

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Writ Petition No. 1130 of 2013
With
Civil Application No.10781 of 2014
Civil Application No.12827 of 2014
Civil Application No.8234 of 2017
Civil Application No.2589 of 2018**

* Tejaswini d/o Rajkumar Phad,
Age 19 years,
Occupation: Education,
R/o Sonpeth, Taluka Sonpeth,
District Parbhani. **.. Petitioner.**

Versus

- 1) The State of Maharashtra.
Through its Secretary,
Medical Education and Drugs
Department, Mantralaya,
Mumbai.
- 2) The Pravesh Niyantran Samiti,
305, Government Polytechnic
Building, Kherwadi,
Ali Yawar Jung Marg, Bandra (E)
Mumbai 400 051.
- 3) The Director of Medical Education
And Research, Maharashtra State,
Mumbai.
- 4) The Association of Management of
Unaided Private Medical and
Dental Colleges, Mumbai
Through its Competent Authority
Mezzanine Floor, Shreeji House,
Fort, Mumbai.

- 5) Dr. Ulhas Patil Medical College
And Hospital, Jalgaon,
Through its Dean/Principal
- 6) Sheikh Zaid Khalid Ahmed,
Age 19 years,
Occupation Education.
- 7) Mahesh s/o Uddhav Kale,
Age 22 years,
Occupation: Education.
- 8) Pratiksha D/o Ganpat Tichkule,
Age 20 years,
Occupation: Education.
- 9) Jidnyasa D/o Kamalkishor Sanghavi
Age 19 years,
Occupation: Education.
- 10) Nihal s/o Mohan Padole,
Age 19 years,
Occupation: Education.
- 11) Gargi Eknath Kulkarni,
Age 19 years,
Occupation: Education.
- 12) Hemant s/o Bhagwat Mapari,
Age 20 years,
Occupation: Education.
- 13) Shubhangi D/o Vijay Tekale,
Age 19 years,
Occupation: Education.
- 14) Shreeprasad s/o Fattesingh Chavan,
Age 19 years,
Occupation: Education.
- 15) Ashmira Zainab Mushir Patel,
Age 19 years,
Occupation: Education.

- 16) Akash s/o Shivshankar Puri,
Age 20 years,
Occupation: Education.
- 17) Shraddha d/o Hemraj Lahoti,
Age 19 years,
Occupation: Education.
- 18) Arzoo D/o Prakash Meshram,
Age 20 years,
Occupation: Education.
- 19) Aniket s/o Abhimanyu Ughade,
Age 19 years,
Occupation: Education.
- 20) Abhishek s/o Dipak Chaudhari
Age 19 years,
Occupation: Education.
- 21) Ajinkya s/o Arun Naik,
Age 20 years,
Occupation: Education.

Respondents 6 to 21
through respondent No.5 college.

- 22) Medical Council of India,
Pocket 14, Sector 8,
Dwarka Phase -1 ,
New Delhi - 110 077.
- 23) Maharashtra University of
Health Sciences Nashik
Taluka and District Nashik. .. **Respondents.**

Shri. S.S. Thombre, Advocate, for petitioner.

Shri. Y.G. Gujarati, Assistant Government Pleader, for
respondent Nos.1 and 3.

Shri. M.D. Narwadkar, Advocate, for respondent No.2.

Shri. V.J. Dixit, Senior Counsel with Shri. L.V. Sangit,
Advocate for respondent No.5.

Shri. V.V. Deshmukh, Advocate for respondent Nos.6 to 21.

Shri. S.K. Kadam, Advocate, for respondent No.22.

Shri. K.M. Suryawanshi, Advocate, for respondent No.23.

With

Writ Petition No. 3610 of 2013

- 1) Godavari Foundation's
Dr. Ulhas Patil Medical College
& Hospital, Jalgaon Khurd,
Jalgaon, Through its Dean
Dr. Narayan Sadashiv Arvikar,
Age 58 years,
Occupation : Dean,
R/o As above.
- 2) Shaikh Zaid Khalid Ahmed,
Age 19 years,
Occupation: Education.
- 3) Manesh Udhav Kale,
Age 22 years,
Occupation: Education.
- 4) Pratiksha d/o Ganpat Tichkule,
Age 20 years,
Occupation: Education.
- 5) Jidnyasa d/o Kamalkishor Sanghavi,
Age 19 years,
Occupation: Education.
- 6) Nihal s/o Mohan Padole,
Age 19 years,
Occupation: Education.

