
(2009) 09 RAJ CK 0064
In the Rajasthan High Court

Director, Gitanjali Medical College

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 29, 30
Limitation Act, 1963 — Section 5

Citation : (2009) 09 RAJ CK 0064

Hon'ble Judges : Raghuendra S. Rathore, J;Ajay Rastogi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Since all these special appeals arise out of common order dt.18/03/2009 passed by learned Single Judge in CWP10858/ 2008 whereby admissions in MBBS course for academic year 2008-09 against 85% of intake 150 seats were declared illegal, hence at joint request, were heard together and are being disposed of at admission stage.

2. Core issue raised before learned Single Judge for consideration was as to whether admission in MBBS course for academic session 2008-09 in a private unaided professional medical college made on the basis of qualifying examination(10+2) is permissible and what will be the effect of Reg.4.2(2) of Medical Council of India Regulations on Medical Education, 1997 (MCI Regulation), which clearly specifies that in a State where there are more than one University/Board/ examining body conducting examination (or where there is more than one medical college) for qualifying examination (10+2), competitive/ common Entrance Test (CET) should be held to achieve a uniform evaluation as there may be variation of standards at qualifying (10+2) examination conducted by different education agencies; and how far, admissions to MBBS course in present private unaided professional institution (Gitanjali Medical College) made on the basis of qualifying marks in 10+2 examination, are justified?

3. Before adverting to the core issue, it would be appropriate to narrate bare

relevant facts for consideration of rival contentions made at the bar. Appellant-Gitanjali Medical College & Hospital is a private unaided institution, applied for grant of permission for teaching MBBS course through medical council of India (MCI) which recommended vide letter dt. 02/06/08 to the Ministry of Health, Government of India but the Ministry after examining infra structure facilities available at the appellant institution denied permission vide letter dt. 04/08/08. Denial of permission was challenged by appellant institution by approaching the Apex Court in Writ Petition (Civil) No. 357/08 which was disposed of alongwith other Writ-Pet(Civil)-294/2008 (Rohilkhand Educational Charitable Trust v. Union of India), vide order dt. 03/09/08, in view of statement recorded of Addl. Solicitor General that revised orders would be passed within a week in respect of Gitanjali Medical College. Accordingly, Government of India issued letter dt.16/09/08 sent by speed post, conveying approval of Central Government for establishment of new medical college at Udaipur Rajasthan by Geetanjali Foundation (appellant-institution) with an annual intake of 150 students with prospective effect from academic year 2008-09 u/s 10(A) of IMC Act, 1956, initially for a period of one year renewable on yearly basis upon verification of achievement of annual targets, which as alleged, according to appellant institution, was received in its office on 25/09/08.

4. Against intake of 150 students for admission in MBBS Course, 15% were made available for NRI-management quota while 85% were available for open selection; and accordingly other than NRI quota, 16 students were admitted by appellant institution in MBBS course from a list prepared on the basis of Private Colleges Pre-Medical Test, 2008 (PC-PMT-2008) held for BDS Dental Colleges of Rajasthan by Federation of Private Medical and Dental Colleges of Rajasthan-Federation which is a body registered under Registration of Societies Act for conducting PC-PMT through Mohanlal Sukhadia University, Udaipur. Further 101 students were admitted by appellant institution based on qualifying marks secured in 10+2 examination through its own advertisement dt.29/09/08; and admissions thereto were made of such students who participated in its counselling. In all 140 students (including 23 against NRI-management quota & 16 through list of PC-PMT-2008 of Federation were admitted and remaining 10 seats were kept vacant because of interim directions issued by learned Single Judge, keeping seats pending for writ petitioners.

5. It is relevant to mention that particularly for academic year 2008-09, the Federation had held a competitive entrance test (PC-PMT-2008) only for admission in private Dental Colleges (BDS course) in which appellant institution was neither included in the list duly circulated by Federation in its advertisement and brochure alongwith application form of PC-PMT-2008 nor any CET (PC-PMT-2008) was held by Federation for admission to MBBS course in private medical colleges like appellant institution.

6. These admissions made by appellant institution in its Gitanjali Medical College and procedure adopted in granting admissions to 140 students in academic year

2008-09 who indisputably have not participated in competitive entrance test (CET, in Rajasthan known as RPMT) conducted in Year 2008, were assailed by writ petitioners (respondents herein special appeals) before learned Single Judge, who in fact participated in RPMT, 2008 and their names find place in select/wait list for admission in MBBS Course for academic Session 2008-09. Their grievance basically is that appellant-institution was legally under obligation to make admissions other than 15% NRI quota on the basis of the counselling from the select/wait list of participants in RPMT-2008 in which their names find place and who have preferential right for being considered of admission in MBBS course, qua students admitted by it.

7. According to writ petitioners (students), procedure for admissions made by appellant institution through list of PC-PMT, 2008, prepared only for admission to BDS course or based on qualifying marks secured in 10+2 examination, was in fact contrary to MCI Regulation-5.2 of 1997 and so also of University Ord.272. Thus it was violative as being not in conformity with authoritative pronouncements of Apex Court.

8. Undisputed facts in regard to the Counselling held of Rajasthan Pre-Medical Test 2008 (RPMT-08) are that Rajasthan University of Health Sciences (University) issued notice on 26/02/08 published in Newspapers inviting applications for appearing in RPMT-08 for admission against 1050 seats of MBBS/ BDS courses for academic session 2008-09 in various medical/dental colleges in which name of present institution appeared at S. No. 10 with stipulation that it has been included in anticipation of sanction from MCI. RPMT-08 written test was held on 23rd, 24th & 25th May, 2008 and its first counselling for admission in MBBS course was scheduled for 14th to 17th July, 2008 and 2nd counselling was held on 23rd & 24th September, 2008.

9. Other relevant facts are that in view of statement of Addl. Solicitor General recorded by Apex Court in its order dt. 03/09/08 while disposing of appellant institution's Writ Petition (C) No. 357/08 that revised orders would be passed within a week in respect of Gitanjali Medical College pursuant to which, Government of India issued letter dt.16/09/08 granting permission for admission in MBBS course with 150 intake seats, was received in its office as alleged by appellant-institution on 25/09/08; whereas contrarily there is a document on record which depicts that a hard copy could be obtained through Internet explorer on 21/09/08, as having disclosed by MCI at its Internet site that approval was granted to institution. Even advertisement was published in Rajasthan Patrika on 25/09/08, itself, inviting applications from eligible candidates for admission against NRI quota with a specific note that institution has been approved by MCI and Government of India. Per contra, it has been the consistent stand throughout on behalf of appellant institution before learned Single Judge that for the first time, it acknowledged information of sanction having been granted vide letter dt.16/09/08 only on 25/09/08 and not prior thereto, then how advertisement on its behalf was published in Rajasthan patrika

dt. 25/09/08 or its approval was available at Internet site on 21/09/08. Thus, its stand that for the first time sanction letter dt.16/09/08 was received on 25/09/08 appears to be doubtful.

10. More over, after 1st counselling, despite information & notice sent to the appellant institution for its participation in 2nd counselling scheduled for RPMT-08 on 23rd & 24th September 2008, institution declined to participate only on the premise that sanction has not been received so far.

