

(2011) 08 KL CK 0125

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18513 of 2011

Amina Nahna

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 141, 16, 226
Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, of Admission, Fixation of Non Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 — Section 4

Citation : (2011) 3 KLT 753

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : George Poonthottam and K.M. Firoz, for the Appellant; KPJD andapani), V. Chitambaresh (Sr Advocate), S. Krishnainoorthy, A. Mohammed Mustaque, Anil K. Narendran, Santhosh Mathew, Sathish Ninan, Jennis Stephen, A. Abdul Kharim and R.T. Pradeep, for the Respondent

Final Decision : Allowed

Judgement

1. The learned Judges of the High Court, if we may say so with respect in a well-considered opinion expressed their anguish at the insensitivity of the authorities administering medical admission in the State to the need to prevent occasions for repetitive grievances from the student community and had occasions to observe:

Shakespeare in Othello has written "Chaos is come again". This Court has witnessed chaos almost annually when time for admission to MBBS/BDS courses case....

These observations of the Apex Court in Convener, MBBS/BDS Selection Board v. Chandan Mishra, were quoted in the judgment in Fathimma Haneena P.v. State of Kerala and Ors. 2008 (3) KLT Suppl. 143 : 2008 (3) KHC 544, where this Court expressed its anguish about the entrance examination conducted by the 3rd

respondent for admission to its member colleges. Again in 2010, in the judgment in *Noorbinan a Banu v. State of Kerala* 2010 (3) KLT 581, it was repeated. Still, the insensitivity of the authorities and grievances from the student community continues and the facts stated hereafter would show that there has not been any improvement.

2. In *PA. Inamdar v. State of Maharashtra and Ors.* 2005 (4) KLT SN 3 (C. No. 3) SC : (2005) 6 SCC 537, the Apex Court held thus:-

136...There is nothing wrong in an entrance last being held for one group of institutions imparting same or similar education Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the Institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter...137...All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated herein above, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

3. The 3rd respondent is an association of 11 Private Self Financing Medical College Managements. The Entrance Examination conducted by the Association in 2008, was set aside by this Court in *Fathimma Haneena's* case (supra), where, in para. 19(b) among various directions, it was directed thus-

I also direct that subject to any future change in law, for coming years, the following requirements shall be strictly complied with by unaided Medical Colleges, who opt to conduct their own entrance test for selection of students for admission.

(a)....

(b).At every Stage of the admission process, viz. issue of notification inviting applications preparation of prospectus, issue of application forms, setting of question papers. deciding the method Of valuation. Publication of list of applicants, conduct of written test. preparation of rank list, counselling etc. approval from the Admission Supervisory Committee appointed under 8.4 of Act 19 of 2006 shall be mandatorily obtained, failure of doing which also would render such selection invalid.

(emphasis supplied)

Again in 2010, entrance examination conducted by the Association and the consequential admissions were held illegal in the judgment in Noorbina Banu's case, and it was inter alia found thus:- "

An effective supervision would be there only if the 5th respondent obtained prior approval for the prospectus as also the notification inviting application. In fact, the 5th respondent ought to have consulted the Committee before taking decision at every stage of the test like the mode of setting question paper, selection of the examiners to set the question papers", the mode of valuation, selection of the valuers and the like. Although the 5th respondent has produced some communications in this regard addressed to the Admission Supervisory Committee, it remains a fact that there was no effective supervision by the Admission Supervisory Committee for the Common Entrance test. At no stage of the test was there prior consultation with the Admission Supervisory Committee. No representative of the Admission Supervisory Committee supervised the entrance test. There was no request to the Committee to make arrangements in that regard.

(emphasis supplied)

4. This year also, the Association decided to conduct an Entrance Examination for admission to MBBS Course, to its member Colleges. Under cover of Ext. R 3(a) letter, a copy of the prospectus proposed to be issued was submitted to the second respondent Committee for approval. In this letter, the request of the Association was that "the prospectus may kindly be approved to enable issuance advertisements;". The second respondent the Admission Supervisory Committee constituted under S.4 of The Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006, (Act 19 of 2006), considered the request of the Association and Ext. R 3(b) notice dated 30.4.2011 was issued by the Committee directing the Association to submit their explanation/clarification on the 11 points mentioned therein. Ext. R 3(c) is the clarification furnished by the Association, where again, it requested thus:-

The Association has proposed to issue advertisement on 7.5.2011 as submitted on) 12.4.2011. The Association would earnestly request the Hon. Committee to accord sanction for issuance of prospectus and to proceed further.

5. The Committee in its meeting held on 7.5.2011, considered the request and issued Ext. R 3(d) letter to the Association. In this letter, referring to the explanation and also the judgment of this Court in Noorbina Banu's case, the Committee held thus:-

In order to have effective supervision and control particularly in respect of setting of Question papers, selection of examiners, valuation, preparation of the merit list, the committee cannot allow the Association to proceed with the process as proposed by them. The Committee also found that the entire process

for the conduct of the test and the; preparation of the rank list etc., shall be done within the time schedule prescribed by the MCI taking all these factors into account the Committee decided to authorise the Commissioner for Entrance Examination who is a member of the Admission Supervisory Committee to conduct the entrance test and to submit the rank list to the committee and to perform all the duties and functions in relation thereto. He is also authorised to take all effective steps in order to make the entire admission process as fair, transparent and merit based. The Secretary on behalf of the Association the Association agreed to the above decision of the Committee. The Secretary of the Association is directed to submit the draft notification for publication and all other documents, which are found necessary for prior approval at every stage in the admission procedure.

The Committee after discussions finally decided to approve the prospectus submitted by the Management Association subject to the fulfillment of the above directions/observations. The copy of the prospectus as amended shall be submitted before the Committee within a period of three days from the date of publication.

(emphasis supplied)

6. According to the Association, on noticing that in Ext. R 3 (d), it was recorded, that the Committee's decision authorizing the Commissioner for Entrance Examination to conduct the test and submit rank list and to perform all duties and functions in relation thereto, was agreed to by him, its Secretary submitted Ext. R 3(e) letter 17.5.2011 stating that he had not given any such agreement and requested to delete the observation from Ext. R 3(d) order. The relevant portion of Ext. R 3(e) reads as under.

I am the Secretary of the Association. At no point of time, I had given any such agreement. There was also opportunity given for me to agree any such agreement to the Committee.

Further I request you to delete the observation of the Committee from the order.

