

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No. 6827/2019 and CM APPL. 28518-
28519/2019, 28703-28704/2019, 29511/2019 and 30481-
30482/2019

Judgment reserved on : 23.07.2019

Date of decision : 29.7.2019

L.N. MEDICAL COLLEGE & RESEARCH CENTRE AND
ANRPetitioner

Through: Mr.Siddharth R. Gupta and
Mr.Abhikalp Pratap Singh and
Mr.Harsh Mishra, Advocates
Mr.Saurabh Mishra, Adv for
Intervenor in CM No.
30481/2019
Mr.Rahul Kaushik, Adv for the
State of Madhya Pradesh/R-3
and 4

versus

UNION OF INDIA, MINISTRY OF HEALTH AND FAMILY
WELFARE & ORS Respondents

Through: Ms.Maninder Acharya, ASG
with Mr.Bhagwan Swarup
Shukla, CGSC for UOI
Mr.Vikas Singh, Sr. Advocate
with Mr.T.Singhdev, Adv for
R-2/MCI
Mr.Rahul Kaushik, Adv for the
State of Madhya Pradesh/R-3
and 4

And

+ W.P.(C) No. 6828/2019 and CM APPL. 8520-28521/2019 and
28700-28701/2019

CHIRAYU MEDICAL COLLEGE & HOSPITAL, &
OTHERS

..... Petitioner

Through: Mr.Siddharth R. Gupta and
Mr.Abhikalp Pratap Singh and
Mr.Harsh Mishra, Advocates

versus

UNION OF INDIA, MINISTRY OF HEALTH AND FAMILY
WELFARE & ORS

..... Respondents

Through: Ms.Maninder Acharya, ASG
with Mr.Bhagwan Swarup
Shukla, CGSC for UOI
Mr.Vikas Singh, Sr. Advocate
with Mr.T.Singhdev, Adv for
R-2/MCI

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. These two petitions seek virtually the same relief of issuance of a writ under Article 226 of the Constitution directing the respondent Medical Council of India (hereinafter referred to as the MCI) seeking extension of the benefit of increase of the MBBS seats (from the intake of 150 to 200 seats) towards implementation of the EWS Quota Scheme to the petitioners in their existing medical college for the current academic year 2019-20 by the grant of the recognition/permission for increase of intake at par with their counterpart/corresponding government owned and aided colleges of the State of Madhya Pradesh.

2. The petitioners of both the petitions also seek that the DO dated 20.05.2019 issued by the MCI restricting the applicability of the EWS Quota Scheme only to the Government Medical Colleges be declared to be violative of Article 14 and 19(1)(g) of the Constitution of India and further seek that it be struck down as being discriminatory and arbitrary. The petitioners also seek a restraint against the Medical Council Committee (hereinafter referred to as the MCC) from proceeding with the counselling and admission process with 15% All India Quota for the MBBS under graduate seats and seek a restraint against the State Government of Madhya Pradesh also from proceeding ahead with the counselling process for admission to the Private Medical Colleges of the State of Madhya Pradesh qua the MBBS course for the current academic year 2019-20.

3. A further prayer is also made by both the petitioners seeking that the State Government i.e., the State of Madhya Pradesh be directed to forward the proposal/applications of the petitioner for extension of the advantage of the EWS Quota Scheme to the private medical colleges of the State of Madhya Pradesh to the MCI i.e. the Medical Council of India, for approving the application of the petitioners for increase of intake in terms of the said Scheme from 150 seats to 200 seats for the current academic year 2019-20.

4. The petitioners of the two writ petitions have submitted that in terms of the Indian Medical Council Act, 1956, Section 10A thereof prescribes the scheme for opening of a new medical college and starting of a new or higher courses of study as well as increase in admission capacity in any course of study or training including a post

graduate course of study and training and that the procedure thereof is also prescribed therein and that in terms of Section 10B of the said enactment, the aspect of non-recognition of medical qualifications is also spelt out.

5. It is submitted by the petitioner that in terms of Section 33 of the Indian Medical Council Act, 1956, the Medical Council of India had formulated the Establishment of Medical College Regulations, 1999, and that the same create no distinction whatsoever between the Government and the Private Medical colleges in so far as the compliance of various norms and standards are determined and formulated by the then MCI and which is now presided by the Board of Governors and that both Government and the Private Medical colleges are equally bound without any exception to ensure compliance of the norms, Minimum Standards and Regulations as prescribed therein as a precondition and precursor to the grant of recognition under Section 10A of the Indian Medical Council Act, 1956. The petitioners further submit that in the case of Private Medical Colleges, the level of scrutiny, verification and inspections is far more stricter and more vigilant than that to which the Government Medical Colleges are subjected to.

6. The petitioners further submit that even in terms of the Minimum Standards and Requirement for MBBS Admissions Annual Regulations, 1999, framed in terms of Section 33 of the Indian Medical Council Act, 1956, there is no distinction made in relation to their applicability or scope qua the Government Medical Colleges or the Private Medical Colleges and that they apply with equal force and

requirements as stipulated in both the categories of colleges. It has thus been submitted by the petitioners that in terms of the Indian Medical Council Act, 1956, and the regulations framed therein there is no distinction created between the Government Medical Colleges or the Private Medical Colleges when it relates to compliance of norms and standards framed by the Medical Council of India which has since been superceded by the Board of Governors in terms of Section 3A of the Indian Medical Council Act, 1956. The petitioners further submit that the very same deadlines and the academic calendar as per the schedule, for process of the grant of appropriate approval to the said colleges for grant of permission for opening of a new medical college or for the grant of recognition for additional intake as fixed by the Medical Council of India which has since been superceded by the Board of Governors, apply and that the contentions raised on behalf of the petitioners through the present petitions are based on this fundamental premise that those who are equally situated ought to be equally treated.

7. The petitioners further submit that they have been established with all approvals and after undergoing the grill of the Medical Council of India which has since been superceded by the Board of Governors, through a thorough approval process with an initial intake of 150 seats having been sanctioned.

8. The petitioner of the Writ Petition (C) No. 6827/2019, *namely*, **L. N. Medical College & Research Centre** is stated to have been established in the year 2009 with the initial intake of 150 seats and has been subsequently granted annual renewals and approvals by the

Medical Council of India, which has since been superceded by the Board of Governors, which resulted into the grant of permission in terms of Establishment Regulations to the petitioner thereof in the year 2015.

9. The petitioner of Writ Petition (C) No. 6828/2019, *namely, Chirayu Medical College & Hospital*, is indicated to have been established in the year 2011 with an initial intake of 150 seats after having been granted the approval by the Medical Council of India, which has since been superceded by the Board of Governors.

10. Both the petitioners submit that they have been running successfully without any complaint or any grievance whatsoever pertaining to non-compliance of essential norms and standards, conditions and permissions and that both the petitioners are affiliated with the Affiliating University i.e., the Private University titled as LNCT University run by the same Trust i.e., H.K.Kalchuri Educational Welfare Trust and that the petitioners have been admitting the students to complete their intake of 150 seats each year and so it has been in the last academic year 2018-19.

11. The petitioners seek invocation of the 103rd Amendment of the Constitution vide the Constitutional 103rd Amendment Act 2019 vide insertion of Article 15 (6) of the Constitution which came into force on 14.1.2019 which reads to the effect:

Article 15 (6)

"(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making, —

a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent, of the total seats in each category.

Explanation—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage."

12. The petitioners submit that a bare perusal of the amendment made in Article 15 of the Constitution by insertion of Article 15(6) into the Constitution, indicates that it has made no distinction between the private institutions or the institutions owned by the State or the Central Government. *Inter alia*, the petitioners submit that the MCI, since superceded by the Board of Governors, vide a letter dated 18.4.2019 bearing No. MCI-23(1)(10A)/2019-Med./104936-105262, Annexure P-8, addressed to the State Governments and the Union Territories directed the implementation of reservation of 10% seats for the EWS candidates by enhancement in the both i.e. Post Graduate as

well as the under Graduate courses for the year 2019-20. The said letter reads to the effect:

“ Further to this office Circular dated 12/04/2019 with regard to implementation of reservation for EWS for admission to PG courses in Government Medical Colleges under the control of State Governments, I am to request you to send your proposal under the EWS Scheme in consultation with DMEs u/s 10 A of the IMC Act, 1956 for the academic year 2020-21 not later than 15th of May, 2019. In this proposal, the increase of 10% EWS quota should be on the seats that stand recognized on the day of submission of the proposal.

The proposals for increase of seats u/s 10A of the IMC Act, 1956 (Other than EWS-Regular Application process for Increase of Seats) as envisaged under The Opening of a New or High Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000 should be made separately.

You are also hereby requested to send proposal under the 10% increase in MBBS seats under EWS scheme in consultation with concerned institutions u/s 10A of the IMC Act, 1956 for the academic year 2019-20. In this proposal, the increase of 10% EWS quota should be on the seats that stand recognized on the day of submission of the proposal. Colleges to ensure that the additional facility required for the increase as per the Minimum Standard Requirements for the Medical College for 50/100/150/200/250 Admissions Annually Regulations, 1999 shall be put in place by the time the said increase in intake capacity of the college comes up for recognition.

The college-wise MBBS seat increase proposal to the Board of Governors, MCI should be received in the Council office not later than 15th May, 2019.”

13. The petitioners thus submit that the said letter made no distinction between the two identical categories of colleges i.e. the Government owned, aided and financed colleges on the one hand and the Private unaided and self financed medical colleges on the other and that it was for the first time that the MCI, since superceded by the Board of Governors, through its internal order dated 20.5.2019 that such discrimination or distinction was made between the two identical categories of colleges, namely, the Government owned, aided and financed colleges on the one hand and the Private unaided and self financed medical colleges on the other, vide memo bearing No. MCI-34(41)(EWS)/2019-Med./115428 clarified for the first time that the ambit of the said scheme was applicable to:

“ 1. Government Medical Colleges that are likely to be granted Letter of Permission in the academic year 2019-20 for admission of 1st batch of MBBS students.

2. Government Medical College which are in the state of renewal or permission for admission of fresh batch of MBBS students and

3. Government Medical College of which MBBS degree is recognized.”

and that the same thus made it apparent that even those Government Medical Colleges which were to start their course from the current academic year 2019-20 fell within the ambit of the letter dated

20.5.2019 and grant of recognition for intake of 150 seats for the MBBS Under Graduate Courses and that even if the Government Medical College was on the verge of grant of recognition with an intake of 150 seats of the MBBS UG Course, the said Medical college would become straight away eligible for grant of recognition for 200 MBBS for the under graduate course seats in terms of the EWS Quota Scheme that has been implemented by the MCI.

14. The petitioners submit that this aspect is equally true for all the Government aided colleges who are in the 2nd or 3rd year of their establishment and still are procuring annual renewal from the MCI, since superceded by the Board of Governors, and the Central Government.

15. The petitioners further submit that this document dated 20.5.2019 issued by the MCI, since superceded by the Board of Governors, was a letter issued to the respondent No.1 and was an internal correspondence between the respondents themselves and was never marked to the petitioners nor brought within the public domain and the petitioners submit that this communication came to light to the petitioners only when it was uploaded by the MCI around 3rd or 4th June, 2019.

16. The petitioners further submitted that the occasion for challenging the same arose only after the same was uploaded on the official website on 3/4-6-2019 whereafter through the said departmental order dated 20.5.2019, the MCI responded to queries of various States that the EWS quota is meant exclusively for the Government owned and aided medical colleges and not for Private

medical colleges. The petitioners thus submit that by assailing the impugned departmental order dated 20.5.2019 they are guarding themselves against any futuristic submissions of the MCI, since superceded by the Board of Governors, that the EWS quota scheme was never meant for Private Medical Colleges.

17. The petitioners further submit that vide another departmental order dated 6.6.2019, the MCI, since superceded by the Board of Governors, extended the last date for receiving the application for increase and intake of MBBS seats towards implementation of the EWS Quota Scheme from the date 7.6.2019 to 11.6.2019 and a guidance note was appended to the said departmental order dated 4.6.2019 titled "***Guidelines for Calculating Additional Seats for Implementing 10% EWS Quota for MBBS Course***" and submit further that the clauses 3 & 4 of the said Guidelines are as under:

"(3) In order to implement the 10% EWS reservation quota, the increase in seats has to be effectively 25% of the current intake to ensure that the existing number of general and other quota seats are not affected. Thus, a college with current intake of 100 seats would need to add 25% additional seats i.e. 25.

(4.) The calculation of seat increase has to be made taking into consideration the total intake of students at the "State" level considering all the seats/ institution where the Government reservation policy is applicable and is being implemented."

