

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

WRIT PETITION NO.10218 OF 2021

Ms.Shaikh Afreen Nooruddin,
Indian Citizen and Inhabitant,
Aadhaar Card No 323814754823,
Age-25 Years, Occupation-Student,
Residing at Extreme Life Building,
Flat No 6, Near Apple Hospital,
Gajanan Colony, Ahmednagar,
Maharashtra-414111 And
having her Permanent Residence
at No 244/3304/1 Tagore Nagar,
Vikhroli East, Mumbai,
Maharashtra-400083.

...PETITIONER

-VERSUS-

1. The Admission Regulatory Authority
through its Secretary,
Excelsior Theatre Building,
9th Floor, AK Nayak Marg, Fort,
Mumbai, Maharashtra – 400001.
2. The State Common Entrance Test
Cell through its Commissioner,
Excelsior Theatre Building,
A.K Nayak Marg, Azad Maidan,
Fort, Mumbai, Maharashtra-400001.
3. The Maharashtra University Of
Health Sciences through its
Registrar Mhasrul, VaniDindori Road,
Nashik, Maharashtra – 422004.
4. Late Shri Yashwantrao Chavan
Memorial Medical and Rural

Development Foundation's
Dental College and Hospital,
Ahmednagar, 166/1,
Vadgaon Gupta Road,
Opposite MIDC,
Ahmednagar, Maharashtra-414003.

5. The State of Maharashtra.
Through it's Principal Secretary,
Medical Education and Drugs
Department, Mantralaya, Mumbai.

...RESPONDENTS

...
Shri Shailendra Pendse, Advocate i/by Shri P.D. Jarare, Advocate
for the Petitioner.

Shri M.D. Narwadkar, Advocate for Respondents 1 and 2.

Shri S.B. Pulkundwar, Advocate for Respondent 3.

Shri R.S. Devdhe, Advocate for Respondent 4.

Shri S.G. Karlekar, AGP for Respondent 5/State.

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CORAM : RAVINDRA V. GHUGE

&

Y.G. KHOBRADE, JJ.

DATE :- 19th August, 2023

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.):

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner earlier had put forth prayer clauses B, C and D as under:-

“B. This Hon'ble Court be pleased to issue a Writ

of Mandamus and/or any other Writ, Order Or Direction in the nature of Mandamus, thereby directing Respondent No. 1, 2 to regularize the Petitioner's admission in Respondent no. 4 College for MDS degree Course; in terms of Clause 8.3 Of Information Brochure For MDS NEET issued by Respondent No. 2.

C. This Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other Appropriate Writ, Order Or Direction in the nature of Mandamus, thereby directing the Respondent Nos. 1, 2, 3, 4 to forthwith issue Hall Ticket to the Petitioner, thereby allowing her to appear for the MDS Part One - Periodontology Examinations scheduled on 21-09-2021 and subsequently declare the Results of the Petitioner thereof.

D. This Hon. Court may be pleased to issue a Writ of Certiorari and/or any other appropriate Writ, Order Or Direction in the nature of Certiorari calling for the Records leading to the issuance of the Impugned Letter dated 05-01-2021 issued by the Respondent No. 4 college to the Petitioner and after examining the legality, veracity, validity and propriety thereof, be further pleased to quash, annihilate and set aside the said Impugned Letter dated 05-01-2021.”

3. Pursuant to the amendment to the petition, she has

put forth prayer clauses D-1, D-2 and D-3 as under:-

“D-1. By issuing appropriate writ, order or directions in the like nature, this Hon'ble Court may kindly be pleased to quash and set aside the Clause No 2 (iv) (a) Notification dated 30-01-2018 passed by The State Of Maharashtra through the "Department Of Medical Education And Drugs" and for that purpose issue

necessary orders;

D-2. By issuing appropriate writ, order or directions in the like nature, this Hon'ble Court may kindly be pleased to quash and set aside the clause no.8.3 of the information Brochure issued by the Government of Maharashtra, State Common Entrance Test Cell, Mumbai for NEET -MDS 2020 and for that purpose issue necessary orders;

D-3. By issuing appropriate writ, order or directions in the like nature, this Hon'ble Court may kindly be pleased to quash and set aside the decision taken in the minutes of the meeting dt.20-08-2021 by the respondent no. 1 thereby terminating the admission of the petitioner and for that purpose issue necessary orders;”

4. On 16.09.2021, this Court issued notice to the Respondents after recording the submissions of the appearing parties in paragraphs 1 to 3 as under:-

- “1. The petitioner claims to have been admitted to the B.D.S. course in June 2013 and has completed internship in March 2020. The petitioner is issued notice to submit the certificate from the Dean of B.D.S. institute Maharana Pratap Dental College and Hospital Kanpur, stating that the petitioner was admitted through 15% All India Quota for B.D.S. course. The petitioner has registered herself for NEET MDS 2020 admission process through 15% All India Quota.*
- 2. It appears that, the petitioner was communicated in January 2021 seeking clarification. The petitioner has approached at the 11th hour before this Court.*
- 3. According to the respondents, prima facie, the petitioner has got admission to the B.D.S.*

course only by passing UPCAT and was not admitted from All India Quota.”

