

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No1956 of 2023
Date of Decision: 11.10.2023
Reserved on: 25.08.2023**

The Mahabir Education Welfare Society ... Petitioner

Versus

The State of Haryana and others ... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Arjun Pratap Atma Ram, Advocate,
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Nilesh Bhardwaj, Advocate,
for respondent No.2-University.

MANISHA BATRA, J.

1. The present petition invoking writ jurisdiction of this Court under Section 226 of the Constitution of India has been filed by the petitioner seeking quashing of orders dated 03.03.2020 (Annexure P-14), dated 15.11.2021 (Annexure P-31) and 28.06.2022 (Annexure P-37)

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respectively passed by the respondents.

2. The factual matrix of the case in brief is that the petitioner which is a duly registered society has been running various colleges, one of which is Mahabir College of Nursing situated at Ambala City (hereinafter to be mentioned as “**the College**”). The College had been set up in the year 2004 on issuing a ‘No Objection Certificate’ by the respondent No.1-State of Haryana and Haryana Nurses Registration Council (its acronym “**HNRC**”). Eversince then, the College has been imparting education in B.Sc. Nursing, Post Basic B.Sc. Nursing and M.Sc. Nursing courses (Hereinafter to be referred as the “**the three courses**”). It has been seeking required yearly approvals from **HNRC** and Indian Nursing Council (For short “**INC**”) as well as affiliation from respondent No.2-University. The respondent No.2-University had also granted affiliation to the College for Sessions 2019-20 and 2020-21. The respondent No.1-State had issued a notification dated 18.10.2019 (Annexure P-7) for admission of students to the three courses for the academic session 2019-20.

3. The petitioner further submitted that in view of above notification, the admissions were to be made on the basis of a Common Entrance Test (CET-19) to be conducted by the respondent No.2-University; that candidates had to fulfill the eligibility criteria as contained in Clause 6 of the notification that the seats remaining vacant after two rounds of counselling would be filled up as per the procedure notified by the State Government; that the seats left vacant in open merit (State Quota) category in private colleges after two rounds of counselling would be converted to management category seats and would be filled up as per the procedure notified by the State Government. Management category seats

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were also to be filled up on the basis of CET-2019. It was submitted that the College was notified in the list of approved institutes in the abovesaid notification for B.Sc. Nursing course with 100 seats, Post Basic Nursing Course with 60 seats and M.Sc. Nursing Course with 40 seats. The respondent-University conducted first and second round of counselling for all the three courses on different dates during the months of October and November, 2019 and the mop up counselling was conducted and concluded on 24.12.2019 and 26.12.2019 respectively for these courses though last date for admission to these courses was notified to be 31.12.2019.

4. It was further submitted that as extremely less number of seats had been allocated to the College when the University Counselling had been done on 24/26.12.2019 and as the respondent No.1 in accordance with Clauses 8 (x) and 8 (xi) of the notification dated 18.10.2019, did not issue any further notification for filling the vacant seats or order of appointment of some Observer for filling those seats, therefore, the College of the petitioner-Society made a written request to respondent No.2 to depute an Observer for counselling to be held by it on 30.12.2019 and issued an admission notice dated 27.12.2019 by publishing advertisement in newspaper. The respondent No.2 did not send any observer despite request being made. As such, counselling was done on 30.12.2019 in the College without the presence of the observer and 31 students in B.Sc. Nursing Course, 32 students in Post Basic B.Sc. Nursing Course and 16 students in M.Sc. Nursing course were admitted. The petitioner submitted registration returns of students admitted in all the three courses in January 2020 to the respondent No.2 which along with the fees deposited had been accepted by the respondent No.2. As the registration numbers of the admitted students

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had not been issued by respondent No.2-University, therefore, the petitioner issued reminders to the respondent No.2. However, to its dismay, the respondent No.2 cancelled the admissions of the students admitted by the petitioner by writing a letter dated 03.03.2020 and intimating that the admissions were not as per University Counselling and had been made by the College at its own level. The College submitted representation to the respondent No.1 against the order of cancellation but to no avail.