11. Counsel for Federation informs that since academic year 2005-06 process of admission was being initiated by the Federation every year for admission in all such private dental colleges/institution which are its members duly recognized by Dental Council of India & Government of Rajasthan. Process of admission initiated by Federation for academic year 2008-09 by holding PC-PMT-2008, related to BDS course only; and it was never held for admission to MBBS course for any of its member-college.

12. State Government vide letter dt. 28/01/08 granted permission to Mohanlal Sukhadia University to organize Pre-medical test for admission to BDS course in private dental colleges of Rajasthan and accordingly, Federation published advertisement in Dainik Bhaskar dt.11/04/08 inviting application for admission for total 715 seats in different private Dental colleges of Rajasthan enlisted therein against which 400 candidates appeared in PC-PMT 2008 held on 11/06/08 and 78 candidates only qualified in Competitive Entrance Test (CET), out of which, only 47 candidates appeared in counselling on 10/08/08 who were allotted Dental colleges as per their merit and preference.

13. Since appellant institution was not enlisted in brochure with application form notified by Federation for PC-PMT 2008, no CET was conducted for admission as regards MBBS course for appellant institution. At the same time, indisputably appellant institution wrote a letter to the State authority on 16/09/08 itself that since counselling was scheduled on 23rd & 24th September, 2008, it may be advised that if sanction is later on received from Government of India, how their seats could be filled in and wait list of RPMT, 2008 would be available for admission to its institution. In reply to it, the University vide its letter dt.22/09/08 informed that if they are really intended to participate in 2nd counselling scheduled for 23rd & 24th September, 2008, they should inform about number of seats for allotment so that it may be taken note of while conducting 2nd counselling. But, as is evident from document (Ann.R2/6) filed by the University, neither the institution turned up nor sent any intimation.

14. Hence Under-graduate Admission Board constituted by State Government decided not to include the appellant-institution in second counselling. However, it was observed that if any further information is received from appellant institution, students would still be provided out of wait list prepared of RPMT-2008 by holding counselling to appellant institution at their costs.

15. However, as is evident from record, appellant institution was interested in

making admissions against 85% of intake seats through CET from wait list of RPMT-2008. But after 25/09/08, when according to institution, it received sanction of intake of 150 students granted by Government of India vide letter dt.16/09/08, appellant institution took a complete U-turn and sent its letter on 26/09/08 to the Federation that they may allot students pursuantly their request was accepted by Federation through letter dt.27/09/08 and the matter was sent for holding counselling on 30/09/08.

16. Moreover, even prior thereto, on 26/09/08 one advertisement (Ann.12) was got published by appellant institution in news papers circulated in State of Madhya Pradesh for holding counselling on the basis of qualifying 10+2 examination with minimum 50% marks in Physics, chemistry & biology (PCB) and inviting applications lastly by 28/09/08.

17. At the same time, notice for admission in MBBS course by Co-ordinator-PCPMT- 2008 on 27/09/08 was published in Rajasthan Patrika while appellant institution also published its own notification in daily news paper of Rajasthan and simultaneously in newspaper Sandesh published in State of Gujarat on 29/09/08 inviting applications for admission based on marks secured in qualifying 10+2 examination.

18. In fact, whether it was a list of allotted students of PC-PMT-2008 prepared for admission in BDS courses for private Dental colleges in Rajasthan, or on the basis of qualifying 10+2 examination, counselling took place on 30/09/08 itself, in reference to advertisements ibid, 16 students were admitted on 30/09/08 out of list provided by Federation and 101 students were admitted based upon qualifying 10+2 examination by appellant institution.

19. Prior thereto, however, writ petitions were filed by students named in wait list of RPMT-08 (respondents herein) raising grievance that merit/wait list of RPMT-08 is not being invoked by appellant institution and despite being higher in merit, on having participated in twin test (RPMT-08), they are not being considered for admission in appellant College for MBBS course. At the initial stage of admission, this Court granted interim order to keep one seat vacant subject to final decision in the petitions; and by virtue of interim stay orders (ibid) being in operation, 10 vacant seats in all could not be filled in by appellant institution. Ultimately, learned Single Judge has set aside all admissions against 85% quota made by appellant institution for MBBS course in academic year 2008-09.

20. After notices were issued by learned Single Judge, State Government, University of Health Sciences, Jaipur, and Medical Council of India (MCI) filed their separate reply. State Government in its reply specifically averred that the institution has made admission in collusion with Federation ignoring statutory provisions and flouting the law laid down by Apex Court in its authoritative decisions. Rather, admissions are being made by ignoring University Order 272 whereas admissions are to be made only on the basis of marks secured in

competitive entrance test (CET) like RPMT-08 and that being so, all such admissions made by appellant institution are illegal and deserve to be cancelled as held by Apex Court in Harish Verma and Others Vs. Ajay Srivastava and Another, wherein illegal admissions, despite students having undertaken post graduate medical education for and one & half years, were cancelled.

21. State Government also averred that a notice dt.11/11/08 (Ann.R/3) has been served upon institution calling explanation in regard to illegal admissions and it was further followed by reminder dt.27/11/08 (Ann.R/4) filed alongwith State's reply.

22. However, separate reply to writ petition was filed by University and it has been inter-alia averred that 85% intake seats allotted to appellant institution was to be filled only through RPMT-08 and that too by providing vertical/horizontal reservation as laid down by Government of Rajasthan; that during counselling by Federation, Government observer (Dr. SK Kaushik) was supposed to be present but he was neither invited nor informed about such constituted Board and admissions were being made in absence of Government observer; and that the Institution in collusion with Federation admitted students ignoring all canons of law particularly the provisions contained in University Order 272. As such, all admissions made by appellant institution are illegal and that being so, the University would not enroll any such illegally admitted students. There shall not be equity created in their favour and accordingly prayed for cancellation of admissions of such students.

23. MCI also filed its reply along with affidavit. It was averred in para 39 of its reply that admissions made by appellant institution in 1st Yr MBBS course of academic year 2008-09, based on marks secured in 10+2 qualifying examination (PCBE) are completely in violation of MCI regulations, 1997 and of policy decision dt.14/05/03 taken by Ministry of Health Government of India. It has also been averred that as per MCI Regulations, 1997 admissions in any medical college to MBBS course have to be within annual intake capacity fixed by MCI and to be made from amongst eligible students fulfilling eligibility norms in their qualifying 10+2 examination, based on their merit in Competitive entrance Test held by State agency. Finally averred that admissions made by appellant institution are illegal and procedure for admission adopted was neither transparent, merit-based & non-exploitative nor in consonance with MCI regulations; policy decision dt.14/05/03 and directions of Apex Court issued from time to time. Therefore, prayed for taking action and issuing the discharge notices to the students admitted in contravention of MCI regulations and directions issued by Apex Court from time to time.

24. A letter was sent to appellant institution on 03/11/08 (Ann.R4/12) asking for sending complete details and procedure adopted in admitting students in MBBS course of academic Year 2008-09, qua intake of 150 seats.