5. On 20.09.2021, this Court considered the prayer of the Petitioner seeking permission to appear for the examination and passed the following order:-

- “1. At the request of petitioner, leave to amend.*
- 2. The petitioner was admitted to the M.D.S. Course in respondent No. 4 College.*
- 3. It is contended that petitioner has completed her term of first year M.D.S. The petitioner is not allowed to appear for first M.D.S. examination on the ground that the petitioner’s admission was illegal. The petitioner has not passed the B.D.S. degree under 15% AIEE quota from medical college outside Maharashtra State.*
- 4. We have heard the learned counsel for the petitioner.*
- 5. The learned counsel submits that after the petitioner was admitted, the H.O.D. of the respondent No. 4 institution upon verifying the documents never communicated that the petitioner is required to comply with other requisite documents. The admission of the petitioner was never cancelled. The petitioner at no material point of time is communicated that the admission of the petitioner to first year M.D.S. is cancelled.*
- 5. Mr. Narwadkar, learned advocate submits that because of the misrepresentation by the petitioner, the admission was secured by the petitioner. The petitioner in her application specifically made a statement that the petitioner has passed B.D.S. degree under 15% AIEE quota from medical college outside the Maharashtra. If the petitioner would have disclosed true and correct information, the candidature of the petitioner*

would not have been considered.

6. *The examination of Periodontology of M.D.S. part first starts from tomorrow. It appears that the petitioner in the application had submitted incorrect information of having passed B.D.S. degree under 15% AIEE quota. It further appears that the decision was taken by the authority on 20th August 2021 about the petitioner being admitted erroneously. It also further appears that the communication is not made about the cancellation of admission of the petitioner to the M.D.S. course.*
7. *The matter will have to be dealt with after considering the rival contention. Examination commences from 21.9.2021. In view of that, we direct the respondent Nos. 3 and 4 to allow the petitioner to appear for examination. Of course, if the petitioner is otherwise eligible to appear. It is submitted that the examination is to start from 10.00 a.m. tomorrow i.e. 21.9.2021. We are aware that the respondents would be hard pressed to conduct the examination, but considering the academic carrier of the student, the respondent No. 3 may try to conduct the examination of the petitioner along with all other candidates.*
8. *It is made clear that respondents shall not declare the result of the petitioner until further orders of this Court nor the petitioner would be entitled to claim equity only on the ground that petitioner is allowed to appear for the examination.”*

6. The learned Advocate for the Petitioner informs us that the Petitioner has completed her MDS course (three years). She was admitted on 29.07.2020 for the first academic year 2020-2021 and she completed her final year MDS in the academic year 2022-2023. In this backdrop, the learned

Advocate for the Petitioner submits that the Petitioner would not press prayer clauses D-1 and D-2. In view of the said statement, the said two prayers are deemed to be deleted.

SUBMISSIONS OF THE PETITIONER

7. The Petitioner passed her 12th standard examination from Maharashtra in 2013. Admittedly, she has not appeared for the All India Entrance Examination (AIEE). She appeared for the UP Common Entrance Test (UP-CET), which was a condition precedent for seeking admission to the Bachelor of Dental Surgery (BDS) degree course in private dental colleges in the State of Uttar Pradesh. It is averred that the NEET examination was not compulsory for seeking admission to the BDS degree course. The Petitioner secured admission in the Maharana Pratap Dental College at Kanpur, which is not a deemed university. It is affiliated to the Chhatrapati Shahuji Maharaj University, Kanpur (erstwhile Kanpur University). After completing the BDS course and one year internship from 12.03.2019 to 11.03.2020, she got herself registered with the Maharashtra State Dental Council. She received the Certificate of Registration dated 24.06.2020.

8. The Petitioner aspired to pursue the Master in Dental Surgery (MDS) Course. She appeared for the NEET

MDS-2020 exam and scored 220 out of 960 marks in the exams. Respondent No.2/ State CET Cell issued a brochure for registration, counseling and preference form filling admission process. The Petitioner filled in the application form, online. All documents were submitted, which were not subjected to physical verification due to the Covid-19 pandemic. No deficiency was communicated to her. On 23.07.2020, the name of the Petitioner was displayed in the list of eligible candidates in Institutional Quota. She deposited total fees of Rs.6 lacs for the academic year 2020-2021 vide three cheques dated 29.07.2020, 17.11.2020 and 27.01.2021. The father of the Petitioner was working as a Technician in MTNL and had meagre salary. He has now retired. The eligibility fee of Rs.53,200/- was also paid by the Petitioner on 14.09.2020.

