

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANIDGARH

Date of decision:31.01.2017

1. LPA No.1745 of 2015 (O&M)
Amandeep Kaur and others ... Appellants.

Versus

State of Punjab and others ... Respondents.

2. LPA No.1750 of 2015 (O&M)
The Punjab Private Self-Financed Dental Colleges Association
... Appellant.

Versus

State of Punjab and others ... Respondents.

3. LPA No.1808 of 2015 (O&M)
Anhadraj Singh ... Appellant.

Versus

State of Punjab and another ... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE GURMIT RAM.

Present: Mr. Arun Singla, Advocate,
for the appellants in LPA No.1745 of 2015.

Mr. Manish Kumar Singla, Advocate,
for the appellant in LPA No.1750 of 2015.

Mr. Tarunveer Vashist, Advocate,
for the appellant in LPA No.1808 of 2015.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for the State of Punjab.

Mr. Munish Dadwal, Advocate, and
Mr. Abhay Sharma, Advocate, for
the Baba Farid University of Health Sciences, Faridkot.

Mr. Gurminder Singh, Senior Advocate, with
Mr. R.P.S. Bara, Advocate, and
Ms. Vriti Gujral, Advocate,
for the Dental Council of India.

S.S. Saron, J.

This order will dispose of the above mentioned appeals, i.e. LPAs No.1745 of 2015 titled 'Amandeep Kaur and others v. State of Punjab and others', LPA No.1750 of 2015 titled 'The Punjab Private Self-Financed Dental Colleges Association v. State of Punjab and others' and LPA No.1808 of 2015 titled 'Anhadraj Singh v. State of Punjab and another', as these arise out of the common judgment and order dated 02.12.2015 passed by the learned Single Judge in CWP No.21777 of 2015.

The petitioners - Amandeep Kaur and others filed a petition, i.e. CWP No.21078 of 2015, seeking a mandamus for directing the respondents, i.e. the State of Punjab, the Baba Farid University, Health Sciences, Faridkot ('Baba Farid University' - for short) and the Dental Council of India ('Dental Council' - for short) to implement clauses 4, 9 and 22 of the Punjab Government notification dated 30.03.2015 whereby admissions in the Bachelor of Dental Surgery ('BDS' - for short) Course for left over vacant seats that remained unfilled could be filled, independent of the marks obtained in the Pre-Medical Entrance Test ('PMET' - for short), on the basis of *inter se* merit in the qualifying examination (10+2) and for quashing the letter/ corrigendum dated 22.09.2015 whereby said notification dated 30.03.2015 issued by the Punjab Government and the prospectus issued by the Baba Farid University

on the basis of the said notification, had been amended and the provision for making admissions to the BDS Course on the basis of qualifying examination (10+2) was deleted.

The Punjab Privately Self-Financed Dental Colleges Association (appellants in LPA No.1750 of 2015) filed CWP No.21777 of 2015 seeking quashing of the corrigendum dated 29.09.2015 and for directing the respondents, i.e. the State of Punjab, the Baba Farid University and the Dental Council, to allow its Colleges to admit students against the vacant seats for the academic session 2015-16 for the BDS Course in accordance with the procedure mentioned in the prospectus of the Baba Farid University or provide students against the vacant seats. An alternative prayer was made for directing the respondents, i.e. the State of Punjab, the Baba Farid University and the Dental Council, that in case seats remained vacant, they should pay the entire financial losses that occur due to the respondents' acts for the whole BDS Course for the survival of its colleges.

Anhadraj Singh (appellant) filed CWP No.21074 of 2015 seeking quashing of the corrigendum dated 29.09.2015 whereby modification had been made in the notification dated 30.03.2015 deleting clause 4, 9 and 22 of the said notification dated 30.03.2015 towards fag end of the process of admission and further directing the respondents, i.e. the State of Punjab and the Baba Farid University, to implement clauses 4, 9 and 22 of the notification dated 30.03.2015 which formed part of the prospectus whereby admissions in the BDS Course for left over seats were to

be made on the basis of *inter se* merit in the qualifying examination.

The grievance of the petitioners/appellants is that initially the State Government and the Baba Farid University in terms of its notification dated 30.03.2015 and prospectus that was issued had allowed admission to the BDS Course in respect of vacant and unfilled seats on the basis of marks obtained in the qualifying examination of 10+2 with Physics, Chemistry, Biology/Bio-technology (PCB); however, in the mid-stream and that too on 29.09.2015, that is, one day before the last date of admissions changed the criteria by deleting the provisions relating to admissions to BDS Course on the basis of the qualifying examination of 10+2 with Physics, Chemistry, Biology/Bio-technology (PCB). This action was assailed by them. According to the petitioners/appellants the terms incorporated in the prospectus have the force of law and were liable to be followed and adhered to.

Short reply by way of affidavit of Dr. Manjit Kaur Mohi, Director, Medical Education and Research, Punjab, was filed on behalf of State of Punjab. It was submitted that the State Government in its notification dated 30.03.2015 provided a provision in which left over seats could be filled on the basis of 10+2 qualifying examinations. Keeping in view the said provision, the Private Dental Colleges issued a public notice (dated 29.09.2015), which is a notice addressed to the Principal Secretary, Department of Medical Education and Research, Chandigarh. It is submitted that in terms of the said public notice the Private Dental

Colleges allowed admissions to candidates in BDS Course in the State of Punjab for the academic 2015-16 on the basis of marks obtained in their qualifying examinations (10+2). The Dental Council took a serious view of the public notice and warned against violation of provisions as prescribed in BDS Course Regulations, 2007 i.e. 'the Dental Council of India Revised BDS Course Regulations, 2007'. A similar letter was received from the Dental Council on 22.09.2015 also.

Keeping in view the objections of the Dental Council and future of the students, the State Government issued the corrigendum dated 29.09.2015. Had the State Government gone ahead as per provisions in the prospectus, the Dental Council would not recognize the degrees of those students who would have taken admissions on the basis of qualifying examinations. It is further submitted that in the previous year, the private Dental Colleges admitted more than 400 students on the basis of qualifying examinations at their own level against the guidelines of the Dental Council. This admission was not recognized and the students could not get relief even from the Hon'ble Supreme Court of India. It was further clarified that that the provision for admissions on the basis of 10+2 examinations was incorporated in the notification dated 30.03.2015 keeping in view the interest of the Institutes and students in view of the scenario of the previous year when less number of students could qualify the entrance examination and the State had to conduct special test for admission to the BDS Course.

