

(2012) 07 PAT CK 0001

In the Patna High Court

Case No : CWJC No's. 9338 of 2012, 8262 of 2011 and MJC No. 2712 of 2012

Dr. Ranjit Kumar and Others

APPELLANT

Vs

The Union of India and Others
 Dr. Sadhna Kumari Vs
The State of Bihar and Others
 Dr. Ranjit Kumar Vs
The Union of India and Others

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Constitution of India, 1950 — Article 15(5), 29(2), 30, 30(1)
Indian Medical Council Act, 1956 — Section 10A, 10A(1)(b)(ii), 20, 23, 33
National Commission for Minority Educational Institutions Act, 2004 — Section 2(g)

Citation : (2012) 4 PLJR 903

Hon'ble Judges : Prakash Chandra Verma, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Mukesh Kumar Singh, Rakesh Kumar Singh, Mr. Subodh Kumar Jha, Mr. Krishna Murari and Mr. Onkar Kumar, for the Appellant; Prashant Pratap, Kumar Brijnandan, Dharmeshwar Mishra, Sanjay Kumar Srivastava, Hemendra Pd. Singh, Arvind Kumar, Ravindra Kr. Choubey, Anjani Kr Sharan, Awdhesh Kumar Pandey, Yogendra Pd. Sinha and Prabhakar Tekriwal, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Chandra Verma, J.

Facts and Submissions

1. These are a batch of writ applications before this Court, which have been filed by all such students who were allotted seats in two private medical colleges in the State of Bihar, namely Katihar Medical College, Katihar and Mata Gujri Memorial Hospital and College (MGMMC), Kishanganj filed for a direction to the Respondent Nos. 5 & 6 to admit petitioners as per direction and allotment orders issued by Respondent No. 4 or direct the Respondent Nos. 1, 2 & 3 to withdraw recognition of Post Graduate in Katihar Medical College, Katihar (hereinafter referred to as the "Medical College") and M.J.C. arising out of order dated

14.5.2012 passed in C.W.J.C. No. 9338 of 2012 has been filed by the petitioners for initiation of Contempt Proceeding for willful and deliberate disobedience of the order of a Bench of this Court. All the petitioners have been successfully completed their MBBS Course applied for admission in Post Graduate Course in pursuance of advertisement published by respondent No. 4 for the year 2012. As per advertisement, petitioners purchased prospectus for 2012 Post Graduate Medical Admission Test from respondent No. 4, which is annexed as Annexure-1 of the petition. Alongwith the prospectus, application forms were also supplied to the petitioners. They filled up their forms and submitted to respondent No. 4 alongwith all relevant papers and requisite fees. Since the prospectus of respondent No. 4 is one in the same for all the subjects, petitioners have been advised to annex one of the prospectus alongwith the writ application for proper appreciation. Thereafter respondent No. 4 conducted written test for selection of candidates for recommendation and admission in Government/Non-Government Recognized Medical Colleges in the State of Bihar. Petitioners as per scheduled date of examination appeared in the Competitive Test Examination. Their answer sheets were evaluated and finally result was published on 30.3.2012 on internet and in the daily newspaper of State of Bihar on 1.4.2012. Petitioners alongwith others are successful candidates in the State Competitive Examination for admission in the Post Graduate Medical Courses. It is relevant to mention here that the result published in the daily newspaper of the State namely, Sunday Times of India, Patna also published date of counseling giving roll numbers. Date of counseling of the petitioners were in between 16.4.2012 to 29.4.2012 and on the scheduled date of counseling the petitioners appeared before Respondent No. 4 alongwith the all original documents. Counseling was held. As per option, college was allotted and allotment letters were issued on 26.4.2012, 25.4.2012, 19.4.2012, 20.4.2012, 24.4.2012 and 20.4.2012 respectively. Copies of allotment letters of petitioners have been annexed as Annexures-2, 3, 4, 5, 6 & 7. On 24.4.2012 and onward the petitioners reported to respondent Nos. 5 & 6 along with their allotment letters but they refused to take admission of these petitioners. On scheduled date of report for taking admission all the petitioners approached/reported to respondent Nos. 5 & 6 but they were reluctant and finally refused for admission. Subsequently, they directed the petitioners to approach them on or before 30.5.2012. Petitioners were reporting, practically every day after first day of reporting and thereafter they approached the respondent Nos. 5 & 6 with all papers including tuition fee, hostel fee etc. but for one reason or other the petitioners have not been admitted till date.

