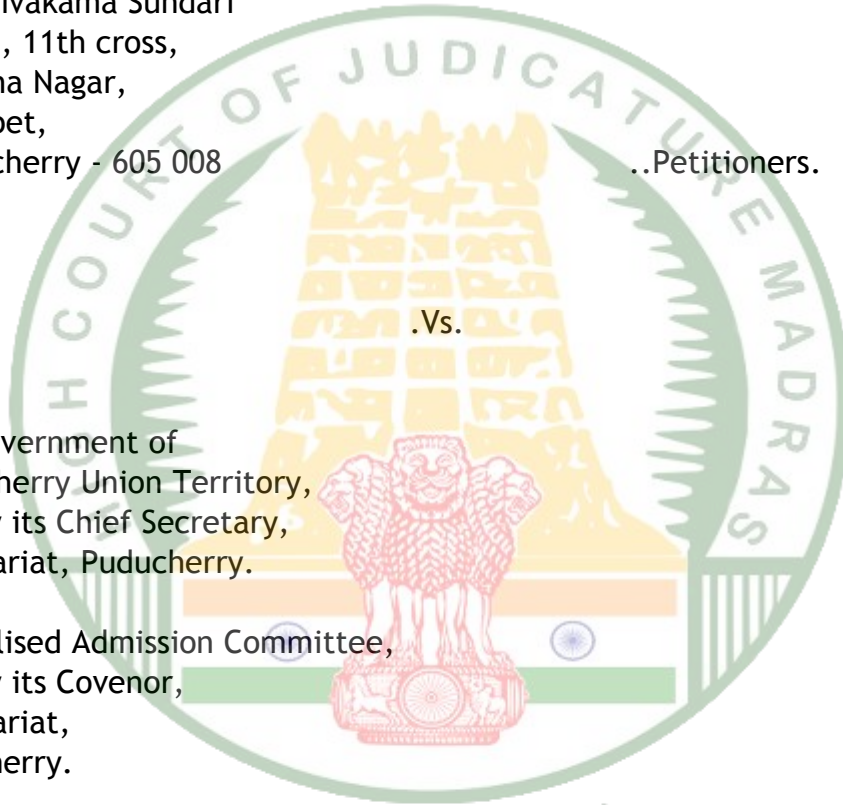
1. The Government of
Pondicherry Union Territory,
rep. by its Chief Secretary,
Secretariat, Puducherry.

2. Centralised Admission Committee,
rep. by its Covenor,
Secretariat,
Puducherry.

3. The Medical Council of India,
rep. by is President,
Pocket 14, Phase-I, Sector-8,
New Delhi.

4. Indira Gandhi Medical College,
rep. by its Director,
Pondicherry-9.

5. Pondicherry Institute of Medical Sciences,
rep. by its Dean,
Pondicherry-14.



सत्यमेव जयते
WEB COPY

6. Managula Vinayaga Medical College,
rep. by its Dean,
Pondicherry-107

7. Sri Venkateswara Medical College,
rep. by tis Dean,
Pondicherry-102.

..Respondents.

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent relating to the impugned orders viz., G.O.Ms.No.12 Chief Secretariat (Higher Education and Technical Education) Puducherry dated 09.05.2017 published in the Gazette of Puducherry Extra Ordinary Part-1 dated 12.05.2017; G.O.Ms.No.99 Chief Secretariat (Education) Puducherry dated 10.08.2006 and advertisement issued by the 4th respondent in No.85/IGMC&RI/NRI/Acad/2017-18 dated 30.06.2017 published in Thinamalar daily on 01.07.2017 and quash the same and consequently direct the respondents 1 and 2 to fix 65% of the total intake strength of Medical seats in respondents 5 to 7 (Private Medical colleges) as the Government quota seats and cause consideration of the petitioners for admission to the said Government quota medical seats for M.B.B.S. Courses in respondents 5 to 7 colleges without regional reservation based on regions population; after duly reserving the medical seats Board of study wise in proportion to the number of candidates got selected by NEET from the respective Boards or by applying appropriate normalization procedure; and in respect of 4th college without allowing candidates sponsored by NRIs and without admitting NRI candidates belonging to the states other than the 1st respondent.