The Dental Council filed a counter affidavit before the learned Single Judge. However, in compliance to order passed by this Court, it filed a counter affidavit in the Letters Patent Appeal in Amandeep Kaur's case. It is submitted that the Dental Council is constituted under the provisions of the Dentists Act, 1948 and for discharging its statutory obligations Regulations had been framed under Section 20 of the Dentists Act. It is submitted that the Regulations being statutory are binding and are mandatory. However, it is open to the State Governments to make their own rules and regulations for regulating the admission procedure in professional Colleges as well as constitute State Admission Committees as held by the Supreme Court. It is submitted that there had been an increased demand of Dental Specialists in various specialties of Dentistry. In view of this, it was mandatory for all Dental Colleges in the country to have proper infrastructure facilities, faculties and adequate clinical material of starting courses. No Dental Institute could start a course without prior approval of the Central Government as per the provisions of the Dentists (Amendment) Act, 1993 and the Regulations made there under.

The Dental Council, it is submitted, had framed detailed Regulations containing the detailed syllabus and curriculum for BDS Course including the selection procedure for graduation courses. These Regulations are called 'the Dental Council of India Revised BDS Course Regulations, 2007' ('2007 Regulations' - for short) which had been framed in exercise of powers conferred by Section 20 of the Dentists Act with the previous approval of the Central

Government. The notification of the 2007 Regulations was issued on 25.07.2005 and was published in the Gazette of India on 10.09.2007. These 2007 Regulations were framed with a view to maintaining uniform standard of Dental Education and admission procedure in all Dental Colleges in the country including the private ones. The 2007 Regulations provides for, 'admission, selection and migration'; besides, for 'selection of students' and other matters.

It is further submitted that the Hon'ble Supreme Court of India in Mridul Dhar vs. Union of India, (2005) 2 SCC 65, while emphasizing the need for strict enforcement of the time schedule, reiterated that there should not be any mid-stream admission or any admission in excess of the sanctioned intake capacity/quota fixed for the State and Management seats. This has been reiterated in several judgments of the Hon'ble Supreme Court. The last dates for admitting students to BDS course, it was mentioned is 30.09.2015 for the academic session 2015-16 or any other date which the Supreme Court may extend.

The right to set up and administer an educational institution, it is submitted, is not an absolute right and this right is subject to reasonable restrictions and is subject to (even in minority institutions) to the national interest. The imparting of education is a State function but due to resource crunch, the State is not in a position to establish sufficient number of educational institutions. Therefore, the States were permitting private educational institutions to perform its functions. However, the States and the Universities had statutory rights to regulate the admission of

students in order to ensure, (a) that there is no profiteering; (b) capitation fee is not charged; (c) admissions are based on principles of merit; and (d) to ensure that persons from the backward classes and poorer sections of society, including meritorious students from all sections of the society, also get an opportunity to receive education particularly professional education. A reference has been made to various other judgments of the Supreme Court. Accordingly, it was prayed that the writ petition be dismissed.

The learned Single Judge considered the question that as to whether the State could amend the notification dated 30.03.2015 which was part of the prospectus and whether admissions could be made in violation of the 2007 Regulations. It was held that no relief could be granted to the petitioners for their claim for admissions to the vacant seats and the loss being suffered by the Private Dental Colleges Association. Another factor which prevailed with the learned Single Judge was the point of time since the last date of admission i.e. 30.09.2015 as per schedule laid down by the Supreme Court had lapsed. Thus at this point of time no relief could be granted.

Learned counsel Shri Arun Singla, Advocate, Shri Munish Kumar Singla, Advocate and Shri Tarunveer Vashishth, Advocate appearing for the appellants have contended that the learned Single Judge gravely erred in passing the impugned order. It is submitted that the criteria fixed for admission to the BDS Course in terms of the State Government Notification dated 30.03.2015 and also incorporated in the prospectus issued by the Baba Farid University

could not be changed as the same had the force of law. The respondents, according to learned counsel, had acted in an unfair and improper manner in changing the criteria for admissions to the BDS Course in the mid-stream and thereby depriving the students of their rights to get admissions and depriving the Dental Colleges to get students for their sustenance. The provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservations) Act, 2006 ('2006 Act' - for short) which are applicable in view of Clause 10 of the notification dated 30.03.2015 were to be adhered to and followed. Section 4 of the 2006 Act, provides for eligibility criteria for admission which may be determined and notified by the State Government from time to time and it is the State Government or any other authority which is authorized by it that is to conduct the Common Entrance Test for making admissions to all Private Health Sciences Educational Institutions in the State of Punjab except those which are specifically exempted from such test. It is, therefore, submitted that the action of the respondents and the corrigendum dated 29.09.2015, which was erroneously issued, are required to be invalidated. A corrigendum could only be issued to correct things especially an error and not change the entire criteria for admissions to the BDS Course. The Dental Council had been taking a wrong stand that passing of entrance examination in a Common Entrance Test is mandatory for admission to BDS Course even for vacant and unfilled seats as the Dental Council itself in the previous 2014 session in the case of Adesh University allowed

admissions to 43 students on the basis of marks obtained in the qualifying examinations (10+2) and not on the basis of their merit in the competitive examination i.e. PMET 2014. The said students were in the second professional of their course and only the colleges affiliated to the Baba Farid University were being discriminated against. Besides, students had been admitted to the BDS Course on the basis of their qualifying examination of 10+2 in various other States as well, where there were more than one University/Board and more than one Dental College. However, different standards had been adopted for the colleges in Punjab.