2. Respondent No. 4 also communicated to Respondent No. 6 on 29.4.2012 by special messenger, who reached before respondent No. 6 on 30.4.2012 at about 10.00 A.M. and handed over the entire papers but he did not accept the papers sent by respondent No. 4 and special messenger reported to respondent No. 4 that respondent No. 6 has declined to accept papers/documents of candidates who were allotted Katihar Medical College for admission in Post Graduate Degree/ Diploma. Thereafter petitioners reported to Principal Secretary,

Department of Health, Government of Bihar vide registered letter dated 2.5.2012 regarding non-admission in Post Graduate Course by respondent Nos. 5 & 6. Copy of the said registered letter dated 2.5.2012 is annexed as Annexure-14 series to this writ petition. This adamant attitude of Respondent Nos. 5 & 6 exhibits clear violation of mandate of Law, Act and Rules and as such invites derecognition and deaffiliation of such Course by Respondent Nos. 1 to 4. Under the aforesaid facts and circumstances, petitioners have no other option except to approach this Hon''ble Court for relief sought for in Paragraph-1 of this writ petition.

3. C.W.J.C. No. 11568 of 2012, C.W.J.C. No. 12612 of 2012 and C.W.J.C. No. 12614 of 2012 have been filed by the petitioners for a direction to respondent Nos. 4 & 5 to admit petitioners in M.S. General Surgery (Degree) Course and Bio-Chemistry (Degree) Course as per direction and allotment orders issued by Respondent No. 4 dated 25.6.2012 & 28.6.2012 or direct the respondent Nos. 1, 2 & 3 to withdraw recognition of Katihar Medical College, Katihar for Post Graduate. The fact of this application is identical as the fact of abovementioned writ petition.

4. So far past history of Respondent Nos. 5 & 6 in respect of admission in Post Graduate subjects as per allotment by respondent No. 4 is concerned, it is stated that in 2010 Post Graduate Medical Admission, as per allotment by respondent No. 4 was not taken. Ultimately affected candidates filed writ application in this Hon''ble Court and then by interim order, admission was directed forthwith and by final order, interim order has been confirmed with a direction that admission of candidates in Post Graduate Course as per allotment by respondent No. 4 will be on State quota. Again in 2011, respondent No. 4 allotted several candidates on the basis of competitive examination, for admission in the college of respondent Nos. 5 & 6 but again one or other reasons respondent Nos. 5 & 6 did not take admission in spite of allotment by respondent No. 4. Again several writ applications were filed in this Hon''ble Court and by interim orders, admission for such candidates have been taken by respondent Nos. 5 & 6 on State quota and matter is still pending. Against the order of the Hon''ble High Court for the Session 2011-14, the Management of the College filed L.P.A. in this Hon''ble Court and the said L.P.A. was also dismissed then the Management filed SLP in the Hon''ble Supreme Court and only grievance of Management was in earlier Court proceeding that they are minority and as such they are imbue and not obliged to follow regulation of Medical Council of India so that it relates to P.G. Admission nor they are obliged to follow the direction of Respondent Nos. 1 to 4. All these pleas were rejected by the learned single Judge in earlier proceeding affirm by the L.P.A. Bench and the Hon''ble Supreme Court also did not interfere so far it relates to direction for admission of students in P.G. Course on State Quota as fixed by Medical Council of India.