Writ Petition No. 21152 of 2017

1. B.Deebak
Minor rep. by his father &
Natural Guardian,
A.Balasubramanian,
Balaji Nagar,
Dharmapuri,
Pondicherry - 605 009
2. S.Vaishaali,
Minor rep. by her Father &
Natural Guardian,
S.Saravanan,
405, Thulukaathamman Koil Street,
Shadana Nagar,
Murugapakkam,
Podicherry - 605 004.
3. R.Maheswari,
Minor rep. by her Father &
Natural Guardian,
R.Raghu,
17, Kannappa Gounder Street,
Manaveli, Arian Kupam Post,
Pondicherry - 605 007.
4. O.Anjana,
Minor rep. by her Father &
Natural Guardian, Z.Olirvel,
Vanniar Street,
Pakkumdudayan Pet,
Pondicherry - 605 008.
5. S.Jothilakshmi,
Minor rep. by her Father &
Natural Guardian,
Shanmugam @ Jothi Basu,
86, Koil Manya Street,
Dharmapuri,
Pondicherry - 605 009.

6. A. Leena Berlin,
D/o Judathadevu Berlin
6, Bharathi Street,
Sivaji Nagar, Gorimedu,
Pondicherry - 605 006.

..Petitioners.

-Vs-

1. The Government of
Pondicherry Union Territory,
rep. by its Chief Secretary,
Secretariat, Puducherry.
 2. Centralised Admission Committee,
rep. by its Convenor,
Secretariat,
Puducherry.
 3. Indira Gandhi Medical College & Research
Institute, rep. by its Director, Kathirkamam,
Pondicherry-9.
 4. S. Kirubajothy
 5. Mahabhashyam Kameswa
 6. Abharna.G.
 7. Medisetty Sudeepthi
 8. M. Danushkumar
 9. R. Vishalini
 10. S. Nivedha Sivakumar
 11. S. Narmadha Sivakumar
 12. Soumya
 13. N. R. Akshaya
 14. Nati Roopa Srivani
 15. P. Navinthan
- (Respondents 4 to 15 are c/o The Director,
Indira Gandhi Medical College & Research
Institute, Kathirkama, Pondicherry-9.)

..Respondents.

Writ petition filed under Article 226 of the Constitution of India to issue
a Writ of Certiorarified Mandamus to call for the records on the file of the 1st

respondent relating to the impugned orders viz., G.O.Ms.No.99 Chief Secretariat (Education) Puducherry dated 10.08.2006 and from the 2nd respondent relating to the list of Admitted candidate dated 23.07.2017 for admission to M.B.B.S. degree course in 3rd respondent published in the web site of the 2nd respondent and quash the same, insofar as selecting the candidates viz., private respondents 4 to 15 herein who belong to same reserved category as that of the petitioners with lower rank compared to the petitioners and consequently direct the respondents 1 to 3 to consider the petitioners for admission to 3rd respondent without following any region wise reservation.

For Petitioner in both W.Ps. : Mr.N.Subramaniyan
 For Respondents : Mr.C.T.Ramesh
 Addl. Government Pleader (Puducherry)
 for R1 & R2 in both W.Ps.
 Mr.V.P.Raman, Standing Counsel
 for R3 in W.P.18676/2017
 Mr.L.Chandrakumar for
 Mr.S.Arivalagan,
 for R4 to R6, R8 to R12, R13 & R15
 in W.P.21152/2017
 Mr.Abhishek Jenasenan,
 Standing counsel for R5
 in W.P.No.18676/2017
 No appearance for R7 & R14 in
 W.P.No.21152/2017.

WEB COPY

COMMON ORDER

In W.P.No.18676/2017, two orders of the Government of Puducherry are put to challenge and they are G.O.Ms.No.99 Chief Secretary (Education)

Puducherry dated 10.08.2006 and G.O.Ms.No.12 Chief Secretariat (Higher Education and Technical Education) Puducherry dated 09.05.2017. Consequently, the petitioners also seek for a direction to the respondents 1 and 2 to fix 65% of the total intake strength of medical seats in 5th to 7th respondent Medical Colleges as Government quota seats and to consider the petitioners for admission to the said Government quota medical seats for MBBS course in those colleges without regional reservation.

2. In W.P.No.21152/2017, the petitioners have challenged the order passed by the Government of Puducherry in G.O.Ms.No.99 Chief Secretary (Education) Puducherry dated 01.08.2006 and the list of admitted candidates dated 23.07.2017 for admission to MBBS degree course in 3rd respondent medical college and consequently, seek for direction to the respondents 1 to 3 to consider them for admission to 3rd respondent college without following the regional reservation.