In response, Mr. Gurminder Singh, Senior Advocate with Mr. R.P.S. Bara, Advocate and Mr. Vriti Gujral, Advocate for the Dental Council submitted that the 2007 Regulations framed by the Dental Council would prevail over the State 2006 Act. It is submitted that the States have competence to prescribe rules for admissions so long as these were not inconsistent with the rules laid down by the Dental Council which is a delegate of the Union of India. Strong reliance is placed on Preeti Srivastava (Dr.) v. State of M.P. (1999) 7 SCC 120 in support of his contention.

Shri P.P.S. Thethi, Addl. AG, Punjab has submitted that the State Government issued the corrigendum dated 29.09.2015 in the interest of the students so that they are not fastened with unrecognized degrees and whatever the State has done has been done in compliance with the requirements of the Dental Council as laid down in the 2007 Regulations of the Dental Council.

We have given our thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance gone through the records of the case.

It may be noticed that the Government of Punjab in the Department of Medical Education and Research issued a notification dated 30.03.2015 regarding admission to MBBS/BDS Courses in Medical and Dental Institutes in the State of Punjab for the session 2015. The relevant clauses of the said notification which are necessary for the present petition are as follows:-

- "4. The admission to the MBBS/BDS Course in all the categories will be based on marks obtained in PMET-2015. However, if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam).
8. In order to be eligible for admission to MBBS/BDS course, it shall be necessary for the candidate to obtain minimum of 50% marks (45% for persons with Locomotor Disability of Lower Limbs and 40% for SC/BC categories) in PMET-2015. The inter-se merit of candidates for tie-breaking in PMET-2015 shall be determined in the following manner:-
 - a. Candidates obtaining higher marks in Biology (Botany & Zoology) in the PMET-2015.
 - b. Candidates obtaining higher marks in Chemistry in the PMET-2015.
 - c. Candidates older in age.

9. After the declaration of the PMET-2015 result, the candidates will apply on the specific proforma for all seats except All India quota seats to Baba Farid University of Health Sciences, (BFUHS), Faridkot. Admission will be made by the selection committee through a centralized counselling by BFUHS, Faridkot on the basis of inter-se merit of PMET-2015. However, if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam). Merit will be prepared on the basis of PCB (Physics, Chemistry and Biology/Biotechnology) marks in 10+2 examination. In case two or more candidates securing equal marks in PCB, their inter-se merit will be determined as under:
- i) Candidates having higher percentage in the subject of Biology/Biotechnology.
 - ii) Candidate having higher percentage in the subject of Chemistry.
 - iii) Candidate, older in age.
10. Admission to private institutions shall be made as per the provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservations) Act, 2006.

21. Admission to Private Institutes

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

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

Note: regarding minority seats in the S.G.P.C. institutions namely Sri Guru Ram Dass Institute of Medical Sciences and Research and Sri Guru Ram Dass Institute of Dental Sciences and Research, Amritsar, the NRI seats be divided equally between the Government quota and Minority Quota as per Government Notification No.5/19/2004-5HB-111/424 dated 07.02.2005.

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

i) Scheduled Caste	25%
ii) Backward Classes	5%

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

iii) Physically handicapped/ orthopedically handicapped	3%
iv) Migrants from Jammu & Kashmir due to terrorist violence	1%

- iii) The vacancy, if any, generated due to exceptional circumstances or surrender of seats after the 2nd centralized counselling would be filled by the admission committee headed by the Principal of Dayanand Medical College and comprising of the representative each of the Government and the University, strictly on the basis of merit of the corresponding year. This counselling will be held at GGS Medical College, Faridkot.
- iv) The minority quota seats shall be filled on the basis of *inter se* merit of the candidates in the test conducted by the minority institute, or on the basis of marks obtained in PMET-2015. The institutions will also upload the admission form on institute website.
- v) The representative of the University would be at liberty to place on record the copies of applications received in the BFUHS directly for admission to the institutes for consideration by the Committee.

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

For all the leftover seats in Private or Government Medical/Dental Colleges the counselling will be held at GGS Medical College Faridkot with the same merit as that of PMET-2015 or *inter se* merit on the basis of qualifying exam.

No fresh applications will be called by individual institutions.”

Clauses 4, 9 and 22 of the above notification dated 30.03.2015 relate to the vacant seats. It is primarily provided that vacant seats or leftover seats after admission on the basis of PMET 2015 marks obtained can be done on the basis of marks obtained in the 10+2 qualifying examination.

Clause 8 relates to eligibility for admission to the BDS Course and determination of inter se merit. Clause 10 relates to admissions to private institutions and that the same shall be made as per the provisions of the 2006 Act. Clause 21 relates to admissions to private institutes, the distribution of seats in private institutions and the vacancy, if any generated due to exceptional circumstances or surrender of seats after second centralized counselling are to be filled by the admission committee headed by Principal of Dayanand Medical College and comprising of the representatives each of the Government and the University, strictly on the basis of the merit of the corresponding year; besides, this counselling is to be held at Guru Gobind Singh Medical College, Faridkot.

The appellants Amandeep Kaur and others and Anhadraj appeared in the PMET - 2015 conducted by the Baba Farid University for admission to BDS Course in the Dental Colleges within Punjab. In terms of clause 4 of the above notification dated 30.03.2015, the admission in the MBBS/BDS Course was to be made on the basis of marks obtained in PMET-2015. However, for

the vacant seats that remained unfilled, the said notification provided that admissions could be made on the basis of marks obtained in 10+2 examination (qualifying examination).

In terms of clause 9 of the said notification, after declaration of the PMET-2015 result, the candidates were required to apply on a specific *pro forma* for all seats, except all India quota seats, to the Baba Farid University. If seats were still vacant then admissions were to be done on the basis of marks obtained in 10+2 (qualifying examination). The merit was to be prepared on the basis of P.C.B., i.e. Physics, Chemistry and Biology/Biotechnology in 10+2 examination.

Clause 22 of the said notification provided the procedure for filling left over seats in private/minority institutes on the basis of PMET-2015 on the basis of same merit of PMET-2015 or *inter se* merit on the basis of qualifying examination, i.e. 10+2.

