

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 02.08.2019

Date of decision: 07.08.2019

W.P.(C) 10933/2018, CM APPL. 33734/2019, CM APPL.42590/2018, CM APPL. 33735/2019

DEEPANSHU BHADORIYA AND ORS.

..... Petitioners

Through: Mr. Sidharth Gupta, Ms. Perna Priyadarshini & Mr. Somay Kapoor, Advocates.

versus

MEDICAL COUNCIL OF INDIA AND ORS.

..... Respondents

Through: Mr. T. Singhdev, Ms. Michelle, Ms. Puja Sarkar, Ms. Arunima, Ms. Sumangla & Mr. Tarun Verma, Advocates for MCI.

Mr. Rahul Kaushik, Advocate for R-2 & 3.

Mr. Nishit Agrawal & Mr. Harsh Mishra, Advocates for R-4.

Mr. Rakesh Kumar, CGSC with Mr. Raghav Nagar, Advocate for UOI.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners namely Deepanshu Bhadoriya, Wadhwani Ashwin Ramesh, Aditi Pathak, Rahul Soni and Sneha Kumari participated in the

CBSE conducted NEET for UG medical courses in the year 2016 and state that they were eligible and qualified to participate in the centralized offline counseling conducted by the respondent- State Government for admissions to the UG medical courses in the State of Madhya Pradesh. The petitioners submit further that their admissions to the L.N. Medical College Hospital and Research Centre, Bhopal i.e. the respondent no.4 were effected on the last date of admissions i.e. 07.10.2016 in the academic year 2016-17, in as much as the DME i.e. the respondent no.3 could not fill the leftover vacant seats of the respondent no.4- college.

2. The petitioners submit that they are NEET qualified students and eligible as per the norms and standards laid down by the respondent no.1 i.e. the MCI and four of them were also duly registered with the respondent- State Government for participating in every offline/ online rounds of counseling for admission to the UG medical and dental courses so conducted by the State Government. The petitioners also submit that some of them also possess higher marks/percentage than the concerned students possessing the lowest marks/ percentage as allotted by the respondent no.3 i.e. the DME to the management of their medical college. The petitioners submit that due to last minute unorganized counseling, the State Government could not fill up the vacant seats in the respondent no.4- college on the last date of counseling i.e. 07.10.2016 and the Department of Medical Education i.e. the respondent no.3 itself vide letter dated 18.11.2016 had recorded that 20 seats remained vacant in the college i.e. the respondent no.4 as on the last date of admission i.e. 07.10.2016. The petitioners submit that they were eligible and qualified from all the aspects and further submit that the association of private dental and medical colleges issued their own advertisement and admitted students

on the basis of counseling conducted by them on the basis of the merit list prepared from the NEET examination.

3. Vide order dated 22.09.2016 in Contempt Petition (C) no. 584/2016 in C.A. No.4060/2009, the Hon'ble Supreme Court had observed that entrances to various private medical colleges should be effected by the centralized counseling conducted by the State Government and none else and the observations of the Hon'ble Supreme Court relied upon on behalf of the petitioners are to the effect:-

"We may note at this stage that the State Government has done the first counselling. However, the learned Additional Solicitor General has made a statement at the Bar that the State Government is ready to undertake the entire process afresh and assures that it would be completed by 30th September, 2016 which is the last date for admission. We also feel that it is a proper course of action inasmuch as it will enable the private institutions to send their representatives at the place of counseling as per the information which may be displayed by the counseling authority forthwith at its website. We place on record an assurance given by the learned ASG that all seats, whether of Government Colleges or the private institutions, shall be filled up and no seat shall remain vacant."

4. The petitioners thus submit that the State Government apparently had thus assured the Hon'ble Supreme Court that they would conduct the counseling in such a manner so as to ensure that no seats in the private limited colleges sought to be filled by them, were left vacant. The State Government

is stated to have issued a counseling programme for admissions to all the government and medical colleges on 22.09.2016 which was to continue till 27.09.2016 and that on 20.09.2016, the State Government had issued a second counseling programme through which the extended round of counseling was to be conducted till 12.00 am at mid night ending on 30.09.2016 and starting on 01.10.2016. The State Government is stated to have issued a modified counseling programme on 04.10.2016, wherein the fresh round of counseling was to commence from 04.10.2016 and was to continue till 5.00 pm of 07.10.2016 and on 05.10.2016, the State Government through its special note directed that the fresh round of counseling be conducted on 07.10.2016 and that the counseling for the year 2016-17 had been extended upto 07.10.2016 vide an order of the Court.

5. The petitioners submit that till the said date there were a large number of seats in all the private medical colleges which remained vacant and that a large number of NEET qualified students thus got attracted to seek admissions against such vacant seats. *Inter alia* the petitioners submit that on the date 07.10.2016 i.e. on the last extended date of counseling for the session 2016-17, three students who were allotted their respective seats, viz. Shriyanka Mohare, Roopsikha Soni & Ruchi Yadav gave specific letters in their hand writing for quitting the allotted seats on the last date voluntarily and that in the affidavit which was forwarded to the Counseling Authority by these three students also they stated that the withdrawal of the admissions was completely voluntary.

6. As per the averments made in the petition itself, there was no arrangement in terms of the applicable admission rules or procedure framed by the State Government providing for avenues for filling up such seats

falling vacant on the last date of counseling. The petitioners further submit that since seats had fallen vacant towards the closing hours of the counseling, the counseling was in fact conducted by the respondent- State until 11pm midnight of 7.10.2016, which is when the petitioner students were given admissions. The petitioners further submit that on 07/08.10.2016, the management of the respondent no.4- college, immediately intimated the competent authority of admissions about the admissions having been done against the seats, that had fallen vacant on the last date and last hours of counseling, due to fault on the part of the State Government / DME in preparing the counseling program and that in as much as all the petitioner-students possessed "higher marks/ percentage" than the concerned students possessing lowest marks / percentage, as allotted to by the respondent no.3- DME to the management of the respondent medical college. On 18.11.2016, the Department of Medical Education i.e. the respondent no.3 is stated to have forwarded a list of all the students allotted to the respondent- college wherein 125 students were allotted against 127 approved seats with the respondent college and as per the tabular information forwarded by DME itself, 2 seats were left vacant on the last date of admissions, i.e. 07.10.2016.

7. The petitioners at the time of institution of the petition which is filed in the year 2018, which petition is dated 03.10.2018 submit that from 30.08.2017 to 11.09.2017, examinations for the MBBS First year were conducted by the respondent- L.N. University in which the petitioners- i.e. the students appeared and at the time of institution of the petitioner they were studying in the second year. During the course of submissions, it was submitted that they are now studying in the third year.

8. The matter is indicated to have been placed before the MCI by the respondent no.4- College to submit their explanation as to why and in what circumstances, the decision of admitting the petitioners- students on the last date of admission had arisen. The petitioners submit further that there is no reason as to why there was a departure from the principles of natural justice without giving any opportunity to the students to explain their contentions.

9. The petitioners submit that they ought not to be penalized for the failure of the State Government in ensuring that all vacant seats in the medical colleges in the State were filled up. Inter alia, the petitioners submit that even after being informed of the factum of admission of the petitioners to the respondent No.4 college, the State Government DME, the respondent No.3, never raised any objection to the same and thus it was apparent that there was no violation of any rules and that there was thus clear acquiescence on the part of State Government in the confirmation of admissions of the petitioners.

10. The respondent No.1 MCI, now superseded by the Board of Governors in supersession of the MCI has submitted categorically through its short affidavit that the petitioners in terms of the decision of the respondent No.1 as conveyed vide letters dated 26.4.2017, 19.07.2017, 23.08.2017, 06.09.2017, 30.12.2017, 13.02.2018, 25.08.2018 & 21.9.2018 remain discharged from the MBBS course for the academic year 2016-17 and cannot claim any equity in this regard. The Respondent no.1 submits that the Respondent No.4, i.e., the L.N.Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh is in receipt of the aforementioned communications sent by the answering respondent but has illegally permitted the petitioners to continue in the MBBS course and did not send a

compliance in relation thereto despite repeated requests by the answering respondent.

11. The respondent No.1 has further submitted that the respondent No.4 proceeded to issue a discharge letter dated 08.06.2018, only after the respondent No.1 vide letter dated 30.12.2017 communicated its decision that any application of the said medical college for increase of undergraduate as well as postgraduate seats along with recognition of medical courses shall be processed only upon receipt of compliance of the decision of discharge.

12. The respondent No.1 further submits that at the outset, the petitioners had been illegally granted admission in the MBBS course for the academic year 2016-17 in blatant violations of the directions issued by the Hon'ble Supreme Court in the case of **Modern Dental College & Research Centre &Ors. Vs State of Madhya Pradesh &Ors.** - (2016) 7 SCC 353, as well as vide letter dated 9.8.2016 and the further directions issued by the Hon'ble Supreme Court in the case of *State of Madhya Pradesh vs. Jainarayan Chouksey & Ors.* - (2016) 9 SCC 412 whereby the admissions in the MBBS Course within the State of Madhya Pradesh had to be granted on the basis of the centralized counseling conducted by the State Government of Madhya Pradesh through the Directorate of Education, Madhya Pradesh.

13. The respondent No.1 has further submitted that the State of Madhya Pradesh had enacted the **M.P. Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007** along with Statutory Rules for the purpose of streamlining admissions in private professional educational institutions and it had been provided that all admission in MBBS course throughout the State of Madhya Pradesh in both Government as well as Private Medical Colleges shall be granted on the basis

of single window/centralized counseling conducted by the State Government. The respondent No.1 has further submitted that the vires of the said State Act of 2007 had been challenged before the Hon'ble High Court of Madhya Pradesh Jabalpur Bench and that the said challenge had been rejected vide judgment dated 15.5.2009. The respondent No.1 has further submitted that the appeals filed titled ***Modern Dental College & Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.*** before the Hon'ble Supreme Court were dismissed by the Hon'ble five Judge Constitution Bench holding that all the admissions in the MBBS course throughout the State of Madhya Pradesh in both the government as well as the private medical colleges would be granted only on the basis of a single window/centralized counseling conducted by the State Government.

14. The respondent No.1 has further submitted that the Central Govt. vide a letter dated 9.8.2016 had directed all the Principal Secretaries of the various State Governments that for the academic year 2016-17, in view of the implementation of the NEET, the admissions in the MBBS course throughout the State of Madhya Pradesh in both the government as well as the private medical colleges were to be granted only on the basis of a single window/centralized counseling conducted by the State Government.