5. As further submitted, the petitioner society and 79 students admitted in the three courses challenged the order dated 03.03.2020 as passed by respondent No.2 by filing **Civil Writ Petition No.22511 of 2020** titled as *The Mahabir Educational Welfare Society and others v. Pandit Bhagwat Dayal Sharma University of Health Sciences Rohtak and others* before this Court. Vide order dated 23.12.2020, a bench of this Court had given direction to let the admitted students take part in the examination which were to be held in December 2020. Direction was given to INC who was impleaded as a party in the said petition to examine the issue regarding grant of admission to students who had not participated in CET. The said writ petition was disposed of on 25.10.2021 by directing the Director, Department of Medical Education and Research, Haryana (**DMER**) before whom the representations/appeals filed by the petitioner and other writ petitioners of the Writ Petition No.22511 were pending, to decide those representations in terms of provisions of the Haryana Private Health Sciences Educational Institutions (Regulations of Admission, Fixation of Fees and Maintenance of Education Standards) Act, 2012 (For short “**Act, 2012**”). Those representations/appeals had been rejected by the respondent No.3 on 15.11.2021 while imposing fine of Rs.1 lac upon the petitioner.

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6. It was further submitted that in the interregnum, the respondent No.2 neither declared the result of examinations taken by the students in terms of order dated 23.12.2020 passed in Writ Petition No.22511 nor did it let the students appear in subsequent examinations as well. The petitioner then filed another **Civil Writ Petition No.13744 of 2022** titled as *The Mahabir Educational Welfare Society and others v. The Indian Nursing Council and others* making prayer to set aside the order dated 15.11.2021 and for directing the respondent No.2 to declare the result of the admitted students. The said writ petition had been withdrawn on 29.06.2022 as in the meanwhile, the respondent No.1 had passed an order dated 28.06.2022 thereby rejecting the appeal of the petitioner against order dated 15.11.2021. The petitioner then filed another writ petition bearing **No.13884 of 2022** for quashing of order dated 28.06.2022 and to declare the result of the students admitted in the College. The said writ petition was withdrawn on 13.07.2022 with liberty to the petitioner to file a fresh writ petition with better particulars and thereafter this writ petition had been filed by the petitioner.

7. The petitioner has challenged the order dated 28.06.2022 (Annexure P-37) passed by respondent No.1, the order dated 15.11.2021 (Annexure P-31) passed by respondent No.3 and order dated 03.03.2020 (Annexure P-14) passed by respondent No.2-University on the following grounds:-

- (i) That the prescription of CET as contained in Clause 8 of the notification dated 18.10.2019 was beyond the minimum standards prescribed by INC and the action of the respondent No.2 in cancelling the admission of the students of the College

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was contrary to the provisions of Act, 2012 as well as the criteria fixed by INC who was the Central body.

(ii) That the College of the petitioner had conducted counselling on 30.12.2019 in terms of the notification dated 23.12.2019 and was competent to admit students as per the same.

(iii) That as despite being requested in writing to send an observer for conducting counselling on 30.12.2019, the respondent No.2 had not done so, therefore, the College was left with no option but to fill up the vacancies as per merit determined on the basis of qualifying examination and to make admissions against the eligible candidates and the action of respondent No.2 for not providing for filling up seats left after 26.12.2019 was contrary to the terms of the notification dated 18.10.2019 and was also violative of Article 19 (1) (g) of the Constitution of India.

(iv) That the acceptance of registration returns of students and fees deposited by the College on the part of respondent No.2 amounted to acceptance of their admission and, therefore, the order dated 03.03.2020 passed subsequently could not be sustained.

(v) That the impugned orders dated 15.11.2021 and 28.06.2022 were non speaking and were liable to be quashed.

The petitioner accordingly prayed for issuance of a writ of certiorari for quashing the impugned orders and also prayed for giving direction to the respondent No.2 to declare the result of the students

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admitted during the Session 2019-20 and also for accepting their examination forms to enable them to appear in the forthcoming examinations.