The PMET - 2015 was conducted by the Baba Farid University on 17.05.2015 and its result was declared on 18.05.2015. The first round of counselling after the declaration of result was conducted on 30.07.2015 and 01.08.2015. Some students/candidates approached this Court and, therefore, the final list was prepared on 08.09.2015. After the first round of counselling, substantial number of seats for the BDS Course for the session 2015 remained vacant and unfilled. The second counselling for the vacant seats was conducted on 23.09.2015. Even after the second counselling, sufficient seats remained vacant.

The Dental Council on 22.09.2015 addressed a letter to (1) The Secretary, (Health) of all States/U.T., (2) The Director of Medical Education of all States/U.T., (3) The Registrar of all concerned Universities and (4) The Principals of all Dental Colleges in the country, on the subject of; 'Admission to BDS Course in dental colleges as per Revised BDS Course Regulations 2007 and upload the details of students admitted in BDS Course at Dental Colleges for the academic session 2015-16 on the DCI (Dental Council) website - for Strict Compliance'. It was mentioned in the said letter that many of the Dental Colleges, in various States, even having more than one Dental College and one University Board/Examining Body conducting the qualifying examinations were admitting students in BDS Course on the basis of marks of their qualifying examination (10+2) and without qualifying Competitive Entrance Examination (CET), which was mandatory as per Revised BDS Course Regulations, 2007 i.e. 2007 Regulations. The Revised BDS Course Regulations, 2007 clearly indicated that the Competitive Entrance Examination (CET) was mandatory for admission to BDS Course except in States having only one Dental College and one University Board/Examining Body conducting the qualifying examination the marks obtained at such qualifying examination may be taken into consideration. Besides, it was emphasized that the time schedule annexed to the DCI Regulations, 2006, the last date for admitting the students to BDS Course was 30.09.2015 for the academic session 2015-16 or any other date as the Hon'ble Supreme Court extends in the academic year 2015-16

as prescribed in the time schedule laid down by the Supreme Court in para 31 of Mridul Dhar's case (supra).

The Government of Punjab, Department of Medical Education and Research (Health-III Branch), in consequence of the letter of the Dental Council dated 22.09.2015, issued a corrigendum on the subject of; 'Admission to MBBS/BDS Courses – in Medical and Dental Institutes in the State of Punjab for the Session 2015', on 29.09.2015, which was in partial modification of the notification dated 30.03.2015. The said corrigendum provided that:

"1. The following part of clause 4 is hereby deleted:-

"However, if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam).

2. The following part of clause 9 is hereby deleted:-

"However if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam). Merit will be prepared on the basis of PCB (Physics, Chemistry and Biology/ Biotechnology marks in 10+2 examination. In case two or more candidates securing equal marks in PCB, their inter se merit will be determined as under:-

i) Candidates having higher percentage of Biology/Biotechnology

ii) Candidates having higher percentage in the subject of Chemistry

iii) Candidate, older in age"

3. The following part of clause 22 is hereby deleted:-

"or inter se merit on the basis of qualifying exam"

Note: These deletions are made as per MCI/DCI guidelines."

In terms of the above corrigendum dated 29.09.2015 of the Punjab Government, the provision relating to admissions to the BDS Course for the Session 2015 for the left over and unfilled seats on the basis of merit secured in the 10+2 (qualifying examination) was dispensed with and deleted. Therefore, the admissions to the BDS Course in the Dental Colleges in Punjab even for the vacant and unfilled seats was to be made only on the basis of marks obtained in the PMET 2015. However, for being eligible to appear in the PMET 2015 the candidates in terms of clause 6 of the notification dated 30.03.2015 were required to pass in the subjects of Physics, Chemistry and Biology/Biotechnology and English individually and were required to obtain minimum 50% marks (45% for persons with locomotor disability of lower limbs and 40% for SC/BC) taken together in Physics, Chemistry and Biology/Biotechnology (PCB) in 10+2 examination or other equivalent examination of 10+2. Besides, in terms of clause 8 of the notification dated 30.03.2015, in order to be eligible for admission to the BDS Course, it was necessary for the candidates to obtain

minimum 50% marks (45% for persons with locomotor disability of lower limbs and 40% for SC/BC categories) in PMET-2015.

The Baba Farid University issued a notice in the Press for second extended round of physical counselling in respect of PMET-2015. The schedule of the second extended round of physical counselling insofar as the BDS Course was concerned, it was mentioned that the counselling would be held on 30.09.2015 for 12 (SC) and 13 (BC) with PMET marks of 320 and above; besides, it would be conducted for all reserved categories and 11 (Open Merit) with PMET 400 marks and above. The notice also mentioned that the tentative vacancy position would be available at Baba Farid University website and final vacancies would be available at the time of counselling.

The Punjab Private Self-Financed Dental Colleges Association keeping in view the fact that 600 seats were vacant in its Dental Colleges issued a public notice dated 29.09.2015 which was addressed to the Principal, Secretary, Department of Medical Education and Research, Punjab, Chandigarh, on the subject of; 'Admission 2015 in Private Dental Colleges of Punjab'. A reference was made to their letters from the respective institutes of Dental Sciences in Punjab in which a request was made to intervene and issue an order so as to permit the respective Dental Colleges to admit students as per the Punjab Government notification (30.03.2015) PMET-2015. But to their dismay, no cognizance had been taken by the department. In the meanwhile, the Baba Farid University had advertised for third counselling (second extended

counselling) in which they had invited candidates above 400 marks in PMET-2015. The Baba Farid University had not invited the 'appeared' candidates which was permissible as per the Dental Council letter dated 22.09.2015. Through the said letter/e-mail, it was requested that they had invited candidates invoking clauses 9 and 15 of the Baba Farid University prospectus/Punjab Government notification (30.03.2015) PMET-2015 to appear for admissions in case the Baba Farid University failed to give them 100% candidates to fill their seats, i.e. to fill up left over/resultant vacancies. According to the Punjab Private Self-Financed Dental Colleges Association, the Baba Farid University acted in an electric speed to modify the above mentioned clauses from the prospectus to debar the Colleges from making admissions. Besides, the corrigendum dated 29.09.2015 was issued by the Government of Punjab whereby clauses 4, 9 and 22 were deleted.

