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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 7377 OF 2014**

P.A. Inamdar & ors. .. Petitioners

Vs.

State of Maharashtra & ors. .. Respondents

**WITH**

**WRIT PETITION NO. 11638 OF 2018**

Arwa Sutarwala .. Petitioner

Vs.

State of Maharashtra & ors. .. Respondents

**WITH**

**WRIT PETITION NO. 10740 OF 2018**

Inshiya Al-azhar Contractor & ors. .. Petitioners

Vs.

State of Maharashtra & ors. .. Respondents

.....

Mr. S.R. Ganbavale I/by Mr. S.N. Biradar for the petitioners in WP/7377/2014.

Mr. A.I. Patel, Addl. G.P. for respondent Nos.1 and 2 in WP/7377/2014 and WP/10740/2018.

Mr. S.S. Patwardhan for respondent No.3 in WP/7377/2014.

Mr. R.V. Govilkar with Ms. Shaba N. Khan for respondent No.4 in WP/7377/2014.

Mr. Cyrus Ardeshiv with Mr. Mahesh Menon I/by Mahesh Menon & Co. for the petitioners in WP/11638/2018 and in WP/10740/2018.

Mr. S.B. Kalel, AGP for respondent Nos. 1 and 2 in WP/11638/2018.

Mr. R.V. Govilkar with Ms. Shaba N. Khan for respondent No. 4 in WP/11638/2018 and WP/10740/2018.

Mr. S.R. Ganbavale for respondent Nos. 5 and 7 in WP/11638/2018 and WP/10740/2018.

Mr. S.S. Patwardhan with Ms. Sukhman Rait for respondent No.3 in WP/10740/2018.

**CORAM : B.R.GAVAI &  
M.S. KARNIK, JJ.**

**DATE : 11<sup>th</sup> OCTOBER, 2018**

**JUDGMENT (PER M.S.KARNIK, J.) :-**

Rule. Rule is made returnable forthwith.

2. Heard by consent of the parties.

3. The petitioners by this petition filed under Article 226 of the Constitution of India seek to challenge an order dated 20/6/2014 passed by the respondent No.3 – Pravesh Niyantran Samiti thereby not granting approval to the admissions done by the petitioner No.3 – College on the basis of the MARDC – PAGICET-2013 and MARDC-PAGICET-2013 for Post Graduate MDS and for First Year BDS for the Academic Year 2013-14.

4. Brief facts of the petitioners' case in a nutshell are as under :-

The petitioner No.3 – College is a Muslim Minority Unaided Educational Institution, and it has minority status certificate, recognition / approval from State Government, affiliation order of respondent No.4 – Maharashtra University of Health Sciences ('MUHS' for short). The petitioner No.1 is the President of the petitioner No.2 – Education Society which runs the petitioner No.3 – M.A. Rangoonwala College of Dental Science and Research Center. The petitioner No.3 is a stand alone Muslim Minority Unaided Dental College for MDS Course in the entire Maharashtra State. The petitioner Nos. 2 and 3 also run BDS Course.

5. The respondent No. 3 is Pravesh Niyantran Samiti, Maharashtra State, which controls the medical and dental education in the Maharashtra. The respondent No.3 – Committee is constituted in terms of the decision of the Hon'ble Apex Court in the case of **Islamic Academy of Education Vs. State of Karnataka (2003) 6 SCC 697**.

6. The petitioner No.3 – College is established in the

year 2001 (hereinafter referred to as 'the College'). The College was recognized by the Central Government on the recommendation of Dental Council of India ('DCI' for short). After recognition to its BDS Course in 2006, the College was permitted to conduct post graduate courses ('PG' for short) in eight specialties in the year 2007 with 25 seats intake by the Central Government, on the recommendation of the DCI. The Central Government recognized the PG Course of the College in 8 specialties with 25 seats intake in the year 2011. From the Academic Year 2012-13, 23 additional seats in PG course in 8 specialties have been approved by the Central Government on the recommendations of DCI. BDS and MDS course run by the College since 2001 are affiliated to the respondent No.4-MUHS.

7. The College has been conducting its own College Entrance Test ('CET' for short) at the institutional level, counseling and admission of students for under-graduate (BDS) Course since it was established in the year 2001 upto 2005. The said CET was conducted under the supervision of the respondent

No.2 – Director of Medical Education and Research ('DMER' for short). It is the contention of the college that U.G. and P.G. College Entrance Test and admissions were conducted in transparent manner based on merit. There was no exploitation of the students whatsoever. It is the claim of the college that not a single complaint was received in respect of its admission process or the procedure followed while granting admissions.

8. In terms of the decision of the Hon'ble Apex Court in the case of **Islamic Academy of Education** (*supra*) a Committee called as “Pravesh Nyantran Samiti of Maharashtra” ('Committee' for short) viz. Respondent No.3 headed by a retired Judge of this Court came to be appointed by the State Government. The Committee is empowered to oversee/regulate admission process including CET, counseling, fees to be charged etc, for all the professional colleges in the State of Maharashtra. Pursuant to constituting the Committee, from the Academic Year 2005, the College conducted CET for admissions for both MDS and BDS for admitting the students under the supervision of the Committee.

9. The college admitted the students on the basis of the procedure prescribed in the case of **Islamic Academy of Education** (*supra*). Learned Counsel for the petitioners submits that since the College is unaided UG and PG stand alone minority Dental College, hence could not have formed the Association of Colleges for conducting CET/counseling and admission of Muslim minority and other students and therefore, approached the respondent Nos.1 – DMER and the Committee with a proposal that they be permitted to conduct their own CET at the institutional level, which they were conducting prior to coming into existence of the Committee.