8. The respondents filed a joint reply submitting therein that the notification dated 18.10.2019 had been issued by the respondent establishing the procedure of admission for the three courses and Nurse Practitioner Critical Care Programme course in Government/Private Aided/Unaided Nursing Institutions for the academic year 2019-20 and the respondent No.2 was authorized to conduct Combined Centralized Counselling and CET 2019 for admission to all Government/Private Aided/Unaided institutes affiliated to it. It was so conducted in the month of September and October, 2019. The petitioner admitted 79 students i.e. 35 students in B.Sc. Nursing Course, 38 students in Post Basic B.Sc. Nursing Course and 22 students in M.Sc. Nursing Course at its own level though these students had neither appeared in CET-2019 nor got registered themselves for the counselling conducted by the respondent No.2 and while violating the notification dated 18.10.2019, backdoor admissions were made by the petitioner by not following the due procedure required for admission to the Nursing Courses, thereby, putting the future of the students in jeopardy. It was admitted that the registration fees was deposited by the College but it was asserted that no right for regularization had been conferred upon the students by doing so. It was further submitted that the petitioner had also failed to deposit the amount of money which was required to be deposited by it for issuance of NOC for these courses. While controverting the remaining pleas, dismissal of the petition had been prayed

for.

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9. We have heard learned counsel for the petitioner and learned counsel for respondents at length and have gone through the material placed on record.

10. It was vehemently argued by learned counsel for the petitioner that while admitting the 79 students in the three courses for the Sessions 2019-20, due procedure for admission in terms of notification dated 23.12.2019 had been followed by the College of the petitioner. The College was constrained to conduct counselling and admit these students on account of inaction on the part of the respondent No.2 itself of not providing the Observer in terms of notification dated 18.10.2019. The act of accepting the registration returns and the fees deposited by the College proved that the respondent No.2 had accepted the admissions of 79 students who were even otherwise eligible for such admissions as per the norms of INC which did not prescribe participation of the students in CET as a condition precedent for admission.

11. It was further argued that the respondent No.2 had acted in an illegal and arbitrary manner by cancelling the admissions of 79 students as unfilled excess seats were available with the College which could be allowed to be utilized by it by admitting students eligible as per INC norms. The respondents ignored the fact that by keeping seats vacant, not only huge financial loss was going to be caused to the petitioner but that also amounted to national wastage of resources and also that the interest of general public was not subserved by doing so. It was further argued that the State and University failed to evolve a fair and transparent mode of admission as also sufficient number of students for admission on the basis of CET, therefore, the College of the petitioner deserved to be allowed to

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grant admission as per norms of INC as per the merit of students based on academic qualification and the students so admitted deserved to participate in the forthcoming examination to be conducted for the three courses and were also entitled to declaration of the result already taken. To buttress his argument, learned counsel for the petitioner relied upon **Index Medical College, Hospital and Research Centre v. The State of Madhya Pradesh and others**, AIR 2021 Supreme Court 3090; **Association of Education Colleges (Self Financing) of Haryana v. State of Haryana and others** and a bunch of connected petitions reported as 2009 (1) S.C.T. 157 and **The State of Odisha and others v. Orissa Private Engineering College Association (OPECA) and another**, 2021 (7) SCC 468.

12. Per contra, learned Deputy Advocate General, Haryana appearing for respondent No.1 and learned counsel appearing for respondent No.2-University argued that the College of the petitioner could not be allowed to fill the seats by surpassing the procedure of CET and could not be allowed to ignore the procedure prescribed as it was to maintain better standards of higher education that the procedure of CET was adopted by the State and notification dated 18.10.2019 was issued. They argued that the rules and regulations of INC were not applicable and binding on the State and the respondent No.2-University and the State of Haryana was competent to lay down its rules and instructions for the purpose of admissions in technical and professional educational institutes. They further argued that the 79 students were admitted by the College of the petitioner-Society by way of backdoor entry in collusion with each other. The College was very well aware of the terms and conditions of the notification dated 18.10.2019, still it had conducted private counselling and

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granted admissions which were not permissible in law. This notification had never been challenged. The admissions given at its own by the College of the petitioner could be considered to be valid and, therefore, such admissions were rightly cancelled. While concluding, it was urged that the petitioner could not be allowed to get the admissions regularized and to let the students of its College to appear in the examination of the three courses, therefore, it was urged that the petition was liable to be dismissed. To fortify their contentions, learned counsel for the respondents placed reliance upon authorities cited as **Sr. Lourdu Mary N., Principal and another v. State of Maharashtra**, 2017 SCC OnLine Bom 9211 & **Abdul Ahad and others v. Union of India and others**, 2021 SCC OnLine SC 627.