9. The Petitioner received an application form for registration and eligibility of Post Graduate Degree from Respondent No.3/Maharashtra University of Health Sciences. The undertaking clause at page 4 mandates the Petitioner to undertake that she is aware of Respondent No.3 being empowered to return the application for enrollment for non compliance within 90 days from the date of admission. A

deficiency in the admission of the Petitioner was noticed on 05.01.2021 after a period of 164 days. Respondent No.4 College issued a letter to the Petitioner dated 05.01.2021, asking the Petitioner to submit a certificate from the Dean of Maharana Pratap Dental College and Hospital, Kanpur, disclosing that she was admitted to the BDS degree course through 15% All India Quota. This was because the Petitioner had obtained a degree certificate from a college outside Maharashtra and she was not eligible for admission to the MDS course in Maharashtra through the State CET unless she had secured admission to the BDS degree course under 15% AIEE quota. The Petitioner had stated in her CET form that she had appeared for the AIEE and secured admission in the 15% quota at Kanpur. This is admittedly a false statement.

10. There is no dispute that because the Petitioner answered by typing 'YES' to the question '*whether, she had obtained admission outside Maharashtra State for the BDS degree under 15% AIEE quota*', that her NEET MDS 2020 application form was cleared by the State CET Cell. It is conceded that had she written 'NO', she would not have been eligible for the NEET MDS 2020 admission process.

11. The learned Advocate for the Petitioner submitted that when the Petitioner took admission for the BDS degree course at Kanpur, there was no such rule introduced in the State of Maharashtra as regards the MDS admission. So also, NEET was not mandatory as in 2013 and NEET was made compulsory after the Honourable Supreme Court delivered the judgment on 11.04.2016 in *Medical Council of India vs. Christian Medical College, Vellore, (2016) 4 SCC 342*.

SUBMISSIONS BY THE RESPONDENTS

12. This is controverted by the learned AGP Shri Karlekar, who draws our attention to the NEET MDS 2013 information brochure introduced by the Medical Education and Drugs Department, Government of Maharashtra, more particularly clause 5.2 and 5.8, which read as under:-

“5.2 All candidates, who have passed final B.D.S. examination and completed/completing one year internship training by 31 March, 2013 from a recognized Dental college (Annexure F) included in the Schedule of the Dental Council India Act, 1956 and situated in Maharashtra are eligible. The Dental College should have been affiliated to Non-Agricultural Universities established under Maharashtra Universities Act, 1994 or the Maharashtra University of Health Sciences Act, 1998 or Dental College affiliated to Deemed university as per University Grant commission Act of 1956

under section 13/A, situated in Maharashtra. The candidate should have obtained registration either from the Dental Council of India (DCI) or Maharashtra State Dental Council (MSDC) will be eligible to fill Preference Form for NEET-MDS 2013.”

“5.8 The candidates who are domiciled in the State of Maharashtra and who have obtained admission under 15% quota for All India Entrance Examination (AIEE) for BDS course in the Dental College / institution situated outside Maharashtra State and who have obtained the degree from a University situated outside the State of Maharashtra will also be eligible for selection process of NEET-MOS 2013. Such candidates should submit (i) certificate from the Dean of respective Dental college stating that the candidate was admitted under 15% AIEE quota for BDS course, and (ii) Candidate's Domicile certificate of Maharashtra State by virtue of residence.”

13. He further adds that the NEET MDS-2020 carries the same provisions. To be specific, he points out that clauses 5.2 and 5.8 of NEET MDS-2013 are 8.2 and 8.3 in NEET MDS-2020, which read as under:-

“8.2 All candidates, who have passed final B.D.S examination from the college situated in Maharashtra and completed/ completing one-year internship training by 31st March, 2020 from a recognized dental college (Annexure- F) included under section 10(2) of the Dentists Act, 1948 are eligible. The Dental College should have been affiliated to the Maharashtra University of Health Sciences Act, 1998 or Dental College affiliated to Deemed university

as per University Grant commission Act of 1956 under section 13/A, situated in Maharashtra. The candidate should have obtained provisional or permanent registration either from the Dental Council of India or Maharashtra State Dental Council (MSDC) or Other State Dental Council. Such a candidate will be eligible to fill registration for NEET-MDS 2020. Candidate who has passed BDS examination from foreign university are not eligible for NEET-MDS 2020 admission process under Competent Authority, State CET CELL.”