5. C.W.J.C. No. 8262 of 2011, C.W.J.C. No. 8314 of 2011, C.W.J.C. No. 9709 of 2011, C.W.J.C. No. 9840 of 2011 and C.W.J.C. No. 9842 of 2011, have been filed

by all such students who were allotted seats in two private medical colleges in the State of Bihar for PGMAT admission for the year 2011-12 for a direction to respondent No. 5 to take admission of the petitioners forthwith in Post Graduate Medical Science (hereinafter referred to as "PGMAT-2011") in pursuance to the selection/recommendation and allotment made by the Bihar Combined Entrance Competitive Examination Board for such admission and further for any other appropriate relief or reliefs for which the petitioners are entitled. The respondent No. 5 is duty bound to obey the specific provision enumerated in MCI Amendment Notification dated 21.7.2009 sub-section 8(2)(d), which clearly provides the nongovernmental institution to take admission of 50% of total seat should be filled up by the competent authority notified by the State Govt. and the remaining 50% by the management of the institution on the basis of inter se academic merit.

6. At the very outset, it is stated that the petitioners after successful completion of their M.B.B.S. Course became eligible for taking admission in Post Graduate Medical Course. Since the respondent State of Bihar through the Bihar Combined Entrance Competitive Examination Board, issued an advertisement on 2.12.2010 to conduct the competitive examination on 29.3.2011 for such selection and recommendation with allotment of seats for such admission in Post Graduate Medical Course in different medical colleges situated within the State of Bihar, which was known as PGMAT-2011. For such admission the Board has also issued prospectus, giving details of the said test with number of seats available in different medical colleges including the vacancy exists for said admission in Post Graduate Medical Course. Clause 5(3) of the prospectus issued by respondent No. 3 clearly stipulates that 50% of the approved P.G. Medical seats available in private recognized colleges will be filled up by the candidate selected in their PGMAT-2011 and the rest 50% of the seats will be filled up by the management of the concerned private medical colleges. The extract of Clause-5(3) is annexed as Annexure-2 to this writ petition.

7. It is also necessary to state here that since all the petitioners have applied in time for such test, the admit cards were issued to them for appearing in the said examination. All the petitioners have appeared in the said test and finally result was published by the Bihar Combined Entrance Competitive Examination Board declaring the petitioners successful and also directed the petitioners to appear in the counseling. The programme of the counseling was also mentioned in the said result sheet. The petitioners were given the individual letter fixed the date of counseling, so that they may appear at the time and date fixed for such counseling/interview. In pursuance to the counseling/interview held by the Bihar Combined Entrance Competitive Examination Board, respondent No. 3, all the petitioners have been selected in the said test and accordingly they have been allotted Katihar Medical College, Katihar. The Board has also issued a letter to the petitioners for such allotment. These letters have been annexed as Annexure-6 series to this writ petition. On receipt of the said allotment letter issued by the respondent No. 3, the Board the petitioners went to the College in question for

taking their admission to Post Graduate Medical Course in time but they have refused to take admission. Thereafter the petitioners came to Patna, made a request to the Board including the Controller of Examination, BCEC Board respondent No. 4 with a request to intervene in the matter so that their admission would be secured and accepted by respondent No. 5. It is emphatically stated that the respondent No. 5 is not in a mood to admit the petitioners arbitrarily in spite of the allotment made by the Board for such admission in terms of the law laid down by the Hon'ble Supreme Court of India and the guidelines, circular and instructions issued by the State instrumentality time to time in this regard. As such the petitioners' valuable right is being infringed by the respondent No. 5.

8. Left with no option to the stone walling by these two institutions, all the students rushed to the Court of law seeking suitable relief in their favour which includes a direction upon the institutions to permit entry in the subject they have been offered admission by the State. When these writ petitions of 2011 were taken up two interim orders came to be recorded on two different dates. By order dated 10.5.2011 the management of Katihar Medical College has been restrained to take admission in Post Graduate medical courses in any faculty in the current year. Later on, vide order dated 20.5.2011 as an interim arrangement the petitioners were allowed entry into the college with a direction that their attendance shall be marked separately. That interim direction of the Court had been of no avail because the management did not honour the direction of the Court on the ground that they have no available vacancy to accommodate any candidates because under the management scheme admission have already been offered to other successful candidates and therefore now it is too late in the day to allow any further entry into two institutions much less under State quota. By order dated 27.6.2011, a Bench of this Court has directed respondent No. 5 to refund the full fees to those students who have been permitted to take admission by ignoring the State quota or claim of 50%. The Court further directed the two institutions to offer admission forthwith to all the petitioners who are before this Court up to 30th June, 2011. If they fail to carry out the direction, the matter will be dealt with suitably and even M.C.I. and the State will have freedom to act against them.

