



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2020
Pronounced on : 11.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.17473 of 2020
and WMP Nos.21657, 21658, 21659 and 21661 of 2020

1.S.Abirami
2.S.Rushaa Chakaran
3.R.Amirthavarshini
4.M. Vinnoly
5.Ela.Swetha
6.D.Mirambika
7.M.Lavanya

....Petitioners

1. The Government of Puducherry,
Represented by its Chief Secretary,
Secretariat, Puducherry.
2. Centralized Admission Committee (CENTAC)
Rep. by its Coordinator,
Pondicherry Engineering College Campus,
Puducherry-605014.
3. Union of India
Rep. by the Secretary to Government
Ministry of Health and Family Welfare,
New Delhi.
4. Sri Manakula Vinayagar Medical College &
Hospital,
Kalthietherthalkuppam,
Madagadipet, Puducherry-605107.
5. Pondicherry Institute of Medical Sciences,
Kalathumettupathai, Ganapathichettikulam,
Kalapet, Puducherry - 605014.
6. Sri Venkateshwaraa Medical College &
Research Institute, 13-A,
Pondy-Villupuram Main Road, Ariyur,
Puducherry-605102.

7. National Medical Commission,
Rep. by its Chairman,
New Delhi.

.....Respondents.

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in Proc. No.Nil dated October 2020, the Common Admission Prospectus to Undergraduate Professional Courses (NEET Based) in the Union Territory of Puducherry M.B.B.S insofar as it relates to the seat matrix of the respondent 4 to 6, (Viz., allocating less than 50% of the seats under Government Quota), and quash the same as illegal, incompetent and without jurisdiction and to further direct the 2nd respondent to ensure that 50% of seats in the institutions of respondent 4 to 6 filled up under the Government Quota.

For Petitioners: Mr.V.Raghavachari

For Respondents: Mr.T.P.Manoharan
Senior Counsel
for Mr.B.Nambi Selvam
Additional Government Pleader
for R1 & R2
Mr.P.Srinivasa Murthy
Central Government standing Counsel
for R3
Mrs.Hema Sampath
Senior Counsel
Assisted by Mr.Bala Vijayan
for R4
Mr.ARL Sundaresan
Senior Counsel
for R5 for Mr.Abishek Jenasenan
Mr.Abishek Jenasenan
Standing Counsel
for R6
Mr.V.P.Raman
Standing counsel for R7

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ORDER

This writ petition has been filed challenging the allocation of lesser seats by Self-financing institutions towards Government quota in the Common Admission Prospectus issued by the 2nd respondent in the month of October 2020, which called for applications from candidates to participate in the selection through counselling for MBBS, BDS and BAMS courses.

2. The petitioners, who have completed their higher secondary and are aspiring to get into the medical profession, have submitted applications to participate in the selection. The grievance of the petitioners is that there is already an understanding between the Government and Respondents 4 to 6 to share the seats under the Government quota and management quota in the ratio of 50:50 and this is also covered under the 2006 Regulations and inspite of the same, more seats are allotted under the management quota for the 4th, 5th and 6th respondent institutions and the seats allotted towards government quota is much less than 50%. Aggrieved by the same, the prospectus issued by 2nd respondent has been put to challenge and the petitioners are also seeking for a consequential relief to direct the 2nd respondent to ensure that 50% of seats are filled up in the institutions belonging to respondents 4 to 6 under the Government quota.

3. The 1st and 2nd respondents have filed a counter affidavit supporting the claim made by the petitioners and they have sought for a declaration that the Government of Puducherry is entitled to get 50% of the medical seats from respondents 4 to 6 towards Government quota. The relevant portions in the counter affidavit are extracted hereunder:

3, I respectfully state that

A. From the year 1996 to 2007, entities from outside Union Territory/ non-residents have sought permission from the Government of Puducherry to establish their Medical Colleges in the Union Territory of Puducherry in order to avail seats in the MBBS Degree Course permitted by the Government of India in those Colleges to the Government of Puducherry sponsored candidates, the Government of Puducherry has issued Essentiality Certificates to the 7 private Medical Colleges to establish and function in the Union Territory of Puducherry for the purpose of providing opportunity to the aspiring poor educationally and socially backward domicile students to get admission and study MBBS Degree Course in those Colleges at an affordable fees prescribed by it.

B. Based on the said Essentiality Certificates issued by the Government of Puducherry, those 7 private Medical Colleges have established their Medical Colleges in the Union Territory of Puducherry in the year 1996 to 2007 and functioning. Among those 7 private Medical Colleges, 4 Medical Colleges viz., (i) Vinayaga Mission's Medical College & Hospital, Karaikal started in the year 1996, (ii) Aarupadai Veedu Medical College, Puducherry started in the year 1999, (iii) Mahatma Gandhi Medical College, Puducherry started in the year 2001 and (iv) Sri Lakshmi Narayana Medical

College, Puducherry started in the year 2006 are Deemed to be Universities. The remaining 3 private Medical Colleges viz., (i) the 5th Respondent the Pondicherry Institute of Medical Sciences (Religious Minority), Puducherry started in the year 2002, (ii) the 4th Respondent - Sri Manakula Vinayagar Medical College, Puducherry started in the year 2006 and (iii) the 6th Respondent - Sri Venkateshwara Medical College (Linguistic Minority), Puducherry started in the year 2007, are Unaided Private Medical Colleges affiliated to the Pondicherry University.