(emphasis supplied)

7. According to the Association, in the meanwhile, the Model Code of Conduct declared by the Election Commission of India was in force from 1.3.2011 till 14.4.2011 and therefore, the Government could not take any policy decision regarding the consensual agreement to be entered into with the Association. As a result, procedure for conducting the written test to management seats could not be completed within the time prescribed by the Medical Council of India (MCI) and therefore, the Association represented to the MCI for enlargement of time. It is stated that their inability to conduct the entrance test before 31.5.2011 was also intimated to the second respondent. Further in W.P.(C). 15186/2011 filed by the petitioner, this Court also passed Ext. R 3(f) order directing maintenance of status quo and recording the undertaking of the third respondent that no

examination will be conducted unless otherwise permitted by the Apex Court.

8. It is stated that in such circumstances, the third respondent filed W.P. (C).287/2011 before the Apex Court seeking an order extending the last date for conducting the examination to MBBS Course, 2011 -12 for one month. A copy of this Writ Petition is Ext. R 3(g). In the said Writ Petition, the Supreme Court passed Ext. R 3(h) order dated 30.6.2011 which reads as under:-

Kerala Private Medical College Management Association has filed this Writ Petition seeking the following relief:-

Pass an order extending the last date of 30 May, 2011 for conducting the entrance examination for the MBBS Course for the academic year 2011-12 for one month as mentioned in Appendix E to the Graduate Medical Education (Amendment) Regulation, 2004 issued under the Indian Medical Council Act, 1956.

Heard learned counsel for the petitioner as well as for the respondent-Medical Council of India. Considering the details furnished in support of the above prayer and the materials placed, we intend to accede to the request of the petitioner to the following extent:

For conducting written test, the time is extended upto 15th July, 2011 and the results to be published on or before 20 July, 2011. The Writ Petition is disposed of in the above terms.

9. Thereafter/Association faxed Ext R 3(i) statement dated 4.7.2011 to the Committee, stating thus: -

Considering the time frame fixed by the Honourable Supreme Court of India for conduct of the test and publication of result, the advertisement is arranged to be published in two Malayalam and one English major dailies.

The Examination is proposed to be held at Kozhikode on 14.6.2011.

The Honourable Committee may be pleased to make necessary arrangements for supervision of the admission process.

(emphasis supplied)

10. On receipt of Ext. R 3(i) statement, the Committee considered the matter on 4.7.2011. In so far as the prospectus is concerned, it is stated in Ext. R 3(j) order thus:-

It is true that the Admission Supervisory Committee as per the order dated 7.5.2011 approved the prospectus submitted by the Association subject to the fulfillment of certain conditions laid down therein. The Committee also directed that the copy of the prospectus as amended shall be submitted within a period of 3 days from the date of publication. So far amended copy of the prospectus not produced.

(emphasis supplied)

Thereafter, referring to Noorbina Banu's case, the Committee stated that :-

the Secretary of the Association was also directed to-submit draft notification for publication and all other documents, which are found necessary for prior approval at every stage of the admission procedure.

11. Proceeding further, referring to the request of the Association in Ext. R 3(i) that the Committee may make arrangements for supervision of the admission process, the Committee directed thus:-

It must be clarified as to whether the Committee has to conduct the entrance test after / preparing the question papers and also complying all other requirements.

12. In the purported compliance of Ext. R 3(j) the Association filed Ext. R 3(k) statement dated 5.7.2011 clarifying that, the dates indicated in Ext.R 3(i) were incorrect, producing the notification inviting application, the amended copy of prospectus and the certified copy of Ext. R 3(h) judgment. This statement concludes with the following request;

Considering the time frame fixed by the Honourable Supreme Court of India for the conduct of the test and publication of result, the Honourable Committee may be pleased to ensure that the test is conducted on time under the supervision of the Committee.

13. Accordingly, the Committee considered the matter on 7.7.2011 and Ext. R 3(1) is the minutes. In this minutes also the Committee referred to Noorbina Banu's case and held thus:-

In view of the above decision apart from the preparation of prospectus, issue of application-forms, setting of question papers, deciding the method of valuation publication of list of applicants, conduct of written test, preparation of rank list, counseling etc., approval from the Admission Supervisory Committee shall be mandatorily obtained, failure of doing so would render the selection process invalid.

(emphasis supplied)

14. Regarding the conduct of the test and its role, the Committee, stated thus:-

During the discussion the representative did not specifically request the Committee to conduct the test but they requested only to supervise the conduct of the test. In other word the Association itself is conducting the test and the role of the Committee is only to oversee the process of such test.

As per the decision of the Honourable High Court referred to above, the Association is mandatorily bound to obtain prior approval from the Committee especially for setting of question papers selection of examiners, valuation, preparation of rank list etc. so far no attempt has been made by the Association

to supply the details regarding the setting of question papers, selection of examiners, valuation, preparation of rank list etc.. and as to how the confidentiality of the process could be maintained by the Association. One of the most crucial point is with regard to the preparation of question papers and its secrecy. In order to guarantee the secrecy, various details are required from the Association. During the discussion held today, the Committee did not get any such valuable guidance of adequate information from the Association. In the above background the Committee finally decided to hold a meeting at Trivandrum tomorrow (8.7.2011) and directed the representative of the Association to produce all the above details for scrutiny of the Committee for taking a final decision thereon.

15. Accordingly, the Committee again considered the matter on 8.7.2011 and in Ext. R 3(m) minutes, it ordered thus-

In view of the above situation, the Committee directed the Management Association to file a statement with regard to the steps taken by the Association for ensuing the transparency and confidentiality in setting of question papers, method of valuation, conduct of the written test, preparation of rank list etc. After detailed discussion the Committee also directed the Management Association to submit the copy of the original agreement to be executed with the Government as expeditiously as possible. The Committee also directed the Controller of Examination appointed by the Management Association to submit a detailed report regarding the setting of Question papers, method of valuation, conduct of the written test preparation of rank list etc. for the scrutiny of the Committee. The Association shall submit all the above documents/statements/report as expeditiously as possible at any rate before 4.00 P.M. on 11.7.2011.

16. It was while so, that on 7.7.2011 that this Writ Petition was filed before this Court for a declaration that the competitive Entrance Examination proposed through Ext P4 prospectus published by the Association is illegal and that no candidate can be admitted from the list to MBBS Course for the academic year, 2011-12. There is a further prayer to direct the first respondent, the State, to take over the admission in the member colleges of the Association. The main contention raised by the petitioner is that the steps taken by the Association for "conducting the Entrance Examination are in violation of the provisions contained in Act 19 of 2006 and the judgments in Fathimma Haneena's case and Noorbina Banu's. case. On 8.7.2011 this Court admitted the Writ Petition, ordered notice to be served and posted the case to 12 7.2011.