15. The respondent No.1 has further submitted that during the academic year 2016-17, the Private Medical Colleges, including respondent No.4, i.e., L.N.Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh, in blatant violation of the judgment dated 02.05.2016 passed by the Hon'ble 5 Judge Constitution Bench of the Hon'ble Supreme Court in ***Modern Dental College & Research Centre & Ors. V. State of Madhya Pradesh & Ors.***; (2016) 7 SCC 353 and the Central Government directions

dated 9.8.2016, had directly granted admission in the MBBS course in lieu of extraneous considerations and certain contempt petitions were filed before the Hon'ble Supreme Court which were heard by the Hon'ble five Judge Constitution Bench of the Hon'ble Supreme Court and vide judgment dated 22.9.2016 in *State of Madhya Pradesh vs. Jainarayan Chouksey & Ors.* had while cancelling all the admissions granted directly by the Private Medical Colleges, further directed that admissions to all MBBS seats in the State of Madhya Pradesh shall be granted through centralized counseling conducted by the State Govt. and no one else. The Hon'ble Supreme Court had further directed that the entire process of seat allocation /counseling shall be conducted afresh, wherein representatives of the Private Medical Colleges shall be available during the counseling and that all the endeavour shall be made to fill up all the available seats.

16. *Inter alia*, the respondent No.1 has submitted that a perusal of the list of candidates allotted to the respondent No.4, i.e., L.N.Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh, after the centralized counseling, as forwarded by the respondent No.3, i.e., the Directorate of Medical Education, Madhya Pradesh on 18.11.2016, would conclusively demonstrate that the petitioners had not appeared for counseling conducted by the respondent No.3 and thus it is amply clear that the petitioners had not appeared for counseling conducted by the respondent No.3 and thus it is amply clear that the petitioners had been illegally granted admission in MBBS course for the academic year 2016-17 directly by the respondent No.4- L.N.Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh, for extraneous considerations.

17. *Inter alia*, the respondent No.1 has submitted that after it conducted a detailed inquiry in this regard, including considering the response of respondent no.4 - L.N. Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh dated 11.05.2017, had decided to discharge the petitioners from the MBBS course.

18. The respondent No.1 has further submitted that in the present petition in paragraph 10 and 11, the petitioners have admitted that they never appeared for counseling before the respondent No.3, i.e., the Director General Medical Education as they had have never been called for counseling by respondent no. 3- Director General Medical Education and thus, it was amply clear that the petitioners had been directly admitted by the respondent no. 4 - L.N. Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh in contravention to the procedure of counseling and had been granted admission for the academic year 2016-17.

19. The respondent No.1 has further submitted that it had similarly discharged certain students from the MBBS course for the academic year 2016-17, in identical circumstances, from the Sukh Sagar Medical College & Hospital, Jabalpur and Sakshi Medical College, Guna since they had also not appeared for counseling conducted by the respondent No.3 and had been illegally granted admission in the MBBS course for the academic year 2016-17 directly by the aforesaid medical colleges for extraneous considerations and that the decision of the answering respondent to discharge such candidates from the MBBS course for the academic year 2016-17 from the Sukh Sagar Medical College & Hospital, Jabalpur and Sakshi Medical College, Guna, had been challenged before the Hon'ble Division Benches of the Hon'ble High Court of Madhya Pradesh at Gwalior as well as Jabalpur

and that all the aforesaid writ petitions were dismissed and that the details of the writ petitions are as below:-

i)W.P. No. 17806/2017 - Muskan Samajik Evam Prasar Samiti Vs.The Medical Council of India and W.P. No. 20675/2017 - Sakshi Sharma Ors. Vs. The Medical Council of India judgment dated 06.02.2018 passed by the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh, GwaliorBench (Sakshi Medical College, Guna)

ii)W.P. No. 12561/2017 - Sukh Sagar Medical College & Hospital, Jabalpur Vs. Medical Council of India, W.P. No. 13113/2017- Shivani Sahu Vs. State of M.P. & Ors. and W.P. No. 13171/2017- Kanchan Rai Vs. State of M.P. & Ors.—judgment dated 8.02.2018 passed by the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh, Jabalpur Bench (Sukh Sagar Medical College & Hospital, Jabalpur)

iii). W.P. No. 7852/2018, W.P. No. 7855/2018, W.P. No. 7856/2018, W.P.No. 7857/2018, W.P. No.7858/2018, W.P. No. 7859/2018, W.P. No.7861/2018 & W.P. No. 12531/2018 – Aman Shaikh Vs. Union of India & Ors. and other connected petitions - judgment dated 02.08.2018 passed by the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh, Gwalior Bench (Sakshi Medical College, Guna)

20. The respondent No.1 has further submitted that the appeals from the said judgments had been preferred before the Hon'ble Supreme Court which have already been dismissed and reiterated again as submitted:

i)SLP (C) No. 7483/2018 - Muskan Samajik Evam Prasar Samiti Vs. The Medical Council of India judgement dated 06.04.2018 passed by

the Hon'ble Supreme Court (Sakshi Medical College, Guna - against judgment dated 06.02.2018 passed by the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh, Gwalior Bench)

ii)SLP (C) No. 10686/2018 - Sukh Sagar Medical College & Hospital, Jabalpur Vs. Medical Council of India-judgement dated 04.05.2018 passed by the Hon'ble Supreme Court (Sukh Sagar Medical College & Hospital, Jabalpur - against judgment dated 08.02.2018 passed by the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh, Jabalpur Bench)

21. The respondent No.1 has further submitted that the petitioners in collusion with the respondent No.4, i.e., L.N. Medical College Hospital & Research Centre have since placed on record the documents which would be in the exclusive control of the medical college without even stating as to how they laid their hands on such documents and thus issuing the discharge letter only on 8.6.2018 though the respondent No.1 had discharged the petitioners vide their letter dated 26.4.2017. The respondent No.1 has also submitted that the petitioners have not challenged the discharge letter dated 8.6.2018 issued by the medical college.

22. The respondent No.1 has further submitted that the petitioners have intentionally suppressed the material facts and have selectively placed the documents on the record.

23. Reliance has thus been placed on behalf of the respondent no.1 on the observations of the Hon'ble Supreme Court in ***Oswal Fats and Oils Limited***

Vs. Additional Commissioner (Administration) Bareilly Division, Bareilly & Ors.-(2010) 4 SCC 728, to the effect:

" 20. It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only, has the right but a duty to deny relief to such person.

21. In one of the earliest decisions on the subject i.e., - *R. V. Kensington Income Tax Commissioner* (1917) 1 KB 486, Viscount Reading, Chief Justice of the Divisional Court observed:

" Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination

will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.

22. *The above extracted observations were approved by the Court of Appeal in the following words:*

"... 'It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction: and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward.'if an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted"

His Lordship rightly pronounced:

"The Court, for its own protection, is entitled to say:

'We refuse this writ...without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us.'

Warrington, L.J. was also of the same opinion. In a concurring judgment His Lordship observed:

" It is perfectly well settled that a person who makes an ex parte application to the Court - that is to say, in absence of the person who will be affected by that which the Court is asked to do- is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him."

23. This Court and different High Courts have repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance - State of Haryana v. Karnal Distillery Co. Ltd., Vijay Kumar Kathuria v. State of Haryana, Welcome Hotel and Ors. V. State of Andhra Pradesh and Ors. etc., G. Narayanaswamy Reddy (dead) by LRs. and Anr. v. Government of Karnataka and Anr.;, S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and Ors., Agricultural and Processed Food Products v. Oswal Agro Furane and Ors., Union of India and Ors. v. Muneesh Suneja, Prestige Lights Ltd. V. State Bank of India, Sunil Poddar and Ors. v. Union Bank of India, K.D.Sharma v. Steel Authority of India Ltd. and Ors. G.

Jayshree and Ors. v. Bhagwandas 8. Patel and Ors. and Dalip Singh v. State of U.P. and Ors.,

24. *In Hari Narain v. Badri Das*, this Court revoked the leave granted to the appellant by making following observations: (AIR p.1558) "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

25. *In Dalip Singh's case*, the appellant's grievance was that before finalizing the case under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the prescribed authority did not give notice to the tenure holder Shri Praveen Singh (predecessor of the appellant). On a scrutiny of the records, this Court found

that the prescribed authority had issued notice to Shri Praveen Singh, which was duly served upon him and held that the appellant is not entitled to relief because he did not approach the High Court with clean hands inasmuch as he made a misleading statement in the writ petition giving an impression that the tenure holder did not know of the proceedings initiated by the prescribed authority. The preface and para 21 of that judgment read as under:

"For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (nonviolence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, is representation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved

new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

24. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority...."

24. *Inter alia*, the respondent No.1 has placed reliance on this judgment to contend that a person who approaches the Court for grant of relief in particular or otherwise is under an obligation to disclose the material important facts which have a bearing on the adjudication of the issues raised in the case and if a person is guilty of suppressing the material facts and has chosen to approach the Court with unclean hands such a person ought to be dealt with for Contempt of Court and no such relief of any kind ought to be granted to such a litigant.

25. The respondent No.1 has further submitted that the petitioners have not attached allotment letters or any relevant document issued by the

respondent no. 3 - Directorate of Medical Education, Madhya Pradesh showing that the abovementioned 5 candidates including the petitioners had attended the centralized counseling as conducted by respondent no. 3 - Directorate of Medical Education, Madhya Pradesh and thus, it is amply clear that the said 5 candidates had been directly admitted by the respondent medical college in contravention to the procedure of counseling and granted admission for the academic year 2016-17.

26. The respondent No.1 has further submitted that the petitioners have not explained as to why their names were not contained in the list provided by the Director General of Medical Education and how the respondent No.4, i.e., L.N. Medical College Hospital & Research Centre granted admission to them and that the petitioners have failed to show that they ever appeared for centralized counseling before Director General Medical Education who granted admission in the MBBS course for the academic year 2016-17. *Inter alia*, the respondent No.1 submits that since the petitioners have been illegally granted admission in the respondent No.4 medical college they cannot be granted any relief in the present petition which deserves to be rejected at the threshold. The respondent No.1 has further submitted that the petitioners seek relief which are contrary to the provisions of the Indian Medical Council Act, 1956 and the Regulations made therein.

27. The respondent No.1 has further submitted that the respondent No.1 is a statutory authority created and constituted by the Central Government under an Act of Parliament, *namely*, the Indian Medical Council Act, 1956 and that it has been given the responsibility to discharge the duty of maintenance of highest standard of medical education.

28. Reliance was thus placed on behalf of the respondent No.1 on the verdict of the Hon'ble Supreme Court in the case of ***State of Kerala V. Kumari T.P. Roshana & Anr.***; (1979) 1 SCC 572, wherein it has been observed to the effect:

" 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 "

29. *Inter alia*, the respondent No.1 has further placed reliance on the verdict of the Hon'ble Supreme Court in the case of ***MCI v. State of Karnatka & Ors.***; (1998) 6 SCC 131 to contend that the Hon'ble Supreme Court has recognized and enforced the following guidelines:

".....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..... "

30. The respondent no.1 has submitted that these observations of the Hon'ble Supreme Court in ***MCI Vs. State of Karnataka & Ors.*** were re-emphasized by the Constitution Bench of this Court in para 57 of his judgment in the case ***Dr. Preeti Srivastava Vs. State of M.P.*** (1999) 7 SCC 120 where it was laid down 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 "

31. The respondent no.1 has further submitted that in ***MCI Vs. State of Karnataka & Ors.*** the Hon'ble Supreme Court whilst holding that the regulations of the MCI are binding and mandatory and 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 inasmuch as the Act is relatable to Entry 66 List 1 Schedule VII of the Constitution of India.