4. I respectfully state that, after obtaining the Essentiality Certificates, establishing its Medical Colleges in the Union Territory of Puducherry, those 7 private Medical Colleges are reluctant to share 50% of the seats in the MBBS Degree Course to the Government of Puducherry. Consequently, the aspiring poor educationally and socially backward domicile students were deprived of the opportunity to get admission and study MBBS Degree Course by paying affordable fees prescribed by the Government and put to lot of sufferings. The Government of Puducherry is made to negotiate with those 7 private Medical Colleges and get its share of seats in the MBBS Degree Course for admission of the poor domicile students every year.

(vi) In the Essentiality Certificates issued to the Respondents-4, 5 & 6 self financing Medical Colleges, the Government of Puducherry has stated as follows:

(i) (a) In the Essentiality Certificate dt.30.08.2005 issued by the Government of Puducherry to M/s.Ramachandra Educational Trust for establishing and running its Medical College viz. the 6th Respondent - Sri Venkateshwara Medical College (Linguistic Minority) in the Union Territory of Puducherry, it is stated in Clause-9 as follows:.

9. The restriction imposed by the State Government if any on students who are not domiciled in the State from obtaining admission in the state be specified	i) The students sponsored against Government quota should be domiciled in the UNION TERRITORY of Pondicherry ii) 50% of seats shall be reserved for Government Quota and the students will be admitted as per Government order in force.
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(b) In the Order dt.09.06.2015 issued by the Government of Puducherry to M/ s. Ramachandra Educational Trust, declaring that its Medical College viz. the 6th Respondent Sri Venka teshwara Medical

College is a Linguistic Minority Institution in the Union Territory of Puducherry, it is stated in Clause-3(iii) & (vi) as follows:

"3 (iii.) 50% of the total intake permitted by the Government of India shall be from the above minority community.

(vi) As regards the medical admission is concerned, the benchmark of 53 MBBS seats against the total intake of 150 in the academic year 201 +15 shall be the minimum threshold limit for future seat allocations.

(c) The 6th Respondent Sri Venkateshwaraa Medical College has filed W.P.No. 18852/2019, praying to quash the seat matrix issued by the CDNTAC by Order dt.21.06.2019 and consequently, directing the CENTAC to issue revised seat matrix treating only 5 () seats in the MBBS Course in its College as Government quota seats during the academic year 201900. By Order dt. this Hon ble Court was pleased to record that the Petitioner Management was ready to share 53 seats in the MBBS Course which is the minimum benchmark agreed by the parties under the Memorandum of Agreement etc., partly allowed the said W.P. and observed that if the Government desire to alter the minimum benchmark already agreed under the Memorandum of Agreement (lt. 16.04.2015, atleast in future, it shall convene meeting with the Institute well before the commencement of the admission process and arrive at a consensus.

(ii) In the Essentiality Certificate dt.28.08.2004 issued by the Government of Puducherry to Sri Manakula Vinayaka Educational Trust for establishing and functioning its Medical College viz. the 4th Respondent Sri Manakula Vinayagar Medical College in the Union Territory of Puducherry, it is stated in Clause-9 as follows:

"(9) The restriction imposed by the State Government if any on students who are not domiciled in the State from obtaining admission in the State be specified	The students sponsored against Government quota should be domiciled in the Union Territory of Pondicherry
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(iii) (a) In the Essentiality Certificate dt.() 7.12.2000 issued by the Government of Puducherry to the 5th Respondent the Pondicherry Institute of Medical Sciences, Puducherry for establishing and functioning of its Medical College in the Union Territory of Puducherry, it is stated in Clause-9 as follows: ,

9.	The	
restriction		
imposed by the	The students	
State	sponsored	
Government , if	against	
any, on students	Government	
who are not	quota should be	
domiciled in the	domiciled in	
State from	the Union	
obtaining	Territory of	
admission in the	Pondicherry	
state be		
specified		

(b) In the Essentiality Certificate issued by the Government of Puducherry to the 5th Respondent the Pondicherry Institute of Medical Sciences, Puducherry, granting Religious Minority status to it in the Union Territory of Puducherry, it is stated in Clause-(ii) as follows:.

"(ii) 50% of the total intake permitted by the Government of India shall be from the above minority community. "

(c) In the Essentiality Certificate dt.21.()5.2()13, the Government of Puducherry has permitted the 5th Respondent the Pondicherry Institute of Medical Sciences, Puducherry to increase the annual intake in MBBS Course to 150 seats subject to conditions. It is stated in Condition No. 1 as follows:

"i. The College should set apart few seats for CENTAC Candidates to be decided by the Government depending upon the prevailing necessity, in the public interest. "

(d) Further, as stated by the CENTAC in W.P.No.8555/2019 filed by the 5th Respondent Medical College, as per the consensual arrangement, in the said Medical College, seats have been shared in the M.B.B.S. Degree Course to the Government quota and the Government of Puducherry has been selecting candidates domiciled in the Union Territory of Puducherry for admission to the said seats and the said Medical College has been admitting those candidates from the Academic Year 2002-03 to 2016-17

and thereafter, the 2nd Respondent CENTAC has been conducting counseling and selecting candidates in accordance with the Merit Score in the NEET and the 5th Respondent has been admitting them.