25. It appears from record that much prior to academic session 2008-09, a

meeting was held in the office of Secretary, Department of medical education (Gr.I) on 15/12/2007 for initiation of supervision over holding PC-PMT 2008, which was attended by Chairman of Federation & after deliberation, it was resolved (Ann.R1/4) that in private institutions like appellant College & National Institute of Medical Sciences, Jaipur, 85% of its intake seats would be filled in only through list of candidates prepared in RMPT. That apart, vide letter dt.25/06/08 (Ann.R1/5), permission sought for admitting students in MBBS course from PCPMT- 08-list was declined while specifically informing appellant-institution that in academic year 2008-09, 85% of its intake seats would be filled in from among named in RPMT-08 only.

26. After State Government & University having specifically averred in their counter to the writ petitions about all the admissions being made in illegal manner and notices having been issued to the institution calling for explanation, learned Single Judge called upon them to know as to what steps have been taken after notices were issued to the institution and the committee be constituted to take appropriate action.

27. From the order-sheet dt.18/12/08, having been noted in order impugned, it is revealed that Government Counsel sought time on the premise that the Ministry has not been formed till date, which is likely to be formed soon; as such matter is pending for final decision with the Government. Taking note whereof, learned Single Judge directed the State Government to decide after consultation with University and MCI.

28. At this stage, after the Government being formed upon change in Ruling party, State of Rajasthan took a complete u-turn and the Committee formed had proceeded with the aid & advise of Addl. Advocate General for examining the very process of admissions adopted by appellant institution and in its minutes of meeting dt.17/01/09, referred to in order impugned, finally observed that the committee constituted at the time of counselling, has observed about admission being irregular as when candidates were not available from PC-PMT-08 list prepared by Federation, certainly admissions could have been made on marks secured in 10+2 qualifying examination and finally opined that these admission can be considered to be irregular but not illegal.

29. Here we must hasten to observe that neither any amendment was sought by State Government in its counter to writ petitions or by University and it appears that merely on change of Government, the State Counsel also got changed in Jan. 2009 and took somersault and tried its best to save such admissions made by appellant-institution.

30. We are also constrained to take note of peculiar fact that the committee initially constituted has submitted its report, having been annexed with counter filed by State Government to writ petitions, which in an unequivocal terms disclosed about process of admissions impugned herein, as wholesome illegality while categorically observing that admissions have been made by appellant

institution in collusion with Federation. Accordingly the University also averred that since these are illegal admission such illegally admitted students should not be enrolled; and finally reiterated in the reply that the admissions deserves to be cancelled.

31. However, the latter change speaks volumes about State authority which has certainly taken decision by taking a complete u-turn, supportive to appellant institution. It is always expected from the State and its authority to display an independent role within four corners of law. But in the instant case, we find that before learned Single Judge the State & University, at a later stage, came to rescue of the Institution and only because of change of the Government in the State, its counsel also changed. In such changed circumstances, the Government took a somersault having also been noticed by learned Single Judge, as well, we are not prone to comment upon any further except that it is expected from State & its authority to be more cautious because they are meant to serve the people at large and not to individuals in the society. Interest of society is the paramount consideration for which we the people are meant. It is always to be kept in mind that the law is made for the society as the society is not made for law.

32. In the instant case, in larger interest of students who are entitled and eligible for admission on the basis of their performance in competitive entrance test (CET) and where procedure prescribed under MCI Regulations have been given a complete go-bye by the appellant institution. This Court can take judicial notice that for admissions in MBBS course, parents are spending time & huge amount of money for coaching and at the same time, their children have also burnt midnight oil for months together, with the hope and belief that their wards will achieve the goal by getting admission in MBBS course which is one of their desires in life for betterment in their career. But by these indirect methods like the present one impugned, adopted in violation of MCI regulations despite being mandatory in nature and so also judicial directives given consistently in a plethora of decisions of Apex court viz. T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, ; Islamic Academy of Education and Another Vs. State of Karnataka and Others, ; & PA Inamdar v. State of Maharashtra 2005 (6) SCC 537 that 85% of its annual intake seats are to be filled in MBBS course in private unaided professional medical colleges only on the basis of CET and by this method alone, twin test laid down from time to time by apex court could be achieved & fulfilled. Admissions made on the basis of 10+2 qualifying examination have never been approved/approved by Apex Court.

33. Both the Senior Counsel Shri Uday U. Lalit appearing for students (appellants herein) and Shri SM Mehta, appearing for institution jointly submit that appellant institution is an unaided private medical college and as per decisions of Apex Court, in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, having been further taken note of in Islamic Academy of Education and Another Vs. State of Karnataka and Others, and further clarified in PA Inamdar v. State of Maharashtra 2005 (6) SCC 537, private medical colleges have every right to

admit students in MBBS course based upon marks secured in 10+2 qualifying examination; and there is no such State quota available for unaided private medical college while admission can be made only from among named in list prepared by State agency out of its competitive entrance test (RPMT).

34. Counsel further submits that appellant institution being a private unaided medical college, has every right to admit students of their choice subject to rational procedure in compliance with statutory provisions if any required for admission; and it is the option of a private professional institution to make admissions either from among named in list prepared by State agency (RPMT) or any other agency being authorised to hold competitive entrance test (CET) like PC-PMT held by federation out of which appellant institution opted to make admission and counselling was held but only 16 students were made available from among list of PC PMT-08 by Federation. The cut-off date as fixed by Apex court is 30th September; and since time was not left, so advertisements were simultaneously published inviting applications for admission based upon marks secured in qualifying 10+2 examination. The admissions were transparent, merit-based, non-exploitative fulfill twin test as laid down by Apex Court in the decisions (*supra*), inasmuch as there being no complaint pointed out either by State agency or by committee constituted under orders of learned Single Judge. That apart, the committee itself had after examining the record, observed that these admissions can be considered to be irregular but not illegal. Looking to the time schedule left available to appellant institution as the letter from Ministry of Health granting approval/ sanction for annual intake of 150 seats, having been received on 25/09/08 and by that time, 2nd counseling of RPMT-08 had already taken place and being member of Federation immediate, a request was made to the Federation to hold counselling for making admissions before cut-off date i.e. 30/09/08. In such exigency before appellant-institution, admissions made can not be said to be illegal in any manner. It was not the case of any of writ petitioners before learned Single Judge that those having been admitted by appellant institution either did not hold requisite qualification or students with higher merit/qualification on having participated in counselling have been deprived of admission by appellant institution.

35. Counsel further submits that the only complaint made by writ petitioners before learned Single Judge was that they being placed in merit among named in wait list prepared while conducting RMPT-08 based on competitive entrance test (CET) should be considered for admission assigning preference while admitting in the institution. This, according to Counsel, is not the law as laid down by Apex court and being private unaided professional institution, merit list prepared by State Government for admission to Government institution cannot be enforced upon it. It is only for the institution to take its own decision in making admissions and the only rider having been put by Apex Court in judgments (*ibid*) is that the procedure having been adopted in making admission in MBBS course must fulfill twin test laid down therein and when writ petitioners having failed to show as to how procedure adopted by appellant institution in making impugned admission

contravenes either of tests in absence whereof, learned Single Judge erred in canceling impugned admissions.