“8.3 *The candidates who are domiciled in the State of Maharashtra and who have obtained admission under 15% All India Quota / AIIMS /Central Government Institutions for Bachelor of Dental Surgery (BDS) course in the dental colleges situated outside state of Maharashtra and who have obtained degree from University situated outside the State of Maharashtra will also be eligible for selection process of NEET-MDS 2020. Such candidates should submit Certificate from the Dean of respective Dental College stating that the candidate was admitted under 15% All India Quota / AIIMS / Central Government Institution quota for BDS course, and (ii) Candidate's Domicile Certificate of Maharashtra State by virtue of residence.”*

14. The Dentist Act, 1948, was amended with the introduction of Section 10-D, which has been held to be applicable prospectively by the Honourable Supreme Court in ***G.J. Raja vs. Tejraj Surana, (2019) SCC Online SC 989*** (paragraphs 14, 15 and 23). Section 10-D of the Dentist Act,

1948, reads as under:-

“10-D. Uniform entrance examination for undergraduate and post graduate level:

There shall be conducted a uniform entrance examination to all dental educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Dental College or in a private Dental College) where such State has not opted for such examination.”

15. In view of the above, the contention of the Petitioner that NEET was not compulsory in 2013, is an insignificant factor in the present case. While she was in the midst of her BDS degree course at Kanpur, the admission process through the National Eligibility cum Entrance Test (NEET), was made compulsory in the entire nation. To say that, ‘had she knew in 2013 that she would not be eligible for the MDS course in Maharashtra, she would not have taken admission in Kanpur’, is

a far fetched and unpalatable statement. The Petitioner never attempted any admission test in Maharashtra and there is no averment in the petition that she had sought admission to the BDS course in Maharashtra and since she did not secure admission, that she obtained admission at Kanpur. It is an admitted position that the Petitioner directly appeared for the UP Entrance Exam and secured admission at Kanpur.

16. As such, it is very clear that the Petitioner has actually misled the State CET Cell by projecting that she had secured admission at Kanpur through the AIEE 15% quota. This was the eligibility criteria for being considered in the NEET MDS-2020 selection process. Having so misrepresented, her application form sailed through at the doorstep of Respondent No.4/College. The Petitioner was considered in the last round meant for those candidates who did not secure admission in the earlier rounds. She was, therefore, placed in the wait list of candidates who were supposed to report for the admission on 31.07.2020 upto 05:00 pm. This was pursuant to the publication of the second selection list on 29.07.2020.

ROLE OF THE MDS MANAGEMENT

17. With regard to the role of the MDS Management,

Shri Karlekar submits that, the receipt dated 29.07.2020 placed on record by the Petitioner, indicates that an amount of Rs.2 lacs vide cheque No.112974 was accepted by the College and a receipt was issued. It is equally surprising that the Petitioner's attendance sheet dated 31.07.2020, indicates that she had reported to the College to secure her admission from the institution round on the scheduled day, which is 31.07.2020. Her admission was formalized on the said date, but under the 'NRI quota'. Per contra, the NEET MDS-2020 admission form of the Petitioner indicates that she had said 'NO' to the option "*Does the candidate want to claim NRI quota seat?*". The Petitioner, thereafter, paid a further amount of Rs.2 lacs vide cheque No.112975 dated 17.11.2020 and again an amount of Rs.2 lacs vide cheque No.112976 dated 27.01.2021. All these three cheques are in serial order, the last digits being 74, 75 and 76 that were issued over a period from 29.07.2020 till 27.01.2021. This leads to a suspicion that all these three cheques were tendered to the College on 29.07.2020, which is the date of the first cheque and the remaining two cheques were post dated cheques. In between this period, the Petitioner paid Rs.53,200/- by Demand Draft on 14.09.2020.

ANALYSIS OF THE SUBMISSIONS AND THE RECORD

18. As noted above, the Petitioner has stated in her State CET Cell Form that she has not applied under the NRI quota and after Respondent No.4/MDS College surreptitiously granted her the MDS seat/ admission from the NRI quota, either she or the University, filled in the registration and eligibility form declaring her admission as '*Institutional (including 15% NRI)*'. These documents speak louder than words. It is commonly said that 'humans may lie, but documents will not lie'. It is apparent that there has been some development at the Respondent No.4/MDS College admission level, which is de-hors the rules. So also, the date of her admission is shown as 29.07.2020, whereas, her admission has been formalized by the College on 31.07.2020.

19. The Respondent No.4/Dental College issued a letter to the Petitioner on 05.01.2021, calling upon her to submit a certificate from the Dean of the Kanpur College as regards whether she was admitted through the 15% All India Quota for BDS course. She was informed that the approval of her admission to the MDS course would depend upon the said certificate. The Dental College at Kanpur issued a certificate dated 08.01.2021, which is produced by the Petitioner before us,

in which it is stated that as NEET was not mandatory in 2013-2014, she was admitted to the BDS course through UP-CET.