17. In the meanwhile, as directed by the Committee in Ext. R 3 (m), the Association submitted Ext. R 3(n), before the Committee, enclosing Ext. R 3(o) statement of its Controller of Examinations. In Ext. R 3(n) again, the Association requested the Committee to grant necessary approval at the earliest. In Ext. R 3(o), in order to satisfy the Committee that the triple test laid down in the judgment in P.A. Inamdar's case has been ensured, the Controller of Examinations has stated thus:-"

Three sets of question papers are arranged from examiners who are expert in the field in and outside Kerala. From the three sets, one set will be chosen by lot, printed, packed and sealed. The sealed packets of question papers will be handed over to the Chief Superintendent on the day previous to the examination. The Chief Superintendent will open the packets in the presence of two invigilators twenty minutes before the commencement of examination in respect of the paper concerned.

Immediately after the examination, the Chief Superintendent is required to collect the used question and answer booklets, bundle, pack seal and hand over to the Controller of Examination. The answer books will be got valued by examiners, preferably by teachers, and the result will be published in the website of the Association on or before 20.7.2011, ie, the time limit fixed by the Honourable Supreme Court of India.

Soon after the publication of the result, the candidates will be required to exercise online opinion and allotment of candidates will be made on the basis option exercised. The allotted candidates may take admission before 30.7.2011 and classes will be commenced from 1.8.2011.

The above schedule of selection process is fixed as per the direction of the Honourable Supreme Court of India in W.P.(C).287/2011 and Medical Council of India regulation.

18. On 12.7.2011, This case was adjourned to 13.7.2011, and by that time, the Committee had also filed an affidavit. On 13.7.2011, after hearing dl parties, this Court passed an interim order, paragraph 16 and 17 of which reads as under:-

16. All these prima facie findings would justify an order preventing the Association from proceeding further with the conduct of the entrance examination. However, when the case was adjourned, learned senior counsel for the third respondent submitted that more than 1400 student have applied in response to Ext. P 4 prospectus and that the examination is scheduled to be held at 10. am on 14.7.2011. Therefore, at this late stage, if such an order is passed that will cause serious prejudice to all these innocent students. In order only to avoid such a hardship, I pass the following order: /

17. The examination now scheduled pursuant to Ext. P 4 prospectus will be held as scheduled and as permitted by the Apex Court, the results will also be published. However, no further action pursuant thereto will be taken by the 3rd respondent without obtaining orders of this Court.

19. Accordingly, examination was conducted and as per the counter affidavit tried by the third respondent, 1218 students appeared and though results were published on 20.7.2011, nothing further was done. Significantly, not even an averment has been made by the Association in its counter affidavit dated 26.7.2011. that the examination held on 14.7.2011 was supervised by the Committee, In fact, during arguments also, such a contention was no* urged

either by the Association or the Committee. It is accordingly, that the matter was listed and was heard in detail.

20. The contention raised by the learned counsel for the petitioner is that the Examination was conducted by the Association in violation of the provisions of Act 19 of 2006 and the judgment of this Court in *Fathimma Haneena's* case which was reiterated in *Noorbina Bamt's* case.

21. On behalf of the first respondent, the learned Advocate General appeared. It must be stated in this context, that when the Writ Petition was heard on 13.7.2011 the learned Government Pleader had made available a copy of the instructions received by the Advocate General vide letter dated 12.7.2011 and the contents of the letter were incorporated in para. 11 of the order, which is extracted below for reference.

I am to invite your attention to the references cited and to inform you that Government have no objection in conducting the Entrance Examination by the Kerala Private Medical College Management Association under the supervision of the Admission Supervisory Committee for Professional Colleges, subject to the condition that the Management Association shall execute an agreement with Government to share 50 of the MBBS seats in their institutions to be filled from the rank list of the Common Entrance Test conducted by the Commissioner for Entrance Examination, in "the fee structure prescribed by Government.

22. However, in spite of the non execution of the agreement so far, from the arguments of the learned Advocate General, it was obvious that there was a change in the State's attitude. According to him, in the interest of the students, the Association should be permitted to make admissions on the basis of the examination held on 14.7.2011. When this submission was made, this Court requested the learned Advocate General to file a statement disclosing the stand of the State. According to, statement dated 9. 7. 2011, has been filed, wherein, after raising certain contentions supporting the arguments of the Association, it has been stated thus:-

It may not be in the interest of anybody to declare the entrance, examination illegal at this point of time especially when the petitioner has not amended the Writ Petition alleging any illegality in the actual conduct of the entrance examination. It is in the best interest of students to complete the admission process without any further delay in the matter.

23. It was argued by the Counsel for the Admission Supervisory Committee, constituted under S.4 of Act 19 of 2006. (that though it had granted com 1 it ion a i approval to the prospectus submitted by the Association by its order dated 7.5.2011 and that it has not granted approval for anything done by the Association subsequent if, thereto. It was stated that the Committee deferred its decision, in view of the pendency of this Writ Petition. Here itself it should be clarified that in the affidavit dated 12.7.2011 filed by the second respondent, it has not taken such a stand. In any case, the fact that the Association has not

obtained the approval of the Committee for any thing other than the prospectus, which also is conditional, is a matter which was clearly stated in open Court by the learned counsel appearing for the Committee.

24. According to Sri. V. Chithumbaresh, the learned senior counsel for the Association, what is contemplated in para. 19(b) of the judgment in Fathimma Haneena's case is only "approval". It was contended that since only approval is to be obtained, the responsibility of the Association is only to put the Committee on notice of what it has already done and unless its actions are disapproved, every action taken by the Association stands valid. According to him, in Ext. R 3(n) statement of the Association and Ext. R 3(o) all details were furnished to the Committee and the Committee has not disapproved (anything it has done. In support of this contention, the learned senior counsel relied on the Apex Court judgments in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, , High Court of Judicature for Rajasthan Vs. P.P. Singh and Another, and Ashok Kumar Das and Others Vs. University of Burdwan and Others, .

25. It was also contended that under Act 19 of 2006, if admission granted to a Self Financing College is vitiated for any reason, the power under S.4(7) to interfere in such a situation is exclusively that of the Committee. Therefore, according to bin, in view of the statutory power conferred on the Committee, this Court exercising power of judicial review under Article 226 of the Constitution of India, should refuse to interfere in a matter of this nature. It was stated that for the Committee to exercise its power under S.4(7) of the Act, admissions should be completed, and on complaints made to it, the Committee should be satisfied that the admissions are vitiated on grounds mentioned in S.4(7) and that, the stage for such an exercise has not reached. Therefore according to him, the Writ petition itself is premature and is liable to be rejected. In support of this contention, the learned senior counsel relied on paragraph 38 of the Division Bench judgment of this Court in Lissy Medicals and Educational Institution v. State of Kerala 2007 (1) KLT 409.