Vii. In spite of the facts and position of law stated above, as stated in detail above, the 3 self financing Medical Colleges in the Union Territory of Puducherry viz. the Respondents-4, 5 & 6 Medical Colleges are reluctantly sharing only 55 seats each (out of 150 seats permitted in each of those colleges) (i.e. 36.66%) and in total about 165 seats in the MBBS Degree Course to the Government of Puducherry. The Government is earmarking those 165 seats as the Government Quota in those private Medical Colleges and the remaining seats as Management Quota seats. The 2nd Respondent the CENTAC is conducting counseling for admission to both the Government Quota seats and the Management Quota seats in the MBBS Degree Course in those Colleges based on the merit score of the candidates in the NEET. In the 165 Government quota seats, the CENTAC is conducting counseling and admitting 165 poor educationally and socially backward domicile students of the Union Territory of Puducherry based on their merit score in the NEET and making them to study the MBBS Degree Course by paying the fees prescribed by the Government.

8.I respectfully state that in the above circumstances,

(i) In order to clear the doubts, declare the share of 5() % seats in the 1st year MBBS Degree Course in the Respondents-4, 5 & 6 Medical Colleges towards Government Quota and protect the interests of the poor educationally and socially backward domicile students of the Union Territory of Puducherry, the Government of Puducherry has (i) proposed to enact an Act and prepared a draft bill viz. "The Puducherry Private Medical Institutions (Seat Sharing) Bill, 2020", (ii) the Council of Ministers and the Lieutenant Governor have approved the said Bill and (iii) on 11.06.2020, the Government of Puducherry has forwarded the said Bill to the Ministry of Home Affairs, Government of India for approval. Further, by Letter dt. 3().11.2020, the Lieutenant Governor has also requested the Ministry of Home Affairs to obtain the approval of the Central Government for introducing and passing the said Bill and communicate the same.

(ii) On 02.12.2020, the Lieutenant Governor has instructed that the Seat Matrix for the medical/para medical courses be prepared for filling up 5() % seats in the private unaided Medical/ Para Medical

colleges by the Government following the existing reservation policy which are in force. Accordingly, the department calculated the seat matrix as per 50% Government share and submitted to the Government for approval. On this the Lieutenant Governor has recorded dated 08.12.2020 that "In respect of the High Court order dated 14.08.2019, the Government should discuss with management of the Medical college to get 50% of seat"

(iii) The 2nd Respondent the CDNTAC has also published an Information Brochure, calling for applications for counseling for admission to the 1st Year MBBS Degree Course in the Respondents-4, 5 & 6 Medical Colleges for the Academic Year 2020-21. In the said Information Brochure, it has given the number of seats for admission with a specific stipulation that the said number of seats is tentative and subject to change.

9, I respectfully state that in view of the facts, reasons and position of law stated above, it is just, fair, proper, necessary and legal to pass appropriate Orders in the above W.P., declare the entitlement of the Government of Puducherry for getting 50% medical seats in the Respondents-4, 5 & 6 Medical Colleges towards Government Quota and protect the interests of the poor educationally and socially backward domiciled students of the Union Territory of Puducherry aspiring to get admission to the MBBS Degree Course. Otherwise, the Government of Puducherry will be not be able to provide social justice and put to serious problems and those poor educationally and socially backward domicile students will be put substantial injury, irreparable loss, inconvenience, prejudice and hardship.

10. Thus the Government of Puducherry is of the considered view that the private medical colleges must spare 50% of medical seats for Government Quota as that would fair to the poor and deserving students and in line with the law.

4. The 4th, 5th, and 6th respondents have also filed separate counter affidavits.

5. Mr.V. Raghavachari, learned counsel appearing on behalf of the petitioners made the following submissions:-

- The institutions have agreed to share 50% of the seats with the Government, which will be allotted towards government quota and therefore, these institutions must

not be allowed to wriggle out of the undertaking given by them.