9. M.J.C. No. 2712 of 2012 arising out of order dated 14.5.2012 passed in C.W.J.C. No. 9338 of 2012 has been filed by the petitioners for initiation of Contempt Proceeding for willful and deliberate disobedience of the order of a Bench of this Court.

10. Learned counsel for the petitioners submitted that all the petitioners have been successfully completed their M.B.B.S. Course, applied for admission in Post Graduate Course in pursuance of advertisement published by O.P. No. 4. Opposite Party No. 4 conducted written test for selection of candidates for recommendation and admission in Government/ Non-Govt. recognized Medical Colleges in the State of Bihar. Petitioners as per schedule date of examination

appeared in the Competitive Test Examination. Their answer sheets were evaluated and finally result was published on 30.3.2012 on internet. In the daily newspaper of State of Bihar on 1.4.2012. Petitioners alongwith others are the successful candidates in the State Competitive Examination for admission in Post Graduate Medical Courses. After counseling they have been given allotment letters. They reported to Opposite Party No. 5 along with allotment letters contained in Annexures-2 & 3 of the writ petition. Opposite, Party No. 5 was also present in the College. Both of them refused to take admission of these petitioners.

11. So far past history of Opposite Party Nos. 5 & 6 in respect of admission in Post Graduate Course as per allotment by opposite party No. 4 is concerned, it is stated that in 2010 also Post Graduate Medical Admission was not taken. Ultimately effected candidates filed writ application in this Hon"ble Court and then by interim order, admission was directed forthwith and by final order, interim order has been confirmed with a direction that admission of candidates in Post Graduate Course as per allotment by Opposite Party No. 4 will be on State quota. Again in 2011, O.P. No. 4 allotted several candidates on the basis of competitive examination, for admission in the college of O.P. Nos. 5 & 6. Again for one or other reasons Opposite Party Nos. 5 & 6 did not take admission in spite of allotment made by O.P. No. 4. Again several writ petitions were filed in this Hon"ble Court and then by interim orders, admission for such candidates have been taken by Opposite Party Nos. 5 & 6 on State quota and matter is still pending. The orders passed by this Hon"ble Court will be produced at the time of hearing of this application.

12. Under the aforesaid facts and circumstances, petitioners were no other option except to approach this Hon"ble Court and consequently petitioners filed C.W.J.C. No. 9338 of 2012 for issuance of appropriate direction to the O.P. Nos. 5 & 6 to admit the petitioners in Post Graduate Course. The abovesaid application bearing C.W.J.C. No. 9338 of 2012 was heard by this Hon"ble Court and this Hon"ble Court passed an order dated 14.5.2012 whereby and whereunder the O.P. Nos. 5 & 6 have been directed to take or grant admission to the petitioners forthwith against the State quota and further the Court also directed the Union of India, Medical Council of India and the State of Bihar to file affidavits in the matter. In spite of the interim order dated 14.5.2012 passed in C.W.J.C. No. 9338 of 2012 by this Hon"ble Court, the O.P. Nos. 5 & 6 are deliberately not granting or taking admission of the petitioners in their respective Courses against the State quota and the petitioners are compelled to file this Contempt Application due to the time framed by the Hon"ble Supreme Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, .

13. Learned counsel for Medical Council of India submitted that admission in P.G. Medical Courses in all Medical Colleges in India including private medical colleges, is regulated by Post Graduate Medical Education Regulations, 2000 framed by Medical Council of India (hereinafter referred to as "MCI") u/s 33 of