3. In G.O.Ms.No.99 Chief Secretariat (Education), Puducherry, dated 10.08.2006, the 1st respondent Government earmarked certain percentage of seats in admission to various professional degree courses for three regions of Puducherry Union Territory namely Karaikal, Mahe and Yanam at the rate of 18%, 4% and 3% respectively.

4. In G.O.Ms.No.12, Chief Secretariat, (Higher and Technical Education) dated 09.05.2017, the 1st respondent/ Government ordered and indicated that the seats to the professional degree courses available under Government quota seats in other unaided private professional education Institution within the Union Territory of Puducherry are to the extent of not more than 50% of the sanctioned intake.

5. Thus, the above two writ petitions filed by the respective petitioners raised two issues which are as follows:

(a) Fixing certain percentage of reservation in the seats to professional courses in respect of those three regions namely, Karaikal, Mahe and Yanam, is bad and hence, the relevant G.O.Ms.No.99 dated 10.08.2006 is to be set aside.

(b) Percentage of Government quota seats in the private professional educational Institutions should be fixed at 65% instead of upto 50%.

6. Insofar as the first issue namely, the regional reservation to the said three regions is concerned, the petitioners have raised very many grounds out of which one is that continuing such reservation in respect of admission to professional courses, more particularly, to MBBS/BDS course, even after introduction of NEET, is unsustainable.

7. Insofar as the second issue is concerned, the grievance of the petitioners is that the Government is not justified in fixing the Government quota seats in the private professional educational institutions only to the extent of not more than 50% of the total intake and on the other hand, it should demand more and get 65% of the total intake strength of medical seats in those private medical colleges as the Government quota seats.

8. Mr.N.Subramaniyan, learned counsel appearing for the petitioners submitted as follows:

a) The respondents 1 and 2 are filling up the medical seats in private medical colleges only to the extent of 36% for this year under the Government quota (free seats) even though they are bound to fill up 50% of the total intake in the private medical colleges under the Government quota. Filling up of the seats should be on a rational basis. As per Regulation No.12 in the Puducherry Private Professional Educational Institution (Provision of Reservation, Admission of Students and Fixation of Fees) Regulations, 2006, the unaided private professional educational institution other than the minority institution shall have to reserve upto 50% of the sanctioned intake under the Government quota. Therefore, the respondents 1 and 2, without following and insisting upon the filling up of 50% seats in the private medical colleges, have allowed those colleges to exploit the students by filling up more number of

seats under the management quota by receiving heavy fees. The M.C.I., in fact, through letter dated 02.06.2017, called for clarification/comment from the Government of Puducherry on the complaint received from the President, Puducherry Union Territory, All Centac Students Parents Association and even though, a reply dated 27.06.2017 was given by the Puducherry Government informing the M.C.I. that a detailed report regarding violation of the medical colleges in the Union Territory will be submitted for taking appropriate action, till this date nothing has taken place.

(b) The regional reservation made through the impugned G.O.Ms.No.99 dated 10.08.2006 is bad since the said G.O. does not say, on what basis the such reservations were made. Even though the Division Bench of this Court, in an order made in W.P.Nos.13130/2009 etc. dated 6.8.2010 has upheld the regional reservation insofar as the three regions, namely, Karaikal, Mahe and Yanam, it has set aside the regional allocation of seats to Puducherry region alone. In those writ petitions, the challenge was made only against the regional allocation of seats in Puducherry region (75%) and the regional reservation in the other three regions were not questioned. Therefore, the said decision of the Division Bench is distinguishable and not binding on the petitioners who are admittedly not parties in those proceedings. The Government of Puducherry has not placed the material facts before the Division Bench as has been placed before this Court in these writ petitions.

Once NEET is introduced for selection to MBBS/BDS course, this regional wise reservation cannot be permitted except the reservations given to social and educational backward class people. The main grievance of the petitioners is that the students falling within those three regions, namely, Karaikal, Mahe and Yanam, apart from enjoying their respective regional reservation, are also competing with seats allotted to Puducherry Region. This cannot be permitted.