32. The respondent no.1 further placed reliance on the observations of the Hon'ble Supreme Court in ***Dr. Preeti Srivastava Vs. State of M.P & Ors.*** wherein it was held to the effect:

“....37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student teacher ratio has been considered essential at the levels of higher university education, particularly

when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses.....”

33. The respondent no.1 has thus submitted that in discharge of statutory obligation towards maintenance of highest standards in medical education in the country, by virtue of provisions of Section 33 of the Act, the MCI has been empowered with the prior approval of the Central Govt. to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of medicine courses and 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 conduct of examination etc.

34. The respondent no.1 has thus reiterated that the Hon'ble Supreme Court has held through its series of judgments 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 thus placed reliance of reiteration of the binding character of the Regulations of the Council vide verdicts of the Hon'ble Supreme Court in the following cases:

- (i) *Dr. Narayan Sharma & Anr. Vs. Dr. Pankaj Lehtar & Ors.*- (2000) 1 SCC 44.
- (ii) *State of Punjab Vs. Dayanand 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.

35. The respondent no.1 has further submitted that it has the primary responsibility for making admissions in the medical courses in accordance with the directions of the Hon'ble Supreme Court issued from time to time, as per the provisions of Graduate Medical Education Regulations, 1997 in respect of National Eligibility Cum Entrance Test, squarely lies with the Central Board of Secondary Education- CBSE under the overall supervision of the Ministry of Health & Family Welfare, Govt. of India. The respondent no.1 has further submitted that the allocation of seats to different categories was completely upon the responsibility of the admitting authority of the respective State Govt. for the State quota seats as well as the seats in private medical colleges including the deemed universities and the Director General of Medical Education in the case of All India quota seats, who are obliged to ensure that the admissions are made strictly in accordance with law and the merit of the candidates and also having regard to the principles of law laid down by the Hon'ble Supreme Court.

36. The respondent no.1 has further submitted that the NEET i.e. Eligibility-Cum- Entrance Test was introduced by way of amendments notified on 21.12.2010, 15.02.2012 & 08.10.2012 in the Regulations on Graduate Medical Education, 1997 *inter alia* providing that admissions to MBBS Course shall be on the basis of a common entrance examination i.e. NEET and that similarly vide amendments notified on 27.12.2010, 27.02.2012 & 23.10.2012, in the Post Graduate Medical Education Regulation, 2000 had introduced the National Eligibility-Cum-Entrance Test *inter alia* providing that admissions to Post Graduate Medical Courses shall be on the basis of a common entrance examination i.e. NEET.

37. It has been submitted on behalf of the respondent no.1 that these aforesaid regulations providing for admission to MBBS and postgraduate medical courses through a Common Entrance Test, were challenged before the Hon'ble Supreme Court and vide judgment dated 18.07.2013 passed in Transferred Cases (C) No. 98 of 2012 – ***Christian Medical College, Vellore Versus Union of India & Ors.*** and other connected matters - (2014) 2 SCC 305, the Hon'ble Supreme Court had quashed the aforesaid Regulations and the Central Government and the respondent no.1 having been aggrieved vide the judgment dated 18.07.2013 had filed review petitions bearing No. 2159-2268/2013 titled as ***Medical Council of India V/s Christian Medical College & Ors.*** and other connected petitions.

38. The respondent no.1 has further submitted that vide order 11.04.2016 (2016) 4 SCC 342, the Hon'ble Supreme Court whilst allowing the review petition also set aside its judgment dated 18.07.2013 and directed the matter be heard and that pursuant to the order dated 11.04.2016 of the Hon'ble Supreme Court, a writ petition bearing No. 261/2016 titled as ***Sankalp Charitable Trust Vs Union of India & Ors.***, was filed before the Hon'ble Apex Court, *inter alia* praying for directions to the appropriate authorities to conduct the NEET examination from the academic session i.e. 2016-17 and that the Hon'ble Supreme Court after hearing the parties directed that the AIPMT- 2016 examination shall be treated as NEET-I and the Central Board of Secondary Education (CBSE) was directed to conduct NEET-II on 24.07.2016 for admissions to the MBBS / BDS courses in the Country for academic session 2016-17. *Inter alia* the respondent no.1 has submitted that the Graduate Medical Education Regulations, 1997 of the MCI has been framed under Section 33 of the Act with the prior approval of the Central

Govt. and for achieving the highest standards of medical education in the country which was also dependent on the selection of such eligible candidates as provided for and is binding / mandatory in respect of admission to be made to the MBBS course and that the regulation framed by the Graduate Medical Education Regulations, 1997, pertains to the criteria for selections of candidates to MBBS courses which has to be adopted uniformly throughout the country and is as under:-

" 5 Selection of Students; The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country

(1)-(4).....

5 Procedure for selection to MBBS course shall be as follows:-

i. There shall be a single eligibility-cum-entrance examination namely 'National Eligibility-cum-Entrance Test for admission to MBBS course' in each academic year. The superintendence, direction and control of National Eligibility-cum- Entrance Test shall vest with Central Board of Secondary Education under overall supervision of Ministry of Health and Family Welfare, Government of India.

II. In order to be eligible for admission to MBBS Course for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test to MBBS course' held for the said academic year.

However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with locomotory disability of lower limbs terms of Clause 4(3) above,

the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in 'National Eligibility-cum-Entrance Test for admission to MBBS course'.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to MBBS Course, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

III. The reservation of seats in medical colleges for respective categories shall be as per applicable laws prevailing in States / Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates I shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS course from the said lists only,

IV. No Candidate who has failed to obtain the minimum eligibility marks as prescribed in the Sub Clause (ii) above shall be admitted to MBBS Course in the said academic year.

V. All admissions to MBBS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum- Entrance Test.

VI. To be eligible for admission to MBBS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology / Bio-technology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology / Bio-technology at the qualifying

examination as mentioned in clause (2) of Regulations 4 and in addition must have come in the merit list of "National Eligibility-cum-Entrance Test" for admission to MBBS course. In respect of candidates belonging to Schedule Castes, Scheduled Tribes or Other Backward Classes the minimum marks obtained in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 40% instead of 50%. In respect of candidates with locomotory disability of lower limbs in terms of Clause 4(3) above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 45% instead of 50%.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally permitted to take up the National Eligibility-cum-Entrance Test for admission to MBBS course."

VII. The Central Board of Secondary Education shall be the organization to conduct the National Eligibility-cum-Entrance Test for admission to MBBS Course."

39. The respondent no.1 has thus submitted that Regulation 5(5)(1) of the aforesaid Regulations provides that there will be a single eligibility-cum-entrance examination namely National Eligibility cum-Entrance Test - NEET, for admission to the MBBS course in each academic year and that the NEET shall be under the superintendence, direction and control of the Central Board of Secondary Education which will be under the overall supervision of the Ministry of Health & Family Welfare, Govt. of India and that in terms of Section 6 of the Regulation, it is provided as follows:

"6. Common Entrance Test - In private Unaided professional educational Institution, admission to

sanctioned intake shall be on the basis of the common entrance test in such manner as may be prescribed by the State Government."

40. The respondent no.1 has submitted that the CET is defined in Section 3(d) of the Act, 2007 and reads as follows:

"3.(d) "common entrance test" means an entrance test, conducted for determination of merit of the candidates followed by centralized \ counseling for the purpose of merit based admission to professional colleges or institutions through a single window procedure by the State Government or by any agency authorized by it."

41. Reliance was placed on behalf of the respondent no.1 on the observations of the Hon'ble Supreme Court in ***Modern Dental College & Research Centre & Ors. v. State of M.P. & Ors.***, which read to the effect:

"67. Undoubtedly, right to establish and administer educational institutions is treated as a fundamental right as it is termed 'occupation', which is one of the freedoms guaranteed under Article 19(1)(g). It was so recognised for the first time in T.M.A. Pai Foundation. Even while doing so, this right came with certain clutches and shackles. The Court made it clear that it is a noble occupation which would not permit commercialisation or profiteering and, therefore, such educational institutions are to be run on 'no profit no loss basis'. While explaining the scope of this right, right to admit students and right to fix fee was accepted as facets of this right, the Court again added caution thereto by mandating that admissions to the educational institutions imparting higher education, and in particular professional education, have to admit the students based on merit. For judging the merit, the Court indicated that there can be a CET. While doing so, it also specifically stated that in case of admission to professional

courses such a CET can be conducted by the State. If such a power is exercised by the State assuming the function of CET, this was So recognised in T.M.A. Pai Foundation itself, as a measure of 'reasonable restriction on the said right', jlsatriic Academy of Education further clarified the 'contour of such function of the State while interpreting T.M.A. Pai Foundation itself wherein it was held that there can be Committees constituted to supervise conducting of such CET. This process of interpretative balancing and constitutional balancing was remarkably achieved in P.A. Inamdar by not only giving its premature to deholding of CET but it went further to hold that agency conducted the CET must be the one which enjoys the utmost credibility and expertise in the matter to achieve fulfillment of twin objectives of transparency and merit and for that purpose it permitted the State to provide a procedure of holding a CET in the interest of securing fair and merit based admissions and preventing maladministration.

68. We are of the view that the larger public interest warrants such a measure. Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of material is produced, it is, undoubtedly, in the larger interest and welfare of the students community to promote merit, add excellence and curb malpractices. The extent of restriction has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount to 'restrictions' on the right of the appellants to carry on their 'occupation', are clearly 'reasonable' and satisfied the test of proportionality.

69. Apart from the material placed before the High Court, our attention has also been drawn to a recent report of the Parliamentary Committee to which we will refer in later part of this judgment. The report 'notes the dismal picture of exploitation in making -

admissions by charging huge capitation fee and compromising merit. This may not apply to all / institutions but if the Legislature which represents the people has come out with a legislation to curb the menace which is generally prevalent, it cannot be held that there is no need for any regulatory measure. "An enactment is an organism in its environment"[20]. It is rightly said that the law is not an Eden of concepts but rather an everyday life of needs, interests and the values that a given society seeks to realise in a given time. The law is a tool which is intended to provide solutions for the problems of human being in a society."

42. The respondent no.1 has submitted as observed in ***Modern Dental College*** (supra) vide para 154 that the MP Act, 2007 was enacted for:-

"....the regulation of admission and fixation of fee in private professional educational institutions in the State of Madhya Pradesh and to provide for reservation of seats to persons belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes".