the Indian Medical Council Act, 1956 with the prior approval of the Central Government. He has submitted that there can be no increase in admission capacity without complying with the requirements laid down u/s 10A of the Indian Medical Council Act, 1956 and the P.G. Medical Education Regulations, 2000. Neither Section 10A of IMC Act, 1956 nor the Regulation permit the council to create superannuary seats in the Medical Colleges on any ground. Section 10A(1)(b)(ii) of IMC Act, 1956 mandates that no Medical College shall increase its admission capacity in any course of study or training (including a Post Graduate Course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section. The sanctioned intake capacity of Katihar Medical College in P.G. medical courses is 38 seats whereas the sanctioned intake capacity of Mata Gujri Memorial Medical College in P.G. medical courses is 25 seats. Decision to increase the sanctioned intake capacity of these Private Medical Colleges even as one time measure will open a floodgate because for the academic session 2012-13 a minimum of seven P.G. seats will have to be increased in Katihar Medical College and in Mata Gujri Memorial Medical College a minimum of two P.G. seats shall have to be increased for the academic session 2012-13. Similarly, 22 P.G. seats shall have to be increased in Katihar Medical College for the academic session 2011-12 because the Katihar Medical College filled all the 38 sanctioned P.G. seats by the students from Management quota and two more students and thereafter some 20 students were admitted on the strength of the various orders passed by this Hon''ble Court in Dr. Sadhna Kumari and other analogous matters. All of these students are continuing their studies because they are protected by the stay order of the Hon''ble Court in the case of Dr. Sadhna Kumari and other analogous matters. All of these students are continuing their studies because they are protected by the stay order of the Hon''ble Supreme Court dated 31.1.2012 passed in SLP(C) No. 31357 of 2011. In addition to this a minimum of eight P.G. seats shall have to be increased for the academic session 2011-12 in Mata Gujri Memorial Medical College. He further submitted that mid-stream admission in any P.G. Medical Course is not permissible. This is the consistent view of the Hon''ble Supreme Court which is also reflected in the P.G. Medical Education Regulations, 2000. The Hon''ble Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has authoritatively held that the right of unaided minority educational institutions to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

14. Learned counsel for Respondent No. 5, Medical College submitted that Katihar Medical College is an unaided private minority institution and has been established and is being run under Article 30(1) of Constitution of India. The College is imparting medical education up to the level of post graduate courses. The Govt. of India, National Commission for Minority Educational Institutions, after being satisfied that Katihar Medical College is a Minority Educational Institution

within the meaning of Section 2(g) of National Commission for Minority Educational Institution Act, 2004, has declared the said Institution to be a minority institution covered under Article 30 of the Constitution of India by a notification dated 27.11.2008. Katihar Medical College has been affiliated to B.N. Mandal University, Laloo Nagar, Madhepura, Bihar in MBBS Course since 1987-88. The Central Govt. by Gazette notification dated 3.8.2001, on the recommendation of MCI, amended Schedule-1 of the M.C.I. Act and granted recognition to the MBBS degree to be awarded by the B.N. Mandal University, Bihar in respect of the students of Respondent No. 5 College, The MCI promulgated Post Graduate Medical Education Regulations, 2000 on 7.10.2000, wherein under Regulation 9, it has been provided that in Non-Governmental Institutions 50% of the total seats shall be filled up by the competent authority and the remaining 50% by the management of the institution on the basis of merit. The said regulation was challenged before the Hon''ble Karnataka High Court in the case of Dr. Biju Poulose vs. State of Karnataka & Ors. The Hon''ble Karnataka High Court by a judgment dated 17.12.2003 passed in W.P. Nos. 41058-41101/2003 (Dr. Biju Poulose vs. State of Karnataka) held that the said P.G. Regulations pertaining to Regulation 9 which stipulate a 50% limit on the management seats and 50% to be filled up by the competent authorities, ceases to be effective in so far as it was not in consonance with the judgment rendered by the Hon''ble Supreme Court in the case of TMA Pai Foundation. The Hon''ble Supreme Court in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, overruled the judgment rendered in the case of "Islamic Academy" with regard to fixation of quota regarding sharing of seats between the institution and State Government and held that no quota or percentage of admissions can be carved out to be appropriated by State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice as also members of their own community, both to a limited extent only and not in a manner and to such an extent that their Minority Educational Institution Status is lost.