10. The request of the petitioner – College to conduct its own CET was rejected by the State Government and the Committee. Writ Petition No. 1425 of 2004 filed by the petitioners challenging this decision came to be rejected on 7/5/2004. The college challenged the decision of the High Court by filing Special Leave Petition before the Hon'ble Supreme Court. By interim orders dated 28/5/2004 and 15/7/2004

passed by the Hon'ble Apex Court in Special Leave Petition (C) No.9932/2004, the petitioner – College was allowed to hold its own CET for admitting the students. The interim relief was continued till disposal of the said SLP. The issue whether the petitioner – College could hold its own CET or not was concluded by the decision of the constitution Bench of the Hon'ble Supreme Court comprising of seven Judges in the case of **P.A. Inamdar Vs. State of Maharashtra-(2005) 6 SCC 537.**

11. Pursuant to the decision of the Hon'ble Supreme Court, the petitioner – College approached the Committee for permission to conduct its own CET for Academic Year 2006-07 which request came to be turned down by the Committee. The petitioner College therefore challenged the decision of the Committee by way of Writ Petition No. 3417 of 2006 in this Court. This Writ Petition, however, came to be dismissed. The petitioner therefore approached the Hon'ble Supreme Court by filing Special Leave Petition. The Hon'ble Supreme Court on 12/6/2006 permitted the petitioners to adopt for the academic

year 2006-07 the same practice which was adopted in the previous year.

12. Suffice it to state that the petitioner College conducted its own CET for BDS course and MDS course for the academic years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. It thus appears that since the year 2001, under-graduate (BDS) and since year 2007 post-graduate (MDS) admissions are made by the college by conducting its own CET after obtaining permission and under the supervision of the DMER/ Committee.

13. It appears that for the academic year 2013-14 the DCI had issued two separate Regulations by Notifications dated 31/5/2012 under Section 20 of the Dentist Act, 1948 namely (i) Dental Council of India Revised MDS Course (2<sup>nd</sup> Amendment) Regulations 2007 ; (ii) Dental Council of India Revised BDS Course (5<sup>th</sup> Amendments) Regulations. The DCI by its letter dated 18/6/2012 directed all the State Governments to implement the Regulations.

14. It is the submission of the petitioners that the Regulations as well as direction dated 18/6/2012 are contrary to the decision of the Apex Court in the case of ***TMA Pai Foundation Vs. State of Karnataka*** reported as ***(2002) 8 SCC 481***, ***P.A. Inamdar's case*** (supra) and ***Islamic Academy's case*** (supra). These Regulations and directions dated 18/6/2012 came to be challenged in this Court by the petitioners by filing Writ Petition No. 7407 of 2012. The Hon'ble Supreme Court directed the transfer of all such Petitions challenging these Regulations to the Supreme Court.

15. An interim order was passed by the Hon'ble Supreme Court on 13/12/2012, whereby it was ordered that in the meantime, the MCI, the DCI as well as the States, Universities and other institutions will be entitled to conduct their respective admissions for MBBS, BDS and PG courses. It was further ordered, in the meantime and until further orders not to declare the results of the examinations. By an order dated 13/5/2013 the Hon'ble Supreme Court modified its earlier order dated

13/12/2012 and allowed the results of the examinations already conducted to be declared, to enable the students to take advantage of the then current year viz. 2013-14.

16. The challenge to the Regulations was finally heard and decided by the Hon'ble Supreme Court vide judgment and order dated 18/7/2013 in the case of ***Christian Medical College, Vellore and others Vs. Union of India and others*** reported in ***(2014) 2 SCC 305*** (called the Christian Medical College case for short). The Apex Court held that the Notifications of MCI and DCI amending their regulations providing single entrance test (NEET) is unconstitutional and violative of the constitutional provisions. The Apex Court by a 2:1 majority set aside the amending Regulations.

17. The MCI filed Review Petition (C) No. 2159 of 2013 seeking review of the decision in the ***Christian Medical College*** case. The Hon'ble Supreme Court was pleased to issue notice, however, no stay was granted.

18. Coming to the facts of the present case, it would be pertinent to state that in the meantime, the Committee allowed the petitioners to take its own CET for UG and PG admission for the academic year 2013-14 vide communication dated 11/1/2013. Accordingly, the CET was conducted and based on inter-se merit admissions of UG and PG course were made. It would be material to reproduce the Minutes of the Meeting of the respondent No. 3- Committee more particularly Item No.4(a) which reads thus :-

**“Item No.4(a) :-** Letter dated 5<sup>th</sup> January 2013 received from M.A. Rangoonwala College of Dental Sciences & Research Centre, Pune in respect of the decision taken by the Committee in its meeting held on 21<sup>st</sup> December 2012 (at Item No. 5(b) & 5(c) regarding conduct of CET-2013 for Minority Quota admissions for Post Graduate MDS course and first year BDS course for the Academic Year 2013-14.

Samiti perused the letter No.MARDC/Adm/PNS/4656/13, dated 5/1/2013. Disputed in details.

After deliberation, Samiti concluded to abide by the existing orders of Hon'ble Courts. Brochure to be submitted to DMER.”

(emphasis supplied)

19. In accordance with the decision of the Committee dated 11/1/2013, the Brochure was prepared by the college for the academic year 2013-14. The Committee after consulting

DMER approved 100 UG and 47 PG admissions of the college in its meeting dated 20/12/2013 based on the report of Expert Committee. The Minutes of which reads thus :-

**“Item No. 9 (g) :-** To review the pendency in respect of observation report of expert committee i.e. director of Medical education & research, Mumbai regarding admission process of Post Graduate & Under Graduate courses for A.Y.2012-2013 and 2013-2014.