26. Yet another contention raised by the learned senior counsel was that against the interim order dated 31.7.2008, passed in Fathimma lancena's case, SLP. 19247/2008 was filed in which the Apex Court granted leave and passed Ext. R 3(p) order dated 13 8.2008 by which the interim order of this Court was stayed. Subsequently, aggrieved by the judgment in Fathimma Haneena's case, the Association had filed SLP. 19936/2008 and leave was granted and that by Ext. R 3(q) order, the judgment was also stayed. The learned counsel submitted that taking advantage of these orders, admissions were completed and subsequently when the SLPs came up for final hearing on 12.7.2010, taking note of the lapse of lime, holding that there was no need for any adjudication and that no further orders were required, the SLPs were dismissed by Ext. R 3(r) order. This order reads as follows:-

In these matters, the dispute relates to the admission of students into medical

college for the academic year 2008. In view of the interim order passed by this-Court, there is no need for any adjudication and no further orders are required to be passed on these Special Leave Petitions. The Special Leave Petitions are accordingly dismissed.

27. The learned Senior Counsel also pointed out that against the judgment in Noorbina Banu's case the third respondent Association had filed SLP. Nos. 23830/2010 to 23832/2010 which were disposed of by Exls. R3(s) and R3(t) orders. Therefore, according to him, by the aforesaid orders, the Apex Court modified the directions in the judgments in Fathimma Haneena's case and Noorbina Banu's case, and hence, the judgments of this Court, to borrow the expression used by the learned senior counsel, "vanished into thin air".

28. It was then contended that even though the Writ Petition was filed prior to the Entrance Examination, the examination has been held and results are declared, no order adversely affecting the interest of the candidates can be passed, unless, those candidates are also impleaded in the Writ Petition. It was argued that since the candidates are not impleaded, the Writ Petition is defective for non-joinder of necessary parties and deserves dismissal on that ground. In support of this plea, counsel relied on paras. 10 to 12 of the Full Bench decision of this Court in *State of Kerala Anr. v. V. Rafia Rahim* 1978 KLT 369 (F.B.).

29. Finally it was argued that the writ petitioner is not a candidate who responded to the notification issued by the Association. Therefore, the writ petitioner is not an affected party having locus standi to maintain this Writ Petition. According to him, it was only to safeguard the vested interests of others, this Writ Petition has been filed and the whole process of admission has been stalled. On that ground also, according to the learned senior counsel, the Writ Petition deserves to be dismissed.

30. By filing I.A. 12441/2011, two candidates who appeared in the Entrance Examination conducted by the Association got themselves impleaded and they supported the arguments raised on behalf of the Association.

31. Dr. S.M.C.S.I Medical College, Karakonam, which is a member of the third respondent Association, filed I.A. No. 12701/2011 for getting itself impleaded as an additional respondent, and the said application was allowed. They also filed I.A. No. 12501/2011, stating that they withdrew from the written examination conducted by the Association and have decided to admit candidates from Common Entrance Examination Test conducted by the Commissioner for Entrance Examination. On that basis, they sought an order permitting them to admit students from among those included in the rank list of the Common Entrance Test conducted by the Commissioner for Entrance Examination of the Government of Kerala for the academic year 2011-12. I shall deal with this application separately.

32. I have considered the submissions made.

33. The first issue to be considered is whether the examination held by the Association, was in compliance with the provisions of the Act 19 of 2006 and the judgments of this Court in Fathiminn Haneena's case and Noorbina Bonu's case.

34. I have already extracted para. 19(b) of the judgment in Futhimma Haneena's case, which shows that at every stage of admission process, viz, the issue of notification inviting applications, preparation of prospectus, issue of application forms, setting of question papers, deciding the method of valuation, publication of list of applicants, conduct of written test, publication of rank list, counselling etc, the Association should have mandatorily obtained the approval of the Committee. It was further held that failure to comply with the above, would render selection invalid. In the judgment in Noorbina Banu's case, it was further held that effective supervision would be there only if the Association obtains prior approval of the prospectus as also the notification inviting applications and that there should be prior consultation with the Committee at every stage of the test.

35. To both these judgments, the Association and the Committee are parties. The Association had filed SLPs. against the interim order and the judgment in Fathimma Haneena's case, which were dismissed by Ext. R 3(r) order. A reading of this order shows that in view of the interim orders passed, the Association had completed the admissions and therefore, when the matter was considered on 12.7.2010, the Apex Court held that since the dispute related to the admission for the academic year 2008, there was no need for any adjudication and that no further orders were required to be passed. On that basis, SLPs were dismissed. In so far as the judgment in Noorbina Danu's case is concerned, Exts. R 3 (s) and R 3(t) are the orders passed by the Apex Court, which also shows the judgement of this court was not interfered with in any manner. Therefore, the directions contained in the judgments in Futhimma Haneena's case and Noorbina Banu's case have become final and are binding on the Association and t he Committee and if there is non-compliance, consequence mentioned in the judgments should follow.

36. I shall now examine how the Committee understood the requirement of approval. In Ext. R 3(d), the Committee ordered that in order to have effective supervision and control, particularly in setting of question papers, selection of examiners, valuation and preparation of merit list, the Committee cannot allow the Association to proceed with the process as proposed by them. Thereafter, the Committee directed the Secretary of the Association to submit draft notification for publication and all other documents, which were found necessary for prior approval at every stage in the admission procedure. Again, in Ext. R 3(j) proceedings dated 4.7.2011, the Committee reiterated the directions contained in Ext. R 3(d) and once again the Secretary was directed to produce draft notification and other documents necessary for prior approval at every stage.

37. Still later in Ext. R 3(1) minutes dated 7.7.2011, the Committee held that in view of the decision in Noorbina Banu's Case, the prior approval from the Committee shall be mandatorily obtained and that failure to do so would render

the selection process invalid. Accordingly, the Committee directed the Association to produce all the details on 8.7.2011 its scrutiny. On 8.7.2011 the Committee held another meeting, and as per Ext R3 (m) minutes, the Association was again directed to submit documents/ statement/ report at any rate before the 11.7.2011.

38. Thus, the aforesaid proceedings of the Committee unambiguously demonstrates that the Committee also understood the requirement of law as obliging the Association to obtain its prior approval at every stage of the admission process and that failure to do so would render the selection invalid. It is in this background the categorical statement made by the counsel for the Committee in open Court that except the conditional approval granted to the prospectus, the Committee has not granted approval to anything that was -done by the Association assumes importance.