15. He further submitted that Government of India, National Commission for Minority Education Institution, after being satisfied that the Respondent No. 5 College is a Minority Educational Institution within the meaning of Section 2(g) of National Commission for Minority Education Institution Act, 2004, has declared the said institution to be a minority institution covered under Article 30 of the Constitution of India by a notification dated 27.11.2008. The interim order dated 27.6.2011 with a direction to admit the writ petitioners and such others allotted by the State Government is a direction to the respondent to violate the Regulation of Medical Council of India prescribing the time schedule for completion of admission process and also to disobey the direction of the Hon''ble Supreme Court in Civil Appeal No. 8977 of 2010 Katihar Medical College vs. Kundan Kishore. It is reiterated here that the order of this Hon''ble Court dated 27.6.2011 has proceeded on the presumption that the Hon''ble Supreme Court has extended the last date of admission till 30.6.2011 vide Annexure-7 of I.A.

No. 4046 of 2011 in C.W.J.C. No. 8262 of 2011. In this regard it is submitted that the order of the Apex Court dated 13.5.2011 in Writ Petition (C) No. 197 of 2011 Annexure-7 to I.A. Petition No. 4046 of 2011 is exclusively for all India seats and not applicable to State Government quota seats. It is pertinent to state here that the compliance of the interim order of this Hon''ble Court dated 27.6.2011 has led to excess admission of students and that too after expiry of the last date for closing of admission process under State Govt. quota which is violative of the Medical Council of India Regulation and direction of the Apex Court in Mridul Dhar case. The respondent No. 5 by their various letters and lastly on 29.3.2012 have sought advice and guidance of the Medical Council of India in the matter is being the apex technical body of the field is only competent body to approve the annual intake of students but they are keeping mum and till date have not tendered any advice, although they are party and being represented this case through their counsel and were party respondent in the aforesaid L.P.A. & SLP also.

16. He has further submitted that no relief could have been granted to the writ petitioners without either impleading the Management Quota candidates or without issuing notice to them or without hearing them, it ought to be considered that the respondent No. 5 College is a minority, unaided private institution, declared as such u/s 2(g) of the Act by the National Commission and is administered by Article 30 of the Constitution of India, hence Regulation 9 would have to be read down so as to exclude the said college in view of the law laid down by the Hon''ble Supreme Court, therefore, there is no question of any State quota. It ought to be appreciated that Article 15(5) read with Article 30(1) of the Constitution of India read with the law laid down by the Hon''ble Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, makes it amply clear that minority unaided private institution/colleges are fully empowered to control their administration as admission to various courses and the State Govt. has no right to interfere with the same, as such Regulation 9 is not applicable in the case of the respondent College inasmuch as the said regulation will have to be read down so as to exclude the respondent No. 5 from its ambit and applicability. It is stated that no quota or percentage of admissions can be carved out to be appropriated by State in a minority or non-minority unaided educational institution.

17. It is further submitted that the provisional admission of State Govt. allottees in compliance with the order of this Hon''ble Court dated 27.6.2011 has caused admission of students in excess of approved seats and that too after expiry of the last date for admission of students, which is not permissible in view of judgment of the Apex Court in Medical Council of India Vs. Madhu Singh and Others, and Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and is also violation of Medical Council of India Regulation. The respondent No. 5 vide his various letters lastly letter dated 27.3.2012 has sought guidance and advice from the Medical Council of India but they are keeping mum

in the matter. The respondent Nos. 1 to 4 i.e. the State of Bihar are fully responsible for creating the present situation inasmuch as they committed a grave error while the name of the respondent No. 5 College in the prospectus issued by them, inviting applications for PGMAT-2011 and going ahead with the allotment process despite the letter of the respondent No. 5 College dated 19.3.2011, written to the State Govt. to desist from taking any action pursuant to the prospectus issued for PGMAT-2011 in so far the respondent no. 5 College is concerned. He has also submitted that the cardinal principle of natural justice says that opportunity of hearing is required to be given to the Management quota students. Considering the preceding paragraphs, both on laws as well as on facts, it would be clear that there is no merit in the writ petitions filed by the writ petitioners and the same are liable to be dismissed being devoid of any merit.