(c) Though the present writ petitions were filed by raising other two issues as well, namely, questioning the NEET and also seat allotted to NRI, the petitioners are not pressing those two issues. In other words, in these writ petitions, the petitioners are questioning the conduct of the Government in not taking 50% of the seats in the private medical colleges under the Government quota making regional reservation as per the impugned G.O.Ms.No.99 dated 10.08.2006. In support of the contentions raised against the regional reservation, the following decisions are relied on:

- i) 2007(4) SCC 221, (A.V.Papayya Sastry v. Government of A.P.)
- ii) 1989(1) SCC 101, (Municipal Corporation of Delhi vs Gurnam Kaur);
- iii) 2005(6) SCC 537 (P.A.Inamdar v. State of Maharashtra)

9. Per contra, learned Government Pleader for Pondicherry submitted as follows:

- a) The regional reservation made through G.O.Ms.No.99 dated

10.08.2006 has already been upheld by the Division Bench in W.P.Nos.13130/2009 etc. dated 6.8.2010 and therefore, the petitioners are not entitled to question the very same G.O. in this writ petition. Thus, the writ petitions are liable to be dismissed as the issue involved in this case in respect of the regional reservation is already covered by the order of the Division Bench against the petitioners. The order of the Division Bench was not put to challenge further and thus, it has become final and conclusive, and is binding on all parties including the petitioners. Therefore, they cannot be permitted to say that it is not binding them. Assuming that there are some change of facts and circumstances, they should be addressed to the Government so as to take a decision and not by way of questioning the very same G.O. which has already been upheld by this Court.

(b) Regarding the arrangement of seat sharing between the Government and the private medical colleges, no consensus have been arrived at and therefore, the Government is not in a position to fix the correct percentage. Even otherwise, as per the decision rendered in *P.A.Inamdar case*, there cannot be any fixed quota as claimed by the petitioners in respect of the government quota in the private medical colleges.

(c) The petitioners are not justified in their claim for increase of the Government quota seats from 50% to 65% of the total intake. Every State and Union Territory have their own policy to arrive at the Government quota seats

and therefore, the petitioners are not entitled to insist the respondent Government to follow the seat sharing percentage as adopted by the Government of Tamilnadu.

10. Mr.V.P.Raman, learned counsel appearing for the Medical Council of India submitted as follows:

The claim of the petitioners with regard to the percentage of Government quota seats in the private medical colleges is not sustainable in view of the categorical pronouncement made in *P.A.Inamdar case*. There cannot be any fixed quota for free seats in the private medical colleges as claimed by the petitioners, as the percentage of such seats is to be arrived at only by consensus between the Government and the colleges and thus, there cannot be any hard and fast rule. The Regulation 2006 relied on by the petitioners came into the existence before *P.A.Inamdar* judgment and therefore, such Regulation cannot be relied on by them. Both Government quota and Management quota seats are filled only by common government agency and therefore, the petitioners cannot have any grievance as there is no irregularity in such procedure. The letter referred to by the petitioner dated 02.06.2017 issued by M.C.I itself is not an allegation by MCI and on the other hand, it is only an extract of the complaint made by the said Association. The percentage of reservation made in the private medical colleges under

Government quota at Tamilnadu is also by consensus between parties and not by any hard and fast rule. The merit is not compromised at any stage and everybody is allotted a seat as per NEET. If any violations are found and brought to the knowledge of M.C.I., it will take appropriate action against the erring persons.

11. Mr. Abishek Jeenasenan, learned counsel appearing for the 5th respondent, after adopting the arguments of the learned Additional Government Pleader and the learned Standing counsel for the MCI, has further submitted as follows:

The 5th respondent college is unaided minority professional college and they voluntarily surrendered the relevant number of seats to be filled under Government quota. The fee collected by the 5th respondent is fixed by the Fee Committee and no excess fee is being collected. Therefore, there is no question of saying that this respondent is making profits by collecting excess fees.

12. Mr. T.V. Lakshmanan, learned counsel appearing for the 7th respondent college, after adopting the arguments of the learned Additional Government Pleader and the learned Standing counsel appearing for MCI, has submitted further as follows:

The 7th respondent college is an unaided linguistic minority professional college. Regarding the collection of fees and seat sharing, the judgment rendered in *P.A.Inamdar case* is holding the field and therefore, the petitioners cannot contend otherwise. There is a difference between the professional and non-professional college.