18. The petitioners thus submit that the increase has to be carried out on the basis of total intake of students at the State level,

considering all the institutions where the Government Reservation Policy is applicable. The petitioners further submit that in the State of Madhya Pradesh where the petitioners are located, the State has applied and enforced its reservation policies for all reserved categories of students with SC/ST and OBCs of all the Private Medical Colleges of the State of Madhya Pradesh and thus around 50% seats are left after calculating the 15% NRI quota seats that are being reserved for such reserved category of candidates.

19. The petitioners submit that qua the Private Medical Colleges of the State of Madhya Pradesh in terms of the Guidelines read with the departmental order dated 6.6.2019, the Private Medical Colleges become entitled to the EWS quota Scheme and that even for the current academic year, the petitioners' institutions have been following the reservation policy of the State of Madhya Pradesh with respect to its MBBS undergraduate course to which there has been no cavil.

20. The petitioners submit that the Departmental Order of 06.06.19, applies with equal force and includes private medical colleges in the State of Madhya Pradesh. The petitioners further submit that in view of the order dated 6.6.2019 issued by the MCI, since superceded by the Board of Governors, the petitioners wrote to the respondents for inclusion of their medical college and extension of the EWS Quota Scheme by increasing the seats in the MBBS Course in their institution.

21. The petitioners further submit that the University Grants Commission vide its communication dated 18.1.2019 pursuant to the

Office Memorandum dated 17.1.2019 issued by the Central Government, Ministry of HRD, for implementation of the Constitutional provision by the 103rd Constitutional Amendment w.e.f. the academic year 2019-20, has thus directed all the Universities for the implementation of the EWS Quota from the academic year 2019-20.

22. The present petitions W.P.(C) No. 6827/2019 and W.P.(C) No. 6828/2019 were instituted on 15.6.2019 and 17.6.2019 respectively and CM No. 29511/2019 was filed on 2.7.2019 in W.P.(C) No. 6827/2019 and CM No. 28701/2019, in W.P.(C) No. 6828/2019, to place on record subsequent facts and documents that arose during the pendency of the petitions.

23. The petitioners submitted that vide a communication dated 25.6.2019 bearing No. MCI-34(41)(EWS)/2019-Med./12628, the Board of Governors, in supersession of the MCI, issued to all States/Union Territories and to the Director of Medical Education of all the States/Union Territories, stated as follows:

"This is with reference to Ministry's letter No. U.12012/350/2019-ME-I, dated 24.06.2019 granting approval of the proposal of BoG, MCI to extend the benefit of additional seats under EWS quota to the colleges which are being run by Government controlled Societies, Municipal Bodies, Public Private Partnership and under Self-Financing mode, and these institutions (a) provide reservation of seats for SC/ST/OBC, implement reservation guidelines of State, (b) charge fee fixed by the State Government and (c) also contribute 15% of seats to All India Quota(AIQ).

2. In view of above, it has been decided to extend the date of receiving application for increase of MBBS seats to implement EWS quota to the colleges which are being run by Government controlled societies, municipal bodies, public private partnership and under self financing mode which also follow reservation of seats for SC/ST/OBC, charge fee fixed by the State Govt. concerned, and also contribute 15% of seats to AIQ as specified above.

3. It is further stated that a fresh window of opportunity is given to all States to submit proposals for enhancement of seats to implement EWS quota in colleges as specified in the preceding paragraph. In case reservation policy of State Government is followed only on some of the seats in the colleges, additional seats to implement EWS quota will be sanctioned only with respect to those seats.

4. State Govt. may send their proposals accordingly for providing benefit of 10% of EWS quota.

5. It is also requested to intimate the reservation percentage of the State for all categories of reservation implemented for admission to MBBS course along with the proposal.

6. All such proposals must be duly recommended by the State / UT Govt.

7. Last date of submission of such proposal is again extended to 28.06.2019 to receive application for increase of MBBS seats to implement EWS quota, to the colleges which are being run by Government controlled societies/ municipal bodies, public private partnership and under self financing mode which also follow

reservation of seats for SC/ST/OBC, charge fee fixed by the State Govt. concerned, and also contribute 15% of seats to AIQ.

8. State Governments may kindly bear in mind that this increase of seats is for implementation of EWS Quota, therefore; fee structure for EWS Quota students must be within the affordable limit of EWS categories with reference to criteria fixed for identification of EWS beneficiaries.

9. Please treat this as urgent and feel free to ask further clarification if any, sending your query to ug.mci@nic.in.”

24. The petitioners submit that they fall within the category of self-financed mode institutions and submit that pursuant thereto, the State of Madhya Pradesh forwarded the proposals of these private Medical Colleges to the MCI, since superceded by the Board of Governors on 28.6.2019 along with the undertakings of the said colleges which include the present two petitioners which aspect is affirmed by the State of Madhya Pradesh vide the counter affidavit submitted on behalf of the respondents No. 2 and 3 the State of Madhya Pradesh in WP(C) No. 6827/2019.

25. Further more, the petitioners submit that the MCI, since superceded by the Board of Governors, during the pendency of the present petitions as well as the communication dated 30.6.2019 issued to the Principal Secretary, Incharge of Medical Education Department of all the State Universities vide letter No. U-12012/350/2019-ME.I[FTS.8013875] has stated as under:

“2. After carefully considering the matter, Ministry of Health & Family Welfare has accepted the proposal of the

BoG-MCI and hereby directs the Counselling Authorities (States/UTs/AIQ) for filling up the newly created MBBS seats under EWS quota as per rules in forthcoming academic year 2019-20 mentioned in attached Table A and also directs to delete the seats in certain cases which were earlier increased vide Ministry's letter dated 21.06.2019 mentioned in attached Table B. A copy of the list showing details of Medical Colleges and permitted MBBS seats is enclosed herewith.”,

and thus accorded *inter alia* approval of additional seats to certain private medical colleges in the State of Gujarat and the State of U.P. and reference in relation thereto has been made by the petitioners to the Institutes at serial No. 18 and 19 in Table A annexed to the letter dated 30.6.2019 i.e. Banas Medical College & Research Institute, Palanpur and Zydus Medical College & Hospital, Dahod and thus submit that these colleges are Private Medical Colleges identically placed as the petitioners and that the attitude of the MCI of pick and choose is discriminatory and arbitrary in nature and that thus the respondent MCI and the Union of India need to be directed by a writ of mandamus to grant additional intake to the petitioners' medical colleges as well as in view of the proposals forwarded by the State Government.

26. The intervenor in WPC 6827/2019 vide CM No. 30481/2019 is a candidate who appeared in the NEET Examination 2019-20 and has qualified with the minimum percentile marks with a total of 286 marks and possesses the cumulative rank of 5980 in Madhya Pradesh State Merit List and is registered in the EWS category in the MP State combined UG counseling, 2019 and submits that the reservation has been implemented by the State of Madhya Pradesh by making

reservation for EWS category of candidates by the allotment of 10% of the sanctioned intake which has to be implemented in the light of the 103rd Constitutional Amendment of the Constitution of India by which Article 15(6) has been inserted wherein the 10% EWS reservation for the EWS candidates has been provided with the corresponding amendment vide Article 16 of the Constitution of India by inserting Article 15(6) in the Constitution.

27. The intervenor has further submitted that the State Government i.e., the State of Madhya Pradesh has amended, the Madhya Pradesh Medical and Dental Admission Rules, 2018 by its amending notification dated 19.6.2018 as applicable from the current academic year 2019-20 and 10% reservation for EWS category of candidates has also been provided in the medical and dental colleges of the State Government. The intervenor submits that the submission of the respondent i.e. UOI, the MCI and the MCC that the implementation of the 103rd Constitutional amendment by incorporating 10% quota for EWS category of the candidates has not been effected for the current academic year with respect to the private medical colleges of the State of Madhya Pradesh, is against the Constitutional Mandate vide the 103rd Constitutional amendment which is in operation since 14.1.2019.

28. The intervenor further submits that if the DO of the MCI dated 6.6.2019 is implemented without any discrimination and by allowing a corresponding increase in the intake of private medical colleges, the said increase in seats would lead to a large number of deserving EWS category students, around 180 being able to get admission in the

MBBS UG Courses in the State of Madhya Pradesh which may in turn provide avenues of medical education to a large number of EWS category students such as the intervenor.

29. It has been contended by the invervenor also that the State of Madhya Pradesh has also through its communication dated 28.6.2019 to the Union of India as well as to the MCI (now represented through the Board of Governors in supersession of the Medical Council of India for increasing the intake of all private medical college by the State of Madhya Pradesh by 25%/50 seats. The intervenor as above also submits on behalf of the petitioners that the private medical colleges in view of this have also submitted their applications for increase in their intake and also their affidavits stating that they were ready and willing to comply with all the conditions as imposed and provided under the MCI's DO dated 25.6.2019.

30. The intervenor submits as was also submitted on behalf of the petitioners that all the private medical colleges of the State through their affidavits have stated that they were willing to teach the EWS category candidates on the fees and charges at par that is paid by the companion and identically situated candidates in the government medical colleges and it has thus been submitted on behalf of the petitioners that there is no reason at all as to why the private medical colleges should not be allowed to increase their seat intake when they are ready to admit the EWS category candidates on such fees as at par with that of the government medical colleges and it has been submitted that this would be in the larger interest and to the advantage of the EWS category candidates.

31. *Inter alia*, it has been submitted on behalf of the petitioners as well as on behalf of the intervenor that the large number of private and semi-private medical colleges in the State of Gujarat have been granted additional intake by the respondent Board of Governors in supersession of the MCI through its approval letter dated 30.06.2019. Much reliance during the course of submissions on behalf of the petitioners and on behalf of the intervenor was made in relation to the intake granted to two stated private medical colleges, i.e., Banas Medical College & Research Institute, Palanpur and Zydus Medical College & Hospital, Dahod, in the State of Gujarat and it has been submitted that the said medical colleges are **treated as private medical colleges** for all intents and purposes, with 15% NRI quota, as also 15% Management Quota clearly stipulating in their seat matrix for counseling in the current academic session and both the colleges charge a huge amount of fees from both NRI as well as Management Quota category of candidates and in as much as once the enhanced intake has been granted to them by the respondent Board of Governors (in supersession of the MCI), there is no reason as to why the seats be not increased to the advantage of EWS category candidates in the State of Madhya Pradesh similarly in as much as the Constitutional Amendment is identical for the whole country and applies uniformly across all the States and thus should be implemented likewise similarly.

32. On behalf of the respondent no.1 i.e. the Union of India, Ministry of Health and Family Welfare, the affidavit of its under-Secretary Mr. Amit Biswas had been submitted. The respondent no.1

has submitted that the Medical Council of India (MCI) is a body constituted under the provisions of the Indian Medical Council Act, 1956 and has been given the responsibility of discharging the duty of maintenance of the highest standards of medical education throughout the country and that the objective of the MCI is to regulate Medical Education in the country and to formulate regulations and guidelines with regard to the standard and conduct of medical education in India. The respondent no.1 has further submitted that the Hon'ble Supreme Court through its various pronouncements has held that the regulations framed by the MCI are statutory in character and, therefore, binding and mandatory on all concerned universities and colleges conducting Medicine courses. The respondent no.1 has further submitted that the prayer made and directions sought by the petitioners in the petitions are contrary to the Indian Medical Council Act, 1956 and statutory regulations framed by the Medical Council of India with the prior approval of the Central Government, under Section 33 of the Act. The respondent no.1 further submits that in terms of Section 10A of the Indian Medical Council Act, 1956, it has *inter alia* been provided that every person is obliged to make an application to the Central Government for establishing any medical college or starting any higher course of study or for increase in its annual intake capacity and that the Central Government is required to refer the application to the Medical Council of India for its recommendations and that on receipt of an application by the Council, the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and

thereafter, it may either make a recommendation for its approval or disapproval. The respondent no.1 further submits that the Central Government may, after considering the recommendations of the Council may either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and that provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard.

33. The respondent no.1 has further submitted that the Government of India vide the Indian Medical Council (Amendment) Ordinance, 2018 promulgated on 26.09.2018 and Indian Medical Council (Amendment) Ordinance, 2019 promulgated on 12.01.2019 and again on 22.02.2019 superseded the Council and constituted a Board of Governors (BOG) to exercise the powers and functions of the Council under the Indian Medical Council Act, 1956. The respondent no.1 has further submitted that the Ministry of Human Resource Development vide OM dated 17.01.2019 has given direction to its autonomous bodies for implementation of reservation for EWS for admission in Central Educational Institutions and endorsed a copy to the Chief Secretaries of all States Government/ UTs **for implementation in all higher educational institutions funded/ aided medical colleges by the State Government.** The respondent no.1 has further submitted that vide letter dated 29.01.2019, it requested the MCI and the Principal Secretaries of all State Government/ UTs **for implementation of the EWS reservation in Govt. Medical and Dental Colleges funded/ aided, directly or indirectly by the State**

Government. The letter dated 29.01.2019 of the Under Secretary to the Government of India in the Ministry of Health & Family Welfare, Medical Education Policy to all Principal Secretaries of all States/UTs, (Medical Education), reads to the effect:-

**“ F.NO.V.11025/10/2019-MEP
GOVERNMENT OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE
MEDICAL EDUCATION POLICY**

**Nirman Bhawan, New Delhi,
Dated: 29th January, 2019**

To

*Principal Secretaries of all States/UTs, (Medical Education)
(As per list)*

SUB: Reservation for Economically Weaker Sections (EWSs) for admission in Central Educational Institutions - Regarding.