39. The Association never contested these requirements and complying with it, the Association had made Ext. R 3(a) request to the Committee seeking approval of the prospectus to issue advertisements. This plea was again reiterated by the Association in Ext. R 3(c) and R 3(n). However except the conditional approval of the prospectus, the Committee has not granted its approval, to any of the further steps taken by the Association and to wriggle out of this situation, the word "approval" occurring in paragraph 19(b) of Fathimma Haneena's judgment is now sought to be misinterpreted by the Association to its advantage. In spite of the statutory provisions, binding judgments, the aforesaid factual position and the obligation of the Association to obtain prior approval of the Committee, a very obnoxious statement has been made by the Association in its counter affidavit and I extract the averments for reference.

The ongoing process of admission is a time bound exercise which has to be completed within the time limit extended by the Apex Court, in such circumstances, taking approval at each and every stages of admission process is not at all practical. The entire process of admission adopted by the Association was promptly informed to the 2nd respondent Committee so that they have knowledge about the entire procedure.

This stand of the Association, to say the least, holds on contempt of this court and with these averments, the Association is confessing that it has not obtained prior approval of the Committee.

40. In this context that I shall also deal with some of the incidental contentions by the learned senior counsel for the Association. According to him, since what was directed by this Court in Fathimma Haneena's case was to obtain approval of the Committee, obligation of the Association is only to notify the Committee and so long as the Committee has not disapproved of what it has done, the actions taken by the Association holds good. In support of this contention, the learned counsel relied on the Apex Court's Judgment in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, ,

where it was held that ordinarily the difference between the approval and permission is that in the first case, the action holds good until it is disapproved, while in the other case, it does not become effective until permission is obtained. Reference was also made to the judgment in High Court of Judicature for Rajasthan Vs. P.P. Singh and Another, , where it was held that when approval is required, the action holds good and that if it is disapproved, it loses its force. Reference was also made to judgment in Ashok Kumar Das and Others Vs. University of Burdwan and Others, . where the principles laid down in the aforesaid two judgments were reiterated.

41. While there can be no quarrel with the propositions laid down in these judgments, the question to be examined is whether these principles have any application to this case. As I have already held, the Association had accepted its responsibility to obtain prior approval of the Committee and hence this contention is against its own conduct. Further, the Association cannot contend that they are not bound by the judgments of this Court, in Fathima Haneena's case and Noorbina Bonn's case, to which it is a party. In paragraph 19(b) of the judgment in Fathimma Haneena's case "approval" is the word used whereas in Noorbina Banu's case it was specifically held that "prior approval is to be mandatorily obtained and that there shall be "prior consultation" by the Association at every stage of the admission process. The Committee also understood the requirement of law, to be one of prior approval, which has been reiterated by the Committee on various occasions. The Association never disputed its obligation and in the representations made, it has not raised any dispute on this issue.

42. Therefore, at every stage of the admission process, the Association should have obtained prior approval of the Committee. If prior approval is the legal requirement, it is not a mere case of approval, to hold that until disapproved, the action holds good. On the other hand, the absence of prior approval, as held by this Court in the aforesaid two judgments, will invalidate the selection process. Therefore, I have no hesitation to reject this contention of the learned senior counsel, which I believe has been raised only to get out of the mess in which the Association has landed itself.

43. The other contention of the learned senior counsel was that in view of Exts. R3(q), R3(s) and R3(t) orders of the Apex Court disposing of the SLPs filed against the judgments in Fathimma Haneena's case and Noorbina Banu's case, the judgments of this Court "vanished into thin air", I have already made reference to the orders of the Apex Court, and these orders show that the Apex Court has not set aside or modified the judgments of this Court. On the other hand, the SLP's in the Fathimma Haneena's case, were expressly dismissed and the SLP against Noorbina Banu's case, was disposed of without adjudicating the issues raised. Thus, the judgments of this Court have not been modified in any manner. It is trite that a judgment is an authority for what it actually decides and not for what logically follows from it. The attempt of the Association is to

persuade this Court accept the logical conclusions that are convenient to it. Therefore, the contention of the learned senior counsel that the aforesaid two judgments of this Court have "vanished into thin air" is only to be stated and rejected.

44. It was also contented that the judgments have merged in the Apex Court orders. This contention also lacks any force. The principle of merger has been considered by the Apex Court in Kunhayammed and Others Vs. State of Kerala and Another, , where the conclusions have been summed up in paragraph 44 and sub paragraphs (i) to (vi) being relevant, are extracted below for reference.

44.(i). Where an appeal or revision is provided against an order passed by a Court, Tribunal or any other authority before superior, forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii). The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave is granted and the SLP is converted into an appeal.

(iii). The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv). An order refusing special leave to appeal may be a non speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v). If the order refusing leave to appeal is a speaking order, ie., gives reasons for refusing the grant of leave, then the order has two implications. Firstly the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, Tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But this does

not amount to saying that the order of the Court, Tribuna 1 or authority below has stood merged in the order of the Supreme Court rejecting the SLP or that the order of the Supreme Court is the only order binding as resjudicata in subsequent proceedings between the parties.

(vi). Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order, passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

These principles are a complete answer to the contention urged and I do not think that any further elaboration is necessary to reject it.

45. It was contended that in W.P.(C).287 of 2011 filed before the Apex Court, a copy of which is Ext. R 3(g), the Association had explained every step it had taken and that it was considering the details furnished in support of the prayer and the materials placed before it that the Apex Court passed Ext. R 3(h) order. Therefore, according to the learned counsel, the Apex Court granted its stamp of approval to every thing done by the Association and hence, even if it has deviated from the directions in the Judgments in Fathimma Haneena's case and Noorbina Banu's case, this Court should not interfere with what it has done. Except that its pleadings may estop the party concerned from taking a contrary stand, I am yet to find a principle of law that pleadings in a previous proceeding should be accepted by a Court as precedent in a subsequent case. This Court is certainly is bound by Ext R 3(h) order of the Apex Court. This order shows that the Apex Court had considered the details furnished and the materials placed before it and acceded to the request of the Association to the extent, time for conducting the written test and publication of results was extended. That does not mean that by passing such an order, the Apex Court was modifying the judgments of this Court or putting its stamp of approval to the illegalities committed by the Association. On the other hand, the Apex Court only extended the time for conducting the written test and publishing the results thereof which process was permissible only in terms of Act 19 of 2006 and the judgments of this Court. Therefore, this contention of the learned senior counsel also deserves only to be rejected.