- The 1994 Regulations issued by the Medical Council of India specifically states at clause 7 of the Regulation that atleast 50% of the seats in every private medical college shall be free seats and remaining 50% of the seats should be payment seats.
- When the essentiality certificate was granted in favour of the institutions, they agreed to reserve 50% of the seats for Government quota and therefore, the institutions are duty bound to stick to the undertaking given by them.
- The 2006 Regulations, which dealt with reservation, admission of students and fixation of fees for private professional educational institutions, clearly stipulated that the management of an unaided private professional educational institution must reserve up to 50% of the sanctioned intake under the general category and must fill it up under the Government Quota.
- Even in the Government Order that was issued in GO Ms.No. 91 dated 28.07.2006, the Government of Puducherry took into consideration of the judgements of Hon'ble Supreme Court and it is specifically stated in clause 6 of the Government order that private professional educational institutions must admit students sponsored by CENTAC from among the candidates, who are domicile of Puducherry, to an extent of 50% of sanctioned seats in various graduation and post-graduation courses. This 50% domicile seats are the one, which will come under the State quota, which has to be earmarked by the institutions towards Government Quota.
- The petitioners have the locus standi to question the prospectus, since they are deprived of getting a chance to participate in the selection under the Government quota, because of the reduced seats and they cannot afford to pay the fees under the management quota.
- The prospectus issued by the 2nd respondent, which allots only 55 seats for each institution belonging to the 4th, 5th and 6th respondents out of 150 seats, is clearly in violation of the agreement between the parties and the regulations issued by the Puducherry Government.

6. Mr. T.P Manoharan, learned Senior counsel appealing on behalf of respondents 1 and 2 apart from reiterating the contentions raised in the counter affidavit, submitted that the Government of Puducherry was trying to arrive at a

consensus with respondents 4 to 6, to allot 50% seats under the Government quota and the institutions have refused to allot beyond 55 seats and the same is in violation of the agreement, essentiality certificate and the 2006 regulations. The learned Senior counsel further submitted that the Government in order to bring to an end the uncertainty and in order to protect the interest of the poor educationally and socially backward domicile students of Union Territory of Puducherry, decided to enact a law and a bill was passed, which is called as the Puducherry Private Medical Institutions (Seat sharing), Bill, 2020. This Bill was approved by the Council of Ministers and the Lieutenant Governor and it was forwarded to the Ministry of Home Affairs, Government of India, in the month of June 2020, seeking for approval. There was some delay in this process and in the meantime, the prospectus was issued. The Bill was also returned by seeking for some queries and in the meantime, the Lieutenant Governor instructed preparation of a seat matrix for filling up 50% seats in the private un-aided medical colleges under Government quota. It was pursuant to the same, a meeting was held yesterday with the institutions in order to arrive at a consensus and the institutions refused to allot any seats more than what is mentioned in the prospectus. Therefore, the claim made by the petitioners is totally sustainable and this Court must declare that the institutions must allot 50% seats under the Government Quota.

7. Mrs. Hema Sampath, learned Senior counsel appearing on behalf of the 4th respondent made the following submissions:

- The petitioners having participated in the selection and some of the petitioners viz., 1, 3, 5 and 7 having been found meritorious under the management quota and their names finding place in the merits list, cannot now be allowed to turn around and question the prospectus.
- Once a candidate has submitted himself/herself to the prospectus, he/she cannot be allowed to question the same during the course of the selection. To substantiate this submission, the learned Senior counsel relied upon the Full Bench Judgement of this Court in [Dr.R.Murali Vs. Dr.R.Kamalakkannan and three others] in 1999 3 CTC 675
- The Essentiality certificate insofar as the 4th respondent is concerned, does not stipulate that 50% seats must be given under the Government quota.
- Seat sharing is only a consensus and whatever was agreed is reflected in the prospectus and nothing more can be forced by the Government from the institution under the Government quota.
- The Hon'ble Supreme Court in Inamdar case reported in [P.A.Inamdar and others Vs. State of Maharashtra and

others] in 2005 6 SCC 537, has categorically held that the State does not have the power to insist for seat sharing with the self-financing colleges. To substantiate this contention, the learned Senior counsel specifically relied upon para 124 and 125 of the judgement and the same is extracted hereunder:

124. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of [Article 30\(1\)](#) or a reasonable restriction within the meaning of [Article 19\(6\)](#) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds,

can have their own admissions if fair, transparent, non-exploitative and based on merit.

- Even the 2006 Regulations, do not mandate the institutions to allot 50% seats under the Government quota and a discretion has been given, which is clear from the language used under clause 12 of the Regulations.
- The rules of the game cannot be changed midway after the prospectus has already been issued by the 2nd respondent and any such change will cause grave prejudice to the self-financing institutions.
- The petitioners cannot take advantage of the delay in filling up the seats during this academic year, due to the pandemic condition and it is too late to interfere with the prospectus.

8. Mr. ARL Sundaresan, learned Senior Counsel appearing on behalf of the 5th respondent made the following submissions:

- This is nothing but a proxy litigation instituted by the Government of Puducherry by taking the services of some of the candidates, who participated in the selection and what is not achievable directly is sought to be achieved indirectly by the Government of Puducherry.
- The 5th respondent institution did not agree to allot 50% under the Government quota even when the essentiality certificate was issued to the 5th respondent.
- The 5th respondent is a minority institution and therefore, even the 2006 Regulations will not apply to this institution and it is very clear from clause 12 of the Regulations.
- Similar such attempt made by the Tamil Nadu Government when it insisted for compulsory seat sharing with private un-aided professional institutions, was struck down by this Court in [Madha Engineering College Vs. The State of Tamil nadu] in 2007 4 CTC 30. The learned Senior counsel specifically relied upon paragraphs 8, 22, 23 and 37 and the same are extracted hereunder:

8. When the matters stood thus, the Tamil Nadu State Legislature enacted [Tamil Nadu Act 3 of 2007](#) on 06.12.2006 and the assent of the President was received on 03.03.2007 and the Act was brought into force on 07.03.2007. It will be convenient to refer to some of the provisions of the Act as they are material for

the purpose of this case. The Object of the Act, as stated in the short title and in the preamble, is to provide for "admission to professional degree courses such as Engineering, Medicine, Dental, Agriculture and other allied courses on the basis of the marks obtained in the qualifying examinations". Sections 2(c)(iii), 4 and 5 (4) are the provisions which are impugned as unconstitutional and they are as follows:

2. In this Act, unless the context otherwise requires:

(a) ...

(b) ...

(c) Government seats mean:

(i) ...

(ii) ...

(iii) 65% of the seats in each branch in non-minority unaided professional educational institutions and 50% of the seats in each branch in minority unaided professional educational institutions in accordance with the consensus arrived at between such professional educational institutions and the Government.

Section 4:- Admission to unaided professional educational institutions:- Notwithstanding anything contained in any relevant law or any rules, regulations or by laws made thereunder, admission to seats, excluding the seats referred to in item (iii) of Clause (c) of Section 2, in all unaided professional educational institutions shall be made by the consortium of unaided professional educational institutions approved by the Government or by any Authority authorized by the Government, on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.

Section 5(4) :- The appropriate authority and the consortium of unaided professional educational institution shall prepare the rank lists for admission of students to the seats referred to in Section 3 and Section 4, respectively and allot students through centralized counseling.

Section 2(c)(iii) of the Act declares that 65% of the seats in each branch in non-minority

un-aided professional educational institutions and 50% of the seats in each branch in minority unaided professional educational institutions shall be Government seats in accordance with the consensus arrived at between such professional educational institutions and the Government. Section 4 of the Act provides that admission to seats, excluding the seats referred to in item (iii) of Clause (c) of Section 2, in all unaided professional educational institutions shall be made by the consortium of unaided professional educational institutions approved by the Government or by any authority authorized by the Government, on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examinations. Then Section 5(4) of the Act provides that such admissions shall be through centralized counseling.

22. In P.A. Inamdar, the Supreme Court expressly disapproved the scheme evolved in Islamic Academy to the extent it allows the States to fix quota for seat-sharing between the management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. It was held that the observations in para. 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. The Supreme Court while answering Question No. 1 relating to the issue of unaided educational institutions; appropriation of quota by the State and enforcement of reservation policy observed:

121. ...The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated. (Para 55, Pai Foundation).

124. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no

power to insist on seat-sharing in unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State's policy on reservation for granting admission on lesser percentage of marks i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill which was approved by Pai Foundation is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalisation of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30 (1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

126. The observations in para. 68 of the majority opinion in Pai Foundation on which the learned Counsel for the parties have been much at variance in their submissions,

according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in *Pai Foundation* if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned Counsel have made comments and counter-comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in *Pai Foundation* in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give freeships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society.

127. Nowhere in *Pai Foundation* either in the majority or in the minority opinion, have we found any justification for imposing seat-sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

128. We make it clear that the observations in *Pai Foundation* in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.

129. In *Pai Foundation* it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation

of the students by charging exorbitant money or capitation fees.

130. For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy to the extent it allows the States to fix quota for seat-sharing between the management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy in our considered opinion, does not lay down the correct law and runs counter to Pai Foundation.

23. The Bench also ruled that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institutions. It was observed in para.132: (SCC page.603) Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).

27. In a recent judgment in Indra Sawhney v. Union of India, a two Judge Bench considered a similar question in the context of Section 3 of the Kerala Act 16 of 1996. Section 3 of the said Act reads as follows:

3. Declaration.-It is hereby declared, having regard to known facts in existence in the State-

(a) that there are no socially advanced sections in any backward classes who have acquired capacity to compete with forward classes; and The Bench following the decision in Kesavananda Bharati v. State of Kerala (supra) held that it could certainly examine whether the so called "known facts"

referred to in Section 3(a) were indeed non-existent. The court then examined the question whether the legislative declaration in Section 3 of the Act that there is, in effect, no creamy layer in the State of Kerala is one made by ignoring facts which do exist, and held that the declaration in Clause (a) of Section 3 has no factual basis inspite of the use of the words "known facts". The facts and circumstances, on the other hand, indicate to the contrary. It was held that the declaration in Section 3(a) is a mere cloak and is unrelated to facts in existence. The declaration in Section 3(a) was held to be contrary to the principles laid down in Indira Sawhney v. Union of India 1992 Supp.(3) SCC 217 and Ashoka Kumar Thakur v. State of Bihar and violative of Article 14 and 16(1) of the Constitution and consequently, Clause (a) of Section 3 of the Act was declared unconstitutional.