20. As the Petitioner's exam hall ticket for her first year exam of MDS was withheld, since her admission was not approved, she addressed an email to the Commissioner, State CET Cell praying for regularizing her admission to the MDS course. We are informed, on the basis of the pleadings, by the learned Advocate for the Petitioner that she has deposited a total fee of Rs.18 lacs. After initially paying a substantial fee, she received a letter from the MDS College dated 22.03.2022 directing her to deposit the outstanding fee of Rs.6 lacs for her final year. She deposited Rs.2 lacs on 08.04.2022 and after receiving another letter from the College dated 29.04.2022 directing her to deposit Rs.4 lacs before 09.05.2022, she deposited the entire amount.

21. The Dean of Respondent No.4/MDS College has entered an affidavit in reply dated 19.02.2023. It is stated in paragraph 4 that on the last day of conducting interviews for admission from the Institutional Quota, the Petitioner was the only candidate to report for admission for the MDS course for the subject Periodontics. The muster dated 31.07.2020 indicates

the name of the Petitioner, who has reported for interviews. Per contra, the documents placed before us by the College indicate that a candidate, namely, Praneet Diliprao Guttikar, belonging to the Scheduled Caste category, had scored 224 marks and he was from the NRI quota. The Petitioner scored 220 marks. She had declined the NRI quota admission in her State CET Cell Admission Form. There is no record placed before us as to why the candidate Praneet Diliprao Guttikar was not given the admission and as to how was the Petitioner admitted against the NRI quota in his place, without there being any NRI sponsorship letter on record. It is admitted that the NRI admission can be granted only after following a specific procedure, which does not seem to have been followed by the Respondent No.4/MDS College.

22. The attendance report dated 31.07.2020 is just a chart placed before us by the MDS College with a remark in front of the name of Praneet Guttikar that he has 'not reported'. The same is dated 31.07.2020 indicating that the Petitioner was granted the admission as she reported on 31.07.2020, which was the date scheduled for the two candidates to report and confirm their admission. Surprisingly, the MDS Management had already

accepted the cheque dated 29.07.2020 from her towards admission fees from the NRI quota.

23. From the above facts, it is quite apparent that there have been several illegalities that have occurred at the Management level. We do not wish to repeat the factual matrix as recorded in the foregoing paragraphs. The conduct of the Management is writ large from the record before us.

24. The learned Advocate for the Petitioner has strenuously harped upon the contention that the NEET MDS 2020 admission procedure and rules cannot be made applicable, retrospectively. The learned Advocates for the Respondents submit that this argument of the Petitioner is insignificant and is apparently to shift the focus from her conduct, as well as that of the Management, which more serious.

25. In order to contend that the NEET MDS 2020 brochure has the force of law, the Respondents have relied upon the judgment delivered by the Full Bench of the Punjab and Haryana High Court in *Amardeep Singh Sahota vs. The State of Punjab*, (1993) 2 PLR 212, wherein, it was concluded in paragraph 22 as under:-

“22. It may at this stage further be stated that the

*Notification dated July 13, 1992 goes contrary to the policy which was laid down for admission in the Notification dated May 20, 1992 on the basis of which the Prospectus had been issued to the students and the students appeared for test on the basis of the policy laid down in the prospectus. The Prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. In *Randeep Kaur v. The State of Punjab and Ors. I. L. R. (1985) P & H 343*, a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since the Prospectus issued for admission to the 1992-93 course in the medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated July 13, 1992 issued by the State Government is invalid in law.”*

26. Further reliance is placed on the judgment delivered by the Honourable Supreme Court in *Priya Gupta vs. State of Chhatisgarh and others*, 2012 AIR SC 2413 : 2012(7) SCC 433, wherein, it has been held in paragraph 27 as under:-

“27. Now, let us examine the adverse consequences

of non-adherence to the prescribed schedules. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations. Inter alia, the disadvantages are:-

(1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in the case of Muskan Dogra & Ors. v. State of Punjab & Ors. [(2005) 9 SCC 186].

(2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses etc.. encourage lowering of the standards of education in the Medical/Dental Colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

(5)The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

(6) Timely non-inclusion of the recognised/ approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

(7)Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit.”