46. Coming to the role of the Committee, since its proceedings have already been referred to in the earlier part of this judgment, it is unnecessary to repeat the same. The Committee has been constituted under S. 4 of Act 19 of 2006, with the duty to supervise and guide the entire process of admission of students to the unaided professional Colleges with a view to ensure that the process is fair, transparent, merit based and non exploitative. Its powers have been explained by this Court, in the judgment in Lissy Medicals's case. The manner in which its powers are to be exercised have been repeatedly explained in Fathimma Haneena's case and reiterated in Noorbina Banu's case.

47. The Committee understood its powers in the correct perspective and in Ext. R

3(d) dated 7.5.2011, the Committee authorized the Commissioner for Entrance Examination to conduct the Entrance Test, to submit the rank list to it and perform all the duties and functions in relation thereto. It has also recorded that the Secretary of the Association had agreed to this decision of the Committee. By Ext. R 3(e), Secretary of the Association requested the Committee to delete the observations in Ext. R 3(d), that he had agreed to the authorization granted to the Commissioner for Entrance Examination to conduct the examination. Here it is important to be noted that the Secretary only wanted his agreement to be deleted and he did not even ask for reconsideration of the decision of the Committee to authorize the Commissioner to conduct the Examination. In spite of this request, the Committee did not delete from its proceedings the agreement of the Secretary to its decision and the decision of the Committee still remains in force. Therefore, the Committee had the statutory duty to have ensured that the Entrance examination is conducted by none other than the Commissioner for Entrance Examination as authorized by it.

48. However, on 4.7.2011, when Ext. R3(i) statement was faxed by the Association, intimating about Ext. R 3(h) order of the Apex Court in W.P. (C).287/2011, the Association requested the Committee to make arrangements for "supervision of the admission process". This request was considered by the Committee and in Ext. R 3(j) proceedings dated 4.7.2011, instead of rejecting it, strangely enough, the Committee sought a clarification from the Association whether the Committee has to conduct the Entrance Test. This, to say the least, was nothing but abdication of statutory duties and from this stage onwards, the Committee acted contrary to its own orders and the judgments of the Court and no reason is forthcoming to justify it. Again, in Ext. R 3(k) statement dated 5.7.2011, the Association required the Committee to "ensure that the Test is conducted on time under the supervision of the Committee". Even on this occasion, the Committee chose to accept the dictate of the Association by stating in Ext. R 3(1) minutes that the "Association itself is conducting the Test and the role of the committee is only to oversee the process of such test". Proceeding further, the Committee, which is entrusted with the responsibility to ensure that everything is done by the Association only with its prior approval, has made repeated requests to the Association to file statement with regard to the steps taken by it for ensuring the transparency and confidentiality in the examination process.

49. It is in the purported compliance of the aforesaid directions that the Association filed Ext. R 3(n) and R3(o) statements. Perusal of these documents would show that, apart from stating what the Association has done and that too without any details, neither of these statements contain anything about the details of the steps taken for ensuring the confidentiality and transparency in the various stages of the examination process and the Committee seems to have chosen to be satisfied with it. As far as the prospectus is concerned, though belatedly, the Association has produced the amended one, the proceedings of the Committee do not show that it was verified or found to be satisfying the

conditions set by the Committee. To crown all these lapses, the Committee had the misfortune to confess before this Court that apart from granting conditional approval to the prospectus it has not approved anything that the Association has done. During the arguments, learned counsel for the Committee did not even claim that the Committee supervised the examination held on 14.7.2011 in any manner and there is no such contention in counter affidavit filed by the Association. This is despite the fact that in Noorbina Banu's case, the Committee was specifically faulted for this lapse.

50. As I have noted in the earlier part of this judgment, one of the justifications given by the Committee for its lapses and inactions was that this Writ Petition was pending before this Court. In its counter affidavit filed on 12.7.2010, the Committee did not take refuge under this defence. Further, the Writ Petition was filed only on 7.7.2011 and it remains to be explained what prevented the Committee from discharging its duties until then. Further this court also did not prevent the Committee from discharging its statutory duties. Therefore, this is only a lame explanation now offered, to justify its own failures and inactions. Suffice it to say that the Committee did not ensure compliance with its own directions, and did not exercise any of its statutory powers. On the other hand, it acted according to the tunes of the Association, which should have obtained its prior approval for every one of its activities and whose activities it was required to supervise. Instead, it chose to be a silent spectator, to every thing that the Association did and the casualty is the future of thousands of students of this State.

51. Another contention that was seriously urged on behalf of the Association which was supported by the candidates who got impleaded was one of non joinder of necessary parties. According to them, the candidates who appeared in the examination held on 14.7.2011 are not parties to this Writ Petition and any order affecting their rights cannot be passed without them in the party array and that therefore, Writ Petition should fail on that ground. In support of this contention, the judgment of this Court State of Kerala and Anr. v. Rafia Rahim 1978 KLT 369 (F.B) was relied on.

52. Rafia Rahim was a case where. Writ Petitions were filed challenging the validity of the then prevailing system of admissions to the Medical Colleges in the State. The manner in which the plea of non joinder was dealer with by the learned Single Judge and the reasons for declining relief to the petitioners, recorded in para. 3 of the report, reads as follows:

Considering the objections to non joinder of the selected students in the Writ Petitions the learned Judge was of the view that the same did not preclude the petitioners from obtaining any relief's to which they might otherwise be entitled, (vide paragraph 21). This was because, in the first place, the writ petitioners had come to the court before the selections had been finalised and the list of selected candidates published, so that the selections were only, so to say, pendente lite. Secondly there had been interim orders in some of the Writ Petitions, that the

finalisation of the list was to be subject to (the result of the Writ Petitions and that the candidates selected should be informed either before selection or immediately thereafter, that "their selection was subject to the result of the Writ Petitions. In these circumstances, the learned Judge rejected the plea that the Writ Petitions should fail for non-joinder of parties, (vide paragraph 21). Discussing the question of reliefs to which the petitioners were entitled, the learned Judge pointed out that the petitioners were asking for admissions to be made in the light of valid and properly framed rules, and remarked that the task of framing such rules is not easy, and is bound to take time, for collection of statistics and formulation of the appropriate principles. Having regard to the progress of the academic year, to the disturbance and dislocation likely to be caused in upsetting the selections already made, and to the futility of ordering a new selection under a set of rules to be formulated hereafter, so as to benefit the newly selected candidates in the course of the current academic year, the learned Judge felt that beyond declaring that the principle followed in the selection was inequitable, no practical relief could be granted to the petitioners on the facts.