- The 2020 Bill has been returned back by the Central Government with certain queries and the Act has not come into force and therefore, the respondents 1 and 2 should not be allowed to thrust upon 50% of seats under Government quota by taking advantage of the present writ petition.
- Even assuming without admitting that there is an agreement for sharing 50% seats, such an agreement cannot be enforced contrary to law and there can be no estoppel against law.

9. Mr. Abishek Jenasen, appearing on behalf of the 6th respondent, broadly adopted the arguments made by learned Senior counsel, who appeared on behalf of the 4th and 5th respondents. The learned counsel further submitted that the 6th respondent is a linguistic minority institution, which will not be covered under the 2006 regulations, even assuming that it mandates 50% sharing of seats. The agreement that was entered into at the time of granting of the essentiality certificate has now been superseded by the memorandum of agreement that was entered into by the 6th respondent and Government of Puducherry on 16.04.2015, wherein the 6th respondent institution agreed to allot the number of seats that was allotted in the academic year 2014-2015, which was 53 seats and under the prospectus, the 6th respondent has agreed to allot 55 seats under the Government quota. After having agreed, the 1st and 2nd respondents cannot now force the institution to allot more seats under the Government quota. The learned counsel further submitted that the petitioners do

not have any legal right to question the prospectus after participating in the selection and there is no corresponding legal duty for the institution to allot 50% seats under Government quota and therefore, a writ of mandamus cannot be issued without these fundamental ingredients being fulfilled.

10. Mr. V.P. Raman, learned Standing counsel appearing on behalf of 7th respondent submitted that the 1994 Regulation is no more in force. Insofar as the other contentions raised between the parties, the 7th respondent will not have any say in it.

11. Mr.P.Srinivasamurthy, learned Central Government Standing counsel appearing on behalf of the 8th respondent submitted that the bill that was sent for approval to the Central Government has been returned to the Government of Puducherry by raising certain queries.

12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. The main issue that arises for consideration in the present case is as to whether the 4th, 5th and 6th respondents had agreed to allocate 50% seats to the Government of Puducherry under the Government quota relating to medical courses and whether the 2006 Regulations of the Government of Puducherry mandates the unaided professional private educational institutions to reserve up to 50% towards Government quota?

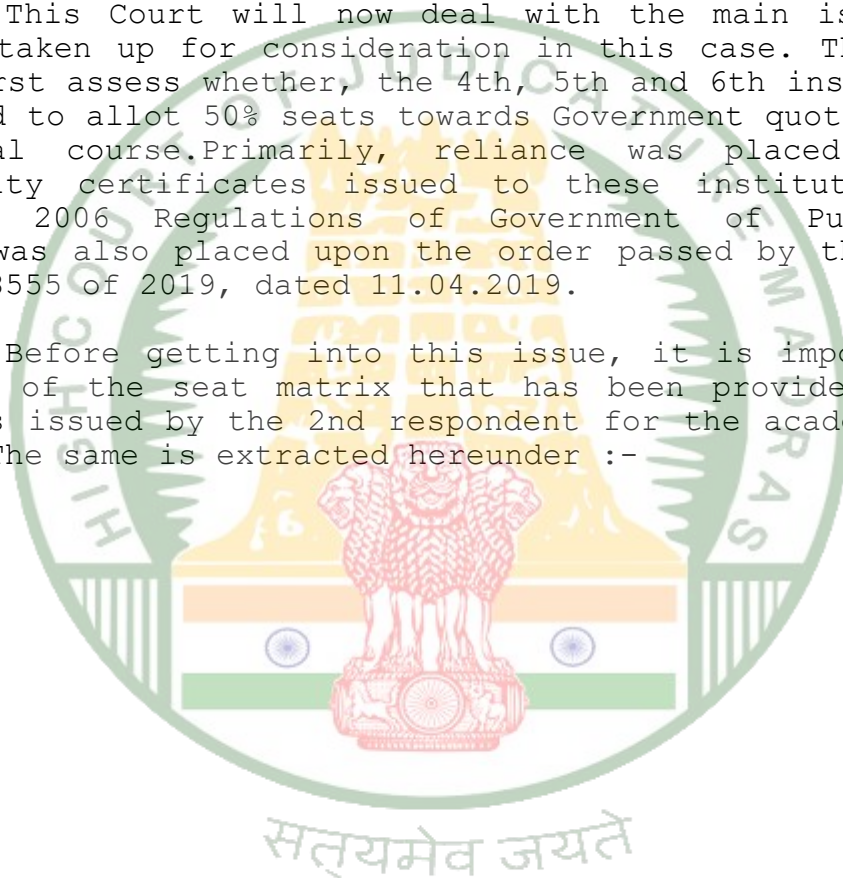
14. The other related issue is as to whether the 1994 Regulations of the Medical Council of India, mandates that self-financing institutions will have to allot 50% seats towards Government quota?