Samiti persuade the report under reference.

After deliberation Samiti decides that, where there are no discrepancies such admissions stand approved where there are discrepancies such admissions are approved, subject to the expert committee sorting out and disposing of with said discrepancies after appropriated compliances with four weeks from respective institutions for academic year 2012-2013 and 2013-2014, the details which are enclosed as **Annexure -A.”**

20. The respondent No.4 - MUHS by its letter dated 18/7/2014 informed the college that Committee has withdrawn the approval of 57 Minority students of BDS Course and 47 Minority students of MDS Course vide its decision dated 20/6/2014. It would be pertinent to reproduce the Minutes of the Meeting and the decision taken thereon :-

**“Item No.6(b) :**

**Observation report dated 12<sup>th</sup> May 2014 received from Expert Committee i.e. Directorate of Medical Education and Research, Mumbai in respect of admission process of Post Graduate and Under graduate Dental courses of M.A. Rangoonwala Dental College, Pune for the Academic Year**

**2013-14 :- Ref.: Agenda of the Meetings dated 20<sup>th</sup> December 2013 (Item No.9[g]) and 11<sup>th</sup> April 2014 (Item No.3[(j)).**

- 1) Samiti perused the aforesaid letter received from Expert Committee i.e. Directorate of Medical Education and Research, Mumbai regarding observation report of admission process of Post Graduate and Under Graduate course of M.A. Rangoonwala Dental College, Pune for the Academic Year 2013-14.
- 2) It is seen that M.A. Rangoonwala Dental College, Pune had requested Samiti to allow the separate CET i.e. MARDC-PGAI CET-2013 and MARDC-CET-2013 for admission to MDS and BDS courses respectively, for the Academic Year 2013-14 for Minority Quota admissions. Samiti in its meeting held on 21<sup>st</sup> December 2012 (at Item No.5[b] and 5[c]) has denied the request made by the said College/Institute on the basis of judgment of Hon'ble Supreme Court of India in the case of Islamic Academy versus State of Karnataka (2003) 6 Supreme Court Cases 697 (para 16).
- 3) Mean while Samiti in its meeting held on 20<sup>th</sup> December 2013 (at Item No. 9[g]) approved the admissions of M.A. Rangoonwala Dental College, Pune of First Year BDS and Post Graduate MDS Course for the Academic Year 2013-14 on the basis of report submitted by the Expert Committee. Expert Committee in the said report did not mention as to the source of student as to from which CET they recruited their students for Academic Year 2013-14.
- 4) In view of the above Maharashtra University of Health Sciences, Nashik vide its letter dated 28<sup>th</sup> February 2014 pointing out that Samiti in its meeting held on 20<sup>th</sup> December 2013 (at Item no.9[g]) approve the admissions of the aforesaid College for the Academic Year 2013-14. In continuation of these University asking guidelines as to whether the admitted students of M.A. Rangoonwala Dental College, Pune in the Post Graduate and Undergraduate courses for Academic Year 2013-14 are approved or not.
- 5) Expert Committee has therefore now submitted the revised report dated 12<sup>th</sup> May 2014 in respect of admission process of M.A. Rangoonwala Dental College, Pune. It is stated that the said College/Institute operated the merit list of MARDC-PAGI CET-2013 for admissions to MDS course for the Academic Year 2013-14 and merit list of MARDC-CET-2013 for admissions to first year BDS course for the Academic Year 2013-14 conducted by own at Institute level for the admissions to Minority Quota.

In view of the above para No.2 and 5, after deliberations Samiti

decides not to approve the admissions done by the College/Institute on the basis of MARDC-PAGICET-2013 and MARDC-CET-2013 for Post Graduate MDS and First Year BDS course respectively, for the Academic Year 2013-14. Office to inform accordingly.”

(emphasis supplied)

21. According to the petitioners, it was on account of the failure of the Registrar of the MUHS to inform the members of the Committee the details of the various orders passed by the Hon'ble Supreme Court on 13/12/2012, 13/5/2013 and decision of the Apex Court dated 18/7/2013 in the case of *Christian Medical College case*, resulted in passing of the impugned order. The petitioners, therefore, approached this Court by filing the present petition.

22. This Court (**CORAM : ANOOP V. MOHTA (as his Lordship then was) AND SMT. ANUJA PRABHUDESSAI, JJ.**) by an order dated 14/8/2014 was pleased to grant ad-interim reliefs in terms to prayer clauses (g) and (h). It would be appropriate to reproduce the ad-interim order dated 14/8/2014 passed by this Court which reads thus :-

“P.C. :

The Petitioners, pursuant to orders passed by the Hon'ble Supreme Court dated 13 December 2012 and 13 May 2013, in a matter concerning the right of minority institution, conducted private institutional Common Entrance Test (CET) for the year 2013-14 for both courses (B.D.S. & M.D.S.). For the year 2014-15, this Court has passed orders dated 4 February 2014 and 3 April 2014 and permitted them to conduct its own CET at institutional level. Respondent No.4/University made enquiry and communicated directly to Respondent No.3/Pravesh Niyrantran Samiti with regard to the alleged, without permission, institutional level examination conducted by the Petitioners for the year 2013-14. Respondent No.3, by impugned order dated 20 June 2014, without giving any opportunity and hearing to the Petitioner, decided not to grant approval to the admission done by the Petitioner/Institution for the courses in question (for the Academic Year 2013-14). The University, in view of above order passed by the Samiti dislodged the students so referred above i.e. 57 B.D.S. and 47 M.D.S. Students though they have completed 15 months of their courses.

