
(2001) 12 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 30353, 35491 and 38811 of 2001

Dr. R.R. Patil and

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

University Grants Commission Act, 1956 — Section 12 A

Citation : AIR 2002 Kar 211 : (2002) ILR (Kar) 300 : (2003) 4 KarLJ 331 : (2002) 1 KCCR 692

Hon'ble Judges : G.C. Bharuka, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Ravi B. Naik and Madhusudan R. Naik and Kamath and Kamath, for the Appellant; N.K. Ramesh, AGA, A.N. Ganguly, K.K. Venugopal and R.N. Narasimha Murthy, N. Khetty, S.A. Nazeer, M.R. Naik, Mohammad Ather, Asst. Advocate, B.S. Patil, M.V. Seshachala, B.A. Lokesh, A. Lobo, L.M. Chidanandaiah, Ashok B. Hinchegeri, D.N. Nanjunda Reddy, Gangi Reddy, T.S. Mahes Murthy, K. Shashikshiran Shetty and Meshesh R. Uppin, for the Respondent

Judgement

Bharuka, J.—The controversy Involved herein relates to the method of admission of Post Graduate Medical and Dental courses in the colleges run by the private managements The crucial question is as to whether the college Managements are entitled to device and adopt their own individual yardsticks of determining the inter se merits of candidates appearing for the courses and give admissions to them as per their choice, or, they are mandatorily bound to adhere to the normal and procedure statutorily laid down by the University Grants Commission, Medical Council of India or the Dental Council, of India (in short UGC, MCI and DCI respectively), as the case may be.

2. We find it proper to mention at the very threshold that the UGC. MCI and DCI have been established under the Parliamentary Acts. These Acts are University Grants Commission Act, 1956, Indian Medical Council Act. 1956 and the Dentists Act. 1948 (in short the "UGC Act", "MCI Act" and "Dentists Act,). The said bodies, in order to carry out their statutory duties have framed regulations. Inter

alia to regulate admissions to P.G. Courses as well, in light of which we are required to determine the impugned rights of the private managements to admit students at their discretion. Certain constitutional issues pertaining to interpretation of relevant legislative entries have also been raised as so as to limit the scope and applicability of the said Regulations in order to emphasize the exclusive power of the State Government to regulate admissions and the extent of absolute discretion of the management in this regard,

3. Writ Petition No. 30353/2001 has been filed as a Public Interest Litigation. The petitioner had been the Principal of various colleges. He, based on his personal experience and knowledge, has alleged that the Managements of private medical colleges have been giving admission to Post Graduate courses (PG courses) to the desiring candidates by charging heavy capitation fees in flagrant violation of all statutorily prescribed norms and procedure with active connivance of the State Government and thus had been unjustly enriching themselves at the cost of standard of education, fairness, moral values and social needs. According to him, the situation is divesting and requires Immediate intervention of the Court. The petitioner emphasis for need of offering the higher and Super specialty courses only to most deserving candidates " based on their grievances grievances achievements and not on their economic power and manipulative skills.

4. Writ Petition in W.P. No. 38811/2001 has also been filed as Public Interest Litigation by a doctor by profession raising the grievances similar to the one raised in W.P. No. 30353/2001 Inter alia praying for quashing of the Government Notification dated 25-8-2001 providing for 80% management quota in medical and dental P.G. courses and to direct the respondent dental colleges to admit students strictly in accordance with the Regulations, framed by the University Grants Commission. The prayer made in the original writ petition has been supplemented by an affidavit filed by the petitioner on 9-11-2001.

5. Writ Petition in W.P. No. 35491/2001 has been filed by the BLDE Associations B.M.Patil Medical College questioning the validity of Regulation 9 of the "Post Graduate Medical Education Regulations, 2000". They have also taken the plea that UGC Regulations have no application to their colleges.

Stand of the Private Managements

6. According to the counter-affidavit filed by the managements of private medical and dental colleges, as also from the statements furnished by the respondent Rajiv Gandhi University of Health Sciences, it appears to be an admitted fact that the managements of private medical and dental colleges have sought to give admissions to candidates in P.G. Courses in respect of quota allotted to them by the State Government in flagrant violation of the provisions contained in the statutory Regulations framed under the Central Acts, prescribing norms for determining the inter se merit and the procedure for admission to the courses. The private managements have asserted that they have an absolute right of

devising their own method of determining inter se merit in respect of the quota allotted to them by the State Government and admit students on the basis of the merits so determined through their self-constituted selection committees. Sri. A.K. Ganguly and Sri Venugopal learned Senior Advocates, have appeared for private medical and Dental colleges, Sri R.N. Narasimhamurthy, learned Senior Advocate, has appeared for the intervening candidates who claims to have been allotted seats in P.G. Courses by the managements of the private medical and dental colleges. Stand of the University

7. Rajiv Gandhi University of Health Sciences, Bangalore, is the only University in the State, which is empowered to affidavit colleges, conducting the courses in Health Sciences. It is established under the Rajiv Gandhi University of Health Sciences Act, 1994. The Registrar of the said University has filed personal affidavit placing on record the relevant material facts. According to him, there are 17 medical colleges in the State which conduct P.G. and Diploma courses. The total number of seats available in these courses are 1240. Out of the said 17 colleges. 4 are Government colleges. The total number, of P.G. seats in Government medical colleges are 385. whereas, the total number of P.G. seats in private medical colleges are 855. Details in this regard has been filed at Annexures R-8, R-9, R-10 and R-11.

8. So far as P.G. Course in dental sciences is concerned, there are. In total 13 dental colleges, out of which one is the Government college. There are, in total 321, P.G. seats in these colleges. Out of 321 seats, 21 seats are in Government college and remaining 300 seats are in private colleges.

9. Pursuant to the Government Order, the respondent University had conducted entrance test on 1-7-2001 for filling up of all the seats in Government colleges and 20% of seats in private medical and dental colleges, the total being 526 (Medical) and 81 Dental. In the entrance test so conducted, 4724 medical and 1306 dental candidates had appeared. According to the Registrar of the University, because of filing of writ petition in W. P. No. 31450/01 and 30728-29/2001 and connected matters in this Court ranking list of the candidates who had appeared in the entrance test could not be finalised till 19-10-2001 i.e. the date of filing the affidavit.

10. The Vice-Chancellor of the respondent University has also come on record through his separate affidavit. According to him, the calendar of events was published by the University by its notification dt. 3-7-2001 providing the last date of admission and commencement of the P.G. courses. But because of the above Court cases a circular was issued on 28-9-2001 stating therein that a fresh calendar of events will be issued in terms of the orders of Hon''ble High Court which may be passed in due course.