- 7) Gargi Eknath Kulkarni,
Age 19 years,
Occupation: Education.
- 8) Hemant Bhagwat Mapari,
Age 20 years,
Occupation: Education.
- 9) Shubhangi d/o Vijay Tekale,
Age 19 years,
Occupation: Education.
- 10) Shriprasad s/o Fattesingh Chavan,
Age 19 years,
Occupation: Education.
- 11) Ashmira Zainab Mushir Patel,
Age 19 years,
Occupation: Education.
- 12) Akash Shivshankar Puri,
Age 20 years,
Occupation: Education.
- 13) Shradha Hemraj Lahoti,
Age 19 years,
Occupation: Education.
- 14) Arzoo d/o. Prakash Meshram,
Age 20 years,
Occupation: Education.
- 15) Aniket Abhimanyu Ughade,
Age 19 years,
Occupation: Education.
- 16) Abhishek Deepak Chaudhari,
Age 19 years,
Occupation: Education.
- 17) Ajinkya Arun Naik,
Age 20 years,
Occupation: Education.

- 18) Pranoti Popatrao Shinde,
Age 19 years,
Occupation: Education.
 - 19) Mahesh Ramesh Patil
Age 19 years,
Occupation: Education.
 - 20) Gaurav Dilip Sakhare,
Age 19 years,
Occupation: Education.
All R/o Godavari Foundation's
Dr. Ulhas Patil Medical College
& Hospital, Jalgaon Khurd,
Jalgaon.
- ... Petitioners.**

Versus

- 1) The State of Maharashtra
Through the Principal Secretary
Higher and Technical Education,
Government of Maharashtra
Mantralaya, Mumbai,
 - 2) Pravesh Niyantran Samiti,
Government of Maharashtra
Through its Secretary,
305, Government Polytechnic
Building, 49, Kherwadi,
Ali Yawar Jung Marg,
Bandra (East), Mumbai - 51.
 - 3) Maharashtra University of Health
Sciences, through its
Registrar having office at
Vani Road, Masrul,
Nashik 422 004.
- ... Respondents.**

Shri. V.J. Dixit, Senior Counsel with Shri. L.V. Sangit,
Advocate for the petitioners.

Shri. Y.G. Gujarati, Assistant Government Pleader for respondent No.1.

Shri. M.D. Narwadkar, Advocate, for respondent No.2.

Shri. K.M. Suryawanshi, Advocate, for respondent No.3.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Judgment reserved on : 23 February 2018

Judgment pronounced on : 27 March 2018

JUDGMENT (Per T.V. Nalawade, J.) :

1) Rule in both the petitions. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2) The petitioner from the first proceeding had appeared for Asso-CET 2012 for seeking admission in private medical college from Maharashtra State for MBBS course. She secured 153 marks out of 200 marks and she was from open category. She could not get admission in "Common Admission Process" (CAP) round. After CAP round, seats remained vacant in almost all medical colleges running MBBS course. There were vacant seats in the college run by respondent management also. First

time in the letter dated 15-9-2012 *Pravesh Niyamtran Samiti* (in short, PNS) gave permission to private colleges to fill vacant seats as per the time schedule given by PNS with the letter. It is the case of the petitioner that the said procedure was not followed by respondent management and before the last date fixed for completion of the process and publishing the list, the respondent management completed its process and published the list on 20-9-2012. It is the case of the petitioner that as per the time schedule prepared by PNS, the dates 22 and 23 September 2012 were fixed for counselling round and only after that the list could have been prepared and further the list ought to have been sent for verification to PNS by respondent management and only after giving of the approval to the list by PNS the respondent management could have given admissions to those students. It is contended that with ulterior motive the said procedure was not followed by respondent management and the petitioner was deprived of her right to get admission in medical course. It is her case that all the students who were admitted in this round had secured less marks in the test than the petitioner.

3) It is the case of the petitioner that she had given application for getting admission in the college of respondent management after CAP round and her name was shown as selected candidate but before 22 and 23 September, 2012 the management collected fees from other students and showed that it had completed the process. The petitioner student has claimed following reliefs in her petition.

"B. By issuing the writ of Certiorari or any other writ or order in the like nature, direct the State Government to cancel all the admission process conducted as per the order dated 15.9.2012 issued by the Pravesh Niyantran Samiti by which the permission was given to the private colleges / institutions to admit the students as per their own and to quash and set aside the same;

B-1. By issuing writ of mandamus or any other writ, order or directions in the like nature, this Hon'ble Court may be pleased to direct the respondents - State Government to pay the compensation of Rs.20 lacs to the petitioner and for that purpose issue necessary order;

C. By issuing writ of mandamus or any other writ, order or directions in the like nature, direct the respondent nos.1 and 2 to issue fresh admission process by way of Common Admission Process (CAP) thereby cancelling the entire admission process completed as per the letter dated 15.09.2012 in the State of Maharashtra and for that purpose issue necessary orders.

D. By issuing the writ of Certiorari or any other writ or order in the like nature, the admission of the respondent nos.6 to 21 may kindly be cancelled and

the petitioner be given admission in the respondent no.5 college and for that purpose issue necessary orders;

E. Pending the hearing and final disposal of this Writ Petition, the respondent no.1 may kindly be directed not to approve the admissions given by the respondent no.5 college as per the schedule of admissions dated 15-09-2012 and for that purpose issue necessary orders;

F. Pending hearing and final disposal of this Writ Petition, the respondent no.1 - State of Maharashtra may kindly be directed not to approve the 19 admissions given by the respondent no.5 college and for that purpose issue necessary orders;

G. Pending hearing and final disposal of this Writ Petition, the respondent nos.1 and 2 may kindly be directed that the petitioner be given admission in the respondent no.5 college as per the merit and for that purpose issue necessary orders."