13. Mr.L.Chandrakumar, learned counsel appearing for the respondents/ students, after adopting the arguments advanced on the side of the other respondents, submitted as follows:

These respondents/students belong to Karaikal region and they were allotted their respective seats under Karaikal region based on G.O.Ms.No.99 which is already upheld by the Division Bench. Therefore, the petitioners cannot question the selection of these respondents/ students.

14. Heard both sides.

15. Let me first consider the challenge made to the G.O.Ms.No.99 dated 10.08.2006 dealing with the regional reservation.

It is not in dispute that the above impugned Government Order has already been tested before this Court by filing a batch of writ petitions in W.P.No.13130/2009 etc. wherein the Division Bench of this Court passed an

order on 06.08.2010 partly allowing the writ petitions only by setting aside the specific regional allocation of seats for Puducherry Region alone. In all other aspects, the writ petitions were dismissed.

16. To put it more clearly, the Honourable Division Bench, in fact, upheld the reservation made to three regions namely, Mahe, Karakal, Yanam, while setting aside the reservation made to the remaining seats for Puducherry Regional students, which is approximately 75%. Relevant paragraph Nos.22, 27 of the said order reads as follows:

22. Thus in view of the law laid down in the above decisions, it is clear that territorial classification is not bad under all circumstances, but there should be a reasonable basis for such classification and the basis should not be arbitrary or fanciful, but should bear a just, rational and intelligible relation with the object sought to be achieved by the classification.

...

27. It is brought to our notice that there are no medical colleges in Mahe and Yanam region and in the counter affidavit filed by the official respondents, they have justified the reason behind such reservation. We are convinced that the reason assigned for such regional reservation for the three

regions of Mahe, Yanam and Karaikal has a rational basis behind it and it satisfies, the object sought to be achieved by the classification, that is to uplift the area from its backwardness. Accordingly, we have no hesitation to hold that the region wise reservation for Mahe, Yanam and Karaikal regions is with a reasonable basis and there is no arbitrariness in such classification and accordingly such classification is held to be valid.

17. No doubt the learned counsel for the petitioners sought to contend that these petitioners are not parties to those proceedings dealt with by the Division Bench and that several contentions raised in the present writ petitions were not raised before the Division Bench by the parties to those writ petitions. This Court is not inclined to appreciate the above contentions for the simple reason that the order passed by the Division Bench binds these petitioners as well since the said order was not restricted or confined only insofar as those petitioners alone. Even otherwise, the order passed by the Division Bench arising out of the same impugned Government Order is binding on this Court. No doubt the petitioners have raised a question, as to whether this regional reservation has to continue even after introduction of NEET. Needless to say that a Government Order passed at a particular point of time can always be revisited in future if there is a change of circumstances. But in this case

what is sought to be challenged is the Government Order making reservations to the three regions, when such G.O. was already upheld by the Division Bench of this Court insofar as the reservation to these three regions is concerned. It is further seen that the said order of the Division Bench has not been put to challenge further and thus, it has become final and conclusive. Therefore, the petitioners are not entitled to canvass the correctness or otherwise of the G.O.Ms.No.99 dated 10.08.2006 before this Court once again even though they are not parties to the earlier proceedings.

18. The learned counsel relied on **2007(4) SCC 221, (A.V.Papayya Sastry v. Government of A.P.)** and **1989(1) SCC 101, (Municipal Corporation of Delhi vs Gurnam Kaur)** to contend that no material facts were placed before the Division Bench when G.O.Ms.No.99 was put to challenge earlier and therefore, the order passed in the said batch of cases has no application to the present case. I do not think that he is justified in contending so, that too, before this Court challenging the very same G.O. Assuming that the petitioners are raising some new grounds, which according to them, have not been placed or considered before the Division Bench and that they are being raised based on the change of circumstances, still it is not open to them to challenge the very same G.O. before this Court, without resorting to the remedy of filing either a review or an Appeal. In this case, these petitioners have not chosen to

do either of the same. Therefore, the above contentions are also liable to be rejected. Thus, this Court is of the firm view that the writ petitioners have to fail in their attempt to challenge the said G.O.Ms.No.99 dated 10.08.2006.

19. Let me come to the next issue namely, fixing the percentage of Government quota seats in the private medical colleges. It is contended by the petitioner that the first respondent Government is not justified in fixing upto 50% of seats alone out of the total intake of medical seats in the private medical colleges as the Government quota. Thus, their claim is that it should be raised to 65%. On the other hand, it is the contention of the State Government that the Government cannot insist upon fixing the percentage of seats in those private medical colleges under Government quota as a matter of right and on the other hand, only by way of consensus arrived between the Government and Private Medical Colleges, the percentage of seats could be fixed. It is further stated by the Government that this year they have fixed upto 50% of the total intake as the Government quota in the private medical colleges. The submissions made on behalf of MCI also supports the above stand of the Government.