11. Subsequently, in a later affidavit dated 11-12-2000 filed by the Registrar of the respondent University, he has stated that so far no seats have been allotted to my candidate in medical and dental P.G. Courses either in the Government

colleges or against Government seats (free seats) in the private medical and dental colleges. According to him, because of the said reasons, the fresh calendar of events has not been published so far and therefore the P.G. Courses have not yet been commenced.

12. According to Sri S.A. Nazeer, learned counsel for the University, all the seats in P.G. Courses have to be filled only in accordance with the UGC Regulations. He submits that if construed in proper perspective and the object sought to be achieved, there is no inconsistency between the Regulations framed by the UGC, MCI and DCI because all intend to achieve the excellence in higher education by selecting the best among the eligible.

Re : Commercialisation of P.G. Courses :

13. In the case of Miss. Mohini Jain Vs. State of Karnataka and others, the Supreme Court while dealing with the vice of charging capitation fees by the Medical Colleges in the State usefully referred to the Presidential Address delivered by Dr. K.S, Chugh, the awardee of eminent medical man for 1991 at the 14th annual conference of the Association of Physicians in India. The relevant extracts of the said address is as under (at pp 1865-66) :--

"It is common knowledge that many of the newly started medical colleges charge huge capitation fees.The result is a back door entry into medical training obtaining solely by the ability to pay one's way through. Even the advice of the Medical Council of India is sidelined in many such cases. The Government must resist all pressures to allow this practice to continue. Admission to medical colleges bought by paying capitation fees must be stopped forthwith and all such existing institutions required to strictly adhere to the Medical Council of India rules.

In the words of my predecessor Dr. V. Parmeshvara, "The need of the hour is better doctors than more doctors, better health education than more education, better health care than more health care delivery".

14. In the case of T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others, . the Supreme Court had to initiate suo motu contempt proceedings against the Government of Maharashtra and its officers for permitting filling up of seats in NRI quota contrary to the order dt. 5-4-1994 passed by the Apex Court in private medical and dental colleges. The Supreme Court while deprecating such an act in strongest terms and holding the officers of the State guilty of contempt of Court, inter alia, observed that :

"It is common knowledge that each seat under this quota is sold for huge sums not all accounted for and not all in Indian currency".

15. In the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., the Constitution Bench of the Supreme Court (five Judges) has held that :

"It is the discretion in the matter of admission that is at the root of the several ills complained of. It is the discretion that has mainly ;led to the commercialisation of education. "Capitation fee" means charging or collecting amount beyond what is permitted by law; all the Acts have defined this expression in this sense. We must strive to bring about a situation where there is no room or occasion for the management or any one on its behalf to demand or collect any amount beyond what is permitted."

16. The Parliament by taking serious note of the above vices, which have been specifically noticed in the Statement of Objects and Reasons, had by its Act 59 of 1984 (w.e.f. 1-1-1984) inserted Section 12A in the UGC Act for regulation of fees and prohibition of donations in the courses pertained to higher education. In Clause (c) of Sub-section (2) of Section 12-A of the UGC Act, the Parliament clearly mandated framing of statutory regulations to ensure that no candidate secures admission to such course of study by reason of economic power and thereby prevents a more meritorious candidate from securing admission to such course of study:

Issues involved :

17. In the backdrop of the above factual aspects and the contentions raised at the Bar. the following questions need to be decided by us --

(i) Whether legislative field comprised in Entry 66 of List I (Union List) of the 7th Schedule to the Constitution empowers the Parliament to make laws providing for regulating the procedure for admissions to the courses of higher education.

(ii) Whether the laws made pursuant to Entry 66 List-I by the Parliament and its delegate has paramountcy over State laws and consequently the latter becomes void to the extent of inconsistency/repugnancy.

(iii) If the answer to question (i) is found to be affirmative, whether UGC, MCI, and DCI have the competence to make regulations providing procedure for admission to P.G. Course under the respective enabling legislations.

(iv) If there be any conflict in the Regulations framed by the UGC on one hand and MCI or DCI on the other hand, then which has to prevail.

(v) Whether there is, in fact any operational conflicts between the Regulations framed by the respective statutory bodies constituted under the Central Acts.

(vi) Whether the State Government has the power to allot quotas to the managements of private Medical and Dental Colleges for admitting students to P.G. course and if so whether it can be filled by them at their own discretion.

Re : Question Nos. 1 & 2

18. The first two questions are closely inter-linked. Therefore, for the sake of convenience and better understanding, discussions on these two questions are taken together.

(i) Relevant Legislative Entrance and amendments thereto.

19. Entry 66 of List-I (Union List) of 7th Schedule of the Constitution reads as follows :--

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

This entry has remained unchanged since the inception of the Constitution.

20. Before the Constitution (Forty-second Amendment) Act, 1976, will came into force with effect from 3-1-1977, Entry 11 in List II i.e. the State List, was follow.

"11. Education including universities subject to the provisions of entries 63. 64. 65 and 66 of List I and Entry 25 of List III"

21. Entry 25 of List III (Concurrent List) prior to the said Constitution Amendment read as follows :

"25. Vocational and technical training of labour""

After Amendment it read as follows :

"25. Education, including technical education, medical education and universities subject to the provisions of Entries 63, 64, 65 and 66 of the List I: vocational and technical training of labour."

22. Entry 63 of List-I related to the Benaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 371-E i.e. Central University in Andhra Pradesh. and other Institutions declared by Parliament by law to be an institution of national importance. Entry 64 of the said list refers to institutions for scientific or technical education financed by the Government of Indian wholly or in part and declared by Parliament by law to be institutions of national importance and Entry 65 relates to the Union agencies and institutions for (a) professional, vocational or technical training, including the training of police officers or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.

(ii) Judicial interpretation of the above legislative Entries.

23. In the case of The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, a 6-Judges Bench of the Supreme Court on having noticed overlapping of legislative fields covered by Entries 66 of List-I and Entry 11 of List II [as it existed prior to Its deletion by 42nd Constitution Amendment] laid down following principles for its resolution. (Para 23) :--

(i) Item 11 of List II and item 66 of List,-I must be harmoniously construed. The two entries undoubtedly overlap : but to the extent of overlapping, the power conferred by Item 66 List-I must prevail over the power of the State under item 11 of List II.

(ii) The power to legislate in respect of primary or secondary education is exclusively vested in the States by Item No. 11 of List II.

(iii) Use of the expression "subject to" in item 11 of List-II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures.

(iv) If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of article 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be Invalid.