13. The College of the petitioner is admittedly a private unaided educational institute. The rights of such institutions were considered and law in this regard was clarified by Hon'ble Supreme Court in a celebrated judgment cited as **P.A. Inamdar and others v. State of Maharashtra and others**, (2005) 6 SCC 537, wherein it was observed that the excellence in education and maintenance of high standards at Graduate and Postgraduate level of education and also for technical and professional educational institutions, were a must. To fulfill these objectives, the State could and rather must in national interest, must step in. The Apex Court had supported the holding of a Common Entrance Test (CET) for one group of unaided educational institutions imparting same or similar education. It was also observed that by holding CET by one agency, the twin objects of transparency and merit would be better ensured and would also save the students community from harassment and exploitation. It was held that holding of CET followed by Centralized Counselling did not cause any

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dent in the right of unaided institutions to admit students of their choice and such choice could be exercised from out of the list of successful candidates prepared at CET.

14. Reliance in this context can further be placed upon **Modern Dental College and Research Centre v. State of M.P.**, (2016) 7 SCC 353, wherein the Hon'ble Supreme Court while dealing with the question of fee structure with regard to medical, dental and other health related professional institutions in the State of Madhya Pradesh and also with the question of rights of association of private unaided colleges, to have a separate Common Entrance Test for admissions as also validity of the order of the State Government directing the unaided colleges to admit students according to the merit on the Common Entrance Test conducted by the State Government, had added caution to the rights of educational institutions to admit students by mandating that admissions to such institutions imparting higher education, and in particular professional education, had to be made based on merits and for judging the merit, it was indicated that there could be a CET. The holding of CET by State was not only held to be permissible but it was also observed that the right under Article 19 (1) (g) was not absolute in terms but was subject to reasonable restrictions. While holding that the right to establish and administer educational institutions being termed as "occupation" though being a fundamental right guaranteed under Article 19 (1) (g) but it came with certain clutches and shackles, it was held that the restrictions had to be considered keeping in view all the factors and the provision of CET was held to be reasonable one.

15. As mentioned above, the Government of Haryana, DMER had issued notification dated 18.10.2019 (Annexure P-7) notifying that

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admissions under the three category of courses i.e. M.Sc. Nursing Course, B.Sc. Nursing Course and Post Basic B.Sc. Nursing Courses were to be made on the basis of CET-2019 to be conducted by the respondent No.2. Before delving into the contentions raised by both the parties, it would be proper to discuss certain clauses of this notification which are relevant for the purpose and which read as follows:-

Clause 7 Process:-

- i. The admissions under all categories will be made on the basis of merit of marks obtained in the Common Entrance Test-2019 (CET-2019) conducted by Pt. B.D. Sharma University of Health Sciences, Rohtak.
- ii. A candidate for admission to B.Sc. Nursing, Post Basic B.Sc. Nursing and M.Sc. Nursing, Nurse Practitioner Critical Care Programme (NPCC) Courses in Government Nursing Institutions and Open Merit Category (State quota) Seats in Private Institutions will be eligible if he/she is a citizen of India and is a bonafide resident of Haryana.
- iii. All candidates (General/SC/ST/BC-A/BC-B/Benchmark disabilities) desirous of seeking admissions in any category of seats should fulfill the minimum eligibility criteria/qualifications/qualifying criteria as prescribed in the prospectus issued by Pt. B.D. Sharma University of Health Sciences, Rohtak for the Academic year 2019-20.

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Clause 8 Procedure for Admission to State Quota seats in Government and Open Merit category seats (State quota seats) in Private/Unaided Nursing Colleges located in the State of Haryana:-

- (i) The admissions under above stated categories will be made on the basis of Common Entrance Test 2019 (CET 2019) conducted by Pt. B.D. Sharma University of Health Sciences, Rohtak.
- (ii) The relative merit, among such candidates desirous of seeking admission shall be drawn as per the merit of Common Entrance Test conducted by the University.
- (iii) Candidates applying on the basis of CET 2019 should fulfill the eligibility criteria for being granted admissions as fixed under CET 2019.
- (iv)to (ix) xxx xxx xxx
- (x) In case there is a vacancy after the first round of counselling due to any reason, such seats will be filled up during the second round of counselling by the same process. However, if the seats still remain vacant even after the two rounds of counselling, then left over seats will be filled up as per directions of State Government and as per procedure notified by the State Government.
- (xi) Seats remaining vacant under open merit category (State Quota) in Private Colleges after two rounds of counselling will be converted to Management Category seats during mop up round and filled up as per procedure notified by the State Government.
- (xii) xxx xxx xxx