Sir,

I am directed to enclose herewith a copy of O.M, dated 17.01.2019 of the Ministry of Human Resource Development for implementation of reservation for Economically Weaker Sections (EWSs) in admission to educational institutions from academic year 2019-20 onwards for students/candidates who are not covered under the existing schemes of reservation of SC/ST/OBC and as per the mandate of the Constitution [One Hundred and Third Amendment) Act, 2019 to say:

a) The 8 Institutions of excellence, research institutions and institutions of national and strategic importance as specified in the Schedule to The Central Educational Institutions [Reservation in Admission) Act, 2006 and minority educational institutions referred to in Article 30(1) of the Constitution are exempted from the operation of this

Amendment Act, 2019. It is informed that North Eastern Indira Gandhi Regional Institute of Health and Medical Science, Shillong (NEIGRIHMS) is one of the 8 Institutions exempted by the Act, 2006,

b) Every Central Educational Institution shall, with the prior approval of the appropriate authority as defined in clause (c) of section 2 of the Act, 2006, increase the number of seats over and above its annual permitted strength in each branch of study or faculty so that the number of seats available, excluding those reserved for the persons belonging to the EWSs, is not less than the number of such seats available, in each category for the academic session immediately preceding the date of coming into force of these guidelines.

c) The applicability of this Amendment Act, 2019 for the increase of annual permitted strength need to be implemented from the academic year following the commencement of the Amendment Act but in case the annual permitted strength cannot be implemented for reasons of financial, physical or academic limitation or in order to maintain the standards of education, such increase can be implemented over a period of two years beginning with the academic session 2019-20, after the representation by the Central Education Institution to the appropriate authority and subject to its satisfaction on the grounds as stated above. At any stage of implementation of EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories shall not be reduced.

d) It is mentioned that no reservation is applicable in Super Specialty courses.

e) All State Governments/UTs have also been requested to give effect to the provisions of the said Constitution Amendment Act in respect of all higher education institutions funded/aided, directly or indirectly by the State Government starting from the academic year 2019-20.

2. The Board of Governors in supersession of Medical Council of India, National Board of Examination, Dental Council of India, Indian Nursing Council and Pharmacy Council of India have been asked to take all necessary measures including enabling amendments in the Regulations to facilitate implementation of the provisions of the Constitution (Amendment) Act, 2019 with immediate effect.

3. All States/UTs are requested to take appropriate action for implementing the provisions of the Amendment Act in the Medical/Dental/Nursing/Pharmacy Institutions/Bodies etc under their control.

Encl; As Above.”

34. The respondent no.1 has submitted further through the affidavit of its Under Secretary that all seats in the MBBS Course will be filled on the basis of NEET merit and that 15% MBBS seats of all India Quota in Government medical colleges in the country except J & K and all seats in Central Institutes and Deemed University will be filled by the common counseling conducted by the DGHS and that the remaining seats in Government Medical colleges and 100% seats in private medical colleges will be filled by the common counselling conducted by the respective State Governments. The respondent no.1 further submits that as per the directions of the Hon'ble Supreme Court of India dated 31.01.2007 passed in W.P. (C) No. 138 of 2006- ***Abhay Nath and Anr. V/s University of Delhi and Ors.***, 15% reservation to Schedule Caste and 7.5 % to Schedule Tribe candidates was being given under the 15% All India Quota and 5% Horizontal reservation was being provided to Physically Handicapped (PH/PWD) category candidates as per the Medical Council of India Regulations and also

27% reservation was being provided to the OBC candidates only in Central Institutes of the country as per instructions issued under the Central Educational Institutions(Reservation in Admission) Act, 2006 issued by the Ministry of Human Resource Development, Department of Higher Education vide their letter O.M. No. No. 1-1/2005-U.I.A/847 dated 20.04.2008. The respondent no.1 has further submitted that the reservation of 10% EWS Quota for MBBS/BDS course under the 15% All India Quota was not implemented for the current academic year 2019-20 and that it was worthwhile to mention that allotment process of the First Round under 15% All India-2019 had already started from 19.06.2019 in terms of the Schedule approved by the Hon'ble Supreme Court of India in its Order dated 18/1/2016 in Writ Petition Civil No.76 of 2015-***Ashish Ranjan &Ors Vs Union of India and Ors.*** and that it was mentioned that for implementation of 10% EWS quota in 15% for UG (MBBS/BDS) seats, the petitioner was advised to approach the Hon'ble Supreme Court of India for obtaining necessary directions in this regard, as the entire allotment/admission process of the Under Graduate (MBBS/BDS) seats is functioning under the guidelines of the Hon'ble Supreme Court of India and that the DGHS was bound to follow these guidelines laid down in the All India Quota Scheme. The respondent no.1 has further submitted that the Hon'ble Supreme Court vide order dated 30.04.1993 in W.P. (Civil) Nos. 443, 458, 510 and 557 of 1992 “***Sharwan Kumar V/s Dir. General of Health Services &Anr.***” had passed the following directions:

"If in the implementation of the scheme any difficulties are felt by the Director- General of Health Services or by any other person including the authorities in the States or by the Universities, they can approach this Court for necessary directions."

35. The respondent no.1 has further submitted that as per the time schedule prescribed in the regulations on Graduate Medical Education, 1997, the counseling for the All India Quota has already commenced from 19.06.2019 and will be completed on 22.07.2019 and that the State Counselling for the admissions in the Medical Colleges for State quota seats has already started from 25.06.2019 and will be completed on 18.08.2019 and the copy of the notification of the time schedule for admission in the MBBS course has been placed on the record by the respondent no.1 which reads to the effect:-

"The following shall be substituted in terms of notification published on 05.02.2018 in the Gazette of India

36. APPENDIX F

TIME SCHEDULE FOR COMPLETION OF THE ADMISSION PROCESS FOR FIRST MBBS COURSE FOR THE ACADEMIC YEAR 2018-19 AND ONWARDS

SI No.	Schedule for Admission	Central Counselling		State Counselling
		All India Quota	Deemed + CI	
1.	Conduct of Exam	By 10 th May		
2.	Declaration of Result	By First Week of June		
3.	1 st round of Counselling	12 th June – 24 th June	12 th June – 24 th June	25 th June – 5 th July
4.	Last date of Joining	3 rd July	3 rd July	12 th July

5.	11 round of Counselling	6 th July – 12 th July	6 th July – 12 th July	15 th July – 26 th July
6.	Last date of joining	22 nd July	22 nd July	3 rd August
7.	Mop-up round		12 th Aug. – 22 nd Aug. *	4 th Aug. – 8 th Aug.
8.	Last date of Joining		26 th August*	12 th August
9.	Forwarding the list of students in order of merit equaling to ten times the number of vacant seats to the Medical Colleges by the Counseling Authority		27 th August	13 th August
10.	Last date of joining		31 st August	18 th August

The following shall be added in terms of notification published on 18.05.2018 in the Gazette of India

In Appendix 'F' the following "Note" shall be added below the Time Schedule for completion of the admission process for first MBBS course for the academic year 2018-19 and onwards:-

Note:

1. All India Quota Seats (15%) remaining vacant after last date for Joining, i.e. 22nd July of the present Admission year will be deemed to be converted into State quota.

2. Institute/college/courses permitted after 31st May will not be considered for admission/ allotment of seats for current academic year.

3. In any circumstances, last date for admission/joining will not be extended after 31st August.

4. For the purpose of ensuring faithful obedience to the above time-schedule, Saturday, Sunday or Holidays (except "National Holiday on account of Independence Day, 15th August) shall be treated as working days.

5. The following Matrix shall be applicable with regard to permissibility to students to exercise fresh choice during counseling:-

S.No.	Round	Free Exit	Exit with forfeiture of fees	Ineligible for further counselling	Amount of registration fee
1.	AIQ I/Deemed	√			
2.	AIQ II/Deemed		If not joined	If joined	Government-Rs.10,000 (half for SC/ST/OBC) Deemed-Rs.2,00,000
3.	State Quota I	√			
4.	State Quota II		If not joined	If joined	Government-Rs.10,000 (half for SC/ST/OBC) Deemed-Rs.1,00,000
5.	State Quota Mop-up			If joined	
6.	Deemed Mop-up			If joined	

6. As per MCT regulations, DGHS counseling would include AIQ seats, Central Institutions and Deemed Universities. State/UT counseling would include State Quota seats and all private colleges in the States/UTs.”

37. The respondent no.1 has further submitted that in view of the present writ petition, the said respondent no.1 vide an office memorandum dated 25.06.2019 requested the Ministry of Human Resource Development for further action for reservation in admissions in private medical institutions in higher courses for the EWS category and that the Ministry of Human Resource Development vide Office Memorandum dated 28.06.2019 has informed that at present there is no reservation specified by the Ministry in Unaided Private Education Institutions. Hence, this Ministry is not implementing the EWS reservation in private medical colleges for the academic year 2019-20. The respondent no.1 has thus, submitted that the petitions be dismissed as being devoid of merit. The letter dated 25.06.2019 from the Under Secretary to the Government of India to Ministry of Human Resource Development is as under:-

*F.NO.C.18018/05/2019-MEP
GOVERNMENT OF INDIA*

*MINISTRY OF HEALTH & FAMILY WELFARE
(MEDICAL EDUCATION POLICY)*

*Nirman Bhawan, New Delhi
Dated 25th June, 2019*

OFFICE MEMORANDUM

*Subject: Reservation in admissions in higher courses
in Unaided Private Educational Institutions for
Economical Weaker Section (EWS) - regarding.*

The undersigned is directed to refer to Writ Petitions No. 6827 of 2019 filed by L. N. Medical College & Research Centre, Madhya Pradesh Vs. UOI and Others and another Writ Petition No.6828 of 2019 filed by Chirayu Medical College & Hospital and Others, Madhya Pradesh Vs. UOI and others in the Hon'ble High Court of Delhi. In these Writ Petitions the petitioners have prayed for implementation of EWS reservation in Private Medical Colleges. These Writ Petitions were listed on 19.06.2019 and the Hon'ble High Court has given two weeks time to file the affidavit.

2. In this regard, it is stated that the Ministry of HRD vide OM dated 21.01.2019 sent a copy of Note for the Cabinet for the proposal for introduction of the Unaided Private Educational Institutions (Reservation in Admission) Bill, 2019 for the comments/views of this Ministry. The Ministry vide OM dated 22.02.2019 (copy enclosed) sent its following comments:

(i) With regard to the financial implecations, the Cabinet Notes prescribed that as the private unaided institutions are not dependent on Central or State Govt. there are no financial implications. However, it is observed that the private medical colleges would have to create additional infrastructure which would require funds.

(ii) Clarity in respect of fee structure for the reserved categories including EWS for their admission to private unaided institutions is also needed to be brought out.

3. This Ministry has not received any correspondence from Ministry of HRD in respect of reservation in higher courses in Private Medical Institutions for EWS. It is therefore requested to convey the further action on reservation in admission in Private Medical Institutions

for the EWS category within seven (7) days to enable this Ministry to file the affidavit in the abovesaid matters.”

The office memorandum dated 22.02.2019 of the respondent no.1 has also been annexed to the petition, which states to the effect:-

**“ No.V.11025/88/2018-MEP
Government of India
Ministry of Health & Family Welfare**

*Nirman Bhawan, New Delhi
Dated the 22 February, 2019*

OFFICE MEMORANDUM

Subject: Draft Note for the Cabinet for the proposed Bill namely 'The Unaided Private Educational Institutions.(Reservation in Admission) Bill, 2019- reg.

The undersigned is directed to refer to O.M. No. 12-3/2019-U1 dated 21.01.2018 on the subject mentioned and to convey the following comments in respect to the Unaided Private Educational Institutions Reservation in Admission) Bill, 2019 for providing reservation to Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections in private unaided educational institutions:

i) With regard to the financial implications, the Cabinet Note prescribes that as the private unaided institutions are not dependent on Central or State Government, there are no financial implications. However, it is observed that the private medical colleges would have to create additional infrastructure in order to increase intake capacity in accordance with the concerned regulations which would require funds.

ii) Clarity in respect of fee structure for the reserved categories including EWS for their admission to private unaided institutions is also needed to be brought out.