24. In *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, , the Supreme Court has further declared that --

(i) Item No. 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. (Para 25)

25. *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, has been referred to and considered by 5-Judges Bench of the Supreme Court in the case of *R. Chitralekha and Another Vs. State of Mysore and Others*, by holding that (Para 7)--

"This and similar other passages indicate that if the law made by the State by virtue of entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical Institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down, but that is a question of fact to be ascertained in each case.

26. The 42nd Constitution Amendment has not brought about any change in the scope of entry 66 List-I. This has been explained by the Supreme Court in the case of *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, . It has been held that (Para 12) (of SCC): (Para 6 of AIR) :--

The subject "co-ordination and determination of standards in Institutions for higher Education or Research and Scientific and technical Institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among

others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of the List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in Institutions has always been the preserve of Parliament".

27. This judgment has been followed with approval by the Supreme Court in a recent judgment in the case of *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, .

28. The question before a 5-Judges Bench of the Supreme Court in the case of *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, was as to whether any special provision in the form of lower qualifying marks in P.G. courses in Engineering and Medicine can be prescribed for reserved category of candidates. For the purpose of examining the said question, the Supreme Court felt it necessary to examine the extent of legislative fields covered by Entry 66 of List-I (Union List) and Entry 25 of List III (Concurrent List). In paragraph 35 of the Judgment it has been Inter alia held that--

"Both the Union as well as the States have the power to legislate on education Including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in Institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot while controlling education in the State. Impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government,"

29. In *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, , the Supreme Court has overruled its earlier 3-Judges Bench opinions in the cases of *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, and *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, by holding that (Para 46) :--

".....It held that Entry 66 of List I would not apply to the selection of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation II of the regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the regulations framed by the Medical council of India a little later. But we cannot agree with the observations made in that Judgment to the effect that the process

of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates, for reasons which we have explained, earlier the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively Imparted in the medical colleges,

30. In *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, . It has further been held that (Para 48) :--

"In this connection, our attention is also drawn to the emphasis placed in some of the Judgments on the fact that since all the candidates finally appear and pass in the some examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, said that everybody has to take the same postgraduate examination to qualify for a postgraduate degree. Therefore, the guarantee of quality lies in everybody passing the same final examination, the quality is guaranteed at the exist stage, therefore, at the admission stage, even ff students of lower merit arc admitted, this will not cause any detriment to the standards, There are similar observations in *Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc.*, . This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possess the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If excellence is to be promoted at postgraduate levels. the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the Inputs - caliber of students, caliber of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will; guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion of *Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc.*, ".

31. With respect to P.G. Regulations framed by the MCI, it has further been held that (Para 52) :--

"These regulations, therefore, are binding and the States cannot. In the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely Impinge upon the regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. the power of the States under Entry 25 of List III is subject to Entry 66 of List I"

32. In a subsequent 3-Judges Bench of the Supreme Court in the case of Veterinary Council of India Vs. Indian Council of Agricultural Research, , the question for consideration was whether the Veterinary Council of India (in short the "VCI") had the power to regulate admissions to the veterinary Institutions. The VCI has been established u/s 3 of the Veterinary Council of India Act. 1984. Section 22 of this Act empowers the VCI to specify by Regulation, the minimum standard of veterinary for granting recognised degree/diplomas in veterinary sciences by various institutions affiliated to or part of the State Agricultural Universities. The Bench held that (Paras 16, 18) :--

"In view of the Judgment of the Constitution Bench in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, it is no longer possible to argue that norms for admission come into the picture only after admissions are made and have no connection with "standards of education". On the contrary, regulation of admissions has a direct Impact on the maintenance of standards of education and in exercise of its power to prescribe and maintain standards of education, VCI has the right as well as an obligation to regulate admissions to the veterinary institutions against the 15% all --India quota by framing appropriate regulations."

"The Constitution Bench in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, expressly disagreed with the views earlier expressed in State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, and Ajay Kumar Singh cases (1994 AIR SCW 2515) in this regard."

33. From the above pronouncements of the Supreme Court, it clearly emerges that--

(i) The process of selection of candidates for admission to institutions for higher education has a direct impact on maintenance of standards of such education (See: Dr Preeti Srivastava and Another Vs. State of M.P. and Others, Para 46 & Veterinary Council of India Vs. Indian Council of Agricultural Research, (Para 16)

(ii) The power to co-ordinate under Entry 66 means harmonising or bringing into proper relation in which all the things so coordinated participate in a common pattern of action. (See : The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, Para 25)

(iii) Under Entry 66 List-I, the Parliament has legislative competence to make laws both for (i) co-ordination, as well as (ii) determination of standards, in the institutions of higher education Including all matters which are ancillary and subsidiary thereto. Therefore, as held by 5- Judges Bench of the Supreme Court in Dr. Preeti Srivastava's case (supra) regulation of admissions to institution of higher education has to be held as comprised within the legislative Entry 66 of List-I (Union List) (See : Gujarat University's case (supra) Para 25, Dr. Preeti Srivastava's case (supra) Para 52, & VCI's case (supra) Para 16)

(iv) Once the regulatory provisions are made under the Central Acts, all contrary

State Laws become ipso facto void under the first part of Article 254(1) of the Constitution of India to the extent of inconsistency repugnancy (See : The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, Para 23, R. Chitralkha and Another Vs. State of Mysore and Others, Para 7. State of Tamil Nadu's case (supra) (Para 12), & Dr Preeti Srivastava and Another Vs. State of M.P. and Others, (Para 35 & 52)

Re: Question No. 3 (i) UGC Act

34. The preamble of this Act inter alia declares that it inter alia intends to make provisions for the co-ordination and determination of standards in the institutions. Section 12 of UGC Act sets out the functions of the Commission and Section 26 empowers the UGC to frame regulations. The relevant provisions contained in the said two sections to the extent those are relevant for the present purpose are being reproduced hereunder--Section 12. functions of the Commission -- It shall be the general duty of the Commission to take, in with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may--

(a) to (h) *****

(i) require a University to furnish it with such information as may be needed relating to the financial position of the University or the studies in the various branches of learning undertaken in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning:

(j) Perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

Section 26 -- Power to make regulations--(1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder --

(a) *****

(f) defining the minimum standards of instruction for the grant of any degree by any University:

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

(h) *****

(i) specifying the matters in respect of which fees may be charged, and scales of

fees in accordance with which fees may be charged by a college under Sub-section (2) of Section 12A;

(ii) MCI Act

35. Sections 20 and 33 of the MCI Act are material for the present purposes. Section 20 of the MCI Act empowers the MCI to prescribe standards of postgraduate medical education for the guidance of Universities, similarly, Section 33 of the MCI Act, which is regulation making power, inter alia empowers the MCI to lay down standards for medical education. The relevant provisions contained in the said two sections are being reproduced hereunder --

Section 20 -- Postgraduate Medical Education Committee for assisting Council in matters relating to postgraduate medical education.-- (1) The Council may prescribe standards of post-graduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for postgraduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Post-graduate Medical Education Committee (hereinafter referred to as the Postgraduate Committee).