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Clause 9 Process for Admission to Management Category seats in Private Nursing Colleges of Haryana:-

Similar procedure as followed for counselling of B.Sc. Nursing, Post Basic B.Sc. Nursing and M.Sc. Nursing, Nurse Practitioner Critical Care Programme (NPCC) courses for filling up State Quota seats in Government/Private Aided, Nursing Colleges and Open Merit Category seats in Private Nursing Colleges as described under Section 8 above will be followed for admissions to Management Category seats also. However, the merit shall be drawn on the basis of Merit of CET-2019 for all candidates.

16. It is admitted case of the parties that 40 seats for M.Sc. Nursing Course, 100 seats for B.Sc. Nursing Course and 60 seats for Post B.Sc. Nursing Course were approved in favour of the College for the Session 2019-20 but in the first and second round of counselling as conducted by way of CET, only few seats were filled. As per Clause 8 (xi) of the notification, the seats remaining vacant under open merit category were to be converted to management category seats during mop up round and were to be filled up as per the procedure prescribed by the State Government. As per Clause 9, the similar procedure as followed for counselling to the three courses for filling up State Quota Seats in Government/Private Aided, Nursing Colleges and open merit category seats was to be followed for admission to management category seats also. However, the merit was to be drawn on the basis of merit of CET-2019 for all candidates.

17. The claim of the petitioner is that the mop up round was exhausted by respondent No.2 on 24.12.2019 and 26.12.2019 respectively though as per the notification dated 23.12.2019 (Annexure P-8), the date of

mop up round was extended till 31.12.2019 and its grievance was that as

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despite making request to the respondent No.2-University by writing letter Annexure P-9 to depute its representative as University Observer for the counselling process to be conducted on 30.12.2019, it had not deputed any Observer, therefore, it was left with no alternative but to admit students in the three courses at its own. Learned counsel for the petitioner laid much stress on the argument that the 79 students so admitted by the College were eligible for admission as per the minimum standards prescribed by INC and also as per the eligibility criteria laid down in Clause 6 of the notification dated 18.10.2019 which was pari materia with the regulations of INC, therefore, the action of the College in admitting students through the counselling conducted by it could not be faulted with.

18. Undisputedly, the eligibility criteria for admissions to the three courses as provided in the notification dated 18.10.2019 was the same as has been provided by INC which is based on fixing the minimum age and qualification for all the three courses. The petitioners in his previous writ petition bearing CWP No.22511 of 2020 had got impleaded INC as respondent No.4. Copies of affidavits/additional affidavits in the form of reply as submitted by the authorities of INC in the above writ petition were placed on record as Annexures P-24 and P-25 respectively, the contents of which reveal that it was admitted by INC that it had prescribed minimum eligibility criteria for admission to Nursing Courses and such admissions were to be strictly made in accordance with the merits of the candidates applying for admission. The question that arises is as to whether prescribing of minimum eligibility criteria for admission in the three courses by INC was binding upon the State of Haryana or the respondent No.2. In our opinion, the answer is in negative. In the affidavits Annexures P-24 and P-

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25 themselves, it was clarified by the authorities of INC that each State/University had its own guidelines laying down the procedure for admission to various courses and also the power to have an examination for granting admission to various courses and relaxation in the process of admission could only be given by the University. It was also clarified that the INC had no role to play with regard to the admissions. The petitioner failed to produce any material on record to show that the minimum eligibility criteria for admission as prescribed by INC was binding upon the State and the University in any manner and further that due to the reason that no criteria for holding CET was prescribed by INC, admissions through CET could not be made or holding of CET was against norms.

19. With regard to the contention that the eligibility criteria was also contrary to the provisions of Act, 2012, the said argument can also not be stated to be having any force, in view of the fact that as per Sections 3 and 4 of this very Act, CET has to be conducted by the State for making admission to the private institutions and admission to management category seats shall be made on the basis of inter se merit of candidates in the Common Entrance Test. Therefore, the notification dated 18.10.2019 could not be stated to be against the spirit of Act, 2012 also. The argument that the prescription of CET was beyond minimum standards prescribed by INC was not as such tenable especially in view of the fact that the petitioner or the College or its students never chose to challenge the validity of this notification and hence, it did not lie in the mouth of the petitioner to say that the prescription of CET as contained in Clause 8 of this notification for following procedure for admission was against norms.