36. Counsel further submits that the finding recorded by learned Single Judge about admissions being violative of University Order 272, is wholly erroneous since the same has no application as regards private unaided institution. MCI Regulations, 1997 are directory in nature and that apart, Reg.4(2).2 being relevant for present purpose, only observes that they should hold a competitive entrance test where there is more than one body conducting qualifying examination in the State but looking to present exigency having been disclosed (supra) and the time having left available for institution only of five days at its disposal, better way available was only to go ahead first with the list prepared by Federation while holding PC-PMT-08, being member of Federation which provided only 16 students in all; as such there was no option left for institution but to make admission on the basis of qualifying marks secured in 10+2 examination, which too has been approved by Apex Court in catena of decisions. In such circumstances, learned Single Judge erred in interfering with admissions impugned and their cancellation cannot be said to be justified.

37. Counsel further submits that PC-PMT08 might have been held by Federation for Dental Colleges but competitive entrance test being common such list can be made use of by institution for admission to MBBS course also. That apart, as regards admission based upon marks secured in qualifying (10+2) examination, it is also a competitive criteria rationally based duly permitted even in MCI Regulations, 1997 under Reg.4.2.1 that if there is one Board, admissions can be made on the basis of marks secured in qualifying 10+2 examination and since criteria adopted by institution fulfills triple test of fair, transparent, merit-based which being in consonance with Article 14 of the Constitution and the law laid down by Apex Court in judgments (supra), learned Single Judge seriously erred in canceling admissions impugned and such finding deserves to be set aside. In support, Counsel placed reliance upon decision of Apex Court in GSF Medical and Paramedical Association Vs. Association of Management of Self Financing Technical Institutes and Another etc. etc.,

38. Counsel also submitted that it is not the case of writ petitioners that they are better qualified than those admitted by appellant institution or despite they having applied in reference to advertisement, admissions have been denied to them. Students admitted having not been impleaded as party respondents to writ petitions, their admissions cannot be cancelled behind their back; and cancellation of such admissions of students who were deprived of opportunity of hearing atleast before cancelling their admissions ordered by learned Single Judge is certainly in violation of principles of natural justice.

39. State Government has also preferred special appeals questioning the validity of order of learned Single Judge but we find that there is no direction against the State by which it could be said to be affected except that the State was directed to hold counselling from ventilating of RPMT and the admission process be

completed before commencement of RPMT-2009. As a matter of fact, State action was never under challenge nor examined by learned Single Judge. Per contra, it was finally held that RPMT-08 list prepared by State agency must be adhered to for admission in MBBS course in the present institution.

40. Moreover, it was the State's own contention initially in its counter to writ petitions before learned Single Judge that procedure adopted by appellant institution is contrary to law and these are illegal admissions liable for being cancelled. Explanation of the institution was also called.

41. When we asked the Counsel for State as to why State has chosen to prefer special appeals without there being any direction directly or indirectly, affecting the State action even being not assailed before learned Single Judge, Shri S.N. Kumawat, Addl. Advocate General submits that since direction of learned Single Judge was to complete admission process before commencement of RPMT-2009 admissions, while judgment impugned was delivered on 18/03/09 and by that time, process of admission of RPMT-2009 had already commenced. In our considered opinion, if that was the only grievance being felt aggrieved by the State and even if process of admission through RPMT-2009 had commenced, still 2nd counselling whereof was yet to take place, or that it could have been raised before Single Judge by seeking clarification in that regard. We do not find that atleast State can be said to be aggrieved in any manner so as to assail the order impugned.

42. The Federation has also preferred special appeal but it was incompetent because of there being delay in filing whereof, for which application seeking condonation has also been filed u/s 5 of Limitation Act and against which objection has been raised by the office that since Federation not being a party respondent to the writ petition their appeal is not maintainable.

43. We have condoned the delay and granted leave to the Counsel for Federation to address the Court on merits.

44. We had also put a question to Shri Ashok Gaur, Counsel for Federation as to how they are aggrieved by order impugned, necessitating it to prefer the special appeal. Counsel has tried to convince that the Federation is only aggrieved by some observations made by learned Single Judge in the order impugned such as the finding recorded that it holds the competitive test only against NRI/management quota(15% of annual intake capacity of college) & 85% quota of annual intake seats has been considered to be State quota, to be filled only from RPMT, which is contrary to the decisions of Apex Court.

45. As regards University Order 272, the Counsel for Federation submits that it has no application to private unaided professional institutions and Federation is conducting PCPMT (competitive entrance test for private colleges) through Government agency Mohanlal Sukhadia University. In the academic year 2009-10 about 4500 students have appeared in CET and after declaration of result, list of successful candidates was prepared for admissions in medical & Dental Colleges

including appellant institution which was also its members; and admission are made through PC-PMT only on the basis of merit which is never sacrificed and the learned Single Judge has failed to examine.

46. On the other hand, Shri Rajendra Soni & Shri PC Sharma, Counsel for writ petitioners (respondents herein) while supporting the finding recorded by learned Single Judge, submits that impugned judgment is based on sound reasonings duly supported by law laid down by Apex Court; 85% quota in private institution can only be filled through State agency CET and list prepared by Federation is only for the purposes of admission against NRI/management quota.

47. Counsel further submits that since admissions are illegal; in violation of MCI Regulations, 1997 and so also of University Order 272, the same has rightly been cancelled by learned Single Judge. Therefore, the finding does not call for any interference. Counsel further submits that writ petitions were filed prior to admission being made; as such no right could have conferred to those having been illegally admitted. That apart, if at all they were deprived of opportunity of hearing before learned Single Judge, atleast they are here before this Court, and their submissions can certainly be examined.

48. It could be considered to be an effective hearing to students appellants, now being represented by senior counsel and who has extensively made submissions on their behalf. In such circumstances, it cannot be said that there was any violation of principles of natural justice, especially when admission itself, being illegal, no right could have otherwise be said to have conferred upon them.

49. Shri Angad Mirdha, Counsel for MCI while supporting the finding recorded by learned Single Judge submits that these admissions being contrary to mandatory Regulations of MCI. PC-PMT-2008 never held competitive test for MBBS nor appellant institution was included as one of private medical colleges in its brochure; and merely because the CET (PC-PMT) is a competitive examination to be held for BDS & MBBS, that by itself would not be sufficient to hold that appellant-institution was justified in giving admission to students in MBBS course from the list prepared by Federation for BDS. That apart, the admission made on the basis of qualifying 10+2 examination, are illegal and against law laid down by Apex Court and so also of MCI Regulations, 1997.

50. Shri NK Joshi & Shri RA Katta, appearing for the University of Health Sciences jointly submit that these admission are in violation of MCI Regulations and also of University Order 272. Admissions in question made by appellant institution in collusion with/Federation, being illegal, have been rightly cancelled by learned Single Judge.