4) In reply affidavit the respondent management has contended that the time schedule was supplied by PNS on 14-8-2012 and that time schedule was followed by the respondent management. According to the respondent management the time schedule which was given by PNS was as follows :

Sr. No.	Programme	Schedule
1	Individual Colleges to start granting provisional admission(s) against the vacant seats strictly in accordance with inter-se-merit from amongst the students applying to each of the Colleges directly.	12/09/12

2	Published the details notification along with (i) category-wise vacancy position and (ii) specimen format of Application Form in widely circulated local as well as State Level News Papers, Notice Board and website specifying the (a) date for submitting the Application to the respective Colleges for seeking admission, (b) the dates for declaring the merit list and (c) the dates for reporting to the College.	13.09.2012
3	Last date for Applications through the Registered Post.	17.09.2012
4	Display the merit list on the Notice Boards and website.	18.09.2012
5	Personal counselling and/or display the selection list on the Notice Board and website.	19 or 20.09.2012
6	Individual Colleges to submit the list of such provisional admissions to the Samiti.	20.09.2012
7	Verification process to be conducted by the Committee for admissions.	28.09.2012
8	Last date for grant of admission at College level in case of only M.B.B.S. and B.D.S. Course.	30.09.2012

5) It is the contention of the respondent management that the aforesaid time schedule was followed for giving admissions by the management, and the students who were present on 20-9-2012 were admitted by collecting their fees. It is the case of the respondent management that the petitioner was selected but she did not remain present on 20-9-2012 and so she

was not admitted in the course.

6) The respondent management has contended that the new time schedule prepared by PNS was received by respondent management on the evening of 15-9-2012 and the management had informed on 17-9-2012 that the respondent management had already started the process as per old schedule. It is the case of the respondent management that to this correspondence no response was given by PNS. It is the case of the respondent management that even after aforesaid round which was permitted by PNS, some seats became vacant due to cancellation of admission by few students and those seats which include open vacant seats were advertised by respondent management in news paper on 26-9-2012. It is contended that it was possible for the petitioner student to come and take admission by giving response to the said advertisement but she did not turn up and so she is not entitled to any relief.

7) Writ Petition No.3610/2013 is filed by the same management to challenge the decision of PNS dated 11-1-

2013. In the meeting of that date resolution was passed by PNS and recommendation was made to the State Government to see that the admissions given by the respondent management from this proceeding after CAP rounds are cancelled. In this writ petition the management has claimed following reliefs.

“(A) For a writ of certiorari, order or direction in the nature of certiorari, calling for the record and proceedings of the minutes of meeting of the Pravesh Niyran Samiti (Medical Education) held under the Chairmanship of Justice D.K. Deshmukh (Retd.) on Friday 11.01.2013 at Mumbai be called for and after examining the legality, validity and propriety thereof, the recommendation of respondent No.2 herein more particularly in para (K) of the recommendation dated 11.01.2013 (Exhibit-G) herewith, be quashed and set aside, permitting the petitioner Nos.2 to 20 to continue their studies as eligible student;

(B) For the writ of mandamus, order or direction in the nature of mandamus, directing the respondent No.3 Maharashtra University of Health Sciences to hold the petitioner Nos.2 to 20 herein as eligible student admitted in Health Science Courses 2012-13 MBBS by petitioner No.1 College and grant eligibility by permitting them to appear for examination and declaring their result;

(C) Pending hearing and final disposal of present Writ Petition, the execution, implementation and operation of the recommendation of minutes of meeting of the Pravesh Niyran Samiti (Medical Education) held under the Chairmanship of Justice D.K. Deshmukh (Retd.) on Friday 11.01.2013 at Mumbai, be stayed;

(D) Pending hearing and final disposal of present Writ Petition, the respondents be directed not to take any coercive action against the petitioners in view of recommendation of minutes of meeting of the Pravesh Niyran Samiti (Medical Education) held under the

Chairmanship of Justice D.K. Deshmukh (Retd.) on Friday 11-01-2013 at Mumbai;

(E) Pending hearing and final disposal of the present Writ Petition, appropriate directions be issued against respondent No.3 University to accept the examination forms of the petitioner No.2 to 20 herein by permitting them to appear for First Year MBBS Examination to be held in the month of May, 2013 and declare their result of the examination by continuing their studies.