2 We have noted that both the Authorities admittedly not given any opportunity. We are not concerned at this stage the power of such Authorities, but definitely concerned with the procedure and modality that they have adopted before passing such drastic order affecting the students. The justification, even if any, just cannot be supplemented in reply/oral argument. We have to consider the rival contentions in view of the above position on record apart from the pendency of litigation/issues in the Supreme Court as well as in this Court regarding the power of such institution to conduct examination at their own level.

3. Therefore, as case is made out and as balance of convenience and equity lies in favour of the Petitioner, apart from the students so referred above, we are inclined to grant ad-interim order in terms of prayers (g) and (h) which reads as follows :

“(g) During the pendency & final disposal of the present Writ Petition, issue writ, order or direction to Respondent No. 4 Maharashtra University of Health Sciences, Nashik to declare result of 57 students of 1<sup>st</sup> year BDS Examinations 2014 and allow those 57 students to complete their 4 years

BDS Course by staying communication of Maharashtra University of Health Sciences dated 18.7.2014.

(h) During the pendency & final disposal of the present Writ Petition, issue direction to Respondent No.4 to allow 47 MDS students of Academic Year 2013-14 to complete 3 years MDS Course and to allow them to appear for University Examination & declared their results.”

4. Respondents to file additional affidavit reply within four weeks.”

23. The Apex Court was pleased to hear the Review Petition filed by MCI of the decision in **Christian Medical College** case. The Apex Court by its order dated 11/4/2016 in *Medical Council of India Vs. Christian Medical College, Vellore and others* reported in **(2016) 4 SCC 342** (hereinafter referred to as 'Medical Council of India case' for short) was pleased to restore National Eligibility-cum-Entrance Test ('NEET' for short). The decision of the Apex Court in *Christian Medical College case* was thus recalled.

#### **SUBMISSIONS ON BEHALF OF THE PETITIONERS**

24. Learned Counsel for the petitioners relying upon the interim order dated 13/12/2012 passed by the Hon'ble Apex

Court in Transferred Case (C) No.101 of 2012 submitted that the Hon'ble Supreme Court had permitted the MCI, the DCI as well as the States and Universities and other Institutions entitling them to conduct their respective examinations for the M.B.B.S., B.D.S. and PG courses. However, they were directed not to declare the results until further orders of the Court. He pointed out that by an order dated 13/5/2013 the interim order was modified and the colleges were permitted to declare the results to enable the students to take advantage of the then current year viz. 2013-14.

25. Learned Counsel further submits that even the respondent No.3 Committee in its meeting held on 20/12/2013 approved the admissions of colleges for the academic year 2013-14 on the basis of the report submitted by the Expert Committee. It is, however, on the basis of the further report of the Expert Committee, that the Committee found the CET conducted by the college at the institutional level is not in accordance with law and that the respondent No.3 decided not to approve the admissions for the academic year 2013-14.

26. In the submission of the learned Counsel for the petitioners, the admission process for the academic year 2013-14 was carried out in terms of the interim orders passed by the Hon'ble Supreme Court. He moreover submits that, the Hon'ble Apex Court vide its decision in *Christian Medical College case* has clearly held that in cases of unaided institutions, except for laying down standards for maintaining the excellence of education, the right to admit students into different courses could not be interfered with. He submits that the Hon'ble Apex Court after considering the decision in *TMA Pai Foundation (supra)*, *P.A. Inamdar's case (supra)* and *Islamic Academy's case (supra)* came to the said conclusion. The Apex Court thus held that the MCI is not empowered under the 1956 Act to actually conduct the NEET.

27. Learned Counsel for the petitioners therefore submits that, if the admissions of the students for the academic year 2013-14 are in accordance with the interim directions of the Hon'ble Apex Court dated 13/12/2012 & in accordance with

the law laid down in the case of **Christian Medical College case**, the action of the college to hold its own CET at the institutional level cannot be faulted with. In any case, he submits that impugned decision of the respondent No. 3 – Committee is completely contrary to the interim orders passed by the Hon'ble Supreme Court and the law laid down in '*Christian Medical College case*'.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

28. On the other hand, learned Counsel for the respondent No. 3 – Committee vehemently opposed the contentions advanced by the learned Counsel for the petitioners. He submits that, the law as regards admissions to the professional unaided minority educational institutions has been well settled by several decisions of the Apex court starting from *TMA Pai Foundation* (*supra*). Learned Counsel for the respondent No. 3 – Committee invited our attention to the relevant observations of the Apex Court in the case of **Islamic Academy of Education** (*supra*) and *P.A. Inamdar's case* (*supra*).

29. Relying on the decision of the Hon'ble Apex Court in the case of **Islamic Academy of Education** (*supra*), learned Counsel for the respondent No.3 inviting our attention to paragraphs 16, 17,18 and 19 submits that the Hon'ble Apex Court directed the State of Maharashtra to appoint permanent committee which will ensure that the test conducted by the association of colleges is fair and transparent. He submits that the respondent No. 3 – Committee is constituted pursuant to the decision of the Hon'ble Apex Court in **Islamic Academy of Education** (*supra*). Now that the Committee has been constituted, the petitioner College has no right to conduct its own CET at the institutional level. Learned Counsel pointed out the relevant observations of the Apex Court in paragraph 19 which reads thus :

“It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out herein above.”