51. However, initially when written statement was filed before learned Single Judge their stand was that illegal admission must be cancelled but as recorded by learned Single Judge, later on they too also joined voice of State Government by saying that these admission are not illegal but irregular. However, before this Court the Counsel for University again affirmed the stands, having been taken in

their written statement and submitted that these admissions being illegal must be cancelled and their appeals be rejected while upholding judgment of learned Single Judge.

52. We have considered the rival contentions of parties and with their assistance examined voluminous record, as well. As regards narration of facts, it has already been considered in details in earlier part of this judgment, as to how litigation initially came up for consideration before learned Single Judge.

53. Prime issue arises for consideration is as to whether against admission made by institution, to be more specific-85% seats of its annual intake, was it justified in admitting students only on the basis of qualifying 10+2 examination and against rest of intake seats admission was made from among named in the list provided by Federation prepared, on the basis of its own CET (PCPMT)- 2008 for BDS course only whereas competitive entrance test was held by Federation for MBBS course. How far that list could be considered for admission to MBBS course by appellant institution?

54. Now we first advert to relevant decisions of Apex Court. In TM Pai Foundation (supra), basic controversy was as to what is the scope of the rights of minorities to administer and establish educational institutions of their choice Under Article 30(1) read with Article 29(2) of the Constitution, since a doubt arose on the correctness of decision in St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., which was examined alongwith certain other questions being taken note of. One of the questions was as to whether in private institutions either aided or unaided, can there be Government restrictions and to what extent ? Since other questions are not relevant, we are not taking note of herein.

55. Earlier in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., it was observed that as regards private unaided/aided, recognized or affiliated educational institutions conducting professional courses of medicine, engineering etc. the State has also active role to play and could impose conditions & regulations in the running of their institutions; and even if individuals are permitted to establish and/or administer a professional college, atleast 50%of seats in every professional college should be filled by nominees of the government or University, selected on the basis of merit determined by a common entrance test, which can be referred to as free seats; and remaining 50% seats referred to as payment seats may be filled by those candidates paying fees prescribed therefor, and allotment of students against payment seats should be done on the basis of inter se merit determined on the same basis as in case of free seats.

56. In the latter judgment of TM Pai foundation (supra), one of the questions which arose, was as to whether Unnikrishna decision requires re-consideration and it was urged before Apex Court that the scheme framed in the said case had imposed unreasonable restrictions on the right of administration of private unaided educational institution and specially in case of minority institutions their

right guaranteed Under Article 30(1) stood infringed and submissions were also made on behalf of aided/unaided institutions, as well.

57. Shri Uday U.Lalit, Counsel for appellants (students) laid much emphasis on the observations made by Apex Court in TM Pai foundation in regard to private aided non- minority educational institution, in paras 50, 53, 58 & 59. But we find that Apex Court has made a separate category as regards private unaided/non-minority educational institutions & private unaided professional colleges.

58. We are concerned with private unaided professional colleges. In para 68 (TM Pai foundation), it has been observed that unaided professional colleges are entitled to autonomy in their administration whereas they do not forego or discard principle of merit and therefore, would be permissible for University or the government while granting recognition, to require such a private unaided institution to provide for merit based selection while giving the management sufficient discretion in admitting students by various methods particularly when all those who have passed common entrance test held by State/University. Certain percentage of seats can be reserved for admission by management out of those students having passed common entrance test held by itself or by State/ University and have applied to the college concerned for admission while the rest of seats can be filled up on the basis of counselling by State agency; and percentage for this purpose can be prescribed according to local needs.

59. At the same time, even for private non-minority unaided institution, it has been observed in para 58 (TMA Pai Foundation) that for admission to any professional institution merit must play an important role and to maintain excellence in professional education it would require greater emphasis to be laid on the merit of a student seeking admission. It was further observed that appropriate regulations for this purpose may be made in the context of admissions to unaided institutions. Apex Court observed *ad infra*:

Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution or in the case of professional colleges, by Government agencies.

60. What has been finally observed in TMA Pai Foundation is that as regards professional un-aided private institutions, to maintain excellence in professional education, a greater emphasis be laid on the merit of student which could be adjudged by various methods. That being so, in para 68 Apex Court observed that certain percentage of the seats can be reserved for admission by the management out of those students who have passed common entrance test held by itself or by the State/University and have applied to the college for admission while rest of seats may be filled up based on counselling by State Agency; and percentage can be prescribed by the Government according to the local needs and different percentage can be fixed for minority unaided and non-minority

unaided and professional colleges.

61. TMA Pai foundation case came up for consideration in *Islamic Academy of Education v. State of Karnataka* 2003 (3) SCC 697 (supra), where one of questions which arose for consideration was as to whether private unaided professional colleges are entitled to admit students by evolving its own method of admission. Question No. 3 & 4 being relevant are *ad infra*:

(3) Whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100% and if not, to what extent; and

(4) Whether private unaided professional colleges are entitled to admit students by evolving their own method of admission?

62. These questions were considered by Apex Court in para 10 onwards and observed that while taking practical approach, it cannot be disputed that selections must be made on merit basis and what has been observed in TMA Pai foundation in para 68 that admission by the management can be made by a common entrance test held by itself or by the State/University; & the words common entrance test clearly indicate that each institute cannot hold separate test and it must be therefore clarified that management could select students of their quota, either on the basis of common entrance test conducted by the State or on the basis of common entrance test conducted by the association of all colleges of a particular type in that State e.g. Medical, engineering or technical. In para 19 (*Islamic Academy's* case), State Government was directed to appoint permanent committee which would ensure that the tests conducted by association of colleges is fair & transparent. It was also observed that different percentage of quota for students' admission in management quota in each minority or non-minority unaided professional colleges shall be separately fixed on the basis of need by respective State and if there is any dispute as regards fixation of percentage of quota that would be open for the Management to approach the committee. Para 16 reads *ad infra*:

16. That brings us the question as to how the management of both minority and non minority professional colleges can admit students in the quota allotted to them. Undoubtedly the majority Judgment has kept in mind the sad reality that there are a large number of professional colleges which indulge in profiteering and/or charging of capitation fees. It is for this reason that the majority Judgment provides that in professional colleges admission must be on the basis of merit. As has been rightly submitted it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also as has been rightly pointed out if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs. 500 to Rs. 1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further as has been rightly pointed out, students would have to arrange for transport from and to and stay at various

places if they have to appear for individual tests conducted by each College. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance tests conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State.

63. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on basis of inter-se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de-hors merit penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.

64. Even as per Islamic Academy decision(supra), selection for admission should be merit based and must be on the basis of common entrance test, which may either be conducted by the State or by an association of all the colleges of a particulate type in the State, e.g. Medical, engineering or technical etc. But ultimately emphasis is that admission must be made on the basis of common entrance test; and marks secured in qualifying examination have never been given primacy for admission in professional education.

65. In a latter judgment in *PA Inamdar v. State of Maharashtra* 2005(6) SCC 537, relevant question for consideration was as to fixation/appropriation of quota for admission to students into unaided professional college and about holding of examination for admission in such colleges which would have control over

admissions in unaided professional educational institutions, with which we are concerned.