2. This issues with the approval of Hon'ble Minister for Health & Family Welfare."

38. Vide communication dated 28.06.2019, the Under Secretary to the Government of India, Ministry of Human Resource Development has conveyed to the Under Secretary, Ministry of Health & Family Welfare, Medical Education Policy, Nirman Bhawan, New Delhi, to the effect:-

*" F.No. 12-3/2019-UI
Government of India
Ministry of Human Resources Development
Department of Higher Education
Dated the 28 June, 2019*

OFFICE MEMORANDUM

Subject:-Reservation in admissions in higher courses in Unaided Private Educational Institutions for Economical Weaker Section (EWS)-regarding.

The undersigned is directed to refer to OM No F.No.C. 18018/05/2019-MEP dated 25th June, 2019 of M/o Health & Family Welfare (MH&FA) and to say that at present there is no reservation specified by this Ministry in Unaided Private Education Institutions."

39. On behalf of the respondent no.2, i.e. the Board of Governors in Supersession of the Medical Council of India has been filed the affidavit of Sh. Shikhar Ranjan, Law Officer of the Medical Council of India, it has been submitted thereby that the petitioner of W.P.(C) No.6827/2019 is a private medical college owned/established/managed by the private trusts in the State of Madhya Pradesh and is

affiliated to the Barkatullah University, Bhopal and that it was granted permission by the Central Government towards its establishment during the academic year 2009-10 with an intake capacity of 150 MBBS admissions annually and that the MBBS degree when granted on or after March 2014 by the Barkatullah University, Bhopal, in respect of students trained at the petitioner's medical college which is recognized as per the provisions of the Indian Medical Council Act, 1956.

40. Through the counter affidavit submitted on behalf of the respondent no.2 in W.P.(C) No.6828/2019, a similar submission has been made, stating to the effect that the establishment of the private medical college was effected into 2011-12. It has been submitted by the respondent no.2 through the counter affidavit of Sh. Shikhar Ranjan, Law Officer of the Medical Council of India, that the petitioner medical colleges on an erroneous interpretation of the various letters/ communications issued by the answering respondent as well as the Central Government, has approached this Court seeking parity between private Medical Colleges and Govt. Medical Colleges, for seats in the MBBS course towards the implementation of the reservation for the Economically Weaker Sections (EWSs) for the academic year 2019-20 and that the petitioner's medical college on one hand was attempting to set up a case that the answering respondent in consultation with the Central Govt. has permitted increase of intake in MBBS course towards the implementation of the reservation for the Economically Weaker Sections (EWSs) for the academic year 2019-20 in all medical colleges of the country,

however, on the other hand, was curiously also challenging the decision of the Central Govt. not to consider Private Medical Colleges for increase in MBBS course.

41. The respondent no.2 has further submitted that by virtue of the 103rd Amendment to the Constitution, Article 15(5) & Article 16(5) have been inserted and that the said amendment was published in the Official Gazette on 12.01.2019 and that the Central Govt. by way of notification published in the Official Gazette on 14.01.2019 has implemented the same and thereafter, the Ministry of Health & Family Welfare, Govt. of India vide letter dated 29.01.2019, towards implementation of the reservation for the Economically Weaker Sections, had informed all the State/ UT Governments that increase of the annual intake **could be implemented over a period of two years** beginning from the academic session 2019-20 and that the higher education institutions of the **State Governments shall only be considered for the increased intake capacity.**

42. The respondent no.2 has further submitted that it had informed all the State/ UTs Government vide letter dated 18.04.2019 to send their proposals for increase of seats in the Medical Government Colleges towards the implementation of the reservation for the Economically Weaker Sections (EWSs) for the academic year 2019-20 by 15.05.2019 and that the answering respondent further vide its letter dated 25.05.2019 informed the Central Government as well as the various State/ UT Governments that the last date for submission of proposals by the State/ UT Governments for increase of seats in Government Medical Colleges had been extended till 07.06.2019 and

had also clarified the categories of Government Medical Colleges which were within the purview of consideration towards increase of seats in the MBBS course.

43. The respondent no. 2 has further submitted that vide letter dated 04/06.06.2019, it had again informed all the State/ UT Governments that the date for submission of proposals by the State/ UT Governments for increase of seats in Government Medical Colleges had again been extended till 11.06.2019 and had also forwarded the guidelines for calculating additional seats towards implementation of the reservation for the Economically Weaker Sections (EWSs) in MBBS Course and that vide its letter dated 10.06.2019, it had further informed all the State/ UT Governments to indicate the total number of intake capacity in MBBS admission in Government Medical Colleges (All India Quota & State Government Quota) as well as the various quota wise number of seats under reserved categories (All India Quota & State Govt. Quota separately.)

44. The respondent no.2 has further submitted that the Central Government in reference to the MCI letter dated 13/14.06.2019, had vide letter dated 14.06.2019 clarified that there was no reservation for the Economically Weaker Sections (EWSs) provided in the All India Quota in terms of the directions of the Hon'ble Supreme Court whereby presently only reservation for SC/ST categories of candidates was provided.

45. The respondent no.2 has further submitted that the Central Government vide its letter dated 21.06.2019 after considering the proposals as received in respect of various Government Medical

Colleges to increase the MBBS seats, had informed the State/ UT Govts. that it had accepted the same and had directed the various Counseling Authorities to include the seats for the academic year 2019-20 and that subsequently, the respondent no.2 vide letter dated 25.06.2019, in view of the Central Government letter dated 24.06.2019, had extended the benefit of increasing intake capacity to certain other categories of Government Medical Colleges and had also extended the date for submission of proposals by the State/ UT Governments for increase of seats in Government Medical Colleges till 28.06.2019 in this regard and that the answering respondent vide letter dated 29.06.2019 with reference to the earlier letters of 24.06.2019 as well as 25.06.2019, had now forwarded to the Central Government the proposals by the State/ UT Governments for increase of seats in Government Medical Colleges/ other categories of Government Medical Colleges and that the Central Government vide letter dated 21.06.2019, after considering the proposals towards increase in MBBS seats, had informed the State/ UT Governments that it had accepted the same and had directed the various counseling authorities to include the seats for the academic year 2019-20.

46. The respondent no.2 has thus submitted that neither the Central Government nor the respondent no.2 have ever contemplated the aspect of Private Medical Colleges for being considered the increase of intake in MBBS course towards implementation of reservation **for the Economically Weaker Sections (EWSs) for the academic year 2019-20 and that a perusal of the letters dated 29.01.2019, 18.04.2019, 20.05.2019, 04/06.06.2019, 10.06.2019, 21.06.2019,**

25.06.2019, 29.06.2019 & 30.06.2019 would show that the same had been addressed to the various State/ UT Governments of the country and at no point of time was any private Medical College informed of sending proposals for increasing seats in the MBBS course towards implementation of reservation for the EWSs for the academic year 2019-20 and that the petitioners, the medical colleges, as alleged, were not even in the zone of consideration for increasing seats in MBBS course towards implementation of reservation for the Economically Weaker Sections (EWSs) for the academic year 2019-20. The respondent no.2 has further submitted that the present petitions had been filed by the petitioners to mislead this Court in believing that they were committed to provide reservation for the Economically Weaker Sections (EWSs), in as much as the petitions were clearly based on a motive to obtain increase in the MBBS seats for purely monetary benefits, on the basis of the Constitutional Amendment, without following the procedure prescribed under the IMC Act, 1956 and the Statutory Regulations made there under for increase of intake capacity and that the present writ petitions were also not maintainable for the reason that the petitioners, the medical colleges were not beneficiaries of the reservation for EWSs. It is also submitted on behalf of the respondent no.2 that the petitioners, the medical colleges do not possess the *locus standi* to maintain the present petition which deserves to be rejected at the threshold. It has been further submitted on behalf of the respondent no.2 that the Hon'ble Supreme Court in its several judgments has categorically held that the Courts cannot direct the making of any legislation or any kind of subordinate legislation

towards grant of reservation and also held that Article 16 as well as Article 15 of the Constitution are enabling provisions for the State Government to bring a legislation or pass an executive order for extending the benefit of the reservation and therefore, the present writ petitions deserve to be rejected on this ground also. The respondent no.2 has further submitted that the directions sought by the petitioners are contrary to the Indian Medical Council Act, 1956 and statutory regulations framed by the MCI with the prior approval of the Central Government under Section 33 of the Indian Medical Council Act, 1956 and the law laid down by the Hon'ble Supreme Court from time to time. The respondent no.2 has further submitted that the MCI is a body constituted under the provisions of the Indian Medical Council Act, 1956 and had been given the responsibility of discharging the duty of maintenance of the highest standards of medical education throughout the country and that the Hon'ble Supreme Court in the case of ***“State of Kerala Vs. Kumari T.P. Roshna” (1979) 1 SCC 572*** had held as under:-

“..... The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses.....”

47. The respondent no.2 has further placed reliance on the verdict of the Hon'ble Supreme Court in the case of "***MCI Vs. State of Karnataka***" (1998) 6 SCC 131, wherein it has been observed to the effect:-

"..... A medical student requires grueling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study....."

48. The respondent no.2 has further submitted that by virtue of the provisions of Section 33 of the Act, the MCI has been empowered with the prior approval of the Central Government to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of **Medicine courses**. *Inter alia* the respondent no.2 has submitted that in the case of "***MCI Vs. State of Karnataka***"(supra), the Hon'ble Supreme Court has held that the regulations of the MCI are binding and mandatory and further held that all State enactments, rules and regulations framed by universities etc. in relation to the conduct of medicine courses, to the extent they are inconsistent with the Act and the regulations made thereunder by the MCI, are repugnant by virtue of Article 254 of the Constitution of India in as much as the Act is

relatable to Entry 66 List 1 Schedule VIIth of the Constitution of India and that the aforesaid ratio has been reaffirmed by the Constitution Bench of the Hon'ble Supreme Court in Dr. Preeti Srivastava Vs. State of M.P. &Ors. (1999) 7 SCC 120.

49. The respondent no.2 has further placed reliance on the observations in the case "**MCI Vs. State of Karnataka**"(supra), to submit that it has been held therein that the regulations of the MCI are binding and mandatory with specific reliance on the observations in paragraphs 27, 28, 29 & 30 of the said verdict, which read to the effect:-

"..... 27..... It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These regulations are in considerable detail.....

28. Standards have been laid by the Medical Council, an expert body, for the purpose of imparting proper medical education and for maintaining uniform standards of medical education throughout the country. Seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the regulations of the Medical Council.

29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the

teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.

.....After the insertion of Sections 10-A, 10-B and 10-C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated 29-9-1993 (though the notification is dated 20-9-1993).

.....

30. Nivedita Jain case does not say that all the regulations framed by the Medical Council with the previous approval of the Central Government are directory or mere recommendatory. It is not that only future admissions will have to be regulated on the basis of the capacity fixed or determined by the Medical Council. The plea of the State Government that power to regulate admission to medical colleges is the prerogative of the State has to be rejected..... "

50. The respondent no.2 has further placed reliance on the verdict of the Hon'ble Supreme Court in "*Dr. Preeti Srivastava Vs. State of M.P.*" (1999) 7 SCC 120, in which observations made by the Hon'ble Supreme Court in "*MCI Vs. State of Karnataka*"(supra) with reference to the medical course were reemphasized to the effect:-

".....57. In the case of Medical Council of India v. State of Karnataka a Bench of three Judges of this Court has distinguished the observations made in Nivedita Jain. It has also disagreed with Ajay Kumar Singh v. State of Bihar and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the

Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana (SCC at p.580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning....."

51. The respondent no.2 has further submitted that the Hon'ble Supreme Court has reiterated the binding and mandatory character of the Regulations of the Council, through its following pronouncements:-

"(i) Dr. Narayan Sharma & Anr. Vs. Dr. Pankaj Lehkar & Ors. - (2000) 1 SCC 44.

(ii) State of Punjab Vs. Deyanand Medical College - (2001) 8 SCC 664.

(iii) State of MP & Ors Vs. Gopal D. Tirthani & Ors - (2003) 7 SCC 83

(iv) Harish Verma & Ors Vs. Ajay Srivastava & Anr. - (2003) 8 SCC 69."

52. The respondent no.2 has further submitted that the MCI further lays down in detail the course content, the duration, distribution of teaching and training days on various subjects and also for the conduct of examination etc. The respondent No.2 has further submitted that it is settled law that in case of any conflict between the MCI Act

/Regulations and any State rule/ regulation, the MCI Act/Regulation shall prevail.