He submits that the petitioner college is not 25 years old and therefore the question of granting exemption does not arise. In

the submission of the learned Counsel for the respondent No.3, the law laid down by the Hon'ble Supreme Court in the case of *Christian Medical College case* is not applicable but according to him the admission process to the petitioner college is governed by the decision rendered by the Hon'ble Apex Court in the case of *TMA Pai Foundation, P.A. Inamdar's case* and *Islamic Academy's case*. He submits that by virtue of the decision rendered by the Hon'ble Apex Court in **Medical Council of India case**, the law laid down by the Hon'ble Apex Court in the case of *Christian Medical College case* can be no longer regarded as a good law.

30. According to him, once the Apex Court has reviewed its decision by recalling the earlier order, the NEET stands restored. He submits that the validity of the impugned order has to be tested on the touchstone of the order in **Medical Council of India case**. Learned Counsel was at pains to point out that it will have to be seen whether the impugned order is in conformity with the law as it stands today. The decision of the

Hon'ble Apex Court which stands recalled cannot enure to the benefit of the petitioners as the same is no longer a good law.

31. Learned Counsel for the respondent No.3 submitted, that the Hon'ble Apex Court's decision in *Christian Medical College case* is erroneous in the face of the law laid down in the case of *TMA Pai Foundation*, *P.A. Inamdar's case* and *Islamic Academy's case*. He submits that when the larger Bench of the Hon'ble Apex Court had concluded the issues as regards the rights of unaided minority educational institutions to regulate the admission process, the view of the Hon'ble Apex Court comprising of a lesser Bench strength could not have taken a view contrary to the law laid down in *TMA Pai Foundation*, *P.A. Inamdar's case* and *Islamic Academy's case*.

32. Learned Counsel for the State and MUHS more or less adopted the stand of the respondent No.3.

**CONSIDERATION :-**

33. We have considered the submissions made by the learned Counsel at some length.

34. The issue involved in the present case is whether for the academic year 2013-14 the petitioner college was justified in conducting its own CET at the institutional level and consequently as to whether the order passed by the respondent No.3 not approving the admissions for the academic year 2013-14 deserves to be quashed and set aside.

35. The decision of the MCI to conduct NEET for both MBBS and PG courses in Medicines as well as question of regulating admission into BDS and MDS Courses was pending consideration before the Hon'ble Apex Court in Transferred Case (C) No.101 of 2012. While passing interim order dated 13/12/2012, the Hon'ble Apex Court directed the MCI, DCI as well as States and Universities and other Institutions, to conduct their respective examinations for the MBBS, BDS and PG courses. This was made subject to the Institutions/Colleges not declaring the results until further orders of the Hon'ble Apex Court. Thereafter, the interim order dated 13/12/2012 came to be modified by the Hon'ble Apex Court on 13/5/2013 and the

colleges were allowed to declare the results of the examinations.

36. The issue came to be finally decided by the Hon'ble Supreme Court on 18/7/2013 in *Christian Medical College case*. In effect the Hon'ble Supreme Court held that the MCI is not empowered under the 1956 Act to actually conduct the NEET.

37. To decide the present controversy, it would be material to quote the relevant paras of the decision of the Apex Court in *Christian Medical College case* which reads thus :-

“169. The learned Judges in T.M.A. Pai case also approved the view taken in the St. Stephen's College case regarding the right of aided minority institutions to give preference to students of its own community for admission. Their Lordships, however, had reservations regarding the rigidity of percentage of students belonging to the minority community to be admitted.

170. While answering Question 4 as to whether the admission of students to minority educational institutions, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated, the learned Judges in T.M.A. Pai case held that admission of students to unaided minority educational institutions, namely, schools and under-graduate colleges, cannot be regulated by the State or the University concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards. The learned Judges further

held that the right to admit students, being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions was on a transparent basis and merit was adequately taken care of. The learned Judges went on to indicate that the right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it was more so in the matter of admissions to professional institutions.

171. In answering Question 5(a), as to whether the rights of minorities to establish and administer educational institutions of their choice would include the procedure and method of admission and selection of students, the learned Judges T.M.A. Pai case held that a minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent and the selection of students in professional and higher educational colleges should be on the basis of merit and even an unaided minority institution should not ignore the merit of the students for admission while exercising its right to admit students to professional institutions. On the question whether the rights of minority institutions regarding admission of students and to lay down the procedure and method of admission would be affected, in any way, by receipt of State aid, the learned Judges were of the view that while giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe conditions in that regard, without, however, affecting the right of such institutions to actually admit students in the different courses run by them.

172. What can ultimately be culled out from the various observations made in the decisions on this issue, commencing from the Kerala Education Bill case to recent times, is that admissions to educational institutions have been held to be part and parcel of the right of an educational institution to administer and the same cannot be regulated, except for the purpose of laying down standards for maintaining the excellence of education being provided in such institutions. In the case of aided institutions, it has been held that the State

and other authorities may direct a certain percentage of students to be admitted other than by the method adopted by the institution. However, in cases of unaided institutions, the position is that except for laying down standards for maintaining the excellence of education, the right to admit students into the different courses could not be interfered with. In the case of aided minority institutions, it has been held that the authority giving aid has the right to insist upon the admission of a certain percentage of students not belonging to the minority community, so as to maintain the balance of Article 19(2) and Article 30(1) of the Constitution. Even with regard to unaided minority institutions, the view is that while the majority of students to be admitted should be from the minority community concerned, a certain percentage of students from other communities should also be admitted to maintain the secular character of education in the country in what has been described as a "sprinkling effect".