66. While examining core question No. 3, Apex Court classified three categories (i) minority educational institutions, unaided & unrecognized educational institutions (ii) minority unaided educational institutions asking for affiliation or recognition; (iii) minority educational institutions receiving State aid. While examining apportionment of quota by State and seating sharing ratio, it was observed in para 124 (PA Inamdar's decision) that the State has no power to insist on seat-sharing between management and the State. In para 127 & 128, it has been clarified about fixation of percentage of quota, observations in TMA Pai foundation should be read and understood as possible consensual arrangement being reached between unaided private professional institutions and the State.

67. Observations made by Apex Court and the scheme evolved in Islamic Academy (*supra*), to the extent it allowed the States to fix quota for seat-sharing between management & the State based on local needs of each State in unaided private educational institutions of both minority & non-minority categories, were not approved. At the same time, for NRI seats it was observed in para 131 that to the extent of 15% seats can be reserved for NRI depending upon discretion of management subject to two conditions.

68. As regards question No. 2 with respect to admission procedure to be adopted by unaided educational institutions, it has been observed in para 134 that there should be different considerations qua graduate & post-graduate level of education and for professional and technical education institution but excellence in education and maintenance of high standards at this level are must and to fulfill these objects, the State can and rather must in national interest, step in since the education, knowledge & learning at this level possessed by individuals collectively constitutes national wealth.

69. However, it was observed in para 136 that either in minority or non-minority institutions, admissions must be made on the basis of common entrance test which may be either held by State, itself or such institutions either situated in one State or the other collectively. Relevant paras 136, 137 & 138 in PA Inamdar's are *ad infra*:

136. Whether minority or non- minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test 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 Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralized counseling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit inter se of the students so chosen.

137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure therefore subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. 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 mal administration. The admission procedure so adopted by 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.

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till Regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.

70. What finally emerges from judgments (supra), that other than NRI quota, which would not exceed 15% in non-minority educational institutions including unaided professional institutions also, the rest 85% available seats are required to be filled on the basis of common entrance test leave no discretion with the institution in making admission and the procedure to be adopted must be fair, transparent and non-exploitative. As regards State or management quota, it has

not been finally accepted in PA Inamdar's decision (para 51) of Apex court.

71. Apart from decisions reference whereof has been made in details (supra), MCI Regulations, 1997 framed u/s 33 of MCI Act, are mandatory and of binding effect, as observed by Apex Court in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, wherein Apex Court while examining MCI regulations with regard to post-graduate medical education held it to be mandatory. No delusion in standards drawn by MCI for Post graduate course has been accepted, which further came up for consideration later on in

72. State of MP v. Gopal D. Tirthani 2003 (3) SCC 83 . Whenever the State has deluded the standards as laid down by MCI regulations was not accepted by Apex Court in Harish Verma and Others Vs. Ajay Srivastava and Another, while examining PG Medical Education Regulations, 2000.

73. As regards admission to MBBS course, MCI in exercise of powers u/s 33 of MCI Act framed Regulations on Graduate Medical Education, 1997 (MCI Regulations, 1997) para relating to selection of students reads ad infra:

Chapter II- Admission, Selection, Migration & training:

4. Admission to the medical course Eligibility Criteria :-No candidates shall be allowed to be admitted to the medical curriculum of first Bachelor of Medicine & Bachelor of Surgery (MBBS) course until:

Selection of Students : - The selection of students to medical college shall be based solely on merit o the candidates and for determination of the merit, the following criteria be adopted uniformly throughout the country:

1.In states, having only one medical College and one university/board/ examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration.

2. In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;

3. Where there are more than one college in a state and only one university/ board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

4. A competitive entrance examination is absolutely necessary in the cases of Institution of All India character.

74. As per sub-para 2 (supra), wherever in a State, there is more than one university/ board/examining body conducting the qualifying examination or there is more than one medical college, there should be a competitive entrance

examination held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

Clause 5(ii) of Regulations on Graduate Medical Education, 1997 reads ad infra:

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

(ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% of marks taken together in Physics Chemistry and biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in physics, chemistry and biology competitive examination. In respect of candidates belonging to Scheduled Caste, Schedule Tribes or other backward class the marks obtained in Physics, Chemistry, and biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above. Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.

75. Procedure for selection to MBBS course has been referred to in para 5 and as per sub-para (ii) of para 5 of Regulations, 1997, only such candidates are eligible who have secured 50% marks in qualifying examination (10+2) and had obtained minimum of 50% marks in competitive entrance test. However, admissions are made on the basis of merit cum preference.

76. Scheme of MCI Regulations has been considered by Apex Court in Ravindra Kumar Rai Vs. State of Maharashtra and Others, wherein Apex Court observed ad infra:

6. We may at the outset point out that inasmuch as there are three Boards in Maharashtra State which conduct the qualifying examination and inasmuch as there are several Universities, the State of Maharashtra would clearly fall under sub-clause(2) of Regulation 5 made by the Medical Council and not under sub-clause(3). The contention for the State that candidates from CBSE Board are small in number does not appeal to us. Inasmuch as there is no dispute that more than one Board conducts the qualifying examination and the Universities are more than one in number Sub-clause (3) of Regulation 5, in our view, is not attracted. It is also not possible for the State to say that conducting a common entrance examination will delay the admission process or that it will be extremely difficult to conduct the examination. In fact the statement in the counter affidavit to the effect that the State has been conducting a common examination for 1,80,000 at the 10+2 level in the 7 divisional boards would itself show that the State is capable of conducting a common Entrance Examination for admission to

medical colleges, even if the number of students is large. We may also say that in several States, Common Entrance Examination is being conducted even before 1997 when these Regulations made by the Medical Council came into force. In fact in some States, entrance examination is conducted jointly for Engineering and medical students also. We fail to see why the State of Maharashtra should say that it will be an arduous task.

77. It would also be relevant to mention that as regards applicability of MCI Regulations, 1997, it does not make a distinction in regard to admission in private or State medical college. It only relates to procedure which has to be adopted by educational institutions established for admission to medical particularly MBBS course and it is binding upon all such private aided/unaided medical institutions to follow MCI regulations.

78. It is true that University Order 272 deals with admission to MBBS/BDS course in regard to Govt. medical colleges in the State and for such private unaided medical/dental colleges having given consent; but the scheme lays down for holding pre-medical test; its qualifying examination & competitive entrance test is *pari-materia* to MCI Regulations on Graduate Medical Education, 1997.

79. As already observed, *ibid*, University Order 272 if in any manner deludes, primacy would be of MCI Regulations, 1997 and not of University ordinance. But one fact which remains uncontroverted that in view of decisions of Apex Court and MCI Regulations being in consonance thereto; apart from NRI quota (15%), 85% available seats with unaided private professional colleges have to be filled by Common/competitive entrance test (CET). However, for holding modality by CET, it can be by State agency or jointly by institutions which in instant case by Federation constituted for the purpose.