27. Further reliance is placed on paragraphs 26 and 27 of the Full Bench judgment of this Court in the matter of *Mahatma Gandhi Mission's Institute and others vs. The State of Maharashtra and others*, 2008 (5) Bom. C.R. 545, which read thus:-

“Information and Admission Brochure

26. *For ensuring adherence to proper appreciation of a academic course, it is essential that the method of admission is just, fair and transparent. The first step in this direction would be publication of a brochure on the basis of which the applicants are supposed to aspire for admission to various institutions keeping in mind their merit and preference of colleges. Brochure, whether information or admission, firstly has to be in conformity with law and the statutory scheme notified by the competent authority. It is a complete and composite document as it deals with the scheme for conducting their entrance examinations, declaration of results, general instructions and method of admission, etc. This brochure is binding on the applicants as well as all the authorities. This brochure or admission notification issued by the State or other competent authority cannot be altered at a subsequent stage particularly once the process of admission has begun. There is hardly any exception to this accepted rule of law.*

27. The Full Bench of the Punjab & Haryana High Court in the case of (Raj Singh Vs. Maharshi Dayanand University)", 1994(4) Recent Services Judgments 289, following the earlier Full Bench of the Court in the case of (Amardeep Singh Sahota Vs. The State of

Punjab, etc.), 1993(2) Punjab Law Reporter 212, held that the brochure is binding on the applicant as well as the institute and has the force of law.”

28. It is, therefore, contended that the Petitioner has raised the issue of retrospective effect of the NEET MDS 2020 Rules, only to camouflage her conduct of entering false information in the admission form which was the primary reason for processing the Petitioner's admission believing that she was entitled for the MDS admission.

29. We can quite see the conduct of the Petitioner as well as that of the Management. The conduct of the Management is more glaring and grave. After scrutiny of the form of the Petitioner, the Management had written to the Petitioner vide its communication dated 05.01.2021 for seeking information as regards the quota from which the Petitioner secured admission to the BDS course in the Kanpur BDS College. The BDS Kanpur College issued the certificate dated 08.01.2021 that the Petitioner's admission to the degree course was purely in the light of her UP-CET exam and not the AIEE. At that very moment, the MDS Management became aware that the Petitioner cannot be admitted and the Admission Authority would not

approve her admission. Yet, the MDS Management proceeded with the admission of the Petitioner. Moreover, though the Petitioner had declared in her admission form that she was not seeking admission from the NRI quota, yet she was included in the category of NRI quota by the Management and her admission was processed. There is not a single document placed before us, nor any explanation offered in the two additional affidavits filed by the Petitioner, in this regard. It is repeatedly contended by her that she had ignorantly committed an error while filling her MDS form. It is thus, apparent that the admission of the Petitioner suffers from an illegality.

30. In *Nibir Jyoti Das vs. State of Maharashtra and others, 2021 (5) Mh.L.J. 681*, this Court concluded in paragraph Nos.49 and 56 to 65 as under:-

“49. *The constitutional validity of Rules 5 and 8 of the 2016 Rules on the anvil of Article 14 of the Constitution having been upheld by a coordinate bench of this Court in Mahatma Gandhi Vidyamandir (supra) and in view of the special leave petition presented against such decision failing before the Supreme Court in the light of the decision in Rajdeep Ghosh (supra), the inevitable conclusion is that the impugned statutory provisions do not suffer either from legislative incompetence or arbitrariness qua outsider students. The narrow terrain within which the restriction imposed by*

the 2016 Rules needs to be examined here is, whether it is unreasonable and, thus, offends Article 19(6).”

.....

.....

“56. *Authorities need not be cited, for, it is settled law that in adjudging the validity of a restriction, the Courts have necessarily to approach it from the point of view of furthering the social interest which the impugned legislation seeks to promote, and the situation which presented itself to the legislature when the same was enacted. Also, in judging the reasonableness of a law, the Court will necessarily see not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme. It is the reasonableness of the restriction and not of the law that has to be found out.*

57. *While dealing with the writ petition of Yellamalli Venkatapriyanka (supra), the coordinate bench noted the stand of the State Government as appearing from an affidavit of Dr. Pravin H. Shingare, Director of Medical Education and Research, Government of Maharashtra, to the effect that Rule 5 of the 1997 Regulations empowered the State Government to frame its own eligibility criteria in respect of 85% State quota. It is in pursuance thereof that Rules 5 and 8 of the 2016 Rules prescribe who would be eligible to be accommodated in the 85% State quota and such prescription has been judicially upheld up to the Supreme Court. Paragraph 38 of the decision traces paragraph 27 of the affidavit where the exact reason advanced by the Government appears for putting in place the stipulations of passing SSC and HSC examinations from institutes situate in Maharashtra coupled with the requirement of*

possessing a domicile certificate taking into account the interest of the State, and the local and regional requirements to weed out candidates who are not in continuous residence within the State of Maharashtra for 15 years preceding the qualifying examination.