20. Dilating further, unquestionably, as per the notification dated

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18.10.2019, the seats remaining vacant under open merit category in private colleges after two rounds of counselling were to be converted to management category seats during mop up round and were to be filled up as per the procedure notified by the State Government. The State, however, did not notify any such procedure. But the question is as to whether this authorized the College to admit 79 students who had neither registered themselves for participating in CET nor participated in CET, at its own? The answer should be in the negative. A specific process for admission on the basis of merit of marks obtained in CET was prescribed in the notification dated 18.10.2019. Even while issuing notification dated 23.12.2019 (Annexure P-8), it was clarified by respondent No.2 that the admissions in all the three courses were to be done amongst CET qualified candidates. There was no instruction or authorization on the part of the State and the University to the College that students who had not participated in CET would be eligible for admission. Rather on the contrary, the merit list of the successful candidates was to be prepared only on the basis of their performance in CET. The norms did not prescribe any minimum percentage of marks in CET as a condition precedent for admission. The petitioner or its College is not shown to have made any request to the State Government to notify any procedure for filling up the vacant seats. No doubt, a request was made by writing a letter dated 27.12.2019 by the College to respondent No.2 to depute some Observer for counselling to be conducted but the absence of devising any procedure for filling up the excess unfilled seats by issuing notification on the part of the State, nevertheless did not give any liberty to the College to grant admission to the students who had not participated in CET. The admissions could not be made by compromising

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the merit of the students. There was no law or legislation enabling the College or the students for enforcement of provisions contained therein so as to seek enrollment and admission to vacant seats and to admit students from sources other than CET. It is settled proposition that in MBBS, BDS and other related courses, the private colleges cannot be allowed to admit students on vacant seats at their own and fill the same by surpassing the procedure of CET even if such seats were going vacant after the last round. Reference in this context can be made to **Sr. Lourdu Mary N., Principal and another's** case (Supra) wherein the Apex Court had observed that if students are allowed to be admitted by surpassing the procedure of CET, then even the seats of MBBS and BDS courses would also be filled up like that and the same could not be permitted.

21. Reference can also be made to **Modern Dental College and Research Centre's** case (Supra), wherein the Hon'ble Supreme Court observed that giving unfettered right to the private unaided institutions to devise their own admission process and fee structure, would lead to situation where it would impinge upon the "right to equality" of the students who aspired to take admissions in such institutions. It was observed that holding CET followed by centralized counselling regulating admissions did not cause any dent on fundamental rights of the institutions in running the same and rather would ensure equal opportunity to all meritorious and suitable candidates as that would ensure twin objects of fairness, transparency and merit apart from preventing maladministration. Similar observations were made by Hon'ble Supreme Court in **Abdul Ahad and others's** case (Supra) wherein while considering the question of validity of admissions of candidates in MBBS course for academic session 2016-17 in

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Glocal Medical College, Uttar Pradesh, it was observed that admissions conducted through private counselling could not be termed as anything else but per se illegal.

22. On applying the position of law as settled in the above cited authorities by Hon'ble Supreme Court to the peculiar facts of the instant case, it can certainly be stated that since the College of the petitioner-Society had admitted 79 students in the three courses without observing and complying with the mandate of notification dated 18.10.2019, therefore, its action of granting admissions at its own was nothing but attempt to overreach the process of law as it was not permissible for the College to have conducted private counselling and grant admissions. The College was affiliated with the respondent No.2 and fell within its supervisory control so far as maintenance of standards of education was concerned, which also included the admission of students in the College. The admissions were obviously given by the College by way of backdoor entry and the respondent No.3 by passing a speaking order had rightly observed that such course was strictly unacceptable and reflected the intent of the College to disobey the duly promulgated order of the State Government. Mere deposition of registration fees and filing registration returns did not confer any right on the students for regularization when mandatory procedure to justify the merit had not been followed and obviously it was also known to the students that their admissions were not made by following the prescribed procedure and the same were made on provisional basis. As such, the orders passed by the respondent No.3 and then the order dated 28.06.2022 as passed by the Additional Chief Secretary (DMER) cannot be stated to be non speaking. The reliance as placed by the petitioner on **Index**

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Medical College, Hospital and Research Centre's case (Supra) does not help its contention as the issue in that case was with regard to filling of vacant seats in MBBS course as a result of allotted candidates from mop up round not taking admission and some candidates resigning from admitted seats and the dispute was not with regard to process/procedure for admission of the students in that course.