80. From judgments of Apex Court (*supra*) and MCI Regulations, 1997, it clearly manifests that in all such private aided & unaided professional institutions including medical colleges, etc., apart from 15% reserved for NRI/management quota, rest 85% seats of its intake have to be filled by competitive entrance test (CET) and selection on the basis of qualifying examination (10+2) marks has not been approved by Apex Court. Private unaided professional institutions with which we are concerned, can adopt its own mode for admission by holding competitive entrance test (CET) either through State agency or jointly by such professional institutions like present Federation subject to fulfillment of twin test as laid by Apex Court; but no such admission on the basis of qualifying examination (10+2) marks has been permitted for such professional unaided colleges.

81. Judgments in TMA Pai foundation, Islamic Academy & PA Inamdar (*supra*) certainly took note of allocation of seats, their fees structure and procedure of admission in such private professional unaided institutions including Technical & Professional Educational institutions also. We are not in agreement with learned Single Judge that judgments (*supra*) only deal with professional courses wherein

medical course has not been discussed. In our considered opinion, all professional courses run by private unaided institutions including medical courses are guided by judgments (supra) and MCI Regulations, 1997 and admissions in all such unaided professional institutions are to be made in conformity of judgment (supra) and in consonance with MCI regulations, 1997, which is binding upon all professional colleges whether being run by State Govt or private unaided professional institutions.

82. Judgments which learned Single Judge referred to in para 37 (Chander Chinar Bada Akhara Udasin Society v. State & J & K 1996 (1) SCC 732) itself is based on TMA Pai foundation. Judgment in Medical Council of India Vs. Madhu Singh and Others, only laid down schedule for holding examination for admission to medical courses and in which question arising for consideration was with regard to desirability of different courses in private professional institutions.

83. As regards latter judgment in Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, question for consideration was as to whether all India quota of MBBS/BDS courses should be increased from its present 15% but was about giving full effect to 15% quota by including all seats while working out 15% quota and by strictly adhering to the time schedule by State colleges & institutions. Time schedule has been laid down by Apex Court which has to be followed by all States while holding examination for medical courses and admission thereto as is evident from para 28 & 31 of judgment (supra) with regard to pre-medical course and post-graduate medical courses.

84. All the judgments (supra) referred to at the bar are not concerned with respect to allotment of quota for NRI and about modality to be adopted in filling up 85% seats available with private unaided professional medical colleges, which in our opinion certainly have to be filled up by institutions in terms of law laid down by Apex Court in TMA Pai foundation, further referred to in Islamic Academy & finally accepted in PA Inamadar (supra) and so also concerned MCI Regulations, 1997.

85. Thus 85% seats of intake of private unaided professional institutions - medical colleges in Rajasthan can certainly be filled either from the list available with the State agency (RPMT) or through Federation, as well by holding competitive entrance test and not on the basis of qualifying examination (10+2) marks which has neither been approved by Apex Court in any of judgments nor by MCI regulations, 1997.

86. The case of appellant institution is that they have not given consent for admission of students in MBBS course against 85% of intake seats through RPMT-08 list. It is also true that State Government cannot bind upon a private institution unless consent has been obtained or such condition is put while granting recognition and affiliation to the institution or the institution itself by consensual arrangements agreed to make admissions from State agency.

87. In instant case, from material on record, it is clearly manifest that earlier

appellant institution sought permission to make admissions from list prepared through PC-PMT for academic year 2008-09. Matter was considered in meeting held on 15/12/2007 which was attended by Chairman of Federation of Private Medical & Dental Colleges of Rajasthan and it was finally resolved and decided that 85% of intake seats of appellant institution shall be filled from list of RPMT-2008; as such request of appellant institution in regard to admission through PC-PMT list was rejected. It was specifically informed that admissions against 85% of intake seats will be filled up only through RPMT-2008 as is evident from letter dt.25/06/2008 sent by State Government in response to letter dt.14/06/08 of appellant institution.

88. That apart, at the same time, in the brochure published by State for holding RMPT2008, for admission to MBBS/BDS course in various Government/private medical/dental colleges affiliated with University of Health Science, name of appellant institution was included at S. No. 10 (Geetanjali Medical College, Udaipur) with a clear stipulation that seats of appellant institution alongwith Jhalawar private medical colleges will also be filled through RPMT provided the appellant institution gets letter of permission from MCI New Delhi. It is relevant to mention that despite its name being included in brochure (supra) published by State Government for holding RMPT-08, appellant institution never raised objection about its inclusion, *ibid*, while process of admission was initiated by authority for holding RMPT-08. On 16/09/2008, appellant institution itself, sent a letter to Vice Chancellor of University of Health Science regarding admission to MBBS course of academic year 2008-09 specifically stating therein that the institution has not received approval from Government of India/MCI and if approval comes after 2nd counselling, a request was made by the institution to suggest the way or provide the merit list of RPMT students for admission in its college. Exact wordings used in letter dt.16/09/08 (Ann.R/2/5) addressed by appellant institution to Vice Chancellor of the University are *ad infra*:

Sub-Admissions in MBBS course for Session 2008-09

In the above reference, kindly note that till we have not received the approval for Government of India. However, if the approval comes after the second counselling that kindly suggest us the way or/provide us the merit list of RPMT students for the admission in our college.

Thus from above, it clearly emerges that appellant institution had given its deemed consent with regard to the students seeking admission to MBBS course in its college and that being so, vide letter dt.16/09/08 (Ann.R2/5) appellant institution requested to provide merit list of RPMT students for admission in its college.

That apart, when appellant institution was not included in brochure published by Federation while holding PC-PMT 2008 (CET for private colleges), which was held for admission to BDS course in private dental colleges of which the appellant institution was well aware; then such a list could not have been utilized by

appellant- institution for admission to MBBS course.

At the same time, as regards admission made on the basis of qualifying examination, there was absolutely no justification and it is per se illegal and the admissions on the basis of marks secured in qualifying examination (10+2) has never been approved either under MCI regulations, 1997 or by Apex Court in judgments (supra). Only recourse available for appellant institution was to make admission in the facts (supra) out of list available with the State agency (RPMT-2008).

89. As regards University Order 272, learned Single Judge observed that all such private unaided professional institutions are under obligation to make admission in terms of Order 272. In our opinion, University Order 272 only deals with admission to MBBS/BDS courses in Government college but with the consent of private unaided medical/dental colleges, selection can also be made there from.

90. However it is always with consensual arrangements & not otherwise. But as already observed, University Order 272 is completely in consonance with MCI regulations, 1997 as regards eligibility; its procedure for admission and for holding of competitive entrance test. It is *pari-materia* to Scheme of MCI Regulations, 1997 laid down for all institutions run by State or private unaided professional institutions which are under obligation to make admissions as per Regulations of 1997. Even if as observed by learned Single Judge that University Order 272 is applicable to all private unaided institutions, which in our opinion as such may not apply to private institutions but as observed supra, being *peri-materia* to scheme of MCI regulations, 1997, primacy is always of MCI regulations; in such circumstances it will not be so material to have any significance attached to Order 272 while examining the controversy raised in special appeals at hand.