8) The submissions made and the record show that after filing of Writ Petition No.3610/2013 the management filed another writ petition bearing Writ Petition No.2695/2016 but at Principal Seat of this Court. In that petition the management has claimed relief to set aside the decision taken by PNS on 15-10-2015 to cancel the admissions given to the students by it after CAP round. It can be said that in the present proceeding viz. Writ Petition No.3610/2013 the said relief could have been claimed but the management filed separate proceeding at Principal Seat. It was submitted that in the said proceeding at Principal Seat interim relief was granted by the Court due to which the students who were admitted after CAP round were allowed to appear for examination. It can be said that the decision of the present proceeding viz. Writ Petition No.3610/2013 will decide everything in

view of the reliefs claimed in this proceeding which are already quoted. It can be said that by filing Writ Petition No.2695/2016 at Principal Seat petitioner management wanted to create complication and that is why such separate proceeding was filed at Principal Seat. Only after insistence by this Court the present petition was argued.

9) In view of the nature of the contents of the petition and the grievances, following points need to be decided in the two petitions. The points along with findings and the reasoning for the same are as follows :

No.	Point	Finding
I	Whether after CAP round it was open to the management to follow its own time schedule to fill the vacant seats ?	No
II	Whether the petitioner management had power to change the time schedule which was published by PNS on 15-9-2012 so far as the process after CAP round is concerned ?	No
III	Whether it needs to be presumed that the change in time schedule was communicated to the management ?	Yes
IV	Whether it was practicable for the management to follow the change in time schedule made by PNS for filling vacant seats after CAP round ?	Yes

V	Whether it was binding on the management to follow the changed time schedule ?	Yes
VI	Whether due to not following the changed time schedule the admissions given by the management could not have been approved by PNS ?	Yes
VII	Whether the students were required to follow the time schedule given by PNS only ?	Yes
VIII	Whether this Court has the power to regularise the admissions given by the management in breach of the aforesaid time schedule after CAP rounds ?	No
IX	Whether the act of the management to give admission after CAP round in the present matter was in breach of the time schedule fixed by PNS and it amounts to contempt of the directions given by the Supreme Court ?	Yes
X	Whether the petitioner-student of Writ Petition No.1130/2013 is entitled to get admission now on the ground that she was illegally prevented by the management to take admission in the course ?	No
XI	Whether other relief like compensation needs to be given to the petitioner student ?	Yes.

10) The Medical Council of India and PNS have supported the petitioner student in Writ Petition No.1130/2013 and they have contended that the procedure for filling vacancies after CAP round was not

followed by the management in the present matter and so necessary orders need to be passed by this Court. The State Government has contended in the reply affidavit that after coming to the conclusion that the procedure given by PNS was not followed, it was open for PNS to pass further orders like cancellation of admissions illegally given by the management and there was no necessity to refer the matter to the Government. Though this submission is there for the State, the submissions made show that subsequently PNS took decision by passing resolution to cancel the admissions given by the present management after CAP round. The students illegally admitted are made party respondents in the first writ petition. The students admitted after CAP round and the management have together filed Writ Petition No.3610/2013. This circumstance needs to be kept in mind.

11) It is not disputed that PNS is constituted by the Government of Maharashtra in accordance with the directions given by the Supreme Court in the landmark case reported as **T.M.A. Pai Foundation and Others v.**

State of Karnataka and Others, (2002) 8 SCC 481 and also the specific direction given by this Court in Writ Petition No.3061/2003. Government Resolution dated 24-9-2003 was issued for constitution of PNS and PNS is working in the State to comply the directions given by the Supreme Court. The Hon'ble Apex Court has given the time schedule and its details could be worked out by PNS and so that procedure was binding on all private medical colleges of the State. This circumstance needs to be kept in mind while appreciating the rival contentions.

12) The Hon'ble Apex Court has settled the law for taking decision on all the aforesaid points framed for consideration by this Court. The law laid down by the Apex Court can be found in the cases reported as :-

- 1. T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481.**
- 2. Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697.**
- 3. State of Kerala v. T.P. Roshana (1981) 4 SCC 512.** (This case needs to be read with Rule 5 of the Regulations on Graduate Medical Education, 1997 framed by MCI).

4. **Ravindra Kumar Rai vs. State of Maharashtra (1998) 3 SCC 183.**
5. **Rajan Purohit v. Rajasthan University of Health Sciences, (2012) 10 SCC 770.**
6. **Mridul Dhar v. Union of India (2005) 2 SCC 65.**
7. **Priya Gupta v. State of Chhattisgarh (2012) 7 SCC 433; and,**
8. **Faiza Choudhary v. State of Jammu & Kashmir (2012) 10 SCC 149.**

13) In the admission process for the academic year 2012-13 irregularities of many kinds were found to be committed by the managements of the private medical colleges after CAP round. Many complaints were received and many writ petitions were also filed by the affected students in this State. One of such proceedings was taken up to Supreme court. The decision of the Supreme Court in that matter is reported as **(2016) 1 SCC 666 (Krina Ajay Shah v. The Secretary, Association of Management of Unaided Private Medical & Dental Colleges, Maharashtra)**. This proceeding was filed in respect of the same year by some affected students. The Bombay High Court had refused to give relief like giving directions to give admissions to those students as much time had

passed after the last date fixed by the Apex Court for giving admissions. The other relief of cancellation of admissions of the students illegally admitted claimed by the petitioners was not pressed though the students admitted were having less marks. Thus before the Apex Court only relief which was claimed by the students for giving directions in their favour to give them admission was for consideration. The Supreme Court held that due to long period of time such relief cannot be granted. The Supreme Court held that the students were entitled to public law damages due to the loss, injury caused to them. Due to inaction of the State authorities of not taking action against the institution the Supreme Court directed the State Government to pay Rs. 20 lakh to each of those petitioners as public law damages. Further direction was given by the Apex Court to the State Government to take appropriate action against its officers who were responsible for inaction.