In paragraph 10 of the Judgment, the aforesaid reasoning to decline relief to the petitioner was upheld by the Full Bench thus;

All things considered, we think the learned Judge was right in his conclusion. Interference in our jurisdiction under Article 226 should be in the interest of justice. The position disclosed in the case is that selections to the Medical Colleges have been made and the selected students have joined the classes. The academic term has advanced. The formulation of a new basis of selection and the making of a fresh selection in the light of the same, are bound to take time; and the newly selected candidates cannot be expected to reap any profit or derive any advantage from their late selection and admission to the course. The net result of quashing the selection would be that neither the selected candidates nor those to be substituted for them will benefit by the current year's course of instruction. To avoid such a national waste of budding talent, we think it was a right exercise of discretion by the learned Judge in declining interference by way of quashing the selection. We do not think it necessary to interfere with this part of the learned Judge's judgment.

Dealing with contention of non joinder of necessary parties and differing from the learned Judge the Full Bench held that the Writ Petition, in so far as it impugned the selection already made should fail for non-joinder of the selected candidates. Referring to the interim orders passed making the selection subject to the result of the Writ Petition, the Bench held;

But this would not be a sufficient substitute for the obligation to make the affected candidates parties to the proceeding and to afford them specific and pointed notice of the same. The invalidation of the selection is a matter which vitally affects their interest, and the same cannot be done in writ proceedings to which they are not parties." Therefore, that was a case where the students were selected, admitted to colleges and the academic year had progressed, unlike this

case where only examination has been held and results are declared.

53. On behalf of the candidates, the judgment in *State of Assam Vs. Union of India (UOI) and Others*, was also relied on. Facts of the case show that Union of India filed a writ appeal before the High Court, without impleading State of Assam, which was a party to the Writ Petition and the Division Bench allowed the Writ Appeal fixing monetary liability on the State of Assam. In the appeal filed by it, State of Assam was held to be a necessary party and allowing the appeal, the Apex Court remitted the matter for fresh consideration by the High Court. Similar is the judgment in *Public Service Commission, Uttaranchal Vs. Mamta Bisht and Others*, , where selected candidates were held to be a necessary parties in a case where the selection was challenged.

54. The legal position has been explained in the Judgment in *J.S. Yadav Vs. State of U.P. and Another*, .

No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order I R.9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non -joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person are terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner-plaintiff succeeds", it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner-plaintiff. (Vide *Prabodh Verma v. State of Uttar Pradesh* *Ishwar Singh v. Kuldeep Singh*, *Tridip Kumar Dingal v. State of W.B.*, *State of Assam v. Union of India* and *Public Service Commission v. Manila Bisht*.) More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post.

On this basis non impleadment of person who was appointed in the place of the appellant was held fatal to his litigation.

55. To answer this contention of the Association, it is necessary to examine the nature of the alleged right that has accrued in favour of those who have appeared in the examination held on 14.7.2011. This calls for an examination of the prospectus, a copy of which is Ext. P 4. Paragraph IV lays down the procedure of selection. In paragraph 4.1 it is stated that merit list of candidates qualified in terms of admission notification and satisfying the terms and conditions of the prospectus will be prepared on the basis of the marks obtained

and subject to their eligibility. Para 4.2 states that those "selected for admission shall at the time of admission" remit the fee etc. Paragraph V provides for the Entrance Examination and in para 5.13 dealing with the publication of merit list, it is stated thus;

5.13 Publication of merit list: Merit list will be prepared as stated in clause 4.1 above and published in the Official Website of the Association.

Inclusion of the name of candidate in the merit list is purely provisional and subject to final scrutiny and verification of the claims with original certificates. Also mere inclusion of the name of a candidate in the merit list does not carry with any guarantee for allotment or for admission which is made subject to availability of seats and satisfaction of all conditions including qualifications.

56. Again in paragraph VI dealing with allotment and admission, as per para 6.1, the candidates are required to exercise their choices/options of colleges and it is stated that allotment will be based on options and category and availability of seats. Paragraph 6.2 provides for the fee payable and interest fee refundable deposit and paragraph 6.3 provides that at the time of admission candidates are to produce the 12 documents specified therein.

57 These provisions prospectus therefore make it clear that, by virtue of inclusion the merit list published, a candidate does not acquire any indefeasible or vested right to be admitted to any college. Therefore, the facts of this case stand on a totally different footing as compared to the cases dealt with by the Full Bench in the case of Rafia Rahim (*supra*).

58. In this case, petitioner challenges the steps taken by the Association for conducting the entrance examination for admission to its member colleges, on the ground that it is in violation of Act 19 of 2006, and the judgments of this Court. Who are the necessary parties to such a litigation is the question to be considered. The distinction between necessary and proper parties was examined by the Apex Court in the judgment in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, , and para.7, 9 and 10. it was held thus;

7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

9. The next question is whether the parties whose rights are directly affected are the necessary parties to a Writ Petition to quash the order of a Tribunal. As we have seen, a Tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the Tribunal in favour of the successful party. How can the

High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the Tribunal's order would be quashed but the right vested in that party by the wrong order of the Tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order, but whose presence may facilitate the rattling of all the questions that may be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein.

Thereafter, the question considered was answered in paragraph 12 as follows:

To summarise in a writ of certiorari not only the Tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party.

59. *Post-Graduate Institute of Medical Education and Research and Another Vs. A.P. Wasan and Others*, was a case where the question decided was whether promotion Within Engineering Department were to be made section wise or cadre wise. In that case, before the Apex Court, interveners contended that their career prospects have been jeopardized by the decision of the High Court in a case filed without impleading them. Repelling this contention, it was held thus;

The arguments of the appellants appear plausible but do not bear close scrutiny. It was not necessary for Respondent I to have impleaded the interveners nor can the High Court's decision be criticized because they were not made parties. The grievance of Respondent 1 was against the appellant Institute and its alleged policy to promote Technologist Grade II section wise. It was for the appellant Institute to have justified its action. The justification would serve to protect the interests of other employees if it were legally sustainable. If it is not legally sustainable it must be negated and not hearing of employees who may be affected as a result of the rejection of the justification, would not vitiate such negation. See *G.M., S.C Rly. v. A. V.R. Siddhantti*, *A. Janardhana v. Union of India* SCC at p. 626, and *V.P. Shrivastava v. State of M.P.* SCC at p.763.

In this judgment the Apex Court has relied on *A. Janardhana Vs. Union of India (UOI) and Others*, , where in para 36, contention of non joinder was repelled with the following reasoning;

It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant. In the Writ Petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be" those shown senior to the appellant. By an order made by the High Court, the names of Respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P.R. Mridul, learned Senior Counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any "particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to *G.M. South Central Railway Secunderabad v. A. V.R. Siddhanti*. Repelling a contention on behalf of the appellant that the Writ Petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that (SCC para 15, p. 341 : SCC L&S 296) the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention

of the respondents for this additional reason must also be negated.