38. Learned Counsel for the respondent No.3 – Committee with all vehemence at his command submitted that, the decision of the Hon'ble Apex Court in *Christian Medical College case* is completely contrary to what is decided in *TMA Pai Foundation*, *P.A. Inamdar's case* and *Islamic Academy's case*. According to him, his submissions are further fortified by the fact that the Hon'ble Supreme Court has reviewed the decision in *Christian Medical College case*, thereby recalling the order. According to him, the decision in *Christian Medical College case* was never a good law and in any case after the Review Petition is allowed, the decision has lost its efficacy.

39. Learned Counsel urged that the law laid down by the Hon'ble Apex Court comprising of a larger Bench strength is binding on any subsequent Bench of lesser or co-equal strength. According to him, a Bench of lesser quorum cannot express disagreement with, or question the correctness of, the view taken by a Bench of larger quorum.

40. Undoubtedly, it is well settled that the doctrine of binding precedents has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individuals as to the consequence of transactions forming part of his daily affairs.

41. The submissions of Shri Patwardhan appear to be attractive at the first blush. In our opinion, however, we will have to take into consideration the position of law prevailing at the time when the petitioner College conducted its own CET to admit the students for the academic year 2013-14 while deciding the present controversy.

42. So far as the facts of the present case are concerned, the majority view in the *Christian Medical College case* holding that MCI is not empowered to conduct NEET, in our opinion, is the law declared by the Hon'ble Supreme Court as on 18/7/2013. The Hon'ble Apex Court has made a specific reference to the earlier decisions in the case of *TMA Pai Foundation, P.A. Inamdar's case* and *Islamic Academy's case* and several other rulings. After making a specific reference to the earlier binding precedents, the Hon'ble Apex Court has observed in para 172 that “What can ultimately be culled out from the various observations made in the decisions on this issue, commencing from the Kerala Education Bill case (supra) to recent times, is that admissions to educational institutions have been held to be part and parcel of the right of an educational institution to administer and the same cannot be regulated, except for the purpose of laying down standards for maintaining the excellence of education being provided in such institutions.” The Hon'ble Apex Court has further held that “in cases of unaided institutions, the position is that except for

laying down standards for maintaining the excellence of education, the right to admit students into the different courses could not be interfered with.” The Apex Court in para 177 and 178 ultimately went on to hold thus :-

“177. In the light of our aforesaid discussions and the views expressed in the various decisions cited, we have no hesitation in holding that the "Regulations on Graduate Medical Education (Amendment) 2010 (Part II)" and the "Post Graduate Medical Education (Amendment) Regulation, 2010 (Part II)", whereby the Medical Council of India introduced the single National Eligibility-cum-Entrance Test and the corresponding amendments in the Dentists Act, 1948, are ultra vires the provisions of Articles 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run Universities and all medical colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their M.B.B.S., B.D.S. and Post-graduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in the T.M.A. Pai Foundation case (supra), to be an integral facet of the right to administer. In our view, the role attributed to and the powers conferred on the MCI and the DCI under the provisions of the Indian Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. The role assigned to the MCI under Sections 10A and 19A(1) of the 1956 Act vindicates such a conclusion.

178. As an off-shoot of the above, we also have no hesitation in holding that the Medical Council of India is not empowered under the 1956 Act to actually conduct the NEET.”

(emphasis supplied by us)

43. The Apex Court has in no uncertain terms observed that the MCI is not empowered to actually conduct the NEET. Accordingly, the Notifications published by the DCI and the amended Regulations sought to be implemented thereunder along with Notification dated 31/5/2012 were quashed and set aside.

44. It is thus clear that, the Apex Court after considering all the previous decisions on this issue categorically held that, as regards the admission to unaided institutions, the position is that except for laying down standards for maintaining the excellence of education, the right to admit students into the different courses could not be interfered with. The Apex Court in para 177 struck down the Regulations introducing the NEET and the corresponding amendments in the Dentists Act, 1948, as ultra vires the provisions of the Articles 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run universities and all medical colleges and institutions, including those enjoying the protection

of the above provisions, from admitting students to their MBBS, BDS and postgraduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in T.M.A. Pai Foundation Case, to be an integral facet of the right to administer. Their Lordships have clearly observed about the role attributed to and the powers conferred on MCI and DCI under the provisions of the Indian Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. It is further observed that the role assigned to MCI under Section 10-A and 19-A(1) of the 1956 Act vindicates such a conclusion.

45. In our humble opinion, once the Hon'ble Apex Court has held thus, it is imperative to follow this view as of 18<sup>th</sup> July, 2013 and thereafter till the decision is overruled, reviewed or set aside. No doubt, the MCI had filed the Review Petition, but the decision in *Christian Medical College case* was not stayed.

46. So understood, if the admission process of the petitioner – College of 2013-14 is in accordance with law as laid down in *Christian Medical College case*, it cannot be said that the college has carried out the process contrary to the earlier decisions of the Hon'ble Apex Court. We have addressed this issue at some length in the later part of this judgment.

47. In our opinion, so long as the decision of the Hon'ble Apex Court in the case of *Christian Medical College case* was in operation, it is not possible for us to undo the actions taken which are in consonance with the decision in *Christian Medical College case*. We are not persuaded to accept the submission of the learned Counsel for the respondent No.3 to ignore the law laid down in *Christian Medical College case* on the ground that the Review Petition filed against the said decision succeeded.

48. Undoubtedly, 11<sup>th</sup> April, 2016 onwards, the question of following the decision of the *Christian Medical College case* does not arise since the Review Petition is allowed. However,

between the period 18<sup>th</sup> July, 2013 to 10<sup>th</sup> April, 2016 the admissions to the petitioner College are to be governed as per the law laid down in *Christian Medical College case*. We have also taken note of the interim directions of the Apex Court dated 13/12/2012 and 13/5/2013 passed before the issue was finally decided by the Apex Court on 18/7/2013.