53. The respondent no.2 has further submitted that every person is obliged to seek a prior permission from the Central Government for establishing any medical college or starting any higher course of study or for increase in its annual intake capacity as per Section 10A of the Indian Medical Council Act, 1956. The respondent no.2 has further submitted that the Central Government on 26.09.2018 promulgated the Indian Medical Council (Amendment) Ordinance, 2018, consequently the MCI stood dissolved and the Board of Governors in Supersession of MCI had been appointed to discharge the functions under the Indian Medical Council Act, 1956. The Central Govt. vide another Notification dated 26.09.2018, had constituted the Board of Governors consisting of the following persons:-

S.No.	Name	Particulars
1.	Dr. V.K. Paul, Member, NITI Aayog	Chairman
2.	Dr. RandeepGuleria, Director, AIIMS, New Delhi.	Member
3.	Dr. Jagat Ram, Director, PGIMER, Chandigarh.	Member
4.	Dr. B.N. Gangadhar, Director, NIMHANS, Bangalore.	Member
5.	Dr. Nikhil Tandon, Professor, Department of Endocrinology & Metabolism, AIIMS, New Delhi.	Member

6.	Dr. S. Venkatesh, Director General of Health & Family Welfare.	Member ex-officio
7.	Prof. Balram Bhargava, Secretary, Department of Health Research & Director General Indian Council of Medical Research, New Delhi.	Member ex-officio

54. The respondent no.2 has further submitted that the resolution of the MCI continues to be in effect by way of further ordinances issued by the Central Government dated 12.01.2019 and 21.02.2019.

55. The respondent no.2 has further submitted that vide letter dated 17.01.2019, the Department of Higher Education, Ministry of Human Resource Development had informed that that reservation for EWSs, who are not covered under the existing scheme of reservation for the SC, ST and Socially & Educationally Backward Classes, subject to a maximum of 10% of the total seats in each category, shall be provided for admission to educational institutions and that such reservations would not be applicable to the Minority Educational Institutions and that the reservation shall be provided to EWSs for admission in Central Educational Institutions from the academic year 2019-20 and that the reservation shall not be applicable to the eight institutions as contained in the Schedule of the Central Educational Institutions (Reservations in Admissions) Act, 2006. It has further been contended by the respondent No.2 that all Central Educational institutions, shall increase the number of seats, above the annual permitted strength, in a manner so that the number of seats available in the various other categories are not reduced and that the Central Educational Institutions

may be permitted by the Appropriate Authority to increase the annual permitted strength over a maximum period of two years.

56. The said office memorandum of 17.01.2019 is submitted by the respondent no.2 to have been forwarded to various universities or deemed universities. The respondent no. 2 has further submitted that the Ministry of Health & Family Welfare, Government of India vide letter dated 29.01.2018 towards implementation of the reservation for the Economically Weaker Sections, had informed all the State / UT Govts. that increase of the annual intake can be implemented over a period of two years beginning from the academic session 2019-20 and that the higher education institutions of the State Govts. shall only be considered for the increase intake capacity. The relevant portion of the aforesaid letter dated 29.01.2019 is reproduced as under:-

“.....

b). Every Central Educational Institution shall, with the prior approval of the appropriate authority as defined in clause (c) of section 2 of the Act, 2006, increase the number of seats over and above its annual permitted strength in each branch of study or faculty so that the number of seats available, excluding those reserved for the persons belonging to the EWSs, is not less than the number of such seats available, in each category for the academic session immediately preceding the date of coming into force of these guidelines.

c). The applicability of this Amendment Act, 2019 for the increase of annual permitted strength need to be implemented from the academic year following the commencement of the Amendment Act but in case the annual permitted strength cannot be implemented for reasons of financial, physical or academic limitation or in order to maintain the standards of education, such increase can be implemented over a period of two years

beginning with the academic session 2019-20, after the representation by the Central Education Institution to the appropriate authority and subject to its satisfaction on the grounds as stated above. At any stage of implementation of EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories shall not be reduced.

d). It is mentioned that no reservation is applicable in Super Specialty courses.

e). All State Governments/UTs have also been requested to give effect to the provisions of the said Constitution Amendment Act in respect of all higher education institutions funded/aided, directly or Indirectly by the State Government starting from the academic year 2019-20.

2. The Board of Governors in supersession of Medical Council of India, National Board of Examination, Dental Council of India, Indian Nursing Council and Pharmacy Council of India have been asked to take all necessary measures including enabling amendments in the Regulations to facilitate implementation of the provisions of the Constitution (Amendment) Act, 2019 with immediate effect .

.....”

57. The respondent no. 2 has further submitted that vide letter dated 18.04.2019, it had informed all the State/ UT Governments to send their proposals for increase of seats in Govt. Medical Colleges towards implementation of the reservation for the Economically Weaker Sections for the academic year 2019-20 by 15.05.2019. The respondent No.2 has further submitted that State / UT Govts. were further informed that the increase of intake capacity should be on the seats that stand recognized and the additional facility as per the Minimum Standards Requirements be put in place by the time the

increased admission capacity comes up for recognition. The relevant portion of the letter dated 18.04.2019 is reproduced as under:-

“

You are also hereby requested to send proposal under the 10% increase in MBBS seats under EWS scheme in consultation with concerned institutions u/s 10A of the IMC Act, 1956 for the academic year 2019-20. In this proposal, the increase of 10% EWS quota should be on the seats that stand recognized on the day of submission of the proposal. Colleges to ensure that the additional facility required for the increase as per the Minimum Standard Requirements for the Medical College for 50/100/150/200/250 Admissions Annually Regulations, 1999 shall be put in place by the time the said increase in intake capacity of the college comes up for recognition. The college-wise MBBS seat increase proposal to the Board of Governors, MCI should be received in the Council office not later than 15th May, 2019.

.....”

58. The respondent no.2 has further submitted that vide letter dated 20.05.2019, it was clarified that various State/ UT Governments as well as the various State/ UT Governments, that only Govt. Medical Colleges were being considered for increase of seats in the MBBS course towards the implementation of EWSs reservation for the academic year 2019-20 and that it was also communicated that the last date for submission of proposals by the State / UT Govts. for increase of seats in Govt. Medical Colleges had been extended till 07.06.2019. The relevant portion of the letter dated 20.05.2019 is reproduced as under:-

“

This is in continuation of Council circulars dated 12.04.2019 & 18.04.2019 on the above mentioned subject.

After reviewing the response to the said circular, it has been decided that the proposal for seat enhancement for EWS scheme be extended to the govt. medical colleges that are likely to be granted Letter of Permission and also to those medical colleges which are in the stage of renewal of permission.

It is further clarified that the ambit of this scheme is applicable to :

- 1. Government Medical Colleges that are likely to be granted Letter of Permission in the academic year 2019-20 for admission of 1st batch of MBBS students.*
- 2. Government Medical Colleges which are in the state of renewal of permission for admission of fresh batch of MBBS students and*
- 3. Government Medical College of which MBBS degree is recognized.*

*Keeping in view the fact that the last date for grant of permission for establishment of new Medical College is 31st May, it has been decided to extend the date of submission of proposal under EWS scheme to 7th **June, 2019.***

.....”

59. The respondent no.2 submits that it had further informed all the State/ UT Governments that the date of submission of proposals by the State / UT Govts. for increase of seats in Govt. Medical Colleges had again been extended till 11.06.2019 and had also forwarded the Guidelines for calculating additional seats towards implementation of the reservation for the Economically Weaker Sections in MBBS course. The respondent no.2 further submits that it had also vide letter dated 10.06.2019, informed all the State/ UT Government to indicate the total number of intake capacity in the MBBS admission in Govt. Medical Colleges (All India Quota & State Govt. Quota) as well as the

various quota-wise number of seats under reserved categories (All India Quota & State Govt. Quota separately) and that the respondent no.2 had considered the various proposals received towards increase in the MBBS seats for the implementation of EWSs reservation and had decided to seek the approval of the Central Govt. for increasing seats in the MBBS course in such Govt. Medical Colleges. The respondent no.2 has further submitted that vide letter dated 11.06.2019, the State of Karnataka sought clarifications to facilitate the decision for implementation of EWSs reservation in the Govt. colleges of Karnataka and it was stated on behalf of the respondent no.2 that it was thus, apparent through the letter of the State Government of Karnataka that it was aware that the increase in the MBBS seats was **only applicable to Government Medical Colleges.**

60. The respondent no.2 submits that vide letter dated 13/14.06.2019, it i.e. the respondent no.2 had made it clear that the allotment under the EWSs quota was to be made to the Government Medical Colleges in the State of Karnataka. The respondent no.2 has further submitted that it received a letter dated 18.06.2019 as issued by the State Government of Gujarat, whereby the intake capacity of the MBBS seats in the Govt. Medical Colleges/ Gujarat Medical & Education Research Society Medical Colleges under the State Govt. (100% Govt. granted) / Municipal Corporation Medical Colleges and Medical Colleges under the Public Private Partnership Mode as per the Health Policy 2016 of the State Govt. of Gujarat had been informed including various quota-wise seats. The respondent no.2 has further submitted that vide letter dated 19.06.2019, it had forwarded the

aforesaid letter dated 18.06.2019 as received from the State Govt. of Gujarat to the Central Govt., requesting that the same may be examined towards increase of MBBS seats, since, it was stated **that only the Govt. Medical Colleges were contributing to the 15% All India Quota.** The respondent no.2 has submitted that after considering the proposals as received in respect of various Government Medical Colleges qua the increase in the MBBS seats, the Central Government had vide letter dated 21.06.2019 informed the State / UT Govts. that it had accepted the same and had directed the various Counseling Authorities to include the seats for the academic year 2019-20 and that it received a letter dated 24.06.2019 from the State Government of Gujarat, requesting that increase of seats in MBBS course may also be permitted in **certain other categories of Govt. Medical Colleges being administered by Govt. controlled societies, municipal bodies, public private partnership and under self-financing mode which were following the reservation of seats as per policy of the State and that the respondent no.2 had vide letter dated 24.06.2019 informed the Central Government that such medical colleges do not contribute to the 15% All India Quota and also that there fee structure was different from the Govt. Medical Colleges and that it was requested that the Central Govt. may consider making it mandatory for such medical colleges to contribute 15% seats to the All India Quota and also to reduce their fees so as to enable the candidates admitted in under the EWS quota to afford the same.**

61. The respondent no.2 has further submitted that vide letter dated 24.06.2019, the Central Government had approved the extension of the benefit of the increase in the MBBS seats towards the implementation of EWS quota to the other categories of Govt. Medical Colleges referred in the MCI letter dated 24.06.2019 and the respondent no.2 further submits that vide letter dated 25.06.2019, it had extended the benefit of the increase of MBBS seats towards implementation of reservation for the Economically Weaker Sections for the academic year 2019-20 to medical colleges being administered by Govt. controlled Societies, Municipal Bodies, Public Private Partnership and under Self-Financing Mode and that it was decided that such medical colleges must provide reservation of seats for SC/ST/ OBC, implement reservation guidelines of the State, charge fees fixed by the State Government and also contribute 15% of its seats to the All India Quota and it had also extended the date of submissions of proposals from the State/ UT Governments upto 28.06.2019. The respondent no.2 has further submitted that the Department of Higher Education, Ministry of Human Resource Development, Govt. of India vide letter dated 28.06.2019, has categorically informed the Ministry of Health & Family Welfare, Govt. of India that presently **there was no reservation in admissions in Higher Educational Courses for Economically Weaker Sections (EWSs) in Unaided Private Education Institutions and that subsequently, a meeting was held in the Ministry of Health & Family Welfare, Govt. of India on 28.06.2019, which was also attended by the Officials of the answering respondent, when after**

due deliberation, it was decided that, in view of the aforesaid letter dated 28.06.2019 issued by the Department of Higher Education, Ministry of Human Resource Development, Govt. of India, EWS quota shall not be available in Private Medical Colleges / Self-Financed Institutions as they do not receive any funding from the State Govts.

62. The respondent no.2 submits that vide letter dated 29.06.2019 in reference to earlier letters dated 24.06.2019 & 25.06.2019, the respondent no.2 had forwarded to the Central Government the fresh proposals by the State/ UT Governments for increase of seats in Government Medical Colleges/ other categories of Govt. Medical Colleges and that the Central Government vide letter dated 30.06.2019 after considering the proposals towards increase in MBBS seats, had informed the State/ UT Governments that it had accepted the same and had directed the various Counseling Authorities to include the seats for the academic year 2019-20. The respondent no.2 has further submitted that it had been informed vide letter dated 29.01.2019 issued by the Ministry of Health & Family Welfare, Government of India that for the current academic year i.e. 2019-20, only medical educational Institutions funded / aided, directly or indirectly by the concerned State Govts. / UTs shall be considered towards increase of intake capacity in the MBBS course towards implementation of reservation for the Economically Weaker Sections and that the implementation of the reservation for EWSs can be implemented over a period of 2 years beginning with academic year 2019-20.