15. This Court will first deal with the 1994 Regulations of the Medical Council of India. The learned Standing counsel appearing on behalf of the 7th respondent made a categorical statement, on instructions, that the 1994 Regulations are no more in force. This Court has to necessarily give weightage to this stand taken by the 7th respondent, since the best person to explain this Court regarding the applicability of 2014 Regulations will only be the 7th respondent. The learned counsel appearing on behalf of the petitioner and the learned Senior counsel appearing on behalf of 1st and 2nd respondents, placed reliance upon the National Medical Commission Act, 2019 and placed specific reliance on Section 10 (1) (i) of the Act. Section 10(1)(i) of the Act, gives the power to the Commission to frame guidelines for determination of fees and all other charges in respect of 50% of seats in private medical institutions. A reading of this provision does not in any way

indicate that even under the New Act, the Medical Commission mandates allotment of 50% of seats by un-aided private institutions towards Government quota. This interpretation that was sought to be given by the learned counsel appearing on behalf of the petitioner and the learned Senior counsel appearing on behalf of the 1st and 2nd respondents, was not supported by the learned counsel appearing on behalf of the 7th respondent. Therefore, this Court does not find any Regulation issued by the 7th respondent that mandates the self-financing institutions to allot 50% seats towards Government quota.

16. This Court will now deal with the main issue that has been taken up for consideration in this case. This Court has to first assess whether, the 4th, 5th and 6th institutions had agreed to allot 50% seats towards Government quota for the UG Medical course. Primarily, reliance was placed on the Essentiality certificates issued to these institutions and also the 2006 Regulations of Government of Puducherry. Reliance was also placed upon the order passed by this Court in WP No.8555 of 2019, dated 11.04.2019.

17. Before getting into this issue, it is important to take note of the seat matrix that has been provided in the prospectus issued by the 2nd respondent for the academic year 2020-21. The same is extracted hereunder :-



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Sl. No.	Self-Financing Private Colleges	Courses	Number of seats (Alloted for the year 2020-2021) *			
			Govt. Quota	Managem ent Quota (All India Basis)	U.T.P. Minority Quota (Managem ent Quota)	NRI
PRIVATE MEDICAL COLLEGES						
1.	Pondicherry Institute of Medical Sciences, Puducherry		55	10	75 (Christi an)	10
			55	95	-	-
2	Sri Manakula Vinayagar Medical College and Hospital (Puducherry)	M.B.B.S	55	5	75 (Telugu)	15
3	Sri Venkateshwa ra Medical College and Research Institute, Puducherry					
PRIVATE DENTAL COLLEGES						
4.	Mahe Institute of Dental Sciences, Mahe	BDS	35	65	-	-
			50	-	50 (Telugu)	-
5	Sri venkateshwa ra Dental College, Puducherry					

18. It is clear from the above seat matrix that the 4th, 5th and 6th respondents are permitted a total intake of 150 seats. The prospectus shows that these respondents have agreed to allot 55 seats each under the Government quota and the balance 95 seats is going to be filled up under the management quota. According to the petitioners and respondents 1 and 2, the seat matrix should have been 75 seats under Government quota and 75 seats under management quota. Since

this ratio has not been maintained, the same has been questioned in this Writ Petition.

19. To start with, this Court will now see if these institutions had agreed to allot 50% quota when the Government of Puducherry issued them essentiality certificate. The counter affidavit filed by 1st and 2nd respondents deals with this issue in detail and the same has been extracted supra. It is clear from the counter affidavit that at the time when the essentiality certificate was issued to the 4th and 5th respondents on 28.08.2004 and 07.12.2000, there is absolutely no indication that these respondents agreed to allot 50% seats under Government quota. Insofar as the 6th respondent is concerned, at the time when the essentiality certificate was issued on 30.08.2005, it was agreed by the 6th respondent institution that 50% of seats shall be reserved for Government quota and the students will be admitted as per the Government Order in force. It must be borne in mind that this was only a consensus/agreement between the parties, which is subject to modification through a subsequent agreement. In fact, this agreement was subsequently superseded by a fresh memorandum of agreement that was entered into by the 6th respondent institution and the Government of Puducherry on 16.04.2015 and as per this agreement, the 6th respondent had agreed to allot not less than the number of seats allotted in the academic year 2014-2015 to the Government of Puducherry. What was agreed to be allotted was 53 seats and the same is clear from the counter affidavit filed by the 1st and 2nd respondent. Therefore, this Court does not find any material on facts to come to a conclusion that the 4th, 5th and 6th respondents had mandatorily agreed that they will allot 50% of the seats towards Government quota.

20. Insofar as 2006 regulations are concerned, this Court has to take note of clause 12 of the regulations and the same is extracted hereunder:

12. Allocation of seats :- In an unaided Private Professional Educational Institution, other than a minority institution, the management of such institution may reserve up to fifty percent of the sanctioned intake under the General category, by the prescribed date notified by the Government.