43. The respondent no.1 has submitted that the Act of 2007 as observed in ***Modern Dental College*** (supra) is thus in furtherance of the constitutional obligation imposed upon the State to ensure equality of opportunity in admission to meritorious candidates who seek to pursue the medical education and that the Act of 2007 enables the State to conduct a common entrance test in the interest of securing higher standards of medical education so that quality doctors are trained leading to advancement in the health sector of the nation and that the point to be considered is whether the common entrance test to be conducted by the State Government or any agency authorized by it amounts to a reasonable restriction and that the respondent

no.1 has further submitted that in T.M.A. Pai and P.A. Inamdar, it was categorically held that admission to professional courses must be on the basis of merit and that the word 'merit' is word of Latin origin, deriving roots from meritum, meaning 'due reward' and mereri meaning 'earn, deserve' and that Concise Oxford English Dictionary(11th Edn) defines 'merit' as 'excellence; worth'. P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) on the topic of merit makes mention of **Guman Singh Vs. State of Rajasthan**(1971) 2 SCC 452, wherein it was observed as under;-

“...merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the university, his character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters, or factors, such as his punctuality in work, the quality and out- turn of work done by him and the manner of his dealings with his superiors and subordinates officers and the general public, his rank in the service and annual confidential report. All these and other factors may have to be taken into account in assessing the merit.”

44. The respondent no.1 has further submitted that in **Dr. Pradeep Jain and Ors. v. Union of India and Ors., (1984) 3 SCC 654**, it was held as under:-

“...Merit consists of a high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and Infinite capacity for hard work and also calls for a sense of social commitment and dedication to the cause of the poor.”

and that it was observed in *Modern Dental College* (supra) thus to the effect:

166. It is well known that study of medicine is much sought after by students in India and that due to the high demand for admission in Medical Colleges and limited number of seats, selection and/or screening methods have evolved to select the crème de la crème and that given the surfeit of academically well-qualified applicants, the selection method ought to become highly competitive by placing exceptionally high academic thresholds and that it is in this context that 'merit' comes into play in determining the parameters for admissions in institutions of higher education.

167. Merit was the cumulative assessment of worth of any individual based on different screening methods. Ideally there should be one common entrance test conducted by the State both for government colleges and for private unaided educational institutions to ensure efficacy, fairness and public confidence and that as rightly contended by Mr. Purushaindra Kaurav, Addl. Advocate General for the State of Madhya Pradesh appearing for AFRC, a common entrance test conducted by the State is more advantageous viz.:

“(i) having adhered to the time schedule as laid down in Mridul Dhar case;

(ii) multiple centres of examination and counseling throughout the State and a single window system for admission;

(iii) standard question papers, preservation of question papers and answer books, prevention of leakage of question papers and fair evaluation and

(iv) minimal litigation”

That apart, procedure for preparation of merit list, counseling and allotments to various colleges is subject to Right to Information Act and thus ensures fairness and transparency in the entire process.

168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the Legislature in its wisdom has taken the view that merit based admissions can be ensured only through a common entrance test followed by centralized counseling either by the State or by an agency authorized by the State. The respondent No.1 has further submitted that in order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, the legislature by the impugned legislation has introduced the system of Common Entrance Test (CET) to secure merit based admission on a transparent basis and that if private unaided educational institutions are given unfettered rights to devise their own admission procedure and fee structure, it would lead to a situation where it would impinge upon the right to equality" of the students who aspire to take admissions in such educational institutions. The respondent No.1 further submits that the Common Entrance Test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being plotted to different institutions depending on the courses of study, the number of seats and other relevant factors and that this would ensure twin objects, i.e., of

(i) fairness and transparency and

(ii) merit apart from preventing mal-administration

Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb mal-practices, it would be permissible for the State to regulate admissions by providing a centralized and single window procedure and that Holding such CET followed by centralized counseling or the single window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a 'right of occupation' in running the educational institutions, and that they equally have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence and that the Rights of private educational institutions have to yield to the larger interest of the community.

169. By holding common entrance test and identifying meritorious candidates, the State is merely providing the merit list of the candidates prepared on the basis of a fair common entrance test. If the screening test is conducted on merit basis, no loss is caused to the private educational institutions and that there is neither any restriction on the entry of the students in the sanctioned intake of the institutions nor on their right to collect fees from the students and the freedom of private educational institutions to establish and run institutions, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact.

.....”

45. The respondent no.1 has further submitted that Hon'ble High Court of Madhya Pradesh at Jabalpur vide judgment dated 08.02.2018 in W.P.(C) No. 12561/17 had dismissed the petition and the two connected petitions

therein upholding the discharge notice issued by the respondent no.1 and that SLP (C)No. 10686/2018 against the same was also dismissed by the Hon'ble Supreme Court.

46. The respondent no.1 has further submitted that the judgment dated 08.02.2018 of the Hon'ble High Court of Madhya Pradesh in W.P. 12561 of 2017 titled as ***"Sukh Sagar Medical College & Hospital, Jabalpur Vs. Medical Council of India & Ors"*** and other two connected petitions were assailed vide SLP (C) No. 10686 of 2018 before the Hon'ble Supreme Court and vide order dated 04.05.2018, the Hon'ble Supreme Court concluded that there was no ground to entertain the said petition, which was thus dismissed. The respondent no.1 has further submitted that W.P. No. 7852/2018, W.P. No.7855/2018, W.P. No. 7856/2018, W.P. No. 7857/2018, W.P. No. 7858/2018, W.P. No. 7859/2018, W.P. No. 7861/2018 & W.P. No. 12531/2018 titled as ***"Aman Shaikh Vs. Union of India Ors."*** and other connected petitions, students of Sakshi Medical College had again challenged the discharge notices issued by the respondent no.1, were filed before the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh, Gwalior Bench, which vide judgment dated 02.08.2018 were dismissed.

47. The respondent no.1 has further submitted that similarly situated candidates and medical colleges have filed multiple writ petitions which have since been dismissed by the Hon'ble Division Benches of the Hon'ble High Court of Madhya Pradesh, Gwalior as well as Jabalpur and thus, the petitioners have deliberately not filed their petition before the Hon'ble High Court of Madhya Pradesh to seek the relief and have indulged in forum shopping and that on the same ground, the present writ petition deserves to

be rejected submitting to the effect that the Hon'ble Supreme Court in the case of ***“Chetak Construction Ltd Vs. Om Prakash & Ors.” (1998) 4 SCC 577***, has held that the forum shopping as a practice needs to be deprecated and must not be allowed and that a litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand. The respondent no.1 further placed reliance on the verdict of the Hon'ble Supreme Court in the case of ***“Tamilnad Mercantile Bank Shareholders Welfare Association (2) Vs. S.C. Sekar and Ors.” (2009) 2 SCC 784*** to contend to similar effect.

48. *Inter alia* it has been submitted on behalf of the respondent no.1 that the principles of forum conveniens would apply in the facts and circumstances of the instant case and that the petitioners ought to have sought redressal before the Hon'ble High Court of Madhya Pradesh. The respondent no.1 has further submitted that the State of Madhya Pradesh had enacted the M.P. Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 (hereinafter referred to as the 'State Act, 2007') alongwith Statutory Rules for the purpose of streamlining admissions in private professional educational institutions and it had been provided that all admissions in MBBS course throughout the State of Madhya Pradesh in both Govt. as well as Private Medical Colleges shall be granted on the basis of single window / centralized counseling conducted by the State Govt and that the vires of the said State Act, 2007 had been challenged before the Hon'ble High Court of Madhya Pradesh at Jabalpur and that the said challenge had been rejected vide judgment dated 15.05.2009. *Inter alia* the respondent no.1 has submitted that the appeals filed before the Hon'ble Supreme Court against the said verdict dated

15.05.2009 were dismissed vide judgment dated 02.05.2016 in the case titled as “***Modern Dental College & Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.***”. The respondent no.1 has further submitted that the Central Govt. vide letter dated 09.08.2016 had directed all the Principal Secretaries of the various State Govts. that for the academic year 2016-17, in view of the implementation of the National-Eligibility-Cum-Entrance Test, admissions in the MBBS course throughout the Country, including in the State of Madhya Pradesh in both Govt. as well as Private Medical Colleges had to be granted only on the basis of single window / centralized counseling conducted by the State Govt. It has further been submitted by the respondent no.1 that during the academic year 2016-17, the Private Medical Colleges, including respondent no.4 - L.N. Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh, in blatant violation of the judgment dated 02.05.2016 passed by the Hon'ble 5 Judge Constitution Bench of the Hon'ble Supreme Court in “***Modern Dental College & Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.***” (2016) 7 SCC 353 and the Central Govt. directions dated 09.08.2016, had directly granted admission in the MBBS course in lieu of extraneous consideration, certain Contempt Petitions were preferred before the Hon'ble Supreme Court and that the said Contempt Petitions were heard by the Hon'ble 5 Judge Constitution Bench of the Hon'ble Supreme Court and vide judgment dated 22.09.2016 in “***State of Madhya Pradesh vs. Jainarayan Chouksey & Ors.***” (2016) 9 SCC 412, had while cancelling all admissions granted directly by the Private Medical Colleges, further directed that admissions to all MBBS seats in the State of Madhya Pradesh shall be granted through centralized counseling conducted by the State Govt. and no one else. It has been submitted by the respondent

No.1 that the Hon'ble Supreme Court had further directed that the entire process of seat allocation / counseling shall be conducted afresh, wherein representatives of the Private Medical Colleges shall be available during the counseling and that all endeavour shall be made to fill up all the available seats. The respondent no.1 has further submitted that a perusal of the list of candidates allotted to respondent no.4 - L.N. Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh, after the centralized counseling, as forwarded by respondent no. 3- Directorate of Medical Education, Madhya Pradesh, would conclusively demonstrate that the petitioners had not appeared for counseling conducted by respondent no. 3 and thus it is amply clear that the petitioners had been illegally granted admission in the MBBS course for the academic year 2016-17 directly by the respondent no.4 - L.N. Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh for extraneous considerations and that after conducting a detailed inquiry in this regard, including considering the response of respondent no.4 - L.N. Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh dated 11.05.2017, had decided to discharge the petitioners from the MBBS course. The respondent no.1 has further submitted that it had similarly discharged certain students from MBBS course for the academic year 2016-17, in identical circumstances from Sukh Sagar Medical College & Hospital, Jabalpur and Sakshi Medical College, Guna since they had also not appeared for counseling conducted by respondent no. 3 and had been illegally granted admission in MBBS course for the academic year 2016-17 directly by the aforesaid medical colleges for extraneous considerations. The decision of the answering respondent to discharge such candidates from MBBS course for the academic year 2016-17 from Sukh Sagar Medical

College & Hospital, Jabalpur and Sakshi Medical College, Guna, had been challenged before the Hon'ble Division Benches of the Hon'ble High Court of Madhya Pradesh at Gwalior as well as Jabalpur. All the aforesaid writ petitions were dismissed and that thereafter appeals from aforesaid judgements had been preferred before the Hon'ble Supreme Court, which had also been dismissed.

49. The respondent no.1 has further submitted that the present petition deserves to be rejected at the threshold since the petitioners being fully aware of the aforesaid judgments passed by the Hon'ble Division Benches of the Hon'ble High Court of Madhya Pradesh at Gwalior as well as Jabalpur and also affirmed by the Hon'ble Supreme Court, is clearly indulging in forum shopping on account of which they have refrained from approaching the Hon'ble High Court of Madhya Pradesh, even though the entire cause of action relating to counseling / admission took place in the State of Madhya Pradesh, all the parties are available in the State of Madhya Pradesh and the respondent no. 1 was also duly represented before the Hon'ble High Court of Madhya Pradesh and that that the present petition also deserves to be rejected on the ground of delay, laches and acquiescence as the respondent no.1 had discharged them vide letter dated 26.04.2017.