63. The respondent no.2 has thus submitted that after detailed deliberations, it had been decided to extend the benefit of increase of MBBS seats towards Implementation of reservation for the Economically Weaker Sections for the academic year 2019-20 to the following categories of Govt. Medical Colleges:-

- I) Govt. Medical Colleges with Intake capacity of less than 250 MBBS seats shall be considered;*
- II) Govt. Medical Colleges which have been granted LOP for academic year 2019-20 to admit first batch of MBBS students shall not be considered;*
- III) Govt. Medical Colleges which have been granted LOP for academic year 2019-20 to Increase admission capacity In MBBS course shall not be considered;*
- IV) Govt. Medical Colleges which are in the various stages of renewal of permission to admit fresh batches of MBBS students shall be considered;*
- V) Govt. Medical Colleges which have not been granted renewal of permission for academic year 2019-20 to admit fresh batch of MBBS students shall not be considered;*
- VI) Govt. Medical Colleges whose MBBS degree is recognized shall be considered.*

64. *Inter alia* the respondent no.2 submits that the States of Tamil Nadu & Karnataka, have not sent any proposal for implementation of 10% EWS Quota in their Government Medical Colleges.

65. The respondent no.2 has placed reliance on the verdict of the Hon'ble Supreme Court in the case of ***"Gulshan Prakash (Dr.) & Ors. Vs. State of Haryana & Ors."*** (2010) 1 SCC 477 with specific observations in paragraphs 1, 11, 16, 23, 24, 29, 30 of the said verdict, which read to the effect:-

“.....

1. The petitioners in S.L.P.(C) No. 4590 of 2008 and Writ Petition (C) No. 69 of 2009 are one and the same. Leave granted In the special leave petition. Challenge In this appeal Is to the judgment dated 05.02.2008 of the High Court of Punjab & Haryana at Chandigarh, dismissing the Civil Writ Petition No.1431 of 2008, filed by the appellants herein for quashing of the prospectus for the MD/MS/PG Diploma and MDS Courses issued by Maharshi Dayanand University, Rohtak, Haryana for Academic Session 2007-2008 to the extent that It does not provide any reservation of seats for Scheduled Caste/Scheduled Tribe candidates.

.....

11. On the other hand, the consistent view of this Court Is that Article 15(4) Is only an enabling provision and It is for the respective States either to enact a legislation or Issue an executive Instruction providing reservation In Post-Graduate Courses.

.....

16. The principle behind Article 15(4) is that a preferential treatment can be given validly when the socially and educationally backward classes need it. This article enables the State Government to make provisions for upliftment of Scheduled Castes and Scheduled Tribes including reservation of seats for admission to educational institutions. It was also held that Article 15(4) is not an exception but only makes a special application of the principle of reasonable classification. Article 15(4) does not make any mandatory provision for reservation and the power to make reservation under Article 15(4) is discretionary and no writ can be issued to effect reservation. Such special

provision may be made not only by the Legislature but also by the Executive.

.....

23. Learned counsel for the appellants next contended that, inasmuch as even in All-India Entrance Examination for Post-Graduate Courses, the Government of India itself has made a provision for reservation for SC/ST candidates, the State of Haryana is bound to follow the same and issue appropriate orders/directions providing reservation in the Post-Graduate Courses. He further contended that the prospectus de hors any provision for reservation is bad and is liable to be quashed.

24. In our view, this contention is also liable to be rejected. It is true that Government of India itself has made a provision for reservation of SC/ST categories. This was a decision by the Government of India and it is applicable in respect of All-India Entrance Examination for MD/MS/PG Diploma and MDS Courses, and reservation for SC/ST candidates in All- India quota for PG seats. However, the same cannot automatically be applied in other selections where State Governments have power to regulate.

.....

29. Inasmuch as the Government of Haryana has not prescribed any reservation for the Post-Graduate Courses, neither the University nor any other authority be blamed for approving and publishing the prospectus which does not contain reservation for Post- Graduate Courses. The clarificatory order of this Court in Abhay Nath (supra), is applicable for the Institutes managed/run by the Central Government and unless the State Government takes any decision for

granting reservation in MD/MS/PG Diploma and MDS Courses, it cannot be made applicable. As the State Government is competent to make the reservation to a particular class or category, until it is decided by the State, as being a Policy matter, there cannot be any direction to provide reservation at the PG level. The State of Haryana has explained that reservation in under-Graduate Medical Courses is being provided strictly as per their policy. The Post-Graduate Degree/Diploma in medical education is governed by Medical Council. Even, the Medical Council of India has not followed strict adherence to the rule of reservation policy in admission for SC/ST category at the Post-Graduate level.

30. As stated earlier. Article 15(4) is an enabling provision and the State Government is the best judge to grant reservation for SC/ST/Backward Class categories at Post-Graduate level in admission and decision of the State of Haryana not to make any provision for reservation at the Post-Graduate level suffers no infirmity. In our view, every State can take its own decision with regard to reservation depending on various factors. Since the Government of Haryana has decided to grant reservation for SC/ST categories/Backward Class candidates in admission at MBBS level i.e. under graduate level, then it does not mean that it is bound to grant reservation at the Post-Graduate level also. As stated earlier, the State Government, in more than one communication, has conveyed its decision that it is not in favour of reservation for SC/ST/Backward Classes at Post- Graduate level. In such circumstances. Court cannot issue mandamus against their decision and their prospectus also cannot be faulted with for not providing reservation in Post-Graduate Courses. However, we make it clear that irrespective of

*above conclusion. State of Haryana is free to reconsider its earlier decision, if they so desire, and circumstances warrant in the future years.
.....”*

66. The respondent no.2 has further placed reliance on the verdict of the Hon’ble Supreme Court in the case of **“Suresh Chand Gautam Vs. State of Uttar Pradesh&Ors.” (2016) 11 SCC 113** with specific observations in paragraphs 47 & 48 of the said verdict, which read to the effect:-

“.....
47. The submission of the learned counsel for the petitioners is that a command should be issued to the State of Uttar Pradesh to collect the data as enshrined in the Constitution Bench decision in *M. Nagaraj (supra)* so that benefit of reservation in promotion can be given. The relief sought may appear innocuous or simple but when the Court thinks of issue of a writ of mandamus, it has to apprise itself of an existing right or a power to be exercised regard being had to the conception of duty. The concept of power coupled with duty is always based on facts. If we keenly scrutinize the relief sought, the prayer is to issue a mandamus to the State and its functionaries to carry out an exercise for the purpose of exercising a discretion. To elucidate, the discretion is to take a decision to have the reservation, and to have reservation there is a necessity for collection of data in accordance with the principles stated in *M. Nagaraj (supra)* as the same is the condition precedent. A writ of mandamus is sought to collect material or data which is in the realm of condition precedent for exercising a discretion which flows from the enabling constitutional provision. Direction of this nature, in our considered opinion, would not come within the principle of exercise of power coupled with duty. A direction for exercise of a duty which has inherent and inseparable

nexus with the constitutional provision like Article 21 of the Constitution or a statutory duty which is essential for prayer as laid down in *Julius* (supra) where a power is deposited with a public officer but the purpose of being used for the benefit of persons who are specifically pointed out with regard to whom a discretion is applied by the Legislature on the conditions upon which they are entitled. We are inclined to think so as the language employed in *M.Nagaraj* (supra) clearly states that the State is not bound to make reservation in promotion. Thus, there is no constitutional obligation. The decisions wherein this Court has placed reliance on *Julius* (supra) and the other judgments of this Court and issued directions, the language employed in the statute is different and subserves immense public interest in the said authorities, the purpose and purport are quite different.

48. Be it clearly stated, the Courts do not formulate any policy, remains away from making anything that would amount to legislation, rules and regulation or policy relating to reservation. The Courts can test the validity of the same when they are challenged. The court cannot direct for making legislation or for that matter any kind of subordinate legislation. We may hasten to add that in certain decisions directions have been issued for framing of guidelines or the court has itself framed guidelines for sustaining certain rights of women, children or prisoners or under-trial prisoners. The said category of cases falls in a different compartment. They are in different sphere than what is envisaged in Article 16 (4-A) and 16 (4-B) whose constitutional validity have been upheld by the Constitution Bench with certain qualifiers. They have been regarded as enabling constitutional provisions. Additionally it has been postulated that the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matter of promotions. Therefore, there is no duty. In such a situation, to issue a mandamus to collect the data would tantamount to asking the authorities whether there is ample data to frame a rule or regulation. This will be in a way, entering

into the domain of legislation, for it is a step towards commanding to frame a legislation or a delegated legislation for reservation.

.....”

67. The respondent no. 2 has further submitted that with the prior approval of the Central Government vide notification dated 05.02.2018 published in the Official Gazette on 06.02.2018, it has amended the time schedule for completion of admission process of MBBS course in the country. The respondent no.2 has further placed reliance on the verdict of the Hon’ble Supreme Court in the case of **“Krishna Priya Ganguly & Ors. Vs. University of Lucknow & Ors.” (1984) 1 SCC 307**, wherein it has been laid down by the Hon’ble Supreme Court that the rules and regulations of any academic body are not permitted to be relaxed by any High Court while exercising jurisdiction under Article 226 of the Constitution of India.

68. The respondent no.2 has further placed reliance on the verdict of the Hon’ble Supreme Court in the case **“A.P. Christian Medical Educational Society Vs. Government of Andhra Pradesh & Anr.” (1986) 2SCC 667** and **“CBSE Vs. P.C. Sunil Kumar & Ors.” (1998) 5 SCC 377**, wherein, it has been clearly held by the Hon’ble Supreme Court that no mandamus can be issued to any academic body not to follow its own rules and regulations, hence no direction can be issued by the High Courts under Article 226 of the Constitution of India in the present case.

69. The respondent no.2 has thus sought that the prayer made by the petitioner be dismissed.

70. Through the short affidavit filed on behalf of the respondents No. 3 and 4, i.e. on behalf of the State of Madhya Pradesh filed by Dr. Vipender Bhadkariya, Assistant Professor (Anatomy Department), Gajra Raja Medical College, Madhya Pradesh, vide which it has been submitted that the provision of additional seats in 10% EWS Reservation in the Private Medical Colleges of the State would be a great boon for the aspiring students and for the Health Care System of the State and that the State of Madhya Pradesh has no objection if the additional seats under the EWS Medical reservations in Private Medical Colleges are sanctioned. The respondents No. 3 and 4 have also through the short affidavit of Dr. Vipender Bhadkariya submitted to the effect that they have sent a proposal to enhance the MBBS/Post Graduate proposal seats in Government Medical Colleges under the EWS 10% reservation scheme to the Board of Governors in supersession of the MCI on 10.5.2019 and 4.6.2019 and that the Government of India on 21.6.2019 published the list of allotment of MBBS students under the 10% EWS quota. It has been submitted through the short affidavit submitted on behalf of the State of Madhya Pradesh that on 21.6.2019, the Principal Secretary, Medical Education Mantralaya, State of Madhya Pradesh sent a DO letter to the Chairman of the Board of Governors in supersession of the MCI presenting the anomalies in the allotment of seats in the established Government Medical Colleges and no allotment having been made of seats in the medical colleges which were granted the letter of permission of admission in the session 2019-20.

71. The respondents No.3 and 4 submit that vide letter dated 4.6.2019 the Board of Governors in supersession of the MCI issued the guidance note about the process to be followed with the prescribed proforma to be sent to the Board of Governors in supersession of the MCI by 11.6.2019 and point 4 of the said letter mentioned to the effect:

“ The calculation of seats increase has to be made taking into consideration the total intake of students at the “State” level considering all the seats/institution where the Government reservation policy is applicable and is being implemented.”

72. It has further been submitted though the short affidavit submitted on behalf of the respondents No.3 and 3 that the Board of Governors in supersession of the MCI vide a letter dated 25.6.2019 extended the last date for submission of the application to 28.6.2019 for increase of the MBBS seats to implement the EWS quota and that the benefit of the additional seats under the EWS quota were also extended to the colleges which are under the Self Financing Mode and fulfill the criteria:

- “(i) Provide reservation of seats for SC, ST, OBC, as per the reservation guidelines of State.*
- (ii) Charge fee fixed by the State Government.*
- (iii) Also contribute 15% seat to All India Quota.*
- (i) Calculation of seats under EWS quota to be made only on seats on which reservation is applied.”*

73. The respondents No. 3 and 4 submit that in the context of the letter dated 25.6.2019, six Private Medical Colleges sent their

proposals to the DME for increase of additional seats under the EWS quota reservation with an affidavit fulfilling the criteria and that as per the criteria required vide the letter dated 25.6.2019 of the Board of Governors in supersession of the MCI by the State of Madhya Pradesh in relation to six Private Medical Colleges for according of approval of the EWS Quota in the Private Medical Colleges has already been adverted to elsewhere hereinabove. The respondents No.3 and 4 submit that a letter dated 26.6.2019 was also sent on behalf of the respondents No.3 and 4 to the Government of India, Ministry of Health & Family Welfare for reconsideration of the already submitted proposals for allocating seats under the EWS 10% reservation quota.