21. It is clear from the above regulation that this regulation will not apply to minority institution. In the present case the 5th and 6th respondents are admittedly minority institutions and therefore, it will not apply to them. A careful reading of the above clause found in the regulation, does not mandate that an unaided private professional educational institution must necessarily reserve 50% of the sanctioned intake towards Government quota. The regulation itself gives the discretion and the word 'may' has

been consciously used when it comes to reserving 50%. That apart it merely states that institutions may reserve up to 50%. This means that it is left open to the institutions to agree to allot any number of seats towards Government quota and it is not mandatory that they have to necessarily allot 50%. This is the reason why every time there is a meeting held between Government of Puducherry and the institutions and they come to a consensus and agree for a particular number of seats to be allotted under Government quota. This consensus or agreement, as rightly contended by the learned counsel appearing on behalf of the institutions, cannot be thrust upon them and they cannot be forced to allot 50% of the seats towards Government quota.

22. Insofar as the G.O Ms No. 91, dated. 28.07.2006 is concerned, the Government order itself consciously extends the allotment of 50% seats only for engineering colleges and it has not been extended to the medical colleges.

23. Insofar as the orders passed by this Court in WP No. 8555 of 2019 is concerned, the same cannot be applied in the present case, since that case pertained to PG medical courses and the point for determination was whether the petitioner college being a minority institution is bound to admit 50% of the total intake from the religious minority students of Puducherry alone or from other States also. This order that was relied upon does not in any way strengthen the case of the petitioner.

24. A careful reading of the judgement of the Hon'ble Supreme Court in Inamdar Case and which was subsequently followed by this Court in Madha Engineering College case, gives a clear indication that the States will not have the power to insist on seat sharing in unaided private professional educational institution by fixing a quota of seats between the management and States. This Court does not want to go into this issue in detail, since this is not an issue that is directly and substantially involved in the present case. That apart, the Government of Puducherry is attempting to bring in an Act in this regard and any adverse finding in this case, will have a serious impact in bringing this enactment into force. It will therefore be more appropriate to leave this issue open to be considered at the appropriate stage.

25. This Court is really surprised regarding the stand taken by the 1st and 2nd respondents in the present case. If these respondents are very sure that 50% quota is enforceable against the private institutions, it could have been made very clear even in the prospectus itself. Instead, a prospectus is issued by the 2nd respondent by showing 55 seats under the Government quota. The contention of the learned Senior counsel

appearing for the 1st and 2nd respondents that it was mentioned in the prospectus that the number of seats is tentative and subject to change, on the face of it is a very weak defence. This number continues till date and no corrigendum has been issued changing these numbers and any change in these numbers at this stage, will seriously affect the rights of 4th, 5th and 6th respondent intuitions. Such a change cannot be made unilaterally without putting these institutions on notice. It is clear that the 1st and 2nd respondents are not very sure as to whether they can enforce 50% Government quota against the self-financing institutions and that is the reason why, they are making an indirect attempt in this writ petition to enforce it. The 1st and 2nd respondents are rather asking this Court to give its seal of approval and that is why, interestingly in the counter affidavit the 1st and 2nd respondents are seeking for a declaration from this Court that the Government of Puducherry is entitled to get 50% medical seats in the 4th, 5th and 6th respondent medical colleges. In other words, the 1st and 2nd respondents are attempting to get a relief in a writ petition filed by the aggrieved candidates.

26. It is too late in the day to change the rules of the game after the selection process has commenced for the medical courses. The Hon'ble Supreme Court has time and again held that once the selection process has started, the rule/criteria cannot be changed midstream. Useful reference can be made to the judgment of Hon'ble Supreme Court in [Mohd. Sohrab Khan Versus Aligarh Muslim University and Others] reported in 2009 5 MLJ 301. The petitioners having participated in the selection process and some of the petitioners already having been selected in the merit list towards management quota, cannot be allowed to turn around at this stage and question the prospectus issued by the 2nd respondent.

27. In view of the above discussion, this Court does not find any merits in this Writ Petition and the relief sought for by the petitioners is unsustainable and accordingly, the present writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Secretary,
The Government of Puducherry,
Secretariat, Puducherry.
 - 2.The Coordinator,
Centralized Admission Committee (CENTAC)
Pondicherry Engineering College Campus,
Puducherry-605014.
 - 3.The Secretary to Government
Union of India
Ministry of Health and Family Welfare,
New Delhi.
 4. Sri Manakula Vinayagar Medical College &
Hospital,
Kalitheerthalkuppam,
Madagadipet, Puducherry-605107.
 5. Pondicherry Institute of Medical Sciences,
Kalathumettupathai, Ganapathichettikulam,
Kalapet, Puducherry – 605014.
 6. Sri Venkateshwaraa Medical College &
Research Institute, 13-A,
Pondy-Villupuram Main Road, Ariyur,
Puducherry-605102.
 7. National Medical Commission,
Rep. by its Chairman,
New Delhi.
- +2cc to Mr.Abishek Jenasen, Standing Counsel, SR.40798
+1cc to Mr.Balavijayan, Advocate SR.40516
+1cc to Mr.V.Raghvachari, Advocate SR.40471
+1cc to Mr.V.P.Raman, Standing Counsel, SR.40354
+1cc to the Government Pleader(Puducherry) SR.40854

W.P.No.17473 of 2020
and WMP Nos.21657, 21658, 21659 and 21661 of 2020

LN(CO)
CB(18/01/2021)