50. The respondent no.1 has further submitted that that the present petition appears to have been preferred by the petitioners in collusion with respondent no.4 - L.N. Medical College, Hospital & Research Centre, Bhopal, Madhya Pradesh since they have placed on record documents / material which would be in the exclusive control of the medical college, without even stating as to how they have laid their hands on such documents / material and that became manifest from the approach of the medical college

in issuing the discharge letter only on 08.06.2018 when the respondent no.1 had in the first instance discharged the petitioners vide its letter dated 26.04.2017. The respondent No.1 submits that the petitioners have also not challenged the discharge letter dated 08.06.2018 issued by the medical college only to return the favour to the medical college and the petition deserves to be rejected on this ground also and further submitted that as the petitioners had been illegally granted admission in the respondent No.4 medical college hence they cannot be granted any relief in the present writ petition which deserves to be rejected at the threshold.

51. The State of Madhya Pradesh and the Directorate of Medical Education i.e. the respondent nos. 2 & 3 respectively through the counter affidavit of Dr. Vipendra Bhadkariya, Assistant Professor, Anatomy Department, Gajra Raja, Medical College, M.P. have submitted that the petition deserves to be dismissed at the threshold due to following grounds:-

a. Because the petitioners herein had been illegally granted admission in MBBS Course for the academic year 2016-17 in blatant violation of the directions issued by the Hon'ble Supreme Court in the case of Modern Dental College and Research Centre & Ors. Vs. State of M.P. & Ors., 2016 (7) SCC 353. Moreover, the directions issued by the Central Government vide letter dated 09.08.2016 and directions issued by the Hon'ble Supreme Court in the case of State of M.P. vs. Jai Narayan Chowksi & Ors. (2016) 9 SCC 412, whereby all admissions in MBBS Course within the State of Madhya Pradesh had to be granted on the basis of centralized counseling conducted by the State Government of M.P. through Directorate of Medical Education, M.P. i.e. the answering respondent herein.

b. Because vide letter dated 09.08.2016, the Central Government had directed all the Principal Secretaries of the various state governments that for the Academic year 2016-17 In view of the implementation of the National Eligibility-cum-Entrance Test, admissions in the MBBS Course throughout the country including in the State of M.P. in both government as well as in private medical colleges had to be granted only on the basis of single window/centralized counseling conducted by the concerned state government.

c. Because it has been reiterated by the Hon'ble Supreme Court in a number of cases that admission to all MBBS seats in the State of M.P. shall be granted through centralized counseling conducted by the State Government and no one else.

d. Because a perusal of the list of shortlisted candidates dated 18.11.2016 clearly reflects the fact that the petitioners herein were never shortlisted in the counseling conducted by the answering respondent. Thus it makes clear that the petitioner herein illegally got admitted in the MBBS Course and thus this ground solely is sufficient enough to dismiss the present Writ Petition.

e. Because the petitioners herein were never shortlisted in the final list of counseling before the answering respondent. Thus, it makes it clear that the petitioners herein were granted admission in contravention to the procedure of counseling and granting admission for academic year 2016-17. Thus the present Writ Petition deserves to be outrightly dismissed.

f. Because in similarly placed cases where Writ Petitions were filed before the Hon'ble Division Bench of Gwalior & Jabalpur of High Court of Madhya Pradesh were dismissed by the Hon'ble High Court and thereafter the appeals of the said candidates filed before the Hon'ble Supreme Court were also dismissed. Thus the present petition deserves to be dismissed.

g. Because multiple Writ Petitions of similarly situated candidates and medical colleges have already been dismissed by the Hon'ble Division Bench of Gwalior & Jabalpur of High Court of Madhya Pradesh.

52. The parawise reply of Dr. Vipendra Bhadkariya, Assistant Professor, anatomy Department, Gajra Raja, Medical College, M.P. to grounds to the petition was to the effect:-

III. That the contents of ground (b) are incorrect and thus are vehemently denied by the answering respondent. In the true facts and circumstances of the present case, it is respectfully submitted that the answering respondent had duly conducted the centralized counseling and thereafter the final list of the shortlisted candidates was communicated to respondent no. 4 on 18.11.2016.

IV. That in reply to the contents of ground (c) of the Writ Petition, it is submitted that the petitioners herein deliberately communicated to the answering respondent on 07.10.2016 i.e. the last date of admissions and thus the statement of the petitioners herein stating that the answering respondent did not object the same is incorrect and vague. Moreover, the respondent no. 4 in letter dated 11.5.2017 has specifically stated that the five petitioners herein were directly granted admissions on last date i.e. 7.10.2016, which is contrary to the letter sent to the answering respondent on 11.5.2017, whereby the respondent no. 4 stated that

“

Therefore, after again making allotment against five vacant seats, a list of such allotment be provided so that the seats of MBBS students sanctioned by the MCI can be filled up by the colleges."

53. On behalf of the respondent no.4, learned counsel for the respondent no.4 supported the stand of the petitioners and did not oppose the prayer made in the petition by the petitioners.

54. The petitioners through the rejoinder to the counter affidavit of the respondent no.1 have submitted that the issue of maintainability and jurisdiction of the petition cannot now be reagitated by the respondent no.1 for that would only protract the litigation and obstruct the petitioners from getting relief on substantive grounds. The petitioners have further submitted that the respondent no.1 has not provided any explanation to the basic ground of challenge to the impugned orders, viz. its jurisdiction and competence to pass the impugned discharge orders, when the State Government (DME) has not taken any action or forwarded its recommendation / decision for cancelling the admissions of the petitioners. The petitioners submit that the impugned actions of the respondent MCI are actuated only on the solitary ground that the names of the petitioner students did not find mention in the list dated 18.11.2016 of the students admitted in the petitioner institution, forwarded by the State Government to it. The petitioners submit that under the provisions of Regulation 5 of the MCI UG Regulations 1997, the MCI does not have the powers to cancel admissions on any such ground, viz. name of the students not being disclosed in the list forwarded by the State Government to the MCI, and that limited ground on which the admissions

can be cancelled, is so provided under Regulations 5(7) & (8), and that they pertain to eligibility of the students and that if the students are granted admission contrary to the judgment / orders of any Court, then they shall be liable to face any action, so “*prescribed by the council*”. The petitioners thus submitted that merely because the names of the petitioner students did not find mention in the list forwarded by the State Government to the MCI, it cannot be ground for cancelling the admissions and issuing discharge letters, as the same is outside the scope and powers of Regulation 5 of the MCI Regulations. Relevant excerpts of Regulation 5 provide as follows :

"5. Procedure for Selection to MBBS Course shall be as follows:-

1...

2...

3-6....

7. No authority / institution shall admit any candidate to the MBBS course in contravention of the criteria / procedure as laid down by these Regulations and / or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention / violation of aforesaid shall be discharged by the Council forthwith. The authority / institution which grants admission to any student in contravention / violation of the Regulations and / or the judgments passed by the Hon'ble Supreme Court shall also be liable to face such action as may be prescribed by the Council including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.

8. All admission to MBBS course within the respective categories shall be based solely on the marks obtained in the 'National Eligibility Cum Entrance Test.'"

55. The petitioners have thus, submitted that the MCI does not have the powers and jurisdiction to cancel admissions and issue discharge letters merely on the ground that the name of the petitioners are not mentioned in the list forwarded by the State Government and stated that the MCI was obliged to have applied its mind independently and enquired as to whether actually the grounds for initiating punitive action under the provisions of Regulations 5(7) & (8) were made out against the petitioners or not, where after only such a drastic order could have been passed and not otherwise, and that for this purpose it was necessary for the MCI to have issue an appropriate show cause notice, followed by a reasonable opportunity of hearing to the petitioners as also the respondent college before passing the impugned orders.

56. The petitioners have further submitted that whereas on one hand students were not allotted in sufficient numbers to various medical colleges, and that the seats were left vacant therein, on the other hand, at the same time large number of students in excess numbers were allotted to many colleges over and above their sanctioned intake of 150 seats by the DME State of MP, on 07.10.2016. Subsequently, all these excess admissions 'were cancelled by the State Government, and intimation sent to the respondent MCI, which led to institution of large number of writ petitions before the High Court of the Madhya Pradesh, Indore Bench, viz. WP No. 7229/2016 and other connected matters. The High Court of Madhya Pradesh through its final judgment and order dated 08.11.2016, quashed all the decisions / orders of State

Government cancelling the admissions of all the petitioner students therein, holding that the counseling was not conducted in a proper and organized manner by the State Government, and in fact excess number of students were allotted to various medical colleges, over and above their sanctioned intake, which led to chaotic situation of students being admitted in large number in some colleges, whilst in deficient numbers in many other colleges and the High Court held that for the fault on the part of the State Government, DME in conducting an unorganized counseling, students cannot be made to suffer or punished which judgment was assailed in SLP(C) No. 29209/2016 and vide order dated 30.11.2016, the Hon'ble Supreme Court regularized the admission of all such students who were admitted in large numbers in excess by the State Government which admitted there were errors in the counseling done by them which could be condoned as "human errors". The petitioners have further submitted that it would be worthwhile to submit that there is absolutely no cavil about the fact that the petitioners are NEET qualified candidates, possessing marks higher than the candidates possessing the minimum marks, admitted in the respondent institution and that some of the petitioners are even domiciled in the State of MP, who had the primary right to, be allotted the seat so falling vacant in the private medical colleges, on the last date of admission.

57. The petitioners submit that there is also no dispute about the fact that the petitioners were given admission on the last date of counseling, i.e. 07.10.2016, as that is not a ground for cancellation of their admissions, by the respondent MCI and therefore, under the MCI UG Regulations 1997, there is absolutely no ground to have cancelled the admission of the petitioners and that the petitioners were purely victims of haphazard,

unorganized and unplanned counseling conducted on the last date, i.e. 07.10.2016, and that nobody else, except the MCI has objected to the admissions of the petitioners, including the respondent State Government or the competent authority under the provisions of MP Niji Vyavsayik Shikshan Sansthan Adhiniyam 2007, i.e. AFRC of MP and that on this ground therefore the impugned order issued by the respondent MCI was beyond their jurisdiction and powers and deserved to be quashed.

58. The petitioners have further submitted that somewhat similar situation arose with respect to large number of students admitted in the Mop-Up round, by the respective medical colleges in the academic session 2017-18 and that their admissions were also cancelled by the State Government and the High Court of Madhya Pradesh, as being outside the list of candidates, which was allotted by the State Government for being admitted and that against all the aforesaid cancellation of their admissions, the students had preferred SLP(C) No. 9256/2018, which was allowed by the Hon'ble Supreme Court, through its final judgment and order dated 25.04.2018 passed in the aforesaid SLP, the Hon'ble Supreme Court restored their cancelled admissions and allowed them to pursue their MBBS courses, on the solitary ground that the students had not been heard by the High Court or the State Government prior to cancellation of their admissions and thus submitted that the verdict of the Hon'ble Supreme Court in SLP(C) No. 9256/2018 would apply to the facts and circumstances of the instant case.