74. The State of Madhya Pradesh has further submitted that since the State Reservation Policy is applicable for total seats minus 15% NRI quota in Private Medical Colleges by six Private Medical Colleges including the present petitioners fulfilling the criteria under the Board of Governors in supersession of the MCI letter submitted their affidavits and thus the State of Madhya Pradesh has forwarded the proposals of these six medical colleges to Board of Governors in supersession of the MCI on 28.6.2019 and that vide letter dated 20.6.2019, the Ministry of Health & Family Welfare, Government of India, published another list of Medical Colleges which were allocated seats under the EWS quota and that in this the grievances addressed by the State in the context of allocation of seats under EWS reservation was not resolved. The said letter dated 30.6.2019 adverted to herein has been reproduced elsewhere herein above.

75. The contention of the petitioners is to the effect that in as much as they meet the requirements of the Indian Medical Council Act, 1956, and as the Board of Governors in supersession of the MCI has been accorded recognition to their institutes on the basis of continued Health Care Facilities being imparted by them from the time of their commencement till date and taking into account the factum that the State of Madhya Pradesh has implemented the EWS reservation policy in *toto* in terms of the 103rd Amendment to the Constitution of India by the legislation and insertion of Article 15(6) thereto, the petitioners who are willing to submit an undertaking that they would charge the same fees as is charged by the Government Institutes from the students for attending the MBBS programme, the non grant of permission of enhancement of seats in the institute of the petitioners for the additional intake of 10% of seats in the EWS category is violative of Articles 14 and 19(1)(g) of the Constitution of India and that the two colleges in the State of Gujarat i.e. Banas Medical College & Research Institute at Palanpur and Zydus Medical College and Hospital at Dahod have been accorded the enhanced intake into their institutes despite the factum that they are private institutes.

76. On behalf of the respondent No.1 i.e., the Union of India and the respondent No.2 i.e., the Board of Governors in supersession of the MCI the prayer made by the petitioners is vehemently opposed submitting to the effect that the Article 15 (4) of the Constitution of India and 15(5) and 15(6) of the Constitution of India which read to the effect:

Article 15: prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—

(1)

(2)

(3)

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,— (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and

(5) insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage."

are only enabling provisions and do not confer any vested right in the petitioners to seek the implementation thereof.

77. Reliance was placed on behalf of the respondent No. 1 on the verdict of the ***Gulshan Prakash (DR.) v. State of Haryana***: (2010) 1 SCC 477 wherein pursuant to a notification issued by the State of Haryana, the Maharishi Dayanand University, Rohtak, Haryana published a prospectus for admission to MD, MS/PG diploma and MDS courses in Government Medical & Dental Colleges in the State concerned pursuant to which a writ petition was filed before the Hon'ble High Court for quashing of the said prospectus to the extent that it had not provided reservation of seats for the Scheduled Castes and Scheduled Tribes candidates which petition was dismissed and against the same a Civil Appeal as well as the Writ Petition under

Article 32 of the Constitution of India were preferred which were both dismissed by the Hon'ble Supreme Court observing to the effect:

“ 16. The principle behind Article 15(4) is that a preferential treatment can be given validly when the socially and educationally backward classes need it. This Article enables the State Government to make provisions for the upliftment of Scheduled Castes and Scheduled Tribes including reservation of seats for admission to educational institutions. It was also held that Article 15(4) is not an exception but only makes a special application of the principle of reasonable classification. Article 15(4) does not make any mandatory provision for reservation and the power to make reservation under Article 15(4) is discretionary and no writ can be issued to effect reservation. Such special provision may be made not only by the legislature but also by the executive.

17.

18.

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21.

22.

23. The learned counsel for the appellants next contended that, inasmuch as even in all-India entrance examination for the postgraduate courses, the Government of India itself has made a provision for reservation for SC/ST candidates, the State of Haryana is bound to follow the same and issue appropriate orders/directions providing reservation in the postgraduate courses. He further contended

that the prospectus dehors any provision for reservation is bad and is liable to be quashed.

24. In our view, this contention is also liable to be rejected. It is true that the Government of India itself has made a provision of reservation for SC/ST categories. This was a decision by the Government of India and it is applicable in respect of all-India entrance examination for MD/MS/PG diploma and MDS courses, and reservation for SC/ST candidates in all-India quota for PG seats. However, the same cannot automatically be applied in other selections where the State Governments have power to regulate.

25.

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27.

28. ...

29.

30. As stated earlier, Article 15(4) is an enabling provision and the State Government is the best judge to grant reservation for SC/ST/Backward Class categories at postgraduate level in admission and the decision of the State of Haryana not to make any provision for reservation at the postgraduate level suffers from no infirmity. In our view, every State can take its own decision with regard to reservation depending on various factors. Since the Government of Haryana has decided to grant reservation for SC/ST categories/Backward Class candidates in admission at MBBS level i.e. undergraduate level, then it does not mean that it is bound to grant reservation at the postgraduate level also.”

78. It has also been submitted on behalf of the respondent No.1 and 2 that in terms of the Indian Medical Council Act, 1956 itself the grant of permission for increase in the admission capacity for under graduate students pursuing medicine can only be referred by the Board of Governors, in supersession of the MCI, with its recommendations to the Central Government in terms of Section 10A(2)(a) and in terms of Section 10A(4), the Central Government may after considering the scheme and the recommendations of the Council under Sub Section (3) and after obtaining where necessary, such other particulars as may be considered necessary from the person or the medical college concerned, and having regard to the factors referred to in Sub Section (7), either approve (with such conditions, if any, as it may consider necessary)or disapprove the scheme and any such approval shall be a permission under sub-section (1).

79. The respondent No.1 thus submits that all documents that had been issued on behalf of the respondent No.1 clearly contemplated that the 10% EWS quota for the under graduate seats in medical colleges was to be extended to colleges for the benefit of increasing the intake capacity to the Government Medical Colleges and other categories of Government Medical Colleges. The respondent No.1 has further submitted that the Central Government after considering the proposals as received of the various Government Medical Colleges towards increase in the MBBS quota has informed these States and the Union Territories vide a letter dated 21.6.2019 that it had accepted the same and directed the various Counseling Authorities to include seats for the academic year 2019-20 and that subsequently in as much as

vide letter dated 25.6.2019 in view of the letter dated 24.6.2019 which had extended the benefit of increase in intake of certain other categories of Government Medical Colleges and had extended the date of submission for proposal by the State for increase of the seats in Government Medical Colleges till 28.6.2019. The Central Government vide letter dated 30.6.2019 had after considering the proposals towards increase in MBBS seats, had informed the State / Union Territories Governments that it had accepted the same and had directed the various Counseling Authorities to include the seats for the academic year 2019-20.

80. The respondent No.1 has further submitted that neither the Central Government nor the respondent No.1 were considering the Private Medical Colleges for increase of intake in MBBS course towards implementation of reservation for the Economically Weaker Sections for the academic year 2019-20 and that the letters dated 29.01.2019, 18.04.2019, 20.05.2019, 04/06.06.2019, 10.06.2019, 21.06.2019, 25.06.2019, 29.06.2019 & 30.06.2019 would show that the same had been addressed to the various State / UT Governments of the country for sending proposals for increasing seats for the MBBS course towards the implementation of reservation for the Economically Weaker Sections for the academic year 2019-20 and that the Private Medical Colleges were never in the zone of consideration for increasing seats in the MBBS course towards implementation of reservation for the Economically Weaker Sections for the academic year 2019-20.

81. During the course of submissions that have been made on behalf of the respondent No.1 it was categorically put forth by the learned ASG to the effect that the respondent No.1 was presently for the present academic session for the academic year 2019-20 not contemplating the increase in the intake of MBBS seats towards implementation of reservation for the EWS category in Private Medical Colleges in as much as there are guidelines and regulations and systems which will have to be set into place for the benefit of the students and to ensure that there is no resultant undue monetary benefits that were sought to be derived by the Private Medical Colleges without following the procedure prescribed under the IMC Act, 1956 and the statutory regulations made thereunder for increase of intake of capacity.

82. The respondent No.2 has also submitted to similar effect and it has been submitted on behalf of the respondents No.1 and 2 that despite the proposals of those medical colleges having been forwarded by the State of Madhya Pradesh arrayed as the respondents No.3 and 4 to the petitions, in as much as the Central Government has presently not extended the implementation of reservation 10% EWS quota in private medical institutions, no vested rights have accrued to the petitioners in as much as Article 15(6) of the Constitution is only an enabling provision contending to the effect that it is necessary to act with circumspection in relation to the Private Medical Colleges for the welfare of the students and that as contended on behalf of the respondent No.1, the Union of India by the learned ASG, the systems have to be set in place for appropriate check and balances so that a

regulatory framework in relation to the fee structure for the EWS students is created so that the Private Medical Colleges do not convert the EWS quota seats into monetary gains.

83. Learned counsel for the petitioners refuted the said contention submitting to the effect that in as much as they have undertaken vide their affidavits that if the additional intake is granted they would charge the same fees as is charged by the Government Medical Colleges from the EWS candidates. It was further submitted on behalf of the petitioners that there is no such mechanism of checks and balances required in as much as they would remain bound by their undertakings qua which it was submitted by the learned ASG that even if the said institutes who submit the undertakings are taken to task for breach of the undertaking, the same would not result into the welfare and well-being of the students who would have been admitted and would then be left in the lurch. It was also submitted by the learned ASG on behalf of the respondent Union of India that as averred in the counter affidavit filed by the Under Secretary to the Government of India, Ministry of Health & Family Welfare, in terms of the 103rd Constitutional amendment, vide letter bearing No. F.NO.V.11025/10/2019-MEP dated 29.1.2019 all the States and the Union Territories have been apprised to the effect:

b) Every Central Educational Institution shall, with the prior approval of the appropriate authority as defined in clause (c) of section 2 of the Act, 2006, increase the number of seats over and above its annual permitted strength in each branch of study or faculty so that the number of seats

available, excluding those reserved for the persons belonging to the EWSs, is not less than the number of such seats available, in each category for the academic session immediately preceding the date of coming into force of these guidelines.

c) The applicability of this Amendment Act, 2019 for the increase of annual permitted strength need to be implemented from the academic year following the commencement of the Amendment Act but in case the annual permitted strength cannot be implemented for reasons of financial, physical or academic limitation or in order to maintain the standards of education, such increase can be implemented over a period of two years beginning with the academic session 2019-20, after the representation by the Central Education Institution to the appropriate authority and subject to its satisfaction on the grounds as stated above. At any stage of implementation of EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories shall not be reduced.”,

and it has thus been submitted that the said letter itself indicates that the additional intake related to the Central Educational Institutions and that vide letter dated 29.1.2019 No. F.NO.V.11025/10/2019-MEP, Government of India also apprised the Board of Governors, in supersession of the MCI, to take all necessary measures including the enabling amendments in the Regulation to facilitate the implementation of the provisions of the Constitution (Amendment) Act, 2019 with immediate effect and that both the said letters dated

29.1.2019 of the Union of India apprised that the applicability of the Constitution (Amendment) Act, 2019 for the increase of annual permitted strength needs to be implemented for the academic year following the commencement of the Constitution (Amendment) Act, 2019 but in case the annual permitted strength cannot be implemented for reasons of financial, physical or academic limitation or in order to maintain the standards of education, such increase can be implemented over a period of **two years** beginning with the academic session 2019-20, after the representation by the Central Education Institution to the appropriate authority and subject to its satisfaction on the grounds as detailed in the said letter with it further having been specified that at any stage of implementation of EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories would not be reduced.

84. Further more, it was also submitted on behalf of the respondent No.1 that the said letters made it very clear that the State Governments and Union Territories have been requested to give effect to the provisions of the said Constitution Amendment Act in respect of all higher education **institutions funded/aided, directly or indirectly by the State Government starting from the academic year 2019-20.**

85. The Office Memorandum dated 25.6.2019 of the Under Secretary to the Ministry of Human Resource Development, Government of India, in view of the pendency of the present two writ petitions stated as under:

“ 2. In this regard, it is stated that the Ministry of HRD vide OM dated 21.01.2019

sent a copy of Note for the Cabinet for the proposal for introduction of the Unaided Private Educational Institutions (Reservation in Admission) Bill, 2019 for the comments/views of this Ministry. The Ministry vide OM dated 22.02.2019 (copy enclosed) sent its following comments:

(i) With regard to the financial implications, the Cabinet Notes prescribed that as the private unaided institutions are not dependent on Central or State Govt. there are no financial implications. However, it is observed that the private medical colleges would have to create additional infrastructure which would require funds.

(ii) Clarity in respect of fee structure for the reserved categories including EWS for their admission to private unaided institutions is also needed to be brought out.