The petitioners/appellants are aggrieved against the action of the State of Punjab and the Baba Farid University issuing the notice regarding second round of extended counselling. According to them, the same is in violation of the initial notification dated 30.03.2015 in terms of which, the left over and unfilled seats could also be filled on the basis of *inter se* merits in the qualifying examination, i.e. 10+2 or its equivalent. The petitioners/appellants submit that the corrigendum dated 29.09.2015 issued by the Punjab State deleting clauses 4, 9 and 22 of the notification dated 30.03.2015, one day before the last date of admissions was improper. According to the petitioners/appellants, the notification

as incorporated in the prospectus was liable to be adhered to and it had the force of law.

The Punjab Private Self-Financed Dental Colleges Association also prays that the respondents should pay the whole financial losses for the seats that were to remain vacant due to the act of the respondents so that the colleges can survive.

The question that requires consideration is whether the respondents could change the criteria for admissions to the BDS Course for the Session 2015 from that provided in the notification dated 30.03.2015 and incorporated in the prospectus; besides, whether the 2007 Regulations of the Dental Council could override the provisions of the 2006 Act of the State.

The criteria, that is fixed by the prospectus is normally not to be changed and the prospectus has the force of law. In Amardeep Singh Sahota v. State of Punjab 1993 (4) SLR 673 (F.B.) (P&H), the prospectus had been issued for admissions to MBBS/ BDS/BAMS (Ayurvedacharya) Courses on the basis of an earlier notification. The students appeared for the test on the basis of the policy laid down in the prospectus, which, as already noticed was based on an earlier notification. The subsequent notification that was issued was contrary to the earlier notification. This Court held that the prospectus could not be subsequently changed by the State Government to the detriment of students to benefit certain other students. A reference was made by the Full Bench to a Division Bench judgment of this Court in Ravdeep Kaur v. The State of Punjab and others, ILR (1985) 1 P&H 343. In the said case, the

Division Bench had the occasion to consider the value of a prospectus issued before admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of the instructions given on the prospectus as the instructions issued has the force of law. In Sachin Gaur v. Punjabi University, Patiala, 1996 (1) SCT 837, a Full Bench of this Court reiterated the decision in Amardeep Singh Sahota's case (supra) that the eligibility for admission had to be seen according to the prospectus issued before the entrance test and the instructions issued in the prospectus had the force of law. In Rupinder Singh v. The Punjab State Board of Technical Education and Industrial Training Chandigarh 2001 (2) SCT 726, a Full Bench of this Court held that admissions to the Course should be in strict compliance with the provisions contained in the prospectus or the information brochure, as the case may be.

The judgments referred to above which are relied upon by the learned counsel for the appellants relate to the eligibility for admission to a Course. In the present case, the process of selection of candidates to the BDS course is to be seen. The eligibility for admission to the BDS Course has been provided for in clauses 8 of the notification dated 30.03.2015 which is to be effect that it shall be necessary for the candidate to obtain minimum 50% marks (45% for persons with locomotor disability of lower limbs and 40% for SC/BC categories) in PMET-2015.

Mr. Munish Dadwal, Advocate for the Punjab Private Self-Financed Dental Colleges Association has placed strong reliance on the provisions of Sections 2 (e), 3 and 4 of the 2006 Act.

Section 2 (e) of the 2006 Act defines "Management Category" to mean a category comprising such seats out of the sanctioned intake of private health sciences educational institutions, as may allocated to the management of such institution by the State Government by notification in the official gazette, for filling up those seats by that institution in a fair and transparent manner on the basis of the *inter se* merit, determined by a Common Entrance Test or Qualifying Examination in the presence of the representatives of the authority conducting the Common Entrance Test.

Section 3 of the 2006 Act relates to regulation of admission, fixation of fee and making of reservation. It is provided that the State Government is to regulate admissions, fix fee, and make reservation for different categories in admissions to private health sciences educational institutions; besides, the State Government is to ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of *inter se* merit, determined by the Common Entrance Test or Qualifying Examination as the case may be in accordance with the procedure, notified by the State Government in the official gazette.

Section 4 of the 2006 Act relates to eligibility criteria for admission. It is provided that the eligibility criteria for admission to

private health sciences educational institution is to be such, as may be determined and notified by the State Government from time to time. The State Government or any other authority, authorized by it, is to conduct the Common Entrance Test for making admissions to all private health sciences educational institutions in the State of Punjab, except for those, which are specifically exempted from such tests. Admissions are to be made on the basis of *inter se* merit of the candidates determined in accordance with the Common Entrance Test.

The 2007 Regulations of the Dental Council were notified on 25.07.2007 and these *inter alia* provide for 'selection of students'.

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

1. In states having only one Dental College and one university board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;
2. In states, having more than one university/board/examining body conducting the qualifying examination (or where there are more than one dental colleges under the administrative

control of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;

3. Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;
4. A competitive entrance examination is absolutely necessary in the cases of institutions of All India character;
5. Procedure for selection to BDS course shall be as follows:-
 - i. in case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to BDS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry

and Biology taken together in qualifying examination be 40% instead of 50% as above and must have passing marks in English.

- ii. In case of admission on the basis of competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or any other categories notified by the Government the marks obtained in physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40 % instead of 50% as stated above;

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the BDS course, he shall not be admitted to that course until he fulfills the eligibility criteria as per above regulations.”

The 2007 Regulations have been framed in terms of Section 20 of the Dentists Act which confers powers on the Dental Council with the approval of the Central Government to make Regulations not inconsistent with the provisions of the Dentists Act and to carry out the purpose of Chapter II of the Dentists Act relating to ‘Dental Council of India’.

In Preeti Srivastava (Dr.) v. State of Madhya Pradesh (supra) the Supreme Court considered the legislative competence of Parliament and the legislatures of the States to make laws under Article 246 which are regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, it was observed that Entry 11 of List II gave to the State an exclusive power to legislate on

“education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III”.

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3.1.1976 as a result of the

Constitution 42nd Amendment Act of 1976. The present Entry 25 of List III, that is, the Concurrent List is as follows:

“25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

Entry 25 of List III is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:

“66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, it was held, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because, this, it was observed, is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, it was said that while considering the cases on

the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

It was also said that it would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse affect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors.