(2) to (5) *****

Section 33. Power to make Regulations.-- The council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for--

(a) *****

(k) the standards of staff, equipment, accommodation, training and other facilities for medical education;

(l) the conduct of professional examinations: qualifications of examiners and the conditions of admissions to such examinations;

(n) any matter for which under this Act provision may be made by regulations.

(iii) DCI Act.

36. Section 20 of the Dentists Act empowers the DCI to make regulations to carry out the purposes of the Act Sub-section (1) and Clauses (g), (h) and (1) of Sub-section (2) this section are of the relevance for the present purpose. These are being reproduced hereunder .--

20. Power to make regulations.-- (1) The Council may, with the approval of the Central Government, by notification in the Official Gazette make regulations not inconsistent with the provisions of this act to carry out the purposes of this Chapter.

(2) in particular and without prejudice to the generality of the foregoing power

such regulations may--

(a) *****

(g) prescribe the standard curricula for the training of dentists and dental hygienists, and the conditions for admission to courses of such training;

(h) prescribe the standards of examinations and other requirements to be satisfied to secure for the qualifications recognition under this Act :

(i) any other matter which is to be or may be prescribed under this Act:

Provided that regulations under Clauses (g) and (h) shall be made after consultation with State Governments.

37. On reading of the statutory provisions contained in Sections 12 and 26 of the UGC Act. Sections 20 and 33 of the MCI Act, and Section 20 of the Dentists Act, it is clear that 3 bodies established thereunder have been empowered to make regulations to maintain standards of education, which in view of pronouncement by a 5 Judges Bench of the Supreme Court in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, will include the power to provide procedure for admission to Institutions of higher education.

Re : Question No. 4

(i) UGC Regulations

38. The UGC pursuant to powers conferred on it under the UGC Act with the previous approval of the Central Government and after consultation with the Universities concerned, has framed UGC (Regulation of admission and Fees in Private Non-aided Professional Institutions) Regulations, 1997.

39. The UGC Regulations are of the widest Import and most elaborate, so far as the procedure which is to be followed for admission to the Institutions covered by the Regulations. "Institution" has been defined under Clause (h) of Regulation 3. It reads as under :--

(h) "institution" means a college affiliated to a University or approved or recognised by Government or any competent statutory body, including the All India Council for Technical Education, Dental Council of India, Medical Council of India and National Council for Teacher Education, established or incorporated by, or under, a Central Act or a State Act, and includes an institution deemed to be a University declared by the Central Government on the recommendation of the Commission u/s 3 and all institutions recognised by the Commission under Clause (f) of Section 2 and imparting education;

40. From the above definition of "institution", it is clear that the UGC Regulations squarely applies to all colleges affiliated to a University and approved or recognized inter alia by the DCI and MCI. It includes even the deemed Universities. Therefore, all the respondents medical and dental colleges are "institutions" within the meaning of the UGC Regulations and are to be by the

procedure for admission engrafted in the said regulations.

41. Clause (3) to (7) of Regulation 4 of the Regulations prescribed the method of Inviting applications from eligible candidates who desires to be admitted to a seat available in an institution defined under Clause (h) of Regulation 3 which has been extracted above. These clause of Regulation 4 read as under .--

Regulation 4. Admission :

(1)*****

(3) The competent authority shall call for application for admission to the seats available in any academic year in the Institutions.

(4) The competent authority shall advertise in at least three leading newspapers out of which one shall be in a local vernacular language, the number of seats available for admission institution wise, the fees to be charged for the duration of the course separately for both Free Seats and Payment Seats, and the procedure and schedule for admission.

(5) At the time of inviting applications for admission in any course of study the competent authority shall fix a last date for the allotment of Free Seats.

(6) the competent authority shall issue a brochure containing the application form for admission, full particulars of the courses, number of seats available, names of the professional institution and their location, the fees chargeable by each professional institution the minimum eligibility conditions for admission and such other particulars as may be deemed necessary by the competent authority.

(7) The application form for admission issued by the competent authority shall contain a column wherein an applicant shall indicate the order of preferences, whether he wishes to be admitted against a Free Seat or a Payment Seat, or both, as well as the preference of institutions, in case of more than one institution is offering the same course.

42. Clauses (8) to (10) of Regulation 4 deals with the basis for determination of inter se merit of candidates desiring admission in an Institution. These clauses read as under :--

"Regulation 4. Admission :

(1) *****

(8) in case the admission to a course of study is given on the basis of results of a common entrance examination, the competent authority shall prepare a merit list of candidates from amongst the successful candidates based on their merit position.

(9) Where the admission to a course of study is not based on a common entrance examination, admission shall be given to the course of study on the basis of such other criteria as may be determined by the competent authority:

Provided that no such criterion as has not been notified by the competent authority shall be applied by him.

(10) the result of the entrance examination, if any, held shall be published in at least three leading newspapers, one of which shall be in local vernacular language and shall also be displayed on the notice boards of the concerned institution(s)".

43. Clauses (11) to (13) of Regulation 4 makes provision for allotment of seats to the desiring candidates based on their merit and option exercised. These clauses read as under.--

"Regulation 4. Admission .--

(1) *****

(11)(i) At least 50 per cent of the seats in every professional Institution shall be Free Seats and the remaining 50 per cent be Payment Seats.

(ii) The criteria of eligibility and other conditions shall be the same in respect of both Free Seats and Payment Seats except that the higher fee is to be paid for Payment Seats.

(iii) The management of a professional Institution shall not be entitled to Impose any additional eligibility criteria or conditions for admission either to Free Seats or Payment Seats.

(12) After the Free Seats are filled within the specified time, a further date shall be fixed by the competent authority giving time to the candidates who opt to be admitted against the Payment Seats.

(13)(i) The competent authority shall also prepare and publish a waiting list of candidates along with the marks obtained by them in the entrance examination,

(ii) After the allotment of the last seat is made, the waiting list shall be operated for filling any casual vacancies or drop out vacancies. These vacancies, shall be filled until such date, as may be notified by the competent authority.

(iii) The competent authority shall decide a cut-off date beyond which no one shall be admitted so as to ensure that a student does not miss a good part of the syllabus of the semester or term."