59. The petitioners have further submitted that the respondent- MCI had passed an order without hearing the petitioners- students or considering the entire circumstances, in which they came to be admitted in the respondent institution on the last date of counseling i.e. 07.10.2016. The petitioners have

further submitted the competent authority i.e. DME, State of MP has never found any of the admissions as being contrary to the applicable procedure and provision of law, and has thus decided not to interfere in the admissions of the petitioners and it is only the MCI, which has been opposing the prayer made by the petitioners.

60. The petitioners submit further that the State Government had assured the Hon'ble Supreme Court that all the seats of private medical colleges will be filled up in the counseling being conducted by it and that the orders of the MCI in the factual conspectus of the case, were completely outside the scope and powers conferred by the Regulations of 1997, as the competent authorities under the MP Act of 2007 had not proceeded to take any action against the petitioners students and that the MCI's action was in mere pre-emption.

ANALYSIS

61. At the outset, it is essential to observe that the Court is not considering the aspect of forum conveniens nor of forum shopping as raised on behalf of the respondent no.1 vide submissions made seeking the dismissal of the writ petition, in as much as it is considered appropriate to dispose of the petition on the merits of the present case.

62. At the outset, it is also essential to observe that as laid down by the Hon'ble Supreme Court in *MCI Vs. State of Karnataka & Ors.* (1998) 6 SCC 131, that the Regulations of the MCI are binding and mandatory and that all the State enactments, rules and regulations framed by the University etc. in relation to the conduct of the medicine courses to the extent that they are inconsistent to 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 and Schedule 7 of the Constitution of India.

63. The binding character of the Regulations of the MCI has been reiterated vide judgments of the Hon'ble Supreme Court in:-

- (i) *Dr. Narayan Sharma & Anr. Vs. Dr. Pankaj Lehtar & Ors.* - (2000) 1 SCC 44.
- (ii) *State of Punjab Vs. Dayanand 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.

64. It is essential to advert to the verdict of the Hon'ble Supreme Court in ***“Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others”*** (2016) 7 SCC 353, relied upon on behalf of the petitioners which relates to the challenge that had been made to the validity/vires of the provisions of the Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 i.e. 2007 Act of the State of Madhya Pradesh as also the Madhya Pradesh Private Medical and Dental Post Graduate Course, Entrance Examination 2009, which were framed by the State Government in the exercise of the powers conferred upon it vide Section 12 of the 2007 Act, the observations in paragraphs 47, 48, 49, 51, 52, 53, 57, 149, 151, 167, 168 & 169 of the said verdict read to the effect:-

“47. With regard to the autonomy in admission, it was noted that the earlier judgment kept in mind “the sad

reality that there are a large number of professional colleges which indulge in profiteering and/or charging of capitation fees”. For this reason, it was provided that admission must be based on merit. It was impossible to control profiteering/charging of capitation fee unless admission was on merit. It was further observed that requiring a student to appear at more than one entrance test led to great hardship as the students had to pay application fee for each institute, arrange for and pay for the transport to appear in the individual tests. Thus, management could select students either on the basis of CET conducted by the State or association of all colleges for a particular type, for example, medical, engineering or technical, etc. Some of the institutions have their own admission procedure since long against which no finger had ever been raised and no complaint made regarding fairness and transparency—which claim was disputed. Such institutions as had been established for 25 years could apply for exemption to the Committee directed by the Court to be constituted. This Court directed the State Governments to appoint permanent committees to ensure that the test conducted by association of colleges was fair and transparent.

48. The matter was then considered by a larger Bench of seven Judges in *P.A. Inamdar* [*P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537 : 2 SCEC 745] . It was held that the two committees for monitoring admission procedure and determining fee structure as per the judgment in *Islamic Academy of Education* [*Islamic Academy of Education v. State of Karnataka*, (2003) 6 SCC 697 : 2 SCEC 339] were permissible as regulatory measures aimed at protecting the student community as a whole as also

the minority themselves in maintaining required standards of professional education on non-exploitative terms. This did not violate Article 30(1) or Article 19(1)(g). It was observed that: (P.A. Inamdar case [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , SCC p. 607, para 145)

“145. ... Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.”

(emphasis supplied)

On this ground, suggestion of the institutions to achieve the purpose for which committees had been set up by post-audit checks after the institutions adopted their own admission procedure and fee structure, was rejected. The committees were, thus, allowed to continue for regulating the admissions and the fee structure until a suitable legislation or regulations were framed by the States. It was left to the Central Government and the State Governments to come out with a detailed well-thought out legislation setting up a suitable mechanism for regulating admission procedure and fee structure. Para 68 in T.M.A. Pai Foundation case[T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] was explained by stating that observations permitting the management to reserve certain seats was meant for poorer and backward sections as per local needs. It did not mean to ignore the merit. It was also held that CET could be held, otherwise merit becomes casualty. There is, thus, no bar to CET being held by a State agency when the law so provides.

49. Thus, the contention raised on behalf of the appellants that the private medical colleges had absolute right to make admissions or to fix fee is not consistent with the earlier decisions of this Court. Neither merit could be compromised in admissions to professional institutions nor capitation fee could be permitted. To achieve these objects it is open to the State to introduce regulatory measures. We are unable to accept the submission that the State could intervene only after proving that merit was compromised or capitation fee was being charged. As observed in the earlier decisions of this Court, post-audit measures would not meet the regulatory requirements. Control was required at the initial stage itself. Therefore, our answer to the first question is that though “occupation” is a fundamental right, which gives right to the educational institutions to admit the students and also fix the fee, at the same time, scope of such rights has been discussed and limitations imposed thereupon by the aforesaid judgments themselves explaining the nature of limitations on these rights.

51. We may note that while upholding the regulatory provision for admissions, the High Court has observed: (Assn. of Private Dental case [Assn. of Private Dental and Medical Colleges v. State of M.P., 2009 SCC OnLine MP 760] , SCC OnLine MP paras 27 & 29)

“27. We are of the considered opinion that Section 6 read with Section 3(d) of the 2007 Act, which provide that admissions to sanctioned intake shall be on the basis of common entrance test followed by centralised counseling by the State Government or by any agency authorised by the State Government are in consonance with the judgments of the Supreme Court

in T.M.A. Pai Foundation v. State of Karnataka [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] and P.A. Inamdar v. State of Maharashtra [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] . Section 2 of the 2007 Act makes it clear that it only applies to private unaided educational institutions which impart professional education. Hence, we will have to examine the judgments in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] and P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , to find out whether these judgments permit admission to professional educational institutions on the basis of merit as determined in a common entrance test followed by centralised counseling by the State Government or its agencies.

29. It is thus clear from para 58 of the judgment that in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , quoted above that the Supreme Court has held that the applicant who seeks admission to a professional educational institution in order to become a competent professional must be a meritorious candidate and he cannot be put at a disadvantage by preferences shown to less meritorious but more influential applicants and, therefore, excellence in professional education would require that greater emphasis be laid on the merit of the students seeking admission. It will be further clear from para 59 of the judgment in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 :

2 SCEC 1] , quoted above, that merit is usually determined for admission to a professional educational institution either by the marks that the students obtain at qualifying examination or at a common entrance test conducted by the institution or ‘in the case of professional colleges, by government agencies’. In *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] , therefore, the Supreme Court was of the view that merit for admission to a professional institution could be determined by common entrance test conducted by the government agencies.”

52. Referring to paras 67 and 68 in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] , it was observed: (*Assn. of Private Dental case [Assn. of Private Dental and Medical Colleges v. State of M.P.*, 2009 SCC OnLine MP 760] , SCC OnLine MP paras 31 & 33)

“31. It will be clear from the aforesaid portion of the judgment in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] , that unaided professional educational institutions are entitled to autonomy in admissions but they cannot forego or discard the principle of merit and it would therefore be permissible for the Government to require the private unaided educational institutions to provide for a merit-based admission while at the same time giving the management sufficient discretion in admissions. In the aforesaid portion of the judgment in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] , the Supreme Court has further held that this can be

ensured through various methods and one method is by providing that certain percentage of seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the State agency. Here also, the judgment of the Supreme Court in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , is clear that in the seats reserved for admissions by the management, only those students who have passed the common entrance test held by the management or by the State can be admitted.

33. We are unable to accept the aforesaid submission of Mr Verma and Mr Tankha. In P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , the Supreme Court dealt with the admission procedure of unaided professional educational institutions, both minority and non-minority, in paras 133-38 at pp. 603-05 of the SCC. In para 134 in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , the Supreme Court has held

That for professional educational institutions, excellence in admission and maintenance of high standard are a must and to fulfil these objectives, the State can and rather must in the national interest step in because the education, knowledge and learning possessed by individuals collectively constitute national wealth and in para 135 of the judgment in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , the

Supreme Court has further held that in minority professional educational institutions also, aided or unaided, admission should be at the State level and transparency and merit have to be assured in admissions. In paras 136 and 137 in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , the Supreme Court has observed that admissions in professional educational institutions can be made on the basis of a common entrance test either conducted by the institutions joined together or by the State itself or an agency for holding such test.”

53. After referring to paras 136 and 137 in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , it was observed: (Assn. of Private Dental case [Assn. of Private Dental and Medical Colleges v. State of M.P., 2009 SCC OnLine MP 760] , SCC OnLine MP paras 34 & 37)

“34. It will be thus clear from paras 136 and 137 of the judgment in P.A. Inamdar[P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , quoted above, that admissions to private unaided professional educational institutions can be made on the basis of merit of candidates determined in the common entrance test followed by centralised counseling by the institutions imparting same or similar professional education together or by the State or by an agency which must enjoy utmost credibility and expertise and that the common entrance test followed by centralised counseling must satisfy the triple test of being fair, transparent and non-exploitative. Thus, the judgments of the Supreme Court in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481

: 2 SCEC 1] and P.A. Inamdar[P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , permit holding of a common entrance test for determination of merit for admission to private unaided professional educational institutions by the State as well as any agency which enjoy utmost credibility and expertise in the matter and which should ensure transparency in merit.