23. Further, the judgment of Hon'ble Supreme Court in **The State of Odisha and others's** case (Supra) as cited by petitioner can also not be stated to be applicable in its case as in that case, the Hon'ble Supreme Court while exercising its extraordinary jurisdiction under Article 142 of the Constitution and having regard to the overwhelming hardship faced during the course of Covid 19 Pandemic, had held that the admissions granted to students under lateral entry to B.Tech degree courses should not be disturbed, though it was simultaneously observed that the mandamus given by High Court in that case on the basis of marks obtained in qualifying examination and not on the basis of entrance examination was expressly contrary to the terms of the relevant Act. The facts of the case in authority cited as **Association of Education Colleges (Self Financing) of Haryana's** case (Supra) are also distinguishable and not applicable to the case of the petitioner.

24. Accordingly, in the light of the discussion as made above, we hold that since it was not at all permissible for the College of the petitioner to grant admission to 79 students in the three courses at its own, therefore, its action of doing so was not obviously legal and permissible. It is also interesting to note here that though the 79 students initially challenged the order of cancellation of their admission by respondent No.2 by filing Writ

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Petition No.22511 of 2020 and by way of an interim direction given in this case, they were permitted to take part in their examination for the first year of the respective courses which were to be held in December 2020, but it was made clear that no equity was created in their favour while granting such permission. The said petition was disposed of with direction to the respondents to decide the appeal filed before the Director (DMER). Neither in the subsequently filed CWP No.13884 of 2022 nor in this writ petition, the students have chosen to become a party and assert any challenge to the order dated 03.03.2020. There was no prayer on their behalf to let them participate in the examination which was forthcoming at the time of filing of this petition in the year 2023. A period of about three years has been passed since they were permitted to provisionally appear in the examination of the 1st year course. The interim prayer made by the petitioner for declaring the result of the students had been accepted by this Court only to the extent of giving direction to the respondent No.2 to produce the result of the students in a sealed cover. The same had been produced and as per the details submitted by the respondent No.2, only 9 students each in M.Sc. Nursing and B.Sc. Nursing Course (2 years course) and 2 students in B.Sc. Nursing (four years course) had passed the examination. In view of what has been discussed above, in our opinion, permitting the petitioner to regularize the admissions of the above 79 students or to let them appear in their examination for the subsequent years that too without any prayer being made by themselves in this regard and then giving any direction to respondent No.2 to declare their results, would certainly tantamount of subversion of law which is not at all justified as the same would further amount to misplaced sympathy in favour of the petitioner and those

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students.

25. We further hold that the advantage already gained by the petitioner by seeking interim relief of letting the 79 students appear in examination of 1st year courses, if permitted to be retained further would not only jeopardise the purity of the selection process but would also embolden the errant educational institutions and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by appeal to the sympathy of the Court and should not be permitted. As such, no equitable relief can be granted to the petitioner and the admissions granted by its College to the 79 students being in a patently illegal manner cannot be allowed to be protected nor any relief for allowing the students so admitted to appear in the forthcoming examination or to declare the results of the individual students of the 1st year course can be granted. Accordingly, finding no justification for allowing the petition, the same is dismissed. However, we are also constrained to observe that despite having specifically provided in Clause 8 (x) and (xi) of the notification dated 18.10.2019 (Annexure P-7) that the seats remaining vacant after two rounds of counselling will be filled up as per the procedure notified by the State Government, the State of Haryana has not bothered to notify any such procedure till today and this has resulted in failure on its part to evolve a transparent method of admission in the private nursing institutions. The State of Haryana, is therefore, directed to lay down specific guidelines qua filling up such seats in private aided/unaided nursing institutions that are remaining vacant/left over after the prescribed rounds of counselling. Such guidelines be laid down within three months positively so that such like

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situation as has arisen in this case is avoided in future. The State will send a report to this Court after taking a decision.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

11.10.2023
manju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No