43A. It may be of relevance to mention here that the expressions "free seats" and "payment seats" have been defined under Clauses (g) and (k) of Regulation 3. These clauses read as under :--

Regulation 3. Definitions.--

(a) ***** (g) Free Seats means the seats on which the fee payable by a student seeking admission to, and prosecution of a course of study at a level corresponding to the fees as specified for the Government colleges and

Institutions in the concerned State of Union Territory in respect of similar course of study.

(h) *****

(k) Payment Seats means seats other than Free Seats and for which fee payable by a student seeking admission to and prosecution of. a course of study shall not exceed the limits specified under these regulations.

43B. Regulation 8 of the UGC Regulations makes provision for admission to minority institutions and NRI quota for private professional institutions. Clause (1) of Regulation 8 provides the manner in which admissions are to be made in institutions under the management of minority. This clause reads as under:--

Regulation 8. Admission of students.--(1) Admission in institutions under the management of minority shall be regulated under :--

(a) 50 per cent of the seats in professional institutions established and administered by a minority shall be filled on the basis of merit list prepared by the competent authority. Out of these 50 per cent seats, half shall be Free Seats and the other half shall be Payment Seats.

(b) The remaining 50 per cent of seats shall be filled by the management of the institution from amongst the candidates belonging to the concerned minority community out of which half shall be Free Seats and other half shall be Payment Seats.

Explanation.-- For the purposes of this clause, Payment Seats shall include seats for Foreign, NRI students,

(c) After completing the admission, each minority professional institution shall submit to the competent authority the concerned University and the concerned State Government, a statement containing full particulars of the students admitted against 50 per cent seats filled up by the management from amongst the candidates belonging to the concerned minority.

44. Clause (2) of Regulation 8 makes provision for admission to NRI, foreign students, which has been defined under Clause (i) of Regulation 3 to mean "a Non-Resident Indian and the expression "non-resident" has the same meaning as assigned to it under the Income Tax Act, 1961 (43 of 1961). This clause reads as under :--

Regulation 8, Admission of students,--

(1)*****

(2) Private Professional Institutions shall be permitted to admit the NRI. foreign students up to a maximum of 5 per cent of the total sanctioned intake capacity to be determined from time to time by the competent authority for each academic year. This percentage shall be out of Payment Seats. The NRI, foreign students shall be admitted on the basis of merit. But. In view of the difference in

their backgrounds the competent authority of the professional institution concerned may judge the merit of these candidates having regard to all the relevant factors.

46. Clause (3) of Regulation 8 is of great relevance. It specifically declares that there shall be no quota of seats for the management or for any family, caste or community which had established the professional institution. This clause reads as under :--

Regulation 8. Admission of students.--(1) *****

(3)(i) There shall be no quota of seats for the management or for any family, caste or community which had established the professional institution.

(ii) The competent authority may, at its discretion, fill any seat which may remain unfilled in five per cent NRI quota in any academic year.

(iii) The fees chargeable from the students admitted under this sub-regulation shall be the same as chargeable for the students admitted against Payment Seats and not against the, NRI seats.

(ii) MCI Regulations

46. In exercise of the powers conferred by Section 33 read with Section 19A, of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India, with the previous sanction of the Central Government has made "the Postgraduate Medical Education Regulations 2000" which had come into force w.e.f. 7-10-2000, the date on which it was published in the Gazette of India.

47. Regulation 9 of the Regulations is relevant for the present purposes which reads as under :--

9. Selection of Postgraduate Students

(1) Students for Postgraduate medical courses shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses.

(i) On the basis of merit as determined by the competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same State; or

(ii) On the basis of merit as determined by a centralised competitive test held at the national level, or

(iii) On the basis of individual cumulative performance at the first, second and third MBBS examination, if such examinations have been passed from the same university: or

(iv) Combination of (i) and (iii)

Provided that wherever entrance test for Postgraduate admissions is held by a State Government or a university or any other authorised examining body the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty per cent for all the candidates;

Provided further that in non-Governmental institutions fifty per cent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institution on the basis of merit.

(iii) MDS Regulations :

48. The MDS Regulations provides for "Criteria for Selection for admission to the MDS Course". This reads as under :--

"CRITERIA FOR SELECTION FOR ADMISSION TO THE MDS COURSE

1. Students" for MDS Courses should be admitted on academic merit at BDS level.

2. Preference may be given to candidates having experience as University Teachers, House Surgeons or Clinical Assistants or to persons in State or Central Government Services who have served in rural areas or in Defence Services.

"There would be two types of Postgraduate students :--

(a) Those holding posts in the same Department like Demonstrator/Tutor. Adequate number of paid posts may be created so that such candidates can pursue in-service Postgraduate training.

Seats allotted to in-service students shall be restricted to not more than one third of the total admission in the Department.

(b) Those receiving stipends. The stipends should not be less than Rs. 300/- per month.

Selection of Postgraduate candidates should be done by a Selection Committee consisting of concerned Postgraduate Teachers."

49. There is no dispute about the fact that the UGC Act has been made by the Parliament under Entry 66 List-1 (Union List). In the context of UGC Act, the Supreme Court in the case of Prem Chand Jain and Another Vs. R.K. Chhabra, . (Pr. 8), has held that :--

".....the Act essentially intended to make provisions for the co-ordination and determination of standards in universities and that, as already indicated, it squarely covered under entry 66 of list-I."

50. In The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, it has been held that (Pr. 25).--

"..... there is nothing either in item 66 or elsewhere in the Constitution which supports the submission that the expression "co-ordination" must mean in the

context in which it is used merely evaluation, coordination in its normal connotation means harmonising or bringing into proper relation in which all the things coordinated participate in a common pattern of action. The power to co-ordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action."

51. In the above case, the Supreme Court has further held that.--

(i). There is nothing in the entry which indicates that the power to legislate on coordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. This power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. By express pronouncement of the Constitution makers, it is a power to co-ordinate, and of necessity, implied therein is the power to prevent what would make co-ordination impossible or difficult. The power is absolute and unconditional, and in the absence of any controlling reasons it must be given full effect according to its plain and expressed intention. (Pr. 26)

52. By framing UGC Regulations, the UGC has sought to harmonise and provide a uniform method of admission in the institutions of higher education. Such a power in relation to all the institutions of higher education could have been exercised only by the UGC because it is only this body which had been vested with the duty to ensure co-ordination among the institutions of higher education, which necessarily includes Universities and the colleges affiliated to it. By making the UGC Regulations, the UGC has made provisions for co-ordination as well as maintenance of standards in the institutions of higher education. So far as the procedure for admission is concerned, since admission has to be given only on the basis of inter se merits of candidates Irrespective of the nature of course, a coordinated procedure could have been provided only by the UGC as has been done by it by framing Regulations at hand.