It was further said that while considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or

they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses.

A reference was made to the case of Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401, in which the Supreme Court examined the powers of the Indian Medical Council under Section 20 of the Indian Medical Council Act, 1956 and held that the power of the Council to prescribe standards of postgraduate medical education under Section 20 were only for the guidance of the universities. Since Section 20 also referred to the power of the Medical Council to advise Universities in the matter of securing uniform standards for postgraduate medical education throughout India, the Court said that the entire power under Section 20 was

purely advisory. Therefore, the power of the Indian Medical Council to prescribe the minimum standards of medical education at the postgraduate level, it was held, was only advisory in nature and not of a binding character. However, in Preeti Srivastava (Dr.) v. State of Maharashtra (supra), the Supreme Court did not agree with the said interpretation put on Section 20 of the Indian Medical Council Act, 1956. Section 20 (1), it was observed, was in three parts. The first part provided that the Council may prescribe standards of postgraduate medical education for the guidance of Universities. The second part of sub-section (1) said that the Council may advise Universities in the matter of securing uniform standards for postgraduate medical education throughout. The last part of sub-section (1) enabled the Central Government to constitute from amongst the members of the Council, a Postgraduate Medical Education Committee. The first part of sub-section (1) empowered the Council to prescribe standards of postgraduate medical education for the guidance of Universities. Therefore, the Universities were to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 did not give an option to the Universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a University or a medical institution were to be recognized under the Indian Medical Council Act, 1956. Unless the qualifications were so recognized, the students who qualified would not be able to practice. Before granting such recognition, a

power was given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The Universities were bound to furnish the information so required by the Council. The Postgraduate Medical Committee was also under Section 17, entitled to appoint Medical Inspectors to inspect any medical institution, college, hospital or other institution where medical education was given or to attend any examination held by any University or medical institution before recommending the medical qualification granted by that University or medical institution. Under Section 19, if a report of the Committee was unsatisfactory the Medical Council could withdraw recognition granted to a medical qualification of any medical institution or University concerned in the manner provided in Section 19. Section 19-A enabled the Council to prescribe minimum standards of medical education required for granting recognized medical qualifications other than postgraduate medical qualifications by the Universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of postgraduate medical education. The Universities must necessarily be guided by the standards prescribed under Section 20 (1) if their degrees or diplomas were to be recognized under the Medical Council Act. The judgment in *Ajay Kumar Singh v. State of Bihar* (supra) to the effect that the standards of postgraduate medical education prescribed by the Medical Council of India were merely directory and the Universities were not bound to comply with the standards so prescribed were disagreed with.

In terms of the above conclusion of the Supreme Court, it is quite evident that the norms and procedure laid down by the Dental Council is to be followed and given effect to and the State legislature would have to legislate and provide for imparting dental education in consonance with the requirement laid down by the Dental Council. The condition, therefore, that was provided in the State Government notification dated 30.03.2015 and also incorporated in the prospectus of the Baba Farid University providing for filling the vacant or unfilled seats on the basis of merit in the qualifying examination (10+2) was clearly contrary to the 2007 Regulations of the Dental Council, whereas these were to be in accord with the same. Therefore, the corrigendum that the State Government had carried out on 29.09.2015 was and is in consonance with the 2007 Regulations and the State Government was right in saying that keeping in view the objections of the Dental Council and future of the students, the State Government issued the said corrigendum dated 29.09.2015 and had it gone ahead as per the provisions of the prospectus, the Dental Council would not recognized the degrees of the students who would have taken admission on the basis of the qualifying examination (10+2). In the previous year also, the private dental colleges had admitted more than 400 students on the basis of qualifying examination at their own level against the guidelines of the Dental Council of India. The said admissions were not recognized and all the students could not get relief even from Hon'ble the Supreme Court of India.

Learned counsel for the appellants, however, submitted that the question of appearance in a Common Entrance Test for admission to BDS Course is of not much significance as seats are vacant and are available. Therefore, the candidates who have the minimum eligibility of 10+2 should be admitted against the vacant seats, which would otherwise go waste.

In this regard, it may be noticed that in Minor Aswin Kumar and others v. State of Tamil Nadu, 2007 (2) CTC 677, a Division Bench of the Madras High Court considered the question whether Common Entrance Test is mandatory in Tamil Nadu and whether the State Government could make regulations in contravention of the provisions of the Dental Council. The State of Tamil Nadu enacted the Tamil Nadu Admission in Professional Educational Institutions Act, 2006 (Act III of 2007) to provide for admission to professional degree courses, such as Engineering, Medicine, Dental, Agriculture and other allied courses on the basis of marks in the qualifying examination. The statement of objects and reasons of the said enactment indicated that the Government decided to accept the recommendation of the committee, which had recommended for elimination of the Common Entrance Test. In the said case a counter affidavit was filed by the State of Tamil Nadu by which it was submitted that after the filing of the writ petition, the Act in question had been notified after obtaining the assent of the President of India on 3.3.2007 and in the absence of specific challenge or even amendment of the original prayer, the writ petitions should be dismissed. The Hon'ble Madras High Court

referred to the judgment of the Supreme Court in Preeti Srivastava (Dr.) v. State of M.P. (supra) wherein it has *inter alia* been held that the purpose of holding a Common Entrance Test is to evaluate all candidates by a common yardstick. The Hon'ble High Court held that admissions must be made on a basis which is consistent with the standards laid down by a statute or regulations framed by the Central Government in exercise of its powers under Entry 66, List I. At times, in some judgments the words "eligibility" and "qualification" have been used interchangeably and in some cases a distinction has been made between the words "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statutes or under it, have to be complied with by the State while making, admissions. It may, in addition, lay down other additional norms for admissions or regulate admissions in exercise of its powers under Entry 25, List III, in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down. It was further held that though the State can prescribe higher standard it cannot make a Central Act nugatory. Besides, where a Common Entrance Test is merely a basis of selection, it may come under Entry 25 of List III rather than under Entry 66 of List I. Where, however, the Entrance Test or in both, it is obviously relatable to Entries 66 of List I rather than Entry 25 of List III as it intends to lay down a particular standard. Laying of higher

standard by State is possible, but lowering of standard is not possible. Where there is scope for construing that Medical Council of India Regulation, AICTE Regulation prescribed Common Entrance Test for short listing the candidate or method of selection at graduate level without prescribing any minimum marks, it is possible to construe that such regulation is pursuant to jurisdiction under Entry 25 of List III rather Entry 66 of List I.