14) For the reasons given by Apex Court in Krina Shah's case (cited supra) and also due to the decision of the Apex Court in the case of Faiza Choudhary (cited

supra) there is no question of giving direction in favour of the petitioner-student from Writ Petition No.1130/2013 to give her admission. Further the proceeding was filed in the year 2013 and admittedly the petitioner student got admission in Dental Course and she is on the verge of completion of this course. Thus due to the reason that no student can be admitted after 30 September as per the direction given by the Apex Court, no such relief can be granted in favour of the petitioner student in Writ Petition No.1130 of 2013.

15) In the present matter the main point which needs to be considered is whether the procedure which was followed by the management to fill the vacant seats after CAP round can be approved. It needs to be decided as to whether the said process was legal or illegal and whether this Court has the power to regularise the things. In the reply affidavit filed by the management it is admitted that on 15-9-2012 the change in time schedule was informed by PNS. The change in time schedule was as follows :

"To

Competent Authority,
Association of Management of Unaided
Private Medical & Dental Colleges,
Mezzanine Floor, Shreeji House,
75, Mint Road, Fort,
Mumbai - 400 001.

Subject: - Scheduled of Admission process for first year
Heath Science courses admission process.
Academic Year 2012-13.

Ref: 1) Office note dated 10th September 2012.

2) Your office letter dated 7th September 2012.

With reference to above, Samiti directs you and your concerned Medical and Dental Colleges to follow the following schedule strictly. The seats remaining unfilled shall be filled in by concerned Colleges/Institutes at their own level strictly in accordance with inter-se merit of the applicants and in a fair and transparent manner, the details of which are as under :

Sr. No.	Programme	Schedule
1	Individual Colleges to start granting provisional admission(s) against the vacant seats strictly in accordance with inter-se-merit from amongst the students applying to each of the Colleges directly.	15 th September 2012
2	Published the details notification along with (i) category-wise vacancy position and (ii) specimen format of Application Form in widely circulated local as well as State Level News Papers, Notice Board and website specifying the (a) date for submitting the Application to the respective Colleges for seeking admission, (b)	16 th September 2012

	the dates for declaring the merit list and (c) the dates for reporting to the College.	
3	Last date for Applications through the Registered Post.	20 th September 2012
4	Display the merit list on the Notice Boards and website.	21 st September 2012
5	Personal counselling and/or display the selection list on the Notice Board and website.	22 nd or 23 rd September 2012
6	Individual Colleges to submit the list of such provisional admissions to the Samiti.	24 th September 2012
7	Verification process to be conducted by the Committee for admissions.	28 th September 2012
8	Last date for grant of admission at College level in case of only M.B.B.S. and B.D.S. Course.	30 th September 2012

Samiti further directs the Association and their member colleges to publish said schedule in their web side and notice board also.

Samiti decides that those who failed to submit their admissions details to Samiti, admission process of the said Colleges/Institutes will not be regularized by Samiti for the academic Year 2012-13, kindly note.

By order of the Hon'ble Chairman, Pravesh Niyantran Samiti, Maharashtra State.

Sd/-
(K.V. Sane)
Section Officer
Government of Maharashtra.

Copy to

1) Dean/Principal, All Private and Unaided Medical and Dental Colleges/Institutes in the State of Maharashtra through website for necessary action at their end."

16) The time schedule which was informed in past by PNS on 14-8-2012 is already quoted by this Court while quoting the contentions of the management. The new time schedule and the procedure prescribed by PNS shows that time schedule was informed not only to association of the private managements but also to individual managements. It was sent on email and it was the responsibility of the Association and also every individual management to publish this time schedule on their own website. Admittedly present management did not do it. It needs to be mentioned here that the association of the managements and the individual managements are bound to follow only the time schedule fixed by PNS which is as per directions of Supreme Court. Thus, it cannot be said that it was not practicable for the petitioner-management to follow the new time schedule. Further, all other managements of this State except the present management followed the new time schedule given by PNS.

17) In the present matter it is not disputed that the petitioner-student from Writ Petition No.1130/2013 had

applied to the management for getting admission after CAP round and the application was received by the management on 18-9-2012. Copy of it is produced. It is also not disputed that name of the petitioner student was shown in the list prepared by the management which was displayed in the premises of the college of the candidates selected on merit basis after CAP round.