37. Sections 3(d), 6 and 7 of the 2007 Act by providing that the common entrance test for determining merit for admissions in the private unaided professional educational institutions by a common entrance test to be conducted by the State or by an agency authorised by the State do not interfere with the autonomy of private unaided professional educational institutions, as such private professional educational institutions are entitled to collect the fees from the students admitted to the institutions on the basis of merit, appoint their own staff (teaching and non-teaching), discipline and remove the staff, provide infrastructure and other facilities for students and do all such other things as are necessary to impart professional education to the students. Sections 3(d), 6 and 7 of the 2007 Act, therefore, do not impinge on the fundamental right to carry on the occupation of establishing and administering professional educational institutions as an occupation. The only purpose of Sections 3(d), 6 and 7 of the 2007 Act is to ensure that students of excellence are selected on the basis of a common entrance test conducted by the State or an agency authorised by the State and that students without excellence and merit do not make entry into these professional educational institutions through

malpractices and influence. As has been held both in the judgments in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] and P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , the right of private unaided professional educational institutions to admit students of their choice is subject to selection of students on the basis of their merit through a transparent, fair and non-exploitative procedure. In our considered opinion therefore, Sections 3(d), 6 and 7 of the 2007 Act do not in any way violate the fundamental right of citizens guaranteed under Article 19(1)(g) of the Constitution. In view of this conclusion, it is not necessary for us to decide whether the provisions of Sections 3(d), 6 and 7 of the 2007 Act are saved by Article 15(5) of the Constitution or by the second limb of Article 19(6) of the Constitution relating to the power of the State to make a law for creation of monopoly in its favour in respect of any service.”

57. It is well settled that the right under Article 19(1)(g) is not absolute in terms but is subject to reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the

common man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.

149. I have no hesitation in upholding the vires of the impugned legislation which empowers the State Government to regulate admission process in institutions imparting higher education within the State. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of “higher education” being one such field which directly affects the growth and development of the State, it becomes prerogative of the State to take such steps which further the welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and fee, etc. governing the institutions running in that particular State except the Centrally funded institutions like IIT, NIT, etc. because no one can be a better judge of the requirements and inequalities-in-opportunity of the people of a particular State than that State itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams.

151. Object of the 2007 Act is:

“... to provide for the regulation of admission and fixation of fee in private professional educational institutions in the State of Madhya Pradesh....”

Section 6 of the 2007 Act provides that admission to sanctioned intake in private unaided professional educational institution shall be on the basis of common entrance test in such manner as may be

prescribed by the State Government. In Section 3(d) “common entrance test” has been defined to mean an entrance test conducted for determination of the merit of the candidates followed by centralised counseling based on merit to professional colleges or institutions through a single-window procedure by the State Government or by any agency authorised by it.

(emphasis supplied)

167. Merit is the cumulative assessment of worth of any individual based on different screening methods. Ideally, there should be one common entrance test conducted by the State both for government colleges and for private unaided educational institutions to ensure efficacy, fairness and public confidence. As rightly contended by Mr Purushaindra Kaurav, Additional Advocate General for the State of Madhya Pradesh appearing for AFRC, a common entrance test conducted by the State is more advantageous viz.:

- (i) having adhered to the time schedule as laid down in Mridul Dhar case [Mridul Dhar (5) v. Union of India, (2005) 2 SCC 65 : 2 SCEC 673] ;*
- (ii) multiple centres of examination and counseling throughout the State and a single-window system for admission;*
- (iii) standard question papers, preservation of question papers and answer books, prevention of leakage of question papers and fair evaluation; and*
- (iv) minimal litigation.*

That apart, procedure for preparation of merit list, counseling and allotments to various colleges is subject to the Right to Information Act and thus ensures fairness and transparency in the entire process.

168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the legislature in its wisdom has taken the view that merit-based admissions can be ensured only through a common entrance test followed by centralised counseling either by the State or by an agency authorised by the State. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of common entrance test (CET) to secure merit-based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the “right to equality” of the students who aspire to take admissions in such educational institutions. Common entrance test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects:

- (i) fairness and transparency, and*
- (ii) merit apart from preventing maladministration.*

Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb malpractices, it would be permissible for the State to regulate admissions by providing a centralised and single-window procedure. Holding such CET followed by centralised counseling or single-window system regulating

admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a “right of occupation” in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community.

169. By holding common entrance test and identifying meritorious candidates, the State is merely providing the merit list of the candidates prepared on the basis of a fair common entrance test. If the screening test is conducted on merit basis, no loss will be caused to the private educational institutions. There is neither restriction on the entry of the students in the sanctioned intake of the institutions nor on their right to collect fees from the students. The freedom of private educational institutions to establish and run institution, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact.”,

and thus, participation in a common entrance test and the counseling process is essential for securing admission to a professional medical or dental college in terms of 53(d) of the 2007 Act of Madhya Pradesh. The central counseling process to be conducted by the State Agency on the basis of a counseling conducted by the State Agency.

65. The petitioners in the instant case have undoubtedly not participated in the counseling process conducted by the respondent no.3 i.e. the

Directorate of Medical Education of the State of Madhya Pradesh, though they qualified the NEET examination. The petitioners thus submit that they participated in a last unit of offline counseling and their registration could not be done till the date 07.10.2016 and they approached the respondent no.4- College and were granted provisional admissions by the respondent no.4- college subject to the fact that if any other student of higher merit came and stated claim of the seat in question, the same would be allotted to such candidate. The petitioners have also submitted that they fall within the eligibility qualification of Clause 3 of Chapter-III of the Information Bulletin of National Eligibility-cum-Entrance Test, Session 2016-17, in which all that was required was a minimum of 50% percentile in the NEET and the requirement of having passed the subjects of Physics, Chemistry, Biology/ Bio-technology in English individually and having obtained a minimum of 50% marks taking together in Physics, Chemistry, Biology/ Bio-technology as the qualifying examination.

66. The petitioners thus, contend that the NEET brochure of the year 2016 did not contain the aspect of any common counseling which was added vide a gazette notification dated 10.03.2017 as per the Regulations on Graduate Medical Education, 1997 dated 04.03.1997 vide which the Gazette Notification dated 10.03.2017 brought in Regulation 5A, which reads to the effect:-

“5A Common Counseling.

(1) There shall be a common counseling for admission to MBBS course in all Medical Educational Institutions on the basis of merit list of the National Eligibility Entrance Test.

(2) The Designated Authority for counseling for the /5% AH India Quota seats of the contributing States shall be the Directorate General of Health Services.

(3) The counseling for all admission to MBBS Course in all Medical Educational Institutions in a State/ Union Territory including Medical Educational Institutions established by the Central Government, State Government, University, Deemed University, Trust, Society/Minority Institutions/Corporations or a Company shall be conducted by the State/ Union Territory Government. Such common counseling shall be under the over-all superintendence, direction and control of the State/ Union Territory Government.”

67. It is thus submitted by the petitioners that in as much as Regulation 5A i.e. Common Counseling was brought on to the Regulations w.e.f. 10.03.2017 only and the petitioners had secured admissions on 07.10.2016, the non-participation in a common counseling for admission to the MBBS Course on the basis of a merit list of the NEET cannot detract from the bonafides of the petitioners, to which the submission made on behalf of the MCI i.e. the respondent no.1 and the respondent nos.2 & 3 i.e. the State of Madhya Pradesh and the Directorate of Medical Education is categorical to the effect that vide the verdict of the Hon’ble Supreme Court in ***“Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others” (2016) 7 SCC 353***, a verdict dated 02.05.2016 and the directions issued by the Central Government vide letter dated 09.08.2016 and the directions issued by the Hon’ble Supreme Court in case of ***“State of Madhya Pradesh Vs. Jainarayan Chouksey & Ors.” (2016) 9 SCC 412***, whereby all admissions in the MBBS Courses within the State of Madhya Pradesh after the clearance of the Medical Entrance, had to be granted on the basis of Centralized counseling conducted by the State Government of

Madhya Pradesh through the Directorate of Medical Education, Madhya Pradesh, made it apparent that the petitioners were granted admission in the MBBS Course for the academic year 2016-17 in blatant violation of all the said directions and thus, the admissions were illegal.

68. The respondent nos.2 & 3 have submitted that vide letter dated 09.08.2016, the Central Government had directed all Principal Secretaries of various State Governments that for academic year 2016-17 in view of the implementation of the NEET admissions in the MBBS Course throughout the country including the State of MP in both Government as well as private medical colleges have to be granted only on the basis of single window/ centralized counseling conducted by the concerned State Government and that the list of shortlisted candidates dated 18.11.2016 clearly reflected the fact that the petitioners herein had never been shortlisted in the counseling conducted by the respondent no.3.

69. The said facts as put forth through the counter affidavit that has been submitted by the respondent nos. 2 & 3 have not been refuted on behalf of the petitioners.

70. Significantly, the MCI communication dated 05.10.2016 bearing No. MCI-34(MC)/2016/134441 addressed to all Principals/ Deans of all the Medical Colleges/Medical Institutions in the country to call upon the colleges to take the print out of the details of the students entered through the software duly signed and stamped by the Dean/ Principal of the Colleges/ Institutions along with the letter from the Directorate of Medical Education/ State Government fixing the ratio of Government and Management quota and send to the Council latest by 15th October 2016.

71. Vide reminder dated 07.10.2016, the MCI reiterated the contents of its previous letter dated 05.10.2016 and vide letter dated 10.10.2016 bearing No. MCI-34(MC)/2016/137114 categorically informed that the date for submission of student's admission details through the unique login ID for the medical colleges had been extended upto 15th October 2016 beyond which no extension would be allowed for entering the details of the students in the Students Entry System for the academic year 2016-17.

72. The respondent no.4 was vide communication dated 17.11.2016 of the MCI informed that despite the circulars dated 05.10.2016, 07.10.2016, 10.10.2016, **13.10.2016** in relation to the admissions made in the Medical Colleges for the first year MBBS degree for the academic year 2016-17, the respondent no.4 had not furnished the requisite information to the admissions made in its medical college for the academic year 2016-17 and was once again called upon to submit the list of the students as per the prescribed format of the respondent no.1.

73. As on the date 18.11.2016, as per the information sent by the office of the Commissioner, Medical Education, Madhya Pradesh, the respondent no.4 which had a sanctioned intake of 127 seats, had two seats vacant with the total admission of NEET under-graduates being 125.

74. The verdict of the Hon'ble Supreme Court in "*State of Madhya Pradesh vs. Jainarayan Chouksey & Ors. - (2016) 9 SCC 412*", which also relates to the State of Madhya Pradesh and is a verdict dated 22.09.2016 categorically lays down vide paragraph 5, 6 & 7 thereof, which read to the effect:-

"5. We have heard the learned counsel for the parties at length. We observe that mandate of our judgment was to

hold centralised entrance test followed by centralised State counseling by the State to make it a one composite process. We, therefore, direct that admission to all medical seats shall be conducted by centralised counseling only by the State Government and none else.

6. If any counseling has been done by any college or university and any admission to any medical seat has been given so far, such admission shall stand cancelled forthwith and admission shall be given only as per centralized counseling done by the State Government.

7. We may note at this stage that the State Government has done the first counselling. However, the learned Additional Solicitor General has made a statement at the Bar that the State Government is ready to undertake the entire process afresh and assures that it would be completed by 30-9-2016 which is the last date for admission. We also feel that it is a proper course of action inasmuch as it will enable the private institutions to send their representatives at the place of counseling as per the information which may be displayed by the counseling authority forthwith at its website. We place on record an assurance given by the learned ASG that all seats, whether of government colleges or the private institutions, shall be filled up and no seat shall remain vacant.”