53. It is of utmost importance of note that the procedure for admission to a course, based on merit has hardly anything to do with nature of the course or specialisation in any faculty or discipline. This is a global criteria applicable to all branches of learning where demand is more than the facility available, and has more relevance to higher education. In this regard, we may refer to a 3-judges Bench of the Supreme Court in the case of AIIMS Students Union v. AIIMS AIR 2001 SCW 3143 after a review of earlier pronouncement on the subject has held that (Pr. 39).--

"The basic rule is equality of opportunity for every person in the country which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels and education like post

graduate course."

54 to 56. In order to ensure the right of the best merited candidate to a course of higher learning, there has to be well defined, predictable and transparent procedure for admission, which has to be fair and rational within the meaning of Article 14 of the Constitution of India. Further, such a procedure should not only provide that the admission is to be given on merit but it must also contain appropriate method/procedure for determining the merit which should again be transparent, known, rational and uniform.

57. Keeping the above constitutional perspectives in view, when we closely examine the UGC Regulations, we find that it fulfils the all the above requirements. It has very elaborately provided the procedure through which the desiring candidates are made to know the availability of seats both subject wise and college wise and gives reasonable opportunity to all desiring candidates to apply for seats in the institutions offering the courses of their choice and option. These Regulations also prescribe the method of determining the inter se merits of candidates either by holding a common entrance test or giving an option to competent authority i.e. University in the present case, to adopt similar other method having a reasonable nexus to the object of offering the seats to the merited candidates.

58. MCI Regulations also provide that the P.G. seats can be offered only on the basis of inter se merits of the candidates. It also provides the method of determining merit. But these Regulations have not made any provisions as to how and by whom the applications are to be invited from the desiring candidates.

59. So far as MDS Regulations are concerned, it also provides for determination of inter se merit of candidates. But it again has not made any provisions in its Regulations as to how and who will invite applications. One can understand the reasons for it. These Regulations were framed in 1971. So far as the State of Karnataka is concerned, till that time, only one University namely Bangalore University had been approved for giving degree in MDS and till upto 1979 there was only one college of dental sciences in the State of Karnataka. This was Government Dental College, Bangalore, which was affiliated in 1958. From the report submitted by the then Commissioner and Secretary to Government, Health and Family Welfare Department pursuant to the order of the Court dt. 12-8-1996 in W.P. No. 22316/96 (Citizen of India v. State of Karnataka), the other colleges have come into existence only after 1978 that too in a phased manner. The 1st Schedule to the Dentists Act also reflects the same scenario for other States as well.

60. Therefore, in 1971. when the MDS Regulations were made, the DCI could not have been imagined about the commercialization of its courses by the privately managed dental colleges and requirement of more elaborate provisions for effectively checking the menace and devastation to the higher education as it started manifesting since late 1980s and onward.

61. The MDS Regulations needs to be understood, interpreted and applied in the context of subsequent developments in the academic world, which has witnessed mushroom growth of professional institutions, commercialisation of higher education and the alleged mal administration in the hands of private managements. In the case of *The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others*, the Supreme Court has held that (at p. 163)--

"But, in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them."

62. A 5-judges Bench of the Supreme Court in the case of *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, has taken the view that it is incumbent upon the affiliating Universities to ensure fairness and equal treatment in the matter of admission of students. In Para 169 of the judgment it has been held that.--

"..... it is obligatory -- in the interest of general public -- upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution."

63. It is further to be taken note of that both the DCI Regulations as well as the UGC Regulations had been framed after consultation with the concerned Universities and approval of the Central Government. Such a consultation and approval is the statutory requirement under the enabling provision.. The UGC Regulations have been framed al-most 27 years after framing of the DCI Regulations. It can safely be presumed that the concerned University and the Central Government were well aware of the DCI Regulations. Still they agreed with the UGC to frame regulations for providing more exhaustive procedure for regulating admissions so that the abrasion and mal-practice which have developed during the interregnum period can be taken care of. Keeping these aspects in view," it is reasonable to hold that if there by any inconsistency between the DCI and the UGC Regulations, it is latter which has to prevail and hold the field.

64. Towards close of the arguments in the present case, additional Statement of Objections has been filed on behalf of the MCI. With regard to Regulation 9(2)

(iii) of the MCI Regulations, it has been stated that.--

"It is submitted that as an alternative mode of selection the Regulation 9(2)(iii) is permissible to be adopted by the non-governmental institutions who can make admissions using the same provided all the selections are made out of candidates from the same University only, and only such a construction can be given to the said Regulation, and no other. If the said regulation is not read in such a manner, then if the nongovernmental institution makes its selection from candidates of various Universities, this option under Regulation 9(2)(iii) is not available to the said Institutions because if the candidates are from different Universities with disparate standards then the process of selection cannot be a uniform one, especially in the light of the observations made at para 28 of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , where the importance and desirability of uniformity in the selection process is emphasized while taking note of the disparate quality and standards of different universities. Where candidates are from different Universities, Regulation 9(2)(iv) or (i) or (ii) can be made the criteria by such Institutions."

65. The MCI has further clarified the purpose and scope of 2nd proviso to Regulation 9 of MCI Regulations by clarifying that.--

"It is submitted that even the 50% seats for which admissions have been permitted to be made by the non-governmental institutions, there is no room for discretion on the part of the managements who cannot import any criteria in selection except those stipulated in Regulation 9, and the only meaning that can be ascribed to the making of admissions by non-governmental institutions to the extent of 50% seats of the seats by academic merit only as stipulated in Regulation 9, is that the candidates so selected shall have to pay the fees payable under the "payment seat" category, while the 50% government selectee shall be covered under the "free seat" category, the intention and scheme of the Regulations thereby permitting higher revenue for the non-governmental Institutions, to enable them to run the said Institutions."

66. If the clarification given by the MCI is accepted, then no material incompatibility or inconsistency remains between the UGC Regulations and the MCI Regulations. Because, all that is intended to be done under the MCI Regulations are covered by the UGC Regulations both in relation to determination of merit as also providing of seats under free and payment categories.

67. What is of more important is that if the MCI or MDS Regulations are taken as vesting a right in the private managements of medical and dental colleges to admit candidates based on their own and individual merit criteria, this may amount to arbitrary exercise of regulatory powers vested in statutory bodies like MCI and DCI and thus their regulations to that extent will have to be held as ultra vires and void in violative of Article 14 of the Constitution of India. According to the well established principles of interpretation, such a construction has to be avoided by the Courts if by the Interpretative process such provisions

can be moulded into constitutional framework.