58. *What appears to this Bench to clinch the issue in favour of the respondents and against the petitioners are the decisions in Modern Dental College and Research Centre (supra), Rajdeep Ghosh (supra) and Christian Medical College Vellore Association (supra).*
59. *Based on the decision in Rajdeep Ghosh (supra), the Supreme Court upheld the decision of the coordinate Bench of this Court in Yellamalli Venkatapriyanka (supra). Such decision puts a quietus to the challenge on the ground of violation of Article 14 of the Constitution.*
60. *In Modern Dental College and Research Centre (supra), the Court observed:*
"64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.
65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression 'reasonable restriction' seeks to

strike a balance between the freedom guaranteed by any of the sub- clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression 'reasonable' connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object....

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'. Islamic 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 (sic imprimatur to the holding) of CET but it went further to hold that agency conducting the CET must be the one which enjoys the utmost credibility and expertise in the matter to achieve fulfilment 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 student 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."

- 61. The legal position emanating from the aforesaid discussion is that although T.M.A. Pai Foundation (supra) held that right to admit students and the right to fix fee were facets of the right to occupation guaranteed under Article 19(1)(g), yet, having regard to malpractices and unscrupulous activities in the*

matter of admissions, the Court cautioned by mandating that admissions of students, in particular, to professional educational institutions have to be based on merit and for judging merit, participation of all intending candidates in a common entrance test to be conducted by the State was held to be a reasonable restriction on the right guaranteed under Article 19(1)(g) and, thus, the unbridled power of the institutions to admit students of their choice as part of Article 19(1)(g) right was left to be regulated by the State by conducting a common entrance test. If admission based on results of a common entrance test like NEET is a reasonable restriction, a fortiori, admission of students in the 85% State quota in the manner to be laid down by the State in terms of the 1997 Regulations, without such regulations being subjected to any challenge in any of these writ petitions, would also be a reasonable restriction on the Company's right under Article 19(1)(g). The entire procedure has to be seen as part of a single scheme starting with the 1997 Regulations and culminating in admission of meritorious students as far as possible commensurate with local and regional needs of a particular State.

62. *In Christian Medical College Vellore Association (supra), the Court after reference to all the decisions on the point including T.M.A. Pai Foundation (supra), Islamic Academy (supra), P.A. Inamdar (supra) and Modern Dental College and Research Centre (supra) took note of the prevailing situation of corruption in the field of education and commercialisation of education and came down heavily with the following observations:*
- "62. Thus, it is apparent that the provisions in question which have been incorporated in the*

Act relating to Medical/Dental education, the Government, MCI and DCI cannot be said to be an invasion of the fundamental rights. The intendment is to ensure fairness in the selection, recognition of merit, and the interests of the students. In the national interest, educational institutions are basically for a charitable purpose. By and large, at present education is devoid of its real character of charity, it has become a commodity. To weed out evils from the system, which were eating away fairness in admission process, defeating merit and aspiration of the common incumbent with no means, the State has the right to frame regulatory regime for aided/unaided minority/private institutions as mandated by directives principles, Articles 14 and 21 of the Constitution. The first step has been taken to weed out the evils from the system, and it would not be in the national interest to step back considering the overall scenario. If we revert to the old system, posterity is not going to forgive us. Still, complaints are galore that merit is being ignored by private institutions; there is still a flood of litigation. It seems that unfettered by a large number of regulatory measures, unscrupulous methods and malpractices are yet being adopted. Building the nation is the main aspect of education, which could not be ignored and overlooked. They have to cater to national interest first, then their interest, more so, when such conditions can be prescribed for recognition, particularly in the matter of professional education."

63. *Article 19(6) of the Constitution authorizes restriction on the right guaranteed under Article 19(1)(g) to be imposed, inter alia, in the interests of the general public. Having regard to the aforesaid authorities, this Bench is of the*

considered opinion that the restriction imposed on such a right is in the interest of the general public and in tune with clause (6) of Article 19. The authority competent to impose restriction has done so by a law, enactment whereof was within its competence. Such restriction was imposed keeping in mind local and regional needs. From paragraph 47 of the decision in Rudrika Pushpraj Bhatele (supra), it is revealed that Delhi, Gujarat, Karnataka, Kerala, Punjab, Tamil Nadu and West Bengal have reserved 85% seats for being filled up by students having domicile/permanent residence in the respective States. The State of Maharashtra has not adopted a policy which is at variance with the policies of the other States across the country. The petitioners are seeking declaration/directions of the nature which would undo whatever has been settled by the Supreme Court in the various decisions referred to above and adopted by the State in furtherance thereof.