75. Paragraph 6 of the aforesaid verdict makes it amply clear that if any counseling had been done by any college/ University and any admission to any medical seat had been given so far, such admission so far i.e. even on the date 22.09.2016 (that the petitioners herein having contended that they were admitted on 07.10.2016) such admission was to stand cancelled and admission would be given only as per the centralized counseling done by the State Government.

76. The verdict of the Division Bench of the Gwalior Bench of the High Court of the State of Madhya Pradesh in “*Muskan Samajit Evam Shiksha*

Prasar Evam Prachar Samiti Vs. The Medical Council of India” and “Sakshi Sharma and others Vs. The Medical Council of India & others” is on facts *pari materia* to the facts of the instant case in which students, whose names did not figure in the list sent by the Directorate of Medical Education of the State of Madhya Pradesh to the MCI were discharged by the respondent no.1 herein, qua which discharge, it was observed to the effect that the said discharge of the said students by the MCI could not be faulted and the observations in paragraphs 12, 13, 14 of the said verdict read to the effect:-

“(12) In Vigyan Bharti Trust Vs. Union of India & Ors; Writ Petition (Civil) No. 490/2014, Hon'ble Supreme Court on 11/05/2016 clarified that it will be open for the petitioner institution therein to select such NRI students who have passed NEET examination for the academic year 2016-2017. However, there was no relaxation granted that the selection of candidate could be even after the cut off date 7/10/2016. Though our attention is drawn by learned counsel for the petitioner to the last column of the list said to have been furnished on 21/7/2017 that the students shown to be admitted against NRI quota are admitted prior to 7/10/2016; however no other documents are shown such as online information given to the Director, Medical Education Madhya Pradesh and the Medical Council of India of such admissions. We are not commended to any other cogent material as would establish that these students were admitted prior to 7/10/2016.

(13) Another contention that the petitioner ought to have been given an opportunity of hearing is taken note of and rejected at the outset. As per the stipulation contained in the communication dated 05.10.2016 by the Medical Council of India, reproduced supra, it was the obligation of the petitioner College to have updated the information about admission, and having failed to give the

information about NRI students in response to the notice dated 17.11.2016, it is the petitioner who has to blame Itself; because vide said notice the petitioner was called upon not only to upload sanctioned intake and number of students admitted, but also the information as to number of students admitted under government quota, under management quota and under NRI/PIO. The petitioner, therefore, is not justified in contending that they were not required to give the information about the students admitted under NRI quota.

(14) In view whereof, the conclusion arrived at by the Medical Council of India in its meeting dated 30.08.2017 as regard to 25 students (8 students who do not figure in the list of Director Medical Education and 17 students admitted under NRI category whose names do not figure in the first list submitted by the Institute on 22.11.2016) cannot be faulted with as would warrant an indulgence.”,

The said verdicts of the Hon’ble Division Bench of the Gwalior Bench of the State of Madhya Pradesh were challenged vide an SLP (C) No.7483/2018, which was dismissed vide order dated 06.04.2018 of the Hon’ble Supreme Court.

77. The verdict of the Hon’ble Division Bench of Jabalpur of the High Court of State of Madhya Pradesh in “*Sukh Sagar Medical College and Hospital, Jabalpur Vs. Medical Council of India and Others*”, “*Shivani Sahu Vs. State of M.P. and others*” & “*Kanchan Rai Vs. State of M.P. and others*”, is in facts *pari materia* to the instant case and in as much as the students therein were granted provisional admissions by the Bhabha College of Dental Science, Bhopal on its own at its own level without their participation in the centralized counseling and thus, the MCI sought to discharge the students, in as much as no reasonable explanation was put forth by the college as to how, the said students had been admitted without

undergoing the counseling process and thus, vide paragraph 10, 11 & 13 of the said verdict, it was observed to the effect:-

“10. As the aforesaid aspects and the provisions of law are admitted and are not disputed, this Court is not required to go into each and every issue raised by the petitioners as apparently and admittedly the admission granted to the two private petitioners is dehores the provisions of the admission Rules, which specifically provide that admissions to all MBBS seats in Private Medical Colleges in the State shall be made on the basis of centralized counseling conducted at the State level, against the decision of the Supreme Court rendered in the case of Modem Dental College and Research Centre and others vs. State of Madhya Pradesh and others, (2016) 7 SCC 353, wherein the Supreme Court while upholding the validity of the provisions of the M.P. Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007, and the MBBS Admission Rules, 2008 framed thereunder as well as the Madhya Pradesh Private Medical and Dental Post Graduate Course Entrance Examination Rules, 2009 has held that all admissions in Government and private medical colleges have to be made only through a common entrance test, which has to be conducted by the State and against the judgment of the Supreme Court rendered in the case of State of Madhya Pradesh vs. Jainarayan Chouksey and others, (2016) 9 SCC 412, wherein the Supreme Court has clarified that the power of the State to conduct the centralized State admission process includes the power to conduct the State centralized counselling.

11. In view of the aforesaid Constitution Bench judgment's of the Supreme Court and the admitted provisions of the rules, it is clear that admissions, whether in Government or private medical colleges, have to be made only through the centralized test and a centralized counseling to be conducted by the State and that the private colleges have no power or authority to grant admissions on their own.

13. In view of the aforesaid admitted facts and circumstances and the law laid down by the Supreme Court, it is evident that the admissions granted to the two private petitioners are contrary to law and illegal and that the petitioner/college has committed an illegality in granting admissions at its own level to the two private petitioners inspite of the fact they did not participate in the State level centralized counseling and that their names were not included in the list of allotted students forwarded and sent by the DME to the college and to the MCI.”,

however, vide paragraph 15 of the said verdict, it was observed to the effect:-

“15. As a result of the aforesaid discussion, while all the three petitions filed by the petitioners challenging the order dated 9.6.2017 passed by the MCI are dismissed, however in view of and in terms of the directions issued by this Court in the case of Subha Mishra and others VS. State of M.P. and others, 2008 (3) MPLJ 282, it is observed that the two private petitioners shall be entitled to claim refund of the entire fees deposited by them alongwith interest from the petitioner/college Sukh Sagar Medical College and Hospital, Jabalpur. However, in view of the facts and circumstances of the case which indicate that all the three petitioners i.e. the students as well as the College were aware of the Rules and were also aware of the fact that no admission at the college level could be granted or obtained and are equally at fault and responsible for the situation that has cropped up therefore, there shall be no order as to the cost or compensation against either of them.”,

and thus holding to the effect that the student would be entitled to claim the refund of entire fees deposited by them with interest from the college concerned, though no costs or compensation was awarded.

78. The said verdict in ***“Sukh Sagar Medical College and Hospital, Jabalpur Vs. Medical Council of India and Others”*** was also assailed vide an SLP (C) No.10686/2018, which was dismissed by the Hon’ble Supreme Court vide order dated 04.05.2018.

79. The verdict of the Hon’ble Division Bench of the High Court of Madhya Pradesh at Gwalior dated 02.08.2018 in WP.7852.18 (Aman Shaikh Vs. UOI & Ors), WP.7855,18 (Pallavi Surana Vs. UOI & Ors), WP.7856.18 (Sourabh Laad Vs. UOI & Ors), WP.7857 18 (Ishita Saxena Vs. UOI & Ors), WP.7858.18 (Subeer Saha Vs. UOI & Ors), WP.7859.18 (Gurjeet Singh Dang Vs. UOI & Ors), WP.7861.18 (Sanket Baburao Rane Vs. UOI & Ors) & WP. 12531.18 (Richa Arjariya and another Vs. State of M.P. & Ors.), is to the similar effect.

80. The petitioners however, seek to submit that they were not heard and an opportunity for the same ought to have been granted and if any action was to be taken by the MCI, it could have done so only against the respondent no.4 and no punitive action can be taken against the petitioners. In relation to this aspect, it is essential to observe that in view of the catena of verdicts relied upon on behalf of the MCI, and the State of Madhya Pradesh and the Directorate of Medical Education and the law laid down in ***Modern Dental College & Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.*** (supra) & ***State of Madhya Pradesh vs. Jainarayan Chouksey & Ors.*** (supra), the aspect of students having been granted admission without participation in the centralized counseling conducted by the State Government Agency concerned as regulated by the MCI specifically in view of the factum that the Regulations in the instant case of the State of Madhya Pradesh existed from the year 2007 onwards, of which the petitioners have

essentially to have had knowledge and the respondent no.4 equally has to have had knowledge thereof, the discharge of the petitioners by the respondent no.1 vide the impugned communications dated 19.07.2017, 06.08.2017, 23.08.2017, 30.12.2017 and 25.08.2017, cannot be faulted.

81. The contention of the petitioners that no student has come forward to assail the admissions of the petitioners is *per se* not a ground to grant any equities or confer any benefit on the petitioners whose admission to the respondent no.4 is in violation of the law laid down in ***Modern Dental College & Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.*** (supra) & ***State of Madhya Pradesh vs. Jainarayan Chouksey & Ors.*** (supra), already adverted to hereinabove.

82. Reliance was also placed on behalf of the petitioners on the verdict of the Hon'ble Division Bench at Indore of the High Court of Madhya Pradesh in "***Nishank Tiwari & Anr. Vs. State of M.P. & Ors.***" in W.P.No. 7229/2016, "***Puja Kumari & Anr. Vs. State of M.P. & Ors.***" in W.P.No. 7233/2016, "***Shirish Verma & Ors. Vs. State of M.P. & Ors.***" in W.P.No. 7251/2016 & "***Mohit Khamora & Anr. Vs. State of M.P. & Ors.***" in W.P.No. 7252/2016, to contend that in that case in as much as, the cancellation of the admissions of the students therein was not found to be fair, the cancellation of the admissions of the students on the ground of '***human error***' was quashed.

83. Reliance is also placed on behalf of the petitioners on the verdict of the Hon'ble Supreme Court in "***Om Singh Shekhawat & Ors. Vs. State of Madhya Pradesh & Anr.***" in SLP (C) No.29209/2016, in which, where the cancellation of admission had taken place as the allocation had already taken place, the students were directed to be re-admitted to the allocated colleges

without any fees because they had already paid the fees and the colleges which were benefited by the allocation of the students by virtue of the order of the Court, which was in excess in the intake capacity was directed not to admit equal number of students for the next academic year 2017-18 **and that the said order was on the basis of the facts and circumstances of the case, with it having been observed to the effect that that case would not be cited as a precedent for filling up vacancies which are pending in any State and in as much as it was because of a mechanical error that the State Authority i.e. the Counseling Committee had made in that case.**

84. Reliance thus placed on behalf of the petitioners on the verdicts relied upon is wholly misplaced in the facts and circumstances of the instant case in as much as in the instant case, there is no error that has been brought forth that has been attributed by the petitioners to the Directorate of Medical Education nor to the Medical Council of India.

85. In the circumstances, there is no merit in the prayer made by the petitioners.

CONCLUSION

86. The petition and the accompanying applications are thus dismissed.

ANU MALHOTRA, J

AUGUST 07, 2019/NC/SV/vm