These principles were followed by the Apex in its judgment in (1996) 2 SCR 59 .

60. The principle therefore is that while necessary parties should be impleaded, it is not so in the case of proper parties. Applying this principle to the facts of this, where challenge is against the actions of Association and failures of the Committee, which are to be justified only by them, I must hold that the candidates who have appeared in the examination held on 14.07.2011 are not necessary parties and their non impleadment is not fatal defect in this litigation. Even otherwise, 2 candidates got impleaded in this petition and hence, as noticed in A Janardhana's case (supra), this is not a case where such candidate's went unrepresented. Therefore, this contention also has to be rejected and I do so.

61. The contention that the petitioner has no locus standi to maintain this Writ Petition was dealt with and rejected in the interim order dated 13.7.2011 in I. A. No. 11272/2011 and the relevant part of the order, reads:

15. Learned senior counsel then contended that the petitioner is not an applicant in response to Ext. P4 prospectus and therefore lacks locus standi, to file this Writ Petition. The unrebutted averments in the Writ Petition would show that the petitioner has been included in the rank list published by the Commissioner for Entrance Examination. It is also averred that if the entrance examination of the Association is ultimately held to be illegal, the Association will have to admit students from the rank list in which the petitioner is included and if so she has every chance of getting allotted to the member colleges of the 3rd respondent. In the light of these averments, I am unable to reject the Writ Petition on the ground that the petitioner lacks locus standi.

This answers the contention of the Association.

62. Yet another argument of the Senior Counsel for the Association was that in view of the provisions contained in S.4(7) of Act 19 of 2006, exclusive power to interfere with irregular admissions is that of the Committee and therefore this court cannot interfere with its actions. So long as our Constitution governs this country, nobody can deprive this Court its power of judicial review. The further argument is that if the Committee is to exercise its power, the admissions should be completed, complaints should be made and irregularity should be found and that since, that stage has not reached, the Writ Petition is premature. In other words, what he wants is that the Association should be left free to complete the admission on the basis of the test held by it and like the Committee, this Court also should keep its hands off from the process. In the light of my findings in this judgment, I do not find any merit in this plea.

63. I have referred to tire submission made by the learned Advocate General and the relevant part of the statement filed also has been extracted earlier. The attitude shown by the State, deserves to be strongly condemned for more reasons than one. Act 19 of 2006 was enacted for ensuring that the process of

admissions to the professional colleges in this State are made in a fair, transparent, merit based and non exploitative manner. The Committee constituted under S.4, has been entrusted with the duty to ensure compliance of these laudable objectives. As already noticed, at every stage of the process culminating in the examination held on 14.7.2011, the Association has brazenly violated the provisions of the Act and binding judgments of this court to which it is a party. The Committee confessed before this Court that it has not granted prior approval to anything done by the Association, except the conditional approval to the prospectus; and the amended one is yet to be verified by it. None has a case that the examination was supervised by the Committee.

64. Such a process now completed by the Association cannot be approved by this Court. Consequence thereof is what the Apex Court had held in PA. Inamdar's case, that the State should take over the admission and substitute its own procedure (vide paragraphs 137 of the judgment). State has no case, that candidates are not available in the rank list prepared by its Commissioner for Entrance Examination. It is in such a situation, instead seizing the opportunity by taking over the admissions in the colleges and allotting meritorious students from its rank list, the State has chosen, to shamelessly to plead before this Court that "it may not be in the interest of anybody to declare the entrance examination illegal". If this request is allowed, the whole purpose of Act 19 of 2006 will be defeated and what is attempted to be safeguarded is not the interest of the students as claimed, but the interest of the Association only. I hope and trust that wisdom will prevail and the State will correct itself at least at this belated stage.

65. The prayer made in I.A. No. 12501/2011 filed by SMCSI Medical College, Trivandrum is to permit them to make admissions from among those included in the rank" list of the Commissioner for Entrance Examination of the State. The reason stated for such a prayer is that they have withdrawn from the examination conducted by the Association. When urgent orders were insisted, this Court was willing to direct the Commissioner to allot students from the rank list. At that stage, counsel explained that what is proposed is that applications will be invited from among the candidates included in the rank list of the State and those selected by the management will be admitted. The justification for inviting applications, according to counsel, was that the management did not want to surrender its right to select the candidates. This response of the college, makes me suspect the bona fides of the selection proposed because if merit is to be the yardstick, that would have been achieved by such an allotment from the rank list of the Commissioner. Therefore, the zeal not to surrender its right and the anxiety shown to select the students, is a method now devised to choose candidates on considerations other than merit.

66. In any case, once entrance examination has not been held as ordered in P.A. Inamdar's case, the consequences mentioned in paragraph 137 of the judgment. viz., that the State should take over the admission and substitute its own

procedure should follow. This is the inevitable course insofar as the petitioner in I.A.No. 12501/2011 is concerned. Therefore the prayer in this I.A. has to be rejected and I do so.

67. For all the aforesaid reasons, the Writ Petition has to be allowed with costs. This is the third judgment of this Court holding the entrance examination conducted by the Association illegal. Findings in this judgment show that the violations committed were deliberate and the Association has stated on oath, that it is not practical to comply with the directions contained in the binding judgments of this Court. The repeated violations and defiant attitude adopted by the Association, justifies imposition of exemplary costs on them. However, since the State Government have chosen to support the Association and the Committee is equally guilty of its lapses, such costs cannot be ordered to be paid to either of them and in the circumstances, the amount should be paid to an organisation which can use the same for the benefit of public and in the event of non payment, as directed by the Apex Court in M. Nagabhushana Vs. State of Karnataka and Others, , the amount shall be recovered.

In the result,

(1).The Writ Petition is allowed and the Entrance Examination held by the 3rd respondent on 14.07.2011 is declared illegal and void.

(2) The first respondent is directed to take over the admission to the seats in the management quota in the member colleges of the 3rd respondent and allot students from the rank list prepared by the Commissioner for Entrance Examination on the basis of merit.

(3) I.A.No. 12501 of 2011 is dismissed.

(4) The third respondent is directed to pay costs of Rs. 25,000/- to the petitioner.

(5) In addition, for the reasons explained, I impose exemplary costs of Rs. 5 lakhs on the 3rd respondent, which shall be paid to the Kerala High Court Legal Services Committee within one month from today and if amount is not paid it will be open-to the said Committee to complain to the District Collector concerned, who thereupon shall recover the amount as arrears of public revenue due on land, invoking the provisions of the Kerala Revenue Recovery Act.