49. We also notice that in paragraph 10 of the order dated 11<sup>th</sup> April, 2016 passed in the **Medical Council of India case**, the Hon'ble Apex Court has observed that the majority view in **Christian Medical College case** has not taken into consideration some binding precedents and more particularly the observations of the Hon'ble Apex Court that there was no discussion among the members of the Bench before pronouncement of the judgment in **Christian Medical College case**.

50. We will therefore have to address the question as regards the effect of the decision in **Christian Medical College**

**case** on the admission process carried out between 18<sup>th</sup> July, 2013 (the date of decision of **Christian Medical College case**) and 11<sup>th</sup> April, 2016 viz. the date on which the judgment and order of the Hon'ble Apex Court in **Christian Medical College case** is recalled. We are also called upon to deal with the submissions of learned Counsel for respondent No.3, that we should ignore the law laid down in **Christian Medical College case** which was operating during this period, on account of the decision having been recalled subsequently in a Review Petition.

51. As regards the binding effect of the rulings of the Hon'ble Supreme Court on the High Court under Article 141 of the Constitution of India is concerned, the Hon'ble Apex Court in the case of *South Central Railway Employees Cooperative Credit Society Employees Union Vs. B. Yashodabai and others* - (2015) 2 SCC 727, has observed thus :

“11. We have heard the learned counsel at length and have also considered the submissions made, the judgments relied upon by the counsel, the earlier judgment delivered by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies* and the impugned judgment. In our opinion, the High Court has

committed a grave error by taking a different view than the one which had been taken by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Co-op. Societies*, especially when the rules governing the promotion policy had not been amended after the aforesaid judgment was delivered by this Court. It is pertinent to note that a review application had been filed in the aforesaid *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Co-op. Societies* and the same had been rejected and therefore, the judgment delivered by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Co-op. Societies* had become final.

12. Once in pursuance of a judgment delivered by this Court orders had been issued by the Society to its employees who had been wrongly promoted, the High Court could not have held that the orders were not valid because there were certain other factors which had made the promotions given to the concerned employees valid.

13. In our opinion, the High Court should not have considered any other factor especially when this Court had come to a final conclusion that the policy with regard to reservation in the matter of promotion to the employees was not legal and proper.

14. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Co-op. Societies* was per incuriam.

15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when C.A. No.4343 of 1988 was decided. If the litigants or

lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be re-written and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the Subordinate Courts would also be violating the provisions of Article 141 of the Constitution of India.

16. We do not want to go into the arguments advanced by the learned counsel appearing for the respondents before the High Court for the simple reason that it was not open to them to advance any argument which would run contrary to the judgment delivered by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Co-op. Societies*. In our opinion, the High Court did something which would be like setting aside a decree in the execution proceedings !

17. For the reasons stated hereinabove, we are of the view that the learned Single Judge as well as the Division Bench of the High Court committed a serious error in law by not following the judgment delivered by this Court and by quashing and setting aside the order dated 12-6-1998, which had been issued to the concerned employees so as to give effect to the Judgment dated 13-1-1988 delivered by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Co-op. Societies*."

52. In the light of the rulings of the Hon'ble Supreme Court, it is certainly not open for us to disregard the decision in **Christian Medical College case** till the time it was holding field. More so, when the Hon'ble Supreme Court in the said judgment, has on analysis of the various observations made in

the decisions on this issue, commencing from the Kerala Education Bill case to recent times, has held that admissions to educational institutions have been held to be a part and parcel of the right of an educational institution to administer and the same cannot be regulated, except for the purpose of laying down standards for maintaining the excellence of education being provided in such institutions. If upon considering the earlier decisions, a particular view is taken, it is surely not permissible for us to proceed on the premise that the Hon'ble Apex Court has not taken into consideration some binding precedents, as learned Counsel for respondent No.3 would urge us to do. The Hon'ble Apex Court having rendered a decision in **Christian Medical College case**, the said decision will have to be followed unless it is distinguished, overruled or set aside. In the present case, the decision in **Christian Medical College case** undoubtedly has been set aside on 11<sup>th</sup> April, 2016. However, during the period 18<sup>th</sup> July, 2013 to 11<sup>th</sup> April, 2016 the law laid down in **Christian Medical College case** has to be followed. If we are to accept the submission of the learned Counsel for the

respondent No.3 that the decision is rendered contrary to the earlier binding precedents, we are afraid that we would be violating Article 141 of the Constitution of India.

53. The argument of the learned Counsel for the respondent No.3 that the issues decided in *Christian Medical College case* are contrary to what has been held by the Apex Court in earlier decisions of *TMA Pai Foundation*, *P.A. Inamdar's case* and *Islamic Academy's case* thereby virtually overturning its own pronouncements which were binding on the Hon'ble Apex Court, is an argument which is not open for us to consider. In this context we may usefully make a reference to the following observations of the Apex Court in the case of *Central Board of Dawoodi Bohra Community* (*supra*) in paragraph Nos. 7 and 8 :

“7. The Constitution Bench in the case of Chandra Prakash v. State of U.P. took into consideration the law laid down in Parija's case and also referred to the decision in Union of India v. Raghubir Singh relied on by Ms. Indra Jaising, the learned Senior Counsel and then reiterated the view taken in Parija's case. Per incuriam means a decision rendered by

ignorance of a previous binding decision such as a decision of its own or of a Court of co-ordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law. A ruling making a specific reference to an earlier binding precedent may or may not be correct but cannot be said to be per incuriam. It is true that Raghbir Singh case was not referred to in any case other than Chandra Prakash & Ors.' case but in Chandra Prakash case, Raghbir Singh case and Parija's case both have been referred to and considered and then Parija's case followed. So the view of the law taken in series of cases to which Parija's case belongs cannot be said to be per incuriam.