91. As regards joint submissions made by appellants especially institution & students that in exigency of instant case while 30th September being last cut-off date fixed by Apex Court, and 25th September, 2008 was the date on which letter of sanction for annual intake seats was received in appellant institution's office, looking to paucity of time, efforts were made to get students from the list available based on PC-PMT conducted by Federation of which appellant institution was also a member and the PC-PMT is a common test for MBBS & BDS courses; as such even if competitive entrance test (PCPMT conducted by Federation) having not been held for MBBS course, list of successful students based on such CET, can be utilised. In the considered opinion of this Court, such a contention, *ibid*, is without merit for the reason that there was no general notice while holding PC-PMT (like CET) by Federation that admissions can also be made for MBBS, out of the list finally circulated; who were limited in number and the aspirants to take admission. Merely because it is a common test, as alleged by counsel for appellant institution & students; the merit finally prepared & circulated can in no manner be utilised by Federation for admission to MBBS course.

92. Judgment in GSF Medical and Paramedical Association Vs. Association of Management of Self Financing Technical Institutes and Another etc. etc., on which Counsel for appellant institution has placed reliance, will not be of any assistance for the reason that it was a judgment rendered prior to PA Inamdar's decision. That apart, it was a case where in State of Gujarat, no separate competitive entrance test (CET) was conducted by State or association of self financing technical institutes; and the merit was being considered on the basis of 10+2 examination in the year 2003-04 and MCI regulations, 1997 had not been brought to the notice of Apex Court, while admissions were made to private unaided medical colleges. Whereas in the instant case, State of Rajasthan holds a competitive entrance test (CET) in the form of RPMT for admission to medical courses being certainly in consonance with MCI regulations 1997.

93. Further submission made by appellant's counsel that since there was no time left and the list made available by Federation was also exhausted; in such exigency, the only recourse available was to make admission on the basis of qualifying examination (10+2) marks which also have a rational basis, since qualifying examination is also held by State education body and the merit is adjudged by it. Para 4.2.1. of MCI regulations also approves such admissions. In our considered opinion, the said submission has no substance for the reason that para 4.2.1 has no application in the facts of instant case since in State of Rajasthan, there are more than one Board which holds qualifying examination and there being variations of standards at the qualifying examination conducted by different education agency in the State, only mode available in such exigency is to make admission to MBBS course by a competitive entrance test (CET). Any admission other than CET cannot be recognized, being illegal and not permissible under law.

94. As regards the submission made by the Counsel for appellant institution that it was never the case set up by writ petitioners that they are better qualified than those who were admitted by appellant institution or they had applied pursuant to advertisement, but despite of higher merit, they were denied admission, is totally fallacious for the reason that admissions are made by institutions amongst students having participated in competitive entrance test (CET) held by Federation for BDS or based on qualifying examination marks. Suffice it to say that the present writ petitioners, apart from holding qualifying examination, had also appeared in Competitive entrance test (CET) held by State agency and were placed in wait list available with them. This Court can certainly take judicial notice that they were more meritorious than students who were admitted by appellant institution.

95. It has come on record that against 715 seats in dental private colleges of Rajasthan, notified by Federation for PC-PMT2008 in Dainik Bhaskar and brochure appended to the application form, only 400 candidates appeared and only 78 qualified. In the counselling held on 10/08/08 out of 78, only 47 appeared and got admission by allotment of dental college as per their merit and

choice. In these circumstances, *ibid*, such admissions made by appellant institution, out of the select list of Federation or prepared on the basis of qualifying examination (10+2) marks, in no case, can be recognized by this Court and is considered to be illegal and not serving twin test as laid down by Apex Court.

96. Counsel for students (appellants) submits that the admissions could not have been cancelled behind their back and the order of learned Single Judge was passed in violation of principles of natural justice. Such a contention (*ibid*) is also devoid of merit for the reason that writ petitions were filed before the admissions were made and certainly the principles of *lis pendente* would apply. When admissions sought by them are *per se* illegal, as already observed, *ibid*, no right could be conferred in their favour. That apart, we afforded hearing to students who were represented by their Senior counsel and even if for the sake of arguments, it is considered that they have not been afforded hearing before learned Single Judge still opportunity has certainly been afforded and their objections have also been taken note of by this Court.

97. At last, Counsel for institution & students whose admissions have been cancelled vide order impugned has in the alternative submitted, which is normally made, by claiming equity that as they were admitted on 30/09/08 and thereafter two semesters of MBBS course have been undertaken by now and as per law laid down by Apex Court, no admissions can be made after 30th September, and if their admissions stand cancelled then atleast the respondents (writ petitioners) would not be benefited as they cannot be filled in now for the subsequent academic session 2009-10. Further that, when they atleast possess & hold minimum qualifying (10+2) examination with 50% qualifying marks, their admission may not now be disturbed. Such a contention certainly appears to be attractive but is rather a feeble attempt at their end.

98. We take judicial notice of the fact that looking to mushroom growth of private unaided institutions, admissions are being made at their level without taking note of standards laid down by State authority & MCI.

99. After the students are admitted in such institutions by back-door entry or by other indirect methods and when the State authority takes stern action in regard to error being committed in the admissions made, by a passage of time the students certainly go on studying; then such students became their shield and by protecting them, institution can always save their skin.

100. In case where there are one or two students of such like nature, then it may be considered by this Court but in the facts of instant case (*supra*), despite the institution having been aware of the fact of sanction having been accorded for annual intake of 150 seats by Government of India vide its letter dt. 16/09/08, inasmuch as the State agency holding RPMT had included its name in application form subject to the rider if approved/sanctioned for admission being considered and letter dt.16/09/08 was sent to the University to make available

the list of RPMT-2008, even if submission is taken at its face value that institution got intimation in its office on 25/09/08, then atleast they could have asked State agency which was to provide list from wait list being available.

101. It was already noted by Central UG Education Admission Board in its minutes of meeting held on 23/09/07 that institution has not turned up, however, the wait list be prepared for private colleges and the college authority should display their vacancy on 28/09/2008 that the candidates should report on the same day or may join upto 30/09/08.

102. As already observed, *ibid*, the act of institution in admitting students against 85% annual intake seats is wholly illegal and if such students are now allowed to continue, then we would perpetuate illegality further having once been committed by the institution. In our considered opinion, equity is not in favour of such students who not only got admissions illegally & in clear violation of MCI regulations, 1997 but also against canons of law laid down by Apex Court in decisions (*supra*) and the same cannot be recognized by this Court on the pretext of equity alleged at the shield of students' career.

103. Question certainly arises that learned Single Judge while setting aside admissions against 85% annual intake seats of appellant institution, has directed the State to hold counselling from among successful students named in wait list prepared by State agency while conducting RPMT-2008 before commencement of subsequent RPMT-2009, it is clarified that as there are two counselling being held as per direction of Apex Court, admission can be made upto 30th September, taking note of what has been observed by Apex Court in *Harish Verma and Others Vs. Ajay Srivastava and Another*, we consider it appropriate that available seats of academic session 2008-09 may be filled by institution from the wait list available with State agency (RPMT2008). However, they would pursue their MBBS course alongwith students of academic session 2009-10 but would be considered against the preceding academic year 2008-09.

104. Consequently, with the observations (*supra*), all the special appeals fail and are hereby dismissed. No costs.