64. *This Bench shares the view expressed in the decision in Rudrika Pushpraj Bhatele (supra) where Dr. Dinesh Kumar (supra) and Dr. Jagdish Saran (supra) cases were considered. In view thereof, individual consideration of the ratio of such decisions is not felt necessary.*
65. *For all the reasons aforesaid, this Bench finds no reason to interfere with the impugned legislation. The writ petitions stand dismissed. However, the parties shall bear their own costs.”*

31. This brings us to the contention of the Respondents that the impugned decision dated 20.08.2021 terminating the

admission of the Petitioner, is sustainable and deserves no interference. The learned AGP has relied upon the judgment delivered by this Court in *Dr.Pallavi Manohar Dalvi and others vs. The State of Maharashtra and others, 2022 (5) Mh.L.J. 674*, to buttress his contention that the admission of the Petitioner for the MDS course has been rightly disapproved by the impugned order.

32. In *Dr.Pallavi Manohar Dalvi (supra)*, it was concluded in paragraph 21 that the Petitioners were partly responsible for their illegal admissions. In the case before us, it is obvious that the Petitioner mentioned “YES” in her MDS admission form while answering ‘*Whether, she had obtained her BDS admission from the 15% State quota?*’ The Petitioner has contended on oath that she committed a mistake as she did not really understand the meaning of the question. She has admitted this aspect to the Management at the time of physical scrutiny of her documents, subsequent to her admission to the MDS course. Per contra, it was the Management who appears to have played a mischievous role by continuing her admission, though the Kanpur BDS College informed the Management that the Petitioner appeared for the UP Entrance Exam. The MDS

Management's conduct is further aggravated by the fact that they have admitted the Petitioner against an NRI reserved seat when, she had actually mentioned in the MDS admission form that she does not desire to take admission from the NRI quota.

33. What follows this act of the Management is that since the Petitioner got her admission, she has paid more than Rs.18 lacs as fees and has completed the MDS course. For obvious reasons, there has been no protest from her side. Had the Management obeyed the earliest decision of the Admission Regulatory Authority of disapproving the Petitioner's admission, the Petitioner would have searched for some other option. If there was no seat available for the Petitioner, keeping in view that she had not opted for an NRI seat, the Management could have declined her admission since there was only one NRI seat and the Petitioner had never applied for the same. This would have put the matter to rest. The Management, thereafter, issued letters to the Petitioner to pay the fees of the second and the third years. Constant persuasion for payment of fees emerges from the letters of the Management.

CONCLUSION

34. In the above fact situation, what should be the fate

of the MDS admission of the Petitioner? It is beyond debate that her form was cleared by the CET Cell because she had projected that her admission to the BDS course was through the 15% AIEE quota. She pleads that she could not gather the meaning of the said clause. She has now passed out after completing the 3 years MDS course, as this Court had granted her interim reliefs at various stages, in the past. Her father is a retired employee who was earning a meager salary and comes from a humble background. The total expenditure incurred by him on the Petitioner's MDS course college fees and other expenses, is more than Rs.25 lakhs. It is in these peculiar facts that we are not interfering in the Petitioner's MDS admission. Nevertheless, we are convinced that the Petitioner as well as the Management need to be penalized.

35. In view of the above, **this Writ Petition is partly allowed.** While setting aside the impugned decision dated 20.08.2021, we are issuing the following directions:-

- (a) The Petitioner shall pay costs of Rs.1 lakh by depositing the said amount in this Court on or before 15th October, 2023. After depositing the said amount, Rs.25,000/- each, shall be donated to (i) Infant India,

Anandwan, 659/Infant Hill, Infront of Bindusara Dam, N.H. 211, Pali, Beed-431122, (ii) the Government Cancer Hospital at Aurangabad, (iii) the Government Medical Hospital (GHATI) at Aurangabad and (iv) the Bar Library of the Advocates' Association of Bombay High Court, Bench at Aurangabad.

- (b) Respondent No.4/ MDS Management shall deposit costs of Rs.10 lakhs in this Court, on or before 15th October, 2023.
- (c) Respondent No.4/MDS Management is warned that it should not recover any portion of the aforesaid amount from the Petitioner and shall not withhold any certificate or document of the Petitioner for compelling her to deposit the money with the Management.
- (d) The above stated amount of Rs.10 lakhs shall be transferred by the registry of this Court, into the account of the Chief Minister's Relief Fund, State of Maharashtra.
- (e) This order shall not be construed as a precedent and

henceforth, no such admission shall be regularized.

If the present Respondent No.4/MDS Management is found to have indulged in any such act, appropriate procedure for withdrawing the approval of the Management shall be initiated by the competent authority.

36. The Director, Medical Education and Research, State of Maharashtra, Mumbai and the State CET Cell Respondent no 2, are directed to issue a Circular/directive to all professional colleges to ensure that no admission of any student would be irregularly granted, much less, illegally and if such admissions are granted, they shall be cancelled and the Managements shall be liable for severe penal consequences including cancellation of their approvals/de-recognition, etc.

37. Rule is made partly absolute in the above terms.

kps

(Y.G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)