68. Apart from the above reasons, in our opinion, there is a strong reason for holding that the UGC Regulations has to be held as holding the field for the procedure to be followed for admission to institutions of higher education irrespective of the course or training conducted by such institutions. We have already indicated above that right of a candidate to opt for a course and institution of his choice has to be determined on the basis of his merit as compared to other eligible candidates.

69. Now in the same branch of learning like medical and dental courses, multiple specialised branches are available to the candidates befitting their career requirements. Further, since the very same specialised courses are available in more than one institution, candidate may desire to undertake a particular course in a particular institution, a particular course in a particular Institution. A merit candidate has to be given first right of option both with regard to the course as well as the admission. This can be done only if a coordinated procedure could be laid down under which all available options pertaining to the course as well as institutions are offered by a single nodal agency like the affiliating University.

70. The process of offering choice of course and institution to the best merited candidate becomes more complex where merit is required to be assessed from amongst the candidates drawn from different Universities whose standard of teaching and examination may vary. The only possible solution to such multifaceted problem can be to have a coordinated scheme under which a given authority may be University or any other designated authority is empowered to hold a common entrance test for all the desiring candidates with an option to them to choose their subjects and institutions based on their inter se merits.

71. In relation to the necessity of holding common entrance examination for admission to P.G. Courses to candidates coming from different Universities, the Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, has held that (Pr. 28).--

"This argument ignores the reasons underlying the need for a common entrance examination for postgraduate medical courses in a State. There may be several universities in a State which conduct MBBS courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the MBBS Examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the MBBS Examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the MBBS Examination; while it may also be easier for candidates to secure marks at the higher level. A common entrance examination,

therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities."

72. Making of Regulations to achieve the above objectives would amount to an exercise of providing co-ordination and standards in the Institutions of highest education. Neither, MCI nor the DCI under their parent Act have been permitted to have such, coordinated scheme of admission. This power has been given only to the UGC by its parent Act which expressly empowers it to provide for co-ordination and determination of standards in Universities. Further, the determination of standards in Universities, in our opinion, would also embrace standards of administration in Institutions affiliated to the University. Standards in the Universities and institutions affiliated to it should necessarily ensure fairness in their conduct towards candidates and students. It is the duty cast on the UGC to take all necessary measures to ensure absolute fairness in the working of the Universities and the institutions affiliated by it. It is empowered to do so by taking concerted action devising a common pattern for compelling the managements and institutions to act in a given manner.

73. For the aforesaid reasons, we hold that the UGC Regulations which has devised a coordinated, transparent, rational and workable procedure for selection of candidates to the institutions of higher education must be held to be applicable to all the courses of higher education including medical and dental.

74. The learned counsel appearing for the private managements by referring to paragraph 57 of the Judgment in the case of S.M.C. Students' Parents Association v. Union of India AIR 2001 Kar 457 has sought to Impress upon us that since the Chairman of the UGC had taken a stand before this Court that the UGC Regulations with regard to fixation of fees will not apply to medical and dental colleges, therefore Regulations cannot be made applicable to medical and dental colleges. This plea can hardly be accepted. This Court had specifically repelled the stand so taken by the Chairman of the UGC which was clearly his personal view. In this connection, we may usefully refer to the Judgment of the Supreme Court in the case of M/s. Punjab Traders and others Vs. State of Punjab Traders and others, in para 16 whereof, it has been held that (Para 16).--

"Even if it is true that persons who dealt with the statute understood its provisions in a restricted sense, such mistaken construction of the statute did not bind the Court so as to prevent it from giving it its true construction. (See the observations of Lord Blackburn in *The Trustees of the Clyde Navigation v. Laird & Sons*, (1883) 8 AC 658, 670, as quoted in *National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay*, .

Re : Question No. (v)

75. The State Legislature has enacted Karnataka Education Institutions (Prohibition of Capitation Fees) Act. 1984 (in short the "Act"). This Act has come into force w.e.f. 11-7-1983.

76. Clauses (c), (e) and (f) of Section 2 of the Act are material for the present purpose. These are reproduced hereunder.--

2. Definitions.--

(c) Educational Institution means any institution by whatever name called, whether managed by Government, private body, local authority, trust. University or any other person carrying on the activity of imparting education in medicine or engineering leading to a degree conferred by a University established under the Karnataka State Universities Act. 1976 (Karnataka Act No. 28 of 1976) and any other educational institution, or class of such institution as the Government may, by notification. specify;

(e) Government Seats means such number of seats in such educational institution or class or classes of such institutions in the State as the Government may. from time to time, specify for being filled up by it in such manner as may be specified by it by general or special order on the basis of merit and reservation for Scheduled Castes. Scheduled Tribes, Backward Classes and such other categories, as may be specified, by the Government from time to time, without the requirement of payment of capitation fee or cash deposit:

(f) Management Seats means the managing committee or the governing body, by whatever name called, of an educational institution to which the affairs of the said institution are entrusted and where such affairs are entrusted to any person, whether called by the name of secretary, correspondent or by any other name includes also such person;

77. Section 4 of the Act provides for regulation of admission to educational institutions. It reads as under.--

Section 4 Regulation of admission to educational institutions, etc.-- Subject to such rules, or general or special orders as may be made by the Government in this behalf and any other law for the time being in force.--

(1) *****

(2) in order to regulate the capitation fee charged or collected during the period specified under the proviso to Section 3. the Government may, from time to time, by general or special order, specify in respect of each private educational institution or class or classes of such institutions--

(a) the number of seats set apart as Government seats;

(b) the number of seats that may be filled up by the management of such institution--

(i) from among Karnataka students on the basis of merit, on payment of such cash deposits refundable after such number of years, with or without interest as may be specified therein but without the payment of capitation fee; or

(ii) at its discretion;

Provided that such number of seats as may be specified by the government but not less than fifty per cent of the total number of seats referred to in Clauses (a) and (b) shall be filled from among Karnataka students.

Re : Question No. (vi)

78. The State Government had framed the Karnataka Medical Colleges and Dental Colleges (Selection for Admission to Post Graduate Courses) Rules, 1987, which was issued under the Government Order dt. 21/ 28-12-1987. Sub-rule (1) of Rule 5 of this Rules empowers the Government to notify availability of the total number of seats in Post Graduate Degree and Diploma courses in Government and private colleges. The Government under its notification dt. 25-8-2000 (Annexure A to the writ petition No. 38811/2001) has broadly declared 20% of the seats in medical and dental colleges for being filled up through common entrance test to be held by the respondent University and the remaining 80% seats have been left to be filled up at the discretion of the management.

79. Sri N. K. Ramesh, learned Addl. Govt. Advocate, has admitted at the Bar that the 1987 Rules had been framed pursuant to executive powers of the State Government and not pursuant to provisions contained under the State Act.