18. Learned counsel for respondent Nos. 1 to 4 has submitted that Bihar Combined Entrance Competitive Examination Board (BCECE Board in short) has been constituted under Bihar Combined Entrance Competitive Examination Act, 1995. In accordance with the provision in Memo No. 37(26)/Health, dated 4.2.2000 of the Department of Health Government of Bihar, the BCECE Board was entrusted to conduct Post Graduate Medical Admission Test (PGMAT) every year in order to select candidates for admission in Post Graduate Degree and Diploma Medical Courses in the Institution of Bihar. Accordingly, for conducting PGMAT-2011 the draft prospectus and draft application forms were sent to the Department of Health, Govt. of Bihar for any amendment required and for approval vide BCECE Board's letter No. 2575/2010 dated 14.9.2010. Alike previous year's prospectus (PGMAT-2010), the draft prospectus of PGMAT-2011 had provision contained at para-5.3 which states that as communicated by the Department of Health, Govt. of Bihar and in the light of the notification of the Government of India regarding amendment contained in Post Graduate Medical Education Regulation 2000, the admissions against 50% of the approved P.G. Medical seats available in Private recognized Medical Colleges will be filled by the candidates selected through PGMAT-2011 and the rest of the P.G. Medical seats of the Private recognized Medical Colleges will be filled by the management of the concerned Private Medical Colleges. It is further stated that the draft prospectus as sent to the Department of Health, Government of Bihar for amendment if needed and approval to conduct PGMAT-2011 also contained alike previous year. Thereafter PGMAT-2011 was conducted and merit list based on this competitive examination was published in leading local dailies of Bihar and also placed on the website of the BCECE Board alongwith the Counseling Programme. Prior to the conduct of the counseling for allotment of P.G. Medical Courses/institution based on PGMAT-2011, the Institution-wise/course-wise/category-wise availability of P.G. Medical Degree and Diploma seat chart was provided by the concerned authority of the Department of Health, Govt. of Bihar. Accordingly, those candidates who opted for course available in Katihar Medical College, Katihar at their respective merit position based on merit-cum-choice,

were allotted the seats in Katihar Medical College as per the seat-chart provided by the concerned authority of the Department of Health, Govt. of Bihar prior to conduct of counseling. But the Katihar Medical College, did not take admissions against the allotment orders issued by the BCECE Board as complained by the candidates. In view of the aforesaid facts and circumstances, the BCECE Board informed the Principal Secretary, Department of Health, Govt. of Bihar regarding refusal of the admission by the Katihar Medical College, Katihar and M.G.M. Medical College, Kishanganj and requested to take appropriate action and ensure that the admissions to the candidates should be taken within stipulated time because the matter is related to admissions in fixed time frame, as such the matter be resolved without any delay. Thereafter, Katihar Medical College, Katihar vide his letter had earlier shown their inability to take admission of the candidates based on PGMAT-2011 against 50% State quota seats as contained in the regulation issued by MCI and also in the prospectus of PGMAT-2011. According to the provision of "Post Graduate Medical Education (Amendment) Regulation, 2009 Part-II" provides that in Non-Government Institutions fifty percent of the total seats shall be filled by the competent authority notified by the State Government and the remaining fifty percent by the managements of the institution on the basis of inter se academic merit. In view of the aforesaid facts and circumstances the respondent BCECE Board allotted courses to the eligible candidates based on merit-cum-choice basis for admissions in Katihar Medical College, Katihar.

19. It is further submitted that the prayer of the petitioners is justified. Allotment of P.G. Medical seats during the first counseling based on PGMAT-2011 as per the directives of the Deptt. of Health, Govt. of Bihar as also since the MCI has not withdrawn the provision as contained in the notification dated 24.7.2009 at para-4-(2)-(d) published in the Gazette of India with regard to 50% seats of Private Medical Colleges to be filled by competent authority notified by State Govt. the Katihar Medical College must not deny admissions against allotment orders issued to them during the first counseling based on PGMAT-2011.