18) As per the new time schedule given by PNS admittedly admissions were not given by the petitioner management to as many as 8 other students and they gave complaint to the Collector on 22-9-2012 when they found that the admission process after CAP round was probably completed by the management already. They were not allowed even to enter the premises of the college. Thus on 22-9-2012 many students whose names appeared in the select list published by the management had come to the college premises as per the time schedule given by PNS but they were not allowed even to enter the premises by the petitioner management. On this, learned Senior counsel for the management submitted that complaint given by the students does not

bear signature of the petitioner-student and so it cannot be said that she had remained present for paying fees and taking admission on 22-9-2012. This submission is not at all acceptable. As per the aforesaid time schedule given by PNS, there was date fixed like 22 and 23 September 2012 for counselling and if the admission process was closed on previous date, the students would not have waited for action by PNS. In ordinary course also every students would have exercised other options. The petitioner-student also exercised other option. She claimed admission to B.D.S. course and took admission for the said course. This circumstance cannot come in the way of the petitioner and it cannot be said that she has no locus to file present proceeding. It also needs to be kept in mind that in the eyes of every student and their parents MBBS is better course than BDS course. Students who complete MBBS course have better prospects of further education and also of employment.

19) It is not disputed that in the list which was displayed by the management as per merit after CAP round, there were many students who were more

meritorious than the respondents of Writ Petition No.1130/2013. None of them got admission and all the respondent-students were having less marks than those students. The list displayed by the management shows that one candidate from open category who had secured 105 marks was given admission. The students admitted had secured marks between 143 and 105. To as many as 15 students, admission was given from NRI category. From that category the last student had secured 101 marks. The students who could not get admission had secured more marks than all the illegally admitted students.

20) Due to aforesaid circumstances, PNS had received complaint against the present management and there were complaints against other managements. In the meeting dated 11-1-2013 PNS considered the minutes of the previous meeting. In the previous meeting the enquiry report prepared by the inquiry officer was considered by PNS. Copy of the report was supplied to each management. PNS considered the allegations made against each management separately. The inquiry report

was accepted. The previous resolution dated 4-1-2013 was also confirmed by PNS. Replies were given by the management in respect of inquiry report and those replies were considered in the meeting dated 11-1-2013. So far as the petitioner management is concerned, the resolution can be found at Item "K" of internal page 19 of the said resolution and that is as under.

"K) Ulhas Patil Medical College, Jalgaon.

1. Samiti had received complaints from students/parents with respect to the admissions in Private Unaided Institutions after CAP rounds in Academic Year 2012-13. Medical Education and Drugs Department of Government of Maharashtra vide its G.R. No. MED 1012/CR 309/Edu-2, dated 29th November 2012 appointed the Enquiry Committees in furtherance of the decision of Samiti dated 8/11/2012 (at Item No.5[a] & 5[b]).

Said committees were to enquire in to following aspects:

- 1) To consider all complaints in respect of admissions in Private Unaided Institutions (Medical and Dental) for the Academic Year 2012-13.
- 2) To enquire into whether adequate and proper publicity was given by the Institutions for admission after CAP round.
- 3) Whether adequate opportunity was given to students desirous of seeking admission.
- 4) Whether Samiti schedule was followed.
- 5) Whether vacancies were filled in considering merit of student.

6) Whether reservation rules were followed.

7) Whether guidelines per Government resolution No. WPM 1012/Pr. Kra.165/12/Edu-2, dated 29/05/2012 along with the corrigenda dated 5/6/2012 were followed by Institutions.

21) The submissions and the record show that it is the main contention of the petitioner management that the time schedule prepared by PNS in the past which was communicated on 14-8-2012 was adhered to and on that basis the admissions were given. This contention was considered by PNS and decision was taken which was as under :

"4. Contentions of the College/Institute are not acceptable for the following reasons:-

Contention that the schedule of Samiti dated 14/08/2012 was followed is not acceptable, since it remains the fact that the College did not follow the subsequent schedule. Subsequent Schedule was approved by the Samiti in a meeting of 28th September 2012. The schedule was subsequent and thus a revised one. The said subsequent schedule was followed by other colleges also. College did not follow the said schedule and resultantly did not follow the subsequent procedures as per the said schedule. This resulted in desiring students being denied the opportunity of seeking admissions leave aside the non meritorious students being admitted in the College.

Samiti therefore confirms the findings of Enquiry Committee as under :

a) PNS Schedule was not followed.

The admission process was thus not fair, transparent & merit based. Samiti therefore disapproves all the admissions i.e. 19 done by the College/Institute after the last "Common Admission Process" (CAP) round of Asso-CET-2012 for the Academic Year 2012-13. Samiti recommends to Government of Maharashtra to direct the said College/Institute to cancel the admission after last CAP round of Asso-CET-2012.