80. For the present, in our opinion, we need not enter into the controversy as to the power under which the Government had issued the above notification, because, keeping in view the law laid down by the Supreme Court, the Rules per se trenches upon the legislative field earmarked for Parliament under Entry 66 List-I. The Rules framed by the State Government has direct bearing on the procedure for admission to the P.G. Courses, which in turn is closely related to maintenance of standards in education. The regulations framed by the Central statutory bodies and the Rules framed by the State Government cannot stand together. The State Rules apart from permitting the private managements to fill 80% seats also does not lay down criteria for determination of merit. The subject being a special preserve of the Parliament falling under the Union List and having been occupied by express legislation and regulation, the State Rules has to be declared as void in terms of first part of Article 254(1) of the Constitution of India.

Conclusions :

Re : Medical Colleges :

81. As already noticed above, none of the private medical colleges in the State have followed the mode of determination of academic merits laid down even by the MCI in the regulations framed by it. The MCI regulations had come into force w.e.f. 30-12-1956, the date of its publication in the official gazette. According to MCI Regulations, which have already been extracted above, the students for P.G. Medical courses were to be selected strictly on the basis of academic merits. Regulation 9(2) of the MCI Regulations provides the method of determining the

academic merit. According to these regulations, academic merit could have been determined either by the (i) competitive test conducted by the State Government or authority appointed by the State Government or by the University/group of Universities in the same State or (ii) through centralised test held at the National level or through individual cumulative performance at the 1st, 2nd and 3rd MBBS examination provided all the candidates had passed from the same University and lastly on combination of 1st and 3rd criteria.

82. Admittedly, no national level centralised competitive test has been held for admission to the course in private medical colleges. Further from the statement, filed by the respondent University, students who have been sought to be admitted by the private managements to P.G. Courses had done their MBBS from different Universities of the country. What is more intriguing is that the selection has been made by adopting different methods of determining the academic merits like oral interview, written test conducted by the individual institution in combination with several other factors, none of which were permissible to be taken into account even under the MCI Regulations,

Re : Denial Colleges.

83. The Statement furnished by the respondent University regarding the mode of offering admissions to P.G. Courses in private dental colleges is not of much difference than the one adopted by the private medical colleges. They have also devised their own method of offering courses partially on the basis of academic achievements at the BDS examination partly on interview and partly on other considerations. The methods so adopted does not even fit in with the criteria laid down in MIDS Regulations framed by the DCI. In totality, what emerges is that the managements of the private medical and dental colleges had taken it guaranteed for themselves to give admission to P.G. Courses at their sweet-will and absolute discretion by evolving the method of determining merits of candidates according to their convenience.

84. Accordingly, it has to be held that the admissions sought to be given to the P.G. courses by private medical and dental colleges were all ab initio void being contrary to statutorily provided mode of determining merit and giving of admissions to the courses.

85. As already noticed above, the respondent University has placed on record that because of certain writ petitions filed by some of the candidates who had appeared at the common entrance test held by the University for admissions to P.G. Courses in question, the selection of candidates to such courses are still to be finalised. For these reasons, the University has taken a decision to publish afresh calender of events for commencement of such courses.

86. It has also come record that as against 1240 P.G. seats available in medical colleges 4724 candidates had appeared. Similarly, as against 321 P.G. seats available in dental colleges, 1306 candidates had appeared. Therefore, the ratio of candidates available for P.G. courses is almost 1;4. It is a matter of record

that because of several writ petitions filed in this Court questioning the evaluation in the common entrance test held by the respondent University for admission to P.G. Courses, the academic sessions for the courses in question has already considerably delayed. It can reasonably be presumed that all the candidates who were desiring for P.G. courses and were confident of their merits had certainly availed the common entrance test. In any view of the matter, keeping in view larger interest of the society, educational institutions, completion of the course within the prescribed period and in the interest of majority of the candidates, it is desirable to evolve a solution for selection of candidates at the earliest. Such a process of selection has to be necessarily in conformity with the statutory regulations.

87. In this view of the matter, we find it appropriate to direct the Selection Committee, which has already been constituted by the State Government under its notification dt. 19-4-2000, to complete the process of selection to P.G. courses in question strictly in accordance with the UGC Regulations. So far as minority institutions are concerned. for filling up of 50% seats in those Institutions from amongst candidates belonging to the concerned minority may be religious or linguistic list of such candidates will be made out of the left over general list and sent to the respective colleges for giving admission strictly in accordance with the merit determined in the common entrance test. 5% of the seats available in all the professional colleges will be earmarked by the University for being filled up from amongst NRI foreigners as defined under Clause (h) of Regulation 3 of the UGC Regulations. If any seat remains vacant either in minority quota or NRI Foreigner quota that has to be allotted to the General candidate by the University in accordance with their merits determined in the common entrance test. The University should forthwith proceed to draw time schedule for completing the entire process within four weeks.

88. Before parting, we may notice here that admittedly, all the private medical and dental colleges have been established by the registered societies or trusts apparently for philanthropic purposes and serving the society by providing educational facilities in professional courses.

89. It is a matter of record that the candidates desiring to opt for P.G. Courses are much more than the seats available. Therefore, no seats will remain vacant whether the admissions to such seats are made by one or the other mode. Sri. A. K. Ganguly, learned Sr. Advocate, appearing for the private medical colleges, has very fairly admitted that the medical and dental colleges are not entitled to charge the fees from the candidates more than what has been prescribed by the State Government on the basis of the report of the University. According to him, it is wrong to allege that the private managements have any Intention to charge any unauthorised capitation fee either accounted or unaccounted.

90. In our view, if the above submissions are to be taken as of fact, then the managements of private medical and dental colleges can have hardly anything to complain of even if the procedure as laid down for admission to the P.G. courses

by the UGC is followed in letter and spirit. Following of such procedure will rather facilitate the managements to draw most merited candidate to their institution. Further, if the process of admission is taken up by the University as envisaged under the UGC Regulations the managements of the institutions will be relieved of many administrative hazards without running the risk of any seat remaining unfilled or suffering any financial setback.

91. Keeping in view the above aspects, and even weighing from a common man's point of view, we do not find any reasonable excuse on the part of the managements to enter into costly litigation like the present one for defending their right to admit students in P.G. Courses at their own instance since the cost of such litigation can be better spent and utilised by providing infrastructural facilities to students, teachers and staff of the college.

92. For the foregoing reasons, W.P. 30353/01 and W. P. 38811/2001 are allowed and W.P. No. 35491/2001 filed for challenging the MCI Regulations is dismissed.

93. Let a copy of this order be made available to Sri S. A. Nazeer, learned advocate for the