FINDINGS

20. Post Graduate admission in Medical Colleges are governed by Medical Council of India. Post Graduate Medical Education Regulations, 2000 framed by the Medical Council of India for short M.C.I. in exercise of the powers conferred by Section 33 read with Section 20 of the Indian Medical Council Act, 1956. Second proviso of Clause-9 of the regulations provides for. 50% seats of the non-governmental institutions shall be filled by the competent authority notified by the State Government and the remaining 50% by the managements of the institution on the basis of inter se academic merit. The said proviso is reproduced here as under:-

Provided further that in Non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority notified by the State Government and the remaining fifty percent by the management(s) of the institution on the

basis of inter-se Academic Merit.

21. The aforesaid regulations were based on the scheme in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . The aforesaid second proviso to Clause-9 of the Regulations was considered by Division Bench of Karnataka High Court in Dr. Biju Poulse vs. State of Karnataka. In para-27 of the judgment it has been held that the regulation ceased to be effective as it was not in consonance with the decision in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, .

In TMA Pai's case (a Bench of 11 Hon'ble Judges) while answering the question No. 4 held that the right to admit students being an essential facet of right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not entitle to interfere with that right, so long as admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

22. Question-5 is equally important. Question Nos. 4 & 5 and answers thereof is reproduced hereunder:-

Q. 4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions viz. schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the State or university concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens rights under Article 29(2) are not

infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the State agency followed by counseling wherever it exists.

Q. 5. (a) Whether the minorities' rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Q. 5. (b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid? A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions--the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

T.M.A. Pai Foundation case was considered and ratio was called out by the Seven Judges Bench in P.A. Inamdar and Others Vs. State of Maharashtra and Others, . On seat sharing specific question was framed and has been answered which is reproduced as under:-

122. Apart from the generalized position of law that the right to administer does not include the right to maladminister, an additional source of power to regulate by enacting conditions accompanying affiliation or recognition exists. A balance has to be struck between the two objectives: (i) that of ensuring the standard of excellence of the institution, and (ii) that of preserving the right of the minority to establish and administer its educational institution. Subject too a reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (i) the test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (iii) that there is no inroad into the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation the essential character; of the institution being a minority educational institution, is not taken away.

23. Thus, it has been categorically laid down that there cannot be any State

quota in the Post Graduate Private Unaided Minority Institutions. It is undisputed that respondent college are unaided minority institutions.

24. Provisions contained in second proviso of regulation has been though amended up to 2012 but the 50% quota has been fixed to be filled on allotment of candidates by State Government have been retained in non-governmental institutions. The non-governmental institution has to be understood and applied as per law laid down in P.A. Inamdar's case (supra). Thus, the non-governmental institution does not include private unaided minority institutions in the aforesaid clauses Provisions contained in the amended MCI Regulation up to 2008 and 21.4.2012 regulating the Post Graduate Medical Regulation containing the provision of 50% quota in nongovernmental institution shall not apply to the private unaided minority institutions.

25. The submission that second proviso to Clause-9 as amended and renumbered after the last amendment dated 31st April, 2007 providing for 50% State seat is a condition for grant of recognition by MCI, therefore, it constitute an agreement. Thus, protected by observation made in T.M.A. Pai's case as (consensual) agreement. Undisputedly, the regulations have been framed unilaterally without taking the consent of the minority institutions, the petitioner. The unilateral condition of contract being contrary to law laid down by the Supreme Court that no seat sharing is permissible as held in P.A. Inamdar case, which interferes with the right to administer which includes admission in minority institutions being contrary to provisions contained in Article 30 is unconscionable condition of contract hit by Section 23 of the Indian Contract Act as held in the matter of service contract in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . The interim orders were granted considering aforesaid provision containing 50% seats to be filled by State to the respondent medical colleges, which is hereby held not to be applicable. The Hon''ble Supreme Court has categorically held in several decisions that admission to the PG Colleges should not be granted by interim order For the reason that admission granted by interim order is always subject to the final decision of the writ petition and like the present case the 50% seats have been filled on allotment by Government which is contrary to the law laid down by the Hon''ble Apex Court in P.A. Inamdar case cannot be said valid and allotment made in these colleges and admission thereon is held to be invalid.

ORDER

Accordingly, these writ petitions are dismissed. No order as to costs.