Therefore, it is evident that the eligibility for admissions to the BDS Course for the Sessions 2015 may be the qualifying examination but in order to maintain standards the Dental Council has framed regulations where appearance in the Common Entrance Test has been made mandatory for admissions to the course. The State Government could increase the standards but not lower it. Besides, it is to be noticed that in the said case, the Act applicable therein had the assent of the President of India. The contention of the learned Counsel for the appellant that the Common Entrance Test cannot be made the basis for admissions would not be tenable as that is the requirement of the Dental Council of India and it has statutory force and the State Legislation would have give way to it in view of the Supreme Court judgment *Preeti Srivastava (Dr.) v. State of M.P.* (supra) as has been noticed above.

In Medical Council of India v. State of Karnataka, (1998) 6 SCC 131 it was held that the Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is a repugnant to the provisions of the Act even though, the State Acts may be

relatable to Entry 25 or Entry 26 of List III (Concurrent List). Therefore, it is the Central Legislation in matter relating to standards of admission for conducting Dental Courses that would prevail.

In the previous year, this Court in the case of 'Jaspreet Singh Cheema and others v. State of Punjab and others', CWP No. 6549 of 2015, decided on 15.06.2015, considered the case of students seeking admissions to Dental Colleges who were admitted in the BDS Course for the Session 2014-15 only on the basis of marks obtained in the qualifying examination of 10+2 Physics, Chemistry and Biology/Biotechnology (PCB) and whether these could be regularized/recognized in the absence of compliance of mandatory provisions of the prospectus and the 2007 Regulations.

The State had issued a notification dated 07.03.2014 for admission to the MBBS/BDS Courses in Medical and Dental Colleges in the State for the Session 2014-15. The notification provided the criteria for seeking admission to the BDS Course. It also provided a procedure for admission to private institutes and the manner in which the left over seats in the private/minority institutions were to be filled. It also provided that the 'Committee', which was to be constituted as per the norms provided, would fill up the left over seats after centralized counselling. After the process was complete, the Punjab Private Self-Financed Dental and Medical Colleges Association made a representation stating that most of the Punjab students had got admissions in the neighbouring States on the basis of qualifying marks, i.e. 10+2 marks, and if the seats in Dental

Colleges of Punjab remained vacant, it would cause a huge loss to the economy of the State and the Dental Colleges.

The Baba Farid University recommended that the eligibility for admission to the BDS Course may be relaxed. The State issued a corrigendum on 16.07.2014 partially modifying the notification dated 07.03.2014 by adding sub-para (a) below para 2, which provided that after considering all the eligible BDS candidates from the AIPMT-2014 merit-list, if seats in the BDS Course still remained vacant, then the remaining seats would be filled through special test conducted by the Baba Farid University and on the basis of merit of the said test, the admission process should be completed in stipulated period as directed by Hon'ble the Supreme Court.

The special test was conducted by the Baba Farid University to fill up the remaining seats of the BDS Course and the result was declared on 29.08.2014. After considering all the candidates of AIPMT and special test in centralized counselling, 455 seats still remained vacant. The process of filling the said seats was then being carried out on the basis of marks obtained in 10+2 examination.

The State Government addressed a letter dated 22.09.2014 to the Baba Farid University making it clear that counselling admission in MBBS/BDS Courses on the basis of 10+2 numbers (marks) instead of minimum fixed marks in AIPMT may not be accorded recognition and that the counselling on the basis of 10+2 numbers (marks) may kindly be considered as cancelled and in this regard, orders passed by the Court be properly implemented.

Copies of the said letter dated 22.09.2014 was also sent to other Dental Colleges and institutions.

The Government of Punjab through the Director, Department of Medical Education and Research, also issued a public notice in 'The Tribune' dated 28.09.2014 mentioning that various Medical/Dental Colleges were organizing counselling for filling the various vacant seats of MBBS/BDS Courses in the State at college level. In the notification copies issued by these institutions educational qualification for getting admission in MBBS/BDS Courses is shown as based on 10+2 numbers (marks) instead of minimum fixed marks in AIPMT, which, it was mentioned, was in violation of notification issued by State Government. As per the provisions mentioned in the State notification dated 07.03.2014 for recruitment (sic. - admission) to MBBS/BDS Courses, Baba Farid University had organized the concerned counselling. The general public was informed that the State Government did not accord any recognition for the vacancy of MBBS/BDS Courses in which counselling was done on the basis of 10+2 numbers (marks) instead of minimum marks fixed in AIPMT. Admissions by private institutions in the year 2014 based on 10+2 numbers (marks) instead of minimum fixed marks in AIPMT, it was mentioned, would not accord any recognition from the State Government and proceedings for cancelling the certificates would be started.

The petitioners in the said case, however, set up a case that a public notice was published in 'The Tribune' dated 14.09.2014 by their college, i.e. Guru Nanak Dev Dental College,

inviting applications for admission in the BDS Course against vacant seats. The notification *inter alia* provided that seats still remaining vacant would be offered to candidates on the basis of their merit in the qualifying examination, i.e. 10+2 Physics, Chemistry and Biology/Biotechnology (PCB) with minimum 50% marks as per clause (e) of Section 2 of the 2006 Act. The petitioners before this Court were those who had got admission only on the basis of 10+2 marks. They had deposited their requisite fee and were also attending classes.