5. Considering the large number of resultant vacancies, Samiti decided to suggest Government of Maharashtra to consider moving the Hon'ble Supreme Court of India, New Delhi for permission to fill in the resultant vacancies, extension of cut-off date and also praying their in that all admission even after CAP rounds be brought under Common Admission Process" only."

22) Though in the aforesaid report there is mention of date of approval of PNS of the subsequent schedule as 28-9-2012, admittedly the new time schedule was received by the petitioner management on 15-9-2012. It is already observed that all other managements from the State had followed the new time schedule and it is only the present management which did not follow the time schedule. In para 5 of the reply of the petitioner management the communication is admitted and it is as under :

"5. I say that, in the meanwhile we received the revised schedule for admission of vacant seat by Pravesh Niyantran Samiti in the evening of 15.09.2012 and on 16.09.2012 being Sunday, we informed

respondent no.2 on 17.09.2012 that we have already initiated the process of filling the vacant seats, round on 14.09.2012 and informed them of the schedule adopted, as directed by them in their meeting dated 14.08.2012. Thereafter no instructions received to us from respondent no.2 regarding our process. I say that, we have prepared the Schedule as per instruction of respondent no.2, who had taken the guidelines as per the Judgment and order of the Hon'ble High Court in Review Petition No.120/2006 and Writ Petition No.7799/2010 already approved this schedule. .."

23) The aforesaid circumstances show that petitioner management refused to follow the time schedule prepared by PNS for giving admission after CAP round. It followed its own schedule and it cannot be said the previous schedule of PNS was followed. It is already observed that it was practicable for the petitioner management to follow the schedule as before publishing the list and before actually giving admission by accepting fees, the new time schedule was received by the petitioner management. As per the authority vested in PNS and as the same time schedule was there for all the managements it was not binding on PNS to respond to each and every such communication made by the management. The management was bound to follow the new time schedule and for that there were reasons. When other managements were following the time schedule and

Association had accepted it, the petitioner management could not have claimed special treatment. Thus, we need to read between the lines and it needs to be inferred that a *modus operandi* was adopted by the petitioner management and by using that *modus operandi*, the petitioner management had given admissions to less meritorious students. It is already observed that all the students who were admitted after CAP round were less meritorious than the petitioner and also other students who were entitled to get admissions as per the list published by the management on 19-9-2012. The petitioner management committed breach of the time schedule prepared by PNS when it was bound to follow it. The students were expected to follow the time schedule prepared by PNS and not by present management. Only the time schedule prepared by PNS could have been published by the management.

24) Learned Senior Counsel for the management relied on one more circumstance. Learned Senior Counsel submitted that the management had advertised 4 vacant open seats in news paper dated 26-9-2012 and the

students were expected to take admission. Learned Senior Counsel submitted that the present petitioner student could have taken admission by giving response to said advertisement. It is already observed that the students were following the time schedule fixed by PNS for taking admission after CAP round. It can be said from the advertisement that the management had taken care to see that the advertisement is not noticed by anybody. Further, there was no such power to the management to publish such advertisement and to create one more time schedule for giving admission. When there was no such time schedule of PNS, ordinarily the petitioner-student could not have been expected to give response to the advertisement published on 26-9-2012. It can be said that the management did everything in flagrant violation of the procedure given by PNS and it used peculiar modus operandi to create complications and everything was done to make money for profiteering.

25) In the case of Priya Gupta (cited supra) the Apex Court has laid down that the time schedule prepared as per the direction of the Supreme Court needs to be

strictly followed as the time schedule has the force of law in as much as they form part of the judgment of the Apex Court. In the present matter also it needs to be presumed that the time schedule prepared by PNS for filling the vacant seats after CAP rounds, was as per the direction of the Apex Court as those seats were to be filled before 30 September. Thus the time schedule prepared by PNS was required to be followed by the present management. The time schedule cannot be modulated to suit the convenience of some economic or other interests of any institution and if there is a breach of it, the breach amounts to contempt of the Supreme Court as observed by the Apex Court in the case of Priya Gupta. The Apex Court has further laid down that for such breaches action can be taken by High Court.

26) If the methodology adopted and the manner in which the admissions are given in the present matter is considered that shows that the procedure adopted by the management after CAP rounds was illegal. Inference is easy that such modus operandi was used with the object to give admission to less meritorious candidates and

ultimate aim was of profiteering. In such case, the Court can draw further inference that the students, who got admission due to aforesaid procedure are benefited due to illegality and they are also not innocent. Such observation are also made by the Apex Court in the case of Priya Gupta. Due to such admissions candidates of higher merit have been denied admission in medical course.

27) In the case of Priya Gupta the Apex court used the power given under Article 142 of the Constitution of India and directed the petitioners students of that case to pay Rs. 5 lakh to Government Medical College and allowed them to complete the course. That power was exercised by the Apex Court but such power is not there with this Court. The law laid down by the Apex Court in the aforesaid case by the Apex Court shows that the admissions made without following the procedure are illegal and they cannot be regularized. The Regulations framed by the Medical Council of India and the directions given by the Apex Court in the aforesaid reported cases show that admission in this courses can be solely on merit basis. In the case of Islamic Academy (cited supra) the

Apex Court has considered the other consequences when merit is not followed. It is observed that only by following the merit profiteering / capitation fees can be prevented. In this case the Apex Court has laid down that if any admission is given de-hors merit, even penalty can be imposed on that institution and steps like withdrawal of recognition and affiliation can also be taken. In the present matter also there was flagrant violation of the procedure given by the Apex Court and the object behind it was of profiteering. This Court has no power to regularize these things and for aforesaid reasons, the relief claimed in the petition file by the management cannot be granted.

28) It appears that due to interim relief granted by the Principal seat the student who are illegally admitted by the petitioner management could appear for examination. That interim relief cannot be a ground for regularization. In Civil Appeal No.4305-06/2011 (Abhyudya Sanstha vs. Union of India and others) decided on 12-5-2011 [reported as **(2011) 6 SCC 145**] the Apex Court has laid down that if interim relief is granted by the

Court and due to that students are allowed to appear for examination of a course and if ultimately it is found that the admission could not have been given, regularization of such student by Court on the basis of interim orders is not possible. In that case the Apex Court refused to regularize those admissions. Though the facts were little bit different but this Court is expected to follow the observation in respect of the effect of interim orders made by this Court. Thus only due to circumstance like passing some interim orders at the Principal Seat in favour of the students illegally admitted, it is not possible to regularize their admissions.

29) It is submitted for the State Government that PNS itself has the power to cancel admissions. accordingly, PNS did cancel the admissions and that decision is challenge by filing separate proceeding at Principal Seat by management though in Writ Petition No.3610/2013 itself such relief could have been claimed. Thus decision of PNS cannot be interfered with for the reasons already given and the reliefs claimed in Writ Petition No.3610/2013 cannot be granted.

30) In the present matters, learned counsels for the students are heard. The rights of such students are also discussed by the Apex Court in *Priya Gupta's* case. Necessary observations with regard to their involvement in the matter of illegality are already made. Only due to change of date which was inconsistent with the time schedule prepared by PNS, respondents from Writ Petition No.1130/2013 for whom the relief is claimed in Writ Petition No.3610/2013, got admission. To such students, directly or indirectly no relief can be given by this Court.

31) In the case of *Krina Ajay Shah* (cited supra) in the name of public law damages an amount of Rs.20 lakh was given by the Supreme Court to similar aspirants. In that case direction was given to the State to make payment of that compensation. In the present matter due to peculiar modus operandi used by the management and as there is more material against the management, and students illegally admitted this Court holds that the management needs to be made to pay Rs.20 lakh to the petitioner-student of Writ Petition No.1130/2013. It needs

to be kept in mind that in *Krina Ajah Shah* case the relief of cancellation of admission was not pressed but the Apex Court has given direction to see that action is taken against the officers for non compliance of the direction of PNS. Now PNS has taken decision of cancellation of those admissions. To create fear in the mind of persons indulging in such illegal activities and that too by flagrant violations of the directions given by the Apex Court, this Court holds that the action mentioned by the Apex Court in Priya Gupta's case and Islamic Academy Case cited supra needs to be taken against the management of the present matter. Contempt proceedings need to be started against them by this Court and further action needs to be taken by the authorities like withdrawal of recognition and affiliation. In the result, all the points are answered accordingly and following order is made.

32) Writ Petition No.1130/2013 is partly allowed.

(a) Respondent management is directed to pay an amount of Rs.20 lakh (Rupees Twenty Lakhs Only) as compensation to the petitioner. The amount needs to be paid within 45 days from the date of the order.

(b) *Pravesh Niyantran Samiti* has already taken decision of cancellation of admission of respondents students of Writ Petition No.1130/2013 and so no separate relief in that regard needs to be given.

(c) Writ Petition No.3610/2013 stands dismissed. Rule stands discharged in that matter.

(d) Respondent State and other authorities are expected to take steps for withdrawal of recognition and affiliation of respondent-management from Writ Petition No.1130 of 2013 and for that copies of this decision are to be sent to the State Government and other authorities including the University.

(e) Registrar (Judicial) of this Court is to collect names of persons involved in the management, persons who are responsible for conducting the business of the institution. Names are to be supplied by Dr. Narayan Arvikar who has filed reply affidavit in the matter for the institution within 15 days from today. This information can be supplied by petitioner of Writ Petition No.1130/2013 also.

(f) Registrar (Judicial) of this Court is to see that after receipt of the names of the persons who are responsible for conducting the business of the management, matter is prepared for *suo moto* contempt proceeding. Rule is made absolute in the aforesaid terms in Writ Petition No.1130/2013.

(g) All pending civil applications stand disposed of.

33) After declaring the decision, the learned counsel for the management requested for stay to the present decision as he wants to challenge the decision of this Court. Other side has strong objection to it. Time of 45 days is given and for that period, the present decision is not to be executed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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