20. The issue with regard to the seat sharing in the private medical colleges has already been considered and decided by the Honourable Supreme

Court in **2005(6) SCC 537 (P.A.Inamdar vs. State of Maharashtra)** wherein at paragraph No.124 to 130, it has been observed as follows:

124. *So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.*

125. *As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation*

policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of [Article 30\(1\)](#) or a reasonable restriction within the meaning of [Article 19\(6\)](#) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

126. The observations in paragraph 68 of the majority opinion in *Pai Foundation*, on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in *Pai Foundation*, if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-

minorities can be forced to submit to seat sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in *Pai Foundation*) in our considered opinion, observations in paragraph 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give free-ships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the state to cater to the educational needs of weaker and poorer sections of the society.

127. Nowhere in *Pai Foundation*, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

128. We make it clear that the observations in *Pai Foundation* in paragraph 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional

institutions and the State.

129. *In Pai Foundation, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.*

130. *For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy to the extent it allows States to fix quota for seat sharing between management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy, in our considered opinion, does not lay down the correct law and runs counter to Pai Foundation.*

21. A careful perusal of the observations made in *P.A.Inamdar's case*, as extracted supra, would clearly indicate that the claim of the petitioners herein seeking for a direction to the Government to assert and get 65% of the total intake seats under the Government quota from the private medical colleges, cannot be sustained as a matter of right and on the other hand, the seat sharing percentage are to be fixed only by way of consensual arrangement

to be reached between the Institution and the State. At the same time, it is to be borne in mind that such consensus should be arrived between the parties by taking note of all the material facts and circumstances and also by taking note of the interest of students from the poor and downtrodden community who will not be in a position to pay more fees than the one fixed for the free seat/ Government quota seat, if their chance to get admission only lies with these private medical colleges. Therefore, in my considered view the percentage of the total intake seats under the Government quota from the private medical colleges is to be fixed, of course by way of consensus, in such a way that such fixation, apparently on the face of it, should indicate that the benefit to such poor and downtrodden students is well taken care of. This Court hopes that the respondent Government as well as the private medical Colleges will take into consideration of this aspect while fixing the percentage of seat sharing in future. However, it is also made clear that since these private medical colleges are unaided and they are functioning on self finance support, sustenance of such colleges shall also be given due consideration while fixing the said percentage.

WEB COPY

22. Therefore, under the above stated facts and circumstances, this Court is of the view that the petitioners are not entitled to get any relief based on their claim in respect of seat sharing issue as well, apart from the

fact that admission to the MBBS/BDS courses is already completed. Though the writ petitioners have raised two more issues by questioning the NEET and allotment of seats to NRI also, the learned counsel for the petitioners submitted that the petitioners are not pressing those two issues. Even otherwise, the petitioners are not entitled to question the NEET before this Court as the Honourable Supreme Court has already seized of the matter and ordered to make admissions only as per the merit in the NEET.

23. Considering all these aspects, this Court finds no merit in both the writ petitions. Accordingly, they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13.09.2017

Speaking/Non Speaking
Index : Yes/No
vsi

सत्यमेव जयते

WEB COPY

To

1. The Chief Secretary,
Government of Pondicherry Union Territory,
Secretariat, Puducherry.
2. The Covenor,
Centralised Admission Committee,
Secretariat, Puducherry.
3. The Medical Council of India,
Pocket 14, Phase-I, Sector-8,
New Delhi.
4. The Director,
Indira Gandhi Medical College,
Pondicherry-9.
5. The Dean,
Pondicherry Institute of Medical Sciences,
Pondicherry-14.
6. The Dean,
Managula Vinayaga Medical College,
Pondicherry-17
7. The Dean,
Sri Venkateswara Medical College,
Pondicherry-102.
8. The Director,
Indira Gandhi Medical College & Research
Institute, Kathirkamam,
Pondicherry-9.

K. RAVICHANDRABAABU, J.

vsi



Pre-delivery order made in

Writ Petition Nos.18676 & 21152 of 2017

WEB COPY

13.09.2017