This Court referred to the 2007 Regulations of the Dental Council relating to 'Selection of Students', as reproduced above, which was brought to the notice of the State Government by the Dental Council on 07.02.2015. There was no doubt that the prospectus had the force of law and the notification dated 07.03.2014 was a part and parcel of the prospectus issued for admissions to the BDS Course for the Session 2014-15. It was also admitted position that the private institutions offered admissions to the petitioners in the said case by way of an advertisement in the newspaper only on the basis of marks obtained in the qualifying examination of 10+2 Physics, Chemistry and Biology/Biotechnology (PCB) through the State vide letter dated 22.09.2014 followed by public notice dated 28.09.2014. The State had not only informed the University but also the private institutions about its decision that admissions given on the basis of marks obtained in the qualifying examination of 10+2 Physics, Chemistry and Biology/Biotechnology (PCB) would not be accorded recognition. It was also

informed in terms of letter dated 01.10.2014, addressed to all the private institutions affiliated with the Baba Farid University, that they should return the admission of students who had been admitted otherwise than the merit of AIPMT-2014 and Special Test conducted by the Baba Farid University. However, the admissions were made by the private institutions on their own on the pretext that the admissions were being made on the basis of marks of qualifying exam of 10+2 (PCB) in the neighbouring States of Haryana, Himachal Pradesh, Uttar Pradesh and also in the State of Tamil Nadu etc., besides, on the ground that the procedure of giving admissions to the BDS course on the basis of the marks obtained in the qualifying exam of 10+2 had been continued from 2008 to 2013 and had also been followed in 2015 by the State of Punjab itself.

It was held by this Court that as a matter of fact, the recognition of a Dental Course is by the Dental Council which had issued the notification dated 25.07.2007, notifying the 2007 Regulations, in which it had been categorically provided that wherever there were more than one University Board/Examining Body conducting the qualifying examination, the competitive examination would be the only mode for making admissions to the BDS Course. Later, the Dental Council vide its letter dated 07.05.2015 had further clarified that the competitive examination was mandatory for admissions to the BDS Course and if it was not strictly followed, then necessary action would be taken under Section 10-B of the Dentists (Amendment) Act, 1993 and Section

16-A of the Dentists Act. The facts, it was held, were sufficient to show that the private institutions, while granting admission to the petitioners, had violated not only the prospectus and the notification dated 07.03.2014 but also the 2007 Regulations.

Reliance was placed on the judgment of the Supreme Court in Priya Gupta v. State of Chhattisgarh and others, (2012) 7 SCC 433, which was held to be applicable and in which it had *inter alia* been provided that the admissions to all government colleges were to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges were to choose their option by 30th April of the relevant year, as to whether they wished to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wished to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April was not subject to change.

It was, therefore, held that it had been provided in no uncertain terms that the admissions to the BDS Course were to be given on the basis of the competitive/entrance test i.e. AIPMT or the State Pre-Medical Test, which was made part of the notification dated 07.03.2014 by way of corrigendum dated 16.07.2014. Accordingly, no merit was found in the writ petitions and all the petitions were dismissed.

It is to be noticed that a similar plea as raised in the present case in respect of Adesh University granting admissions on

the basis of marks obtained in the qualifying examination of 10+2 Physics, Chemistry and Biology/Biotechnology (PCB) was raised and it was held as follows:-

“Insofar as the plea of discrimination raised by the petitioners vis-a-vis the admissions in the Adesh University to the BDS course is concerned, the information supplied by the Adesh University, under the Right to Information Act, 2005, who had otherwise not filed any detailed reply in this case, clearly shows that 43 number of students were admitted in BDS course for the session 2014-15 on the basis of merit of 10+2 (Medical) qualifying examination who did not qualify AIPMET-2014 but appeared in the special test conducted by the respondent no.3-University. In this regard, it is ordered that in case the admissions have been made by the Adesh University of the said 43 number of students only on the basis of the marks obtained in the qualifying exam of 10+2 (PCB) and not on the basis of their merit in the competitive exam of AIPMET-2014 or the Special Test conducted by the respondent no.3-University, the admissions of such students shall also be de-regularized/de-recognized but the petitioner(s) in all these writ petitions cannot take advantage of anything wrong committed by the Adesh University

while giving admission to the students to the BDS course only on the basis of the marks obtained in the qualifying exam of 10+2.”

Therefore, not much reliance can be placed by the appellants on the plea of discrimination which practice and procedure, it is stated, had been followed by Adesh University, Bathinda. A Letters Patent Appeal was filed against the judgment of the learned Single Judge in Jaspreet Singh Cheema’s case (supra). A Letters Patent Bench of this Court in Aditi Sharma and others v. State of Punjab and others, LPA No.919 of 2015, dismissed the same on 02.07.2015. It was *inter alia* held that the admission to the course could only be on the basis of entrance test as per the notification dated 7.3.2014 issued in terms of Section 3 and 4 of the 2006 Act. This was held to be an absolute condition in sub-clause (iii) of Clause 23 of the Notification dated 07.03.2014 as well. It was concluded that no admission by a private institute could be made other than on the basis of common entrance test.

Special Leave to Appeal (C) No.17903 of 2015 against the LPA judgment dated 02.07.2015 was dismissed by Hon’ble the Supreme Court on 08.07.2015.

Therefore, in the present case, it is in the interest of the students themselves that they have not been granted admissions on the basis of marks secured in the qualifying examination of 10+2 Physics, Chemistry and Biology/Biotechnology (PCB), as ultimately their degrees would not be recognized. The corrigendum that was issued by the State of Punjab on 29.09.2015 was in the interest of

the students themselves, as the 2007 Regulations of the Dental Council were to be followed and adhered to.

Another aspect which has been noticed by the learned Single Judge is that a period of more than two months had elapsed since the last date of admissions, i.e. 30.09.2015. The schedule of admission has been laid down in Medical Council of India v. Madhu Singh, (2002) 7 SCC 258, Neelu Arora v. Union of India, (2003) 3 SCC 366, Mridul Dhar v. Union of India (supra) and Medical Council of India v. Naina Verma, (2005) 12 SCC 626. Therefore, no relief could be granted at the stage when the Course was in its mid stream after the last date for admissions had elapsed on 30.09.2015.

For the foregoing reasons, there is no merit in the appeals and the same are accordingly dismissed. There shall, however, be no order as to cost.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

31.01.2017
Ramesh

Note:-

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable: Yes