3. This Ministry has not received any correspondence from Ministry of HRD in respect of reservation in higher courses in Private Medical Institutions for EWS. It is therefore requested to convey the further action on reservation in admission in Private Medical Institutions for the EWS category within seven (7) days to enable this Ministry to file the affidavit in the above said matters.”

to which the Under Secretary to the Government of India, Ministry of Human Resource Development, Department of Higher Education has categorically informed to the effect that:

*“ F.No. 12-3/2019-UI
Government of India
Ministry of Human Resources Development
Department of Higher Education
Dated the 28th June, 2019*

OFFICE MEMORANDUM

Subject:-Reservation in admissions in higher courses in Unaided Private Educational Institutions for Economical Weaker Section (EWS)- regarding.

The undersigned is directed to refer to OM No F.No.C. 18018/05/2019- MEP dated 25th June, 2019 of M/o Health & Family Welfare (MH&FA) and to say that at present there is no reservation specified by this Ministry in Unaided Private Education Institutions.”

86. The Union of India, i.e., the respondent No.1 and the Board of Governors, in supersession of the MCI, i.e. the respondent No.2 both have categorically stated in response to the contentions raised on behalf of the petitioners that the Banas Medical College, Palanpur and Zydus Medical College, Dahod, in the State of Gujarat which have been permitted the additional intake of seats **are Public Private Partnerships** Institutes and **not the Private Institutes** and that thus the petitioners cannot contend that they are being discriminated against.

87. The contentions of the State of Madhya Pradesh and the Intervenor that in terms of Article 12 of the Constitution of India, the State of Madhya Pradesh falls within the ambit of the State apparently and thus has a duty to implement the 103rd Constitutional Amendment and thus in as much as the State Government has recommended the proposal of the petitioners and four other private institutions for

enhanced intake for the EWS quota in terms of the 103rd Constitutional Amendment to the Board of Governors, in supersession of the MCI, the said provisions for increase of intake ought to be implemented cannot presently be granted in view of the factum that vide Section 3(C)(2) of the Indian Medical Council Act, 1956 provides as follows:

“ Section 3C: Power of Central Government to given directions.—

(1)

(2):The Decision of the Central Government whether a question is a matter of policy or not shall be final.”

88. Even the Board of Governors, in supersession of the MCI, is bound by the directions on the questions of policy as the Central Government may give in writing to it from time to time and that the decision of the Central government whether a question is matter of policy or not shall be final and taking the same into account in as much as the Government of India has apprised the Ministry of Health & Family Welfare, the Medical Educational Policy vide Officer Memorandum F NO.12-3/2019-UI, Government of India dated 28.6.2019 that at present there is no reservation specified by the Ministry in unaided private institutions for Economically Weaker Sections (EWS), the prayers made by the petitioner and the intervenor and consequential supporting prayers made by the State of Madhya Pradesh through the present writ petitions cannot be granted.

89. Section 10A(1)(b) of the Indian Medical Council Act, 1956, reads to the effect:

“ Section 10A(i)(b): no medical college shall:-

(ii) open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(iii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1-. For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2.- For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.”

90. Section 33 of the Indian Medical Council Act, 1956, confers the powers on the Medical Council of India, which has since been superceded by the Board of Governors vide Section 3A of the said enactment, w.e.f. 15.5.2010 vide which the said Board of Governors make regulations to carry out the purposes of the Indian Medical Council Act, 1956 with the previous sanction of the Central Government. It is essential to refer to the following provisions of the Indian Medical Council Act, 1956.

“Section 33(fa): the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred

and the fee payable with the scheme under clause (b) of sub-section (2) of section 10A;”

91. And Section 33 (fb) which prescribes

***Section 33 (fb):** any other factors under clause (g) of sub-section (7) of section 10A;*

92. Section 10A(2) (b) of the said enactment reads as under:-

Section 10A(2):

(a).....

***(b)** and the central Government shall refer the scheme to the Council for its recommendations.*

93. Section 10A(7)(g) reads to the effect:

Section 10A: Permission for establishment of new medical colleges, new course of study:-

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

(a)

(b)

(c) ...

(d) ...

(e) ...

(f) ...

(g): any other factors as may be prescribed.”

94. The petitioners are aggrieved by the additional 50 seats enhanced for Banas Medical College & Research Institute, Palanpur and Zydus Medical College & Hospital, Dahod, in the State of Gujarat as indicated vide the corrigendum dated 19.7.2019 to the Under

Secretary, Government of India, it is essential to observe that the said two medical colleges are categorically specified through the said letter itself in the PPP mode i.e., the Public Private Partnership Mode which corrigendum reads to the effect:

“ In continuation to this Ministry’s letter of even number dated 30.06.2019 increasing twenty (20) additional MBBS seats in 08 GNERS Medical Colleges, 02 Municipal Corporation Medical Colleges and 02 Medical Colleges in PPP mode on the BoG-MCI’s recommendation dated 29.06.2019, I am directed to say that BoG-MCI vide its letter dated 18.07.2019 (copy enclosed) has now informed the Ministry that they have revised their recommendation to 50 more MBBS seats in each of the 08 GMERS Medical Colleges, 02 Municipal Corporation Medical Colleges and 02 Medical Colleges in PPP mode and requested the Ministry to approve the proposal. After careful consideration of the BoG-MCI’s proposal dated 18.07.2019, Ministry accepted BoG’s request to increase 30 additional MBBS seats in the said 12 Medical Colleges and inform the State Government that increased MBBS seats in the 12 aforementioned Medical Colleges may be read as under;-

sl	College	Total l Seat s	Total Incre ased	Total Seats now permitted
1	Ahmedabad Municipal Corporation Medical Education Trust Medical College, Ahmedabad	150	50	200
2	Surat Municipal Institute of Medical Education & Research, Surat	150	50	200
3	GMERS Medical College, Patan	150	50	200
4	GMERS Medical College, Gandhinagar	150	50	200
5	GMERS Medical College, Vadodara	150	50	200
6	GMERS Medical College Himmatnagar,	150	50	200

7	GMERS Medical College Junagarh,	150	50	200
8	GMERS Medical College, Ahmedabad	150	50	200
9	GMERS Medical College Mehsana,	150	50	200
10	GMERS Medical College, Valsad	150	50	200
11	Banas Medical College & Research Institute, Palanpur	150	50	200
12	Zydus Medical College & Hospital, Dahod	150	50	200

95. On behalf of the respondent Union of India, reliance has also been placed on the verdict of the Hon'ble Supreme Court in ***Suresh Chand Gautam v. State of Uttar Pradesh and Others***; (2016) 11 SCC 113 to contend that the Court cannot issue a mandamus in relation to the enabling Constitutional provision and cannot enter into the domain of Legislation.

96. Reliance was also placed on behalf of the petitioners on the verdict of the Hon'ble Supreme Court in ***Secretary, Cannanore District Muslim Educational Association, Karimbam v. State of Kerala and Others***; (2010) 6 SCC 373 to contend that a writ Court cannot take a mechanical or straitjacket approach in the matter and that where a litigant has a right of atleast a legitimate expectation to get a sanction to conduct an educational course, a mandamus ought to be issued and that the Writ Court must reach injustice wherever it is found and must set right the mistakes. Reliance was placed on behalf of the petitioner on the observations of the Hon'ble Supreme Court in the said verdict on paragraphs 35, 39, 40 and 41 which read to the effect:

“ 35. In Dwarka Nath v. ITO [AIR 1966 SC 81] a three-Judge Bench of this Court commenting on the High Court's jurisdiction under Article 226 opined that this article is deliberately couched in comprehensive language so that it confers wide power on the High Court to “reach injustice wherever it is found”. Delivering the judgment Justice Subba Rao (as His Lordship then was) held that the Constitution designedly used such wide language in describing the nature of the power. The learned Judge further held that the High Court can issue writs in the nature of prerogative writs as understood in England; but the learned Judge added that the scope of these writs in India has been widened by the use of the expression “nature”.

36.

37.

38.

39. This Court has also taken a very broad view of the writ of mandamus in several decisions. In *Comptroller and Auditor General of India v. K.S. Jagannathan* a three-Judge Bench of this Court referred to Halsbury's Laws of England, 4th Edn., Vol. I, para 89 to illustrate the range of this remedy and quoted with approval the following passage from Halsbury about the efficacy of mandamus:

“89. Nature of mandamus.— ... is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy, for enforcing that right; and it may issue

in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

In SCC para 20, in the same page of the report, this Court further held: (K.S. Jagannathan case

“20. ... and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

40. In a subsequent judgment also in Andi Mukta Sadguru Shree MuktajeeVandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani this Court examined the development of the law of mandamus and held as under:

“22. ... mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: ‘To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.’ (Judicial Review of Administrative Action, 4th Edn., p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available ‘to reach injustice wherever it is found’.

Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.”

41. The facts of this case clearly show that the appellant is entitled to get the sanction of holding higher secondary classes. In fact the Government committed itself to give the appellant the said facility. The Government's said order could not be implemented in view of the court proceedings. Before the procedural wrangle in the court could be cleared, came the change of policy. So it cannot be denied that the appellant has a right or at least a legitimate expectation to get the permission to hold higher secondary classes.”

97. It is essential to advert to paragraph 44 of this very verdict relied upon on behalf of the petitioners which reads to the effect:

*“ 44. For the reasons aforesaid this Court cannot uphold the judgment passed by the High Court in WP No. 11167 of 2006. The judgment is set aside and this Court directs the respondent State to sanction higher secondary course in the appellant's institution from the next academic session **with this rider that the appellant must follow the extant statutory procedures for the appointment of teachers in the higher secondary section.**”*

98. It is essential to observe that the sanction that had been granted in favour of the writ petitioner therein vide a direction to the State to sanction the conduct of the Higher Secondary Course

in the appellant's institution from the next academic session was with the rider that the appellant therein must follow the extant statutory procedures for the appointment of teachers in the higher secondary section.

99. In the instant case, the Union of India and Board of Governors, in supersession of the MCI, have sought time for formulation of regulations and procedures for sanction of increased intake in private institutions to the core intake of the EWS category students for the interest of the students so that there is a clarity and checks and balances and prescribed procedure laid down in relation to the fee structure qua fees that may be charged by the Private Institutes which ought not to be to the detriment of the said EWS students. Apparently, the Union of India and the Board of Governors, in supersession of the MCI, cannot thus be faulted with in their endeavour to ensure checks and balances created and systems brought in place for the increased intake of EWS students by the Private Institutions to ensure the regulated fees to be charged by them and in such circumstances it is apparent that even if the petitioners seek to contend that there has been a discrimination made against them that it is essential to observe that the said classification made is presently only for the academic year 2019-20 and is based on an intelligible differentia of the welfare of the of the EWS students, for which the Union of India and the Board of Governors in supersession of the MCI, which is the Regulating Body for maintenance of standards in Medical Education, cannot be faulted.

100. Thus the reliance placed on behalf of the petitioners on the verdict of the *Secretary, Cannanore District Muslim Educational Association, Karimbam v. State of Kerala and Others*; (2010) 6 SCC 373 is wholly misplaced.

101. Reliance was also placed on behalf petitioners on the verdict of the Hon'ble Supreme Court on the verdict of the Hon'ble Supreme Court in *State of Punjab v. Bandheep Singh and Others*; (2016) 1 SCC 724; with Civil Appeal No. 630/2006 titled as *Punjab State Leather Development Corporation and Others v. Bandheep Singh and Others*: to contend to the effect that in view of the issuance of the letter dated 25.6.2019 by the Secretary General of the Board of Governors in supersession of the MCI, vide the communication No. MCI-34(41)(EWS)/2019-Med./126285 vide para 2 to the effect:

***“2. In view of above, it has been decided to extend the date of receiving application for increase of MBBS seats to implement EWS quota to the colleges which are being run by Government controlled societies, municipal bodies, public private partnership and under self financing mode which also follow reservation of seats for SC/ST/OBC, charge fee fixed by the State Govt. concerned, and also contribute 15% of seats to AIQ as specified above.*”**

the subsequent letters and explanations sought to be averred by the Union of India and the Board of Governors to bring forth as to what was meant by them or what they intended cannot be allowed to be given now is also misplaced in view of the policy decision put forth by the Union of India vide its communication dated 28.6.2019 bearing

No.12-3/2019-UI and 29.6.2019 bearing No. F.No.MCI-34(41)(EWS)/2019-Med./12675-66, already adverted to elsewhere herein above.

The writ petitions i.e., W.P.(C) No. 6827/2019 and W.P.(C) No.6828/2019 are declined and the prayers made by the intervenor and the supporting prayers made by the State of Madhya Pradesh through the present writ petitions cannot be granted.

ANU MALHOTRA, J.

JULY 29, 2019/SV/NC