8. In Raghbir Singh case, Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law laid down by the superior Court the ideal condition would be that the entire Court should sit in all cases to decide questions of law, as is done by the Supreme Court of the United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions consisting of judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate related thereto and by such other considerations with the Chief Justices, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individuals as to the consequence of transactions forming part of his daily affairs.

54. We are of the considered view that during the period when the law laid down by the Hon'ble Apex Court in the *Christian Medical College case* which was laid down after

taking into consideration all earlier decisions, was holding the field all such actions which are taken in accordance with the said judgment during that period will have to be held valid. As observed by the Apex Court in the case of ***South Central Railway Employees Cooperative Credit Society Employees Union*** (*supra*) “When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside.”

55. To sum up, it is seen that initially the college was permitted to carry on with the admission process for the year 2013-14 based on the report of Expert Committee. Based on the revised report of the Expert Committee dated 12<sup>th</sup> May, 2014 as regards the college conducting its own CET at the Institutional level being improper, that the approval to the admissions was not granted by the Committee. We find that this observation runs counter to the decision of the Hon'ble Supreme Court in **Christian Medical College case**. The revised report of the Expert Committee dated 12/5/2014 on the basis of which the

impugned order of the Committee refusing to grant approval is based, is illegal in the teeth of the decision in **Christian Medical College case**. The Committee having passed the impugned order based on a finding that the college having conducted its own CET at the Institutional level thereby refusing approval to the admissions for the year 2013-14, which finding is contrary to the decision of the Apex Court in **Christian Medical College case**. In our opinion, the binding force the decision of the Hon'ble Apex Court as on the date of passing of the impugned order cannot be taken away only by reason of recall of the said decision at a later date viz. 11/4/2016.

56. In this view of the matter, if the petitioner No. 3 College has processed the admissions in accordance with the law declared by the Hon'ble Supreme Court as of 18<sup>th</sup> July, 2013 in **Christian Medical College case**, it can not be said that there is any infirmity with the said process. No doubt, MCI had filed a Review Petition but it is a matter of record, that the decision in **Christian Medical College case** was not stayed. It is only on 11<sup>th</sup>

April, 2016 that the order in **Christian Medical College case** came to be recalled by the Hon'ble Apex Court. In our opinion, therefore, all actions taken during the period 18<sup>th</sup> July, 2013 to 11<sup>th</sup> April, 2016 by the petitioner No.3 college which is in accordance with the law laid down by the Hon'ble Supreme Court in the case of **Christian Medical College** will have to be regarded as valid.

57. Having held that the petitioner No.3 college has proceeded to admit the students in accordance with law laid down by the Hon'ble Supreme Court at the relevant time, we may also take into consideration the legal Maxim *actus curiae neminem gravabit* viz. that an act of the Court shall prejudice no man. The petitioner No.3 college would be justified in contending that the admissions which are in accordance with the law as it stood upon pronouncement in **Christian Medical College** case, would stand protected.

58. A profitable reference in this regard could be made to the observations of the Hon'ble Apex Court in the case of **Raj**

***Kumar Dey and others Vs. Tarapada Dey and others*** reported in (1987) 4 SCC 398 in paragraph 6 which reads thus :-

“6. We have to bear in mind two maxims of equity which are well settled, namely, "actus curiae neminem gravabit"-An act of the Court shall prejudice no man. In Broom's Legal Maxims, 10<sup>th</sup> edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense ; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is "lex non cogit ad impossibilia" (Broom's Legal Maxims-P. 162)-The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.”

59. In the conclusion, we are of the considered view that all admissions made during the period between 18<sup>th</sup> July, 2013 to 11<sup>th</sup> April, 2016, in accordance with the decision of the Hon'ble Apex Court in the case of ***Christian Medical College***

will have to be protected. Since the admission process concerning the present Petition is for academic year 2013-14, the said admissions also will have to be protected. Moreover, even this Court by an interim order had directed the respondent No. 4 – MUHS to declare results of 57 students of 1<sup>st</sup> year BDS Examinations 2014 and allow those 57 students to complete their 4 years BDS Course by staying communication of MUHS dated 18.7.2014. This Court further directed the respondent No.4 – MUHS during the pendency and final disposal of the present Writ Petition to allow 47 MDS students of Academic Year 2013-14 to complete 3 years MDS Course and to allow them to appear for University Examination and declared their results. The legal maxim that an act of the Court shall prejudice no man, in our opinion would apply with full vigour to the facts of this Case. The Petition therefore deserves to be allowed. Hence the following order.

### **ORDER**

1. The order passed by respondent No.3 dated 20/6/2014 on item No.6(b) is quashed and set aside. It is held that admissions of the students by the

petitioners for academic year 2013-14 were in accordance with law and as such, the said admissions are legal and valid. Respondent No. 4 – University is directed to issue Degree Certificates in favour of 57 BDS and 47 MDS students who were admitted by the petitioners for the academic year 2013-14. Needless to state that the internship completion certificates shall be issued by petitioner No.3 – College to such of the students who have completed their internship.

60. Rule is made absolute accordingly.

61. Parties to act on the copy of this order duly authenticated by the Registry of this Court.

**(M.S. KARNIK, J.)**

**( B.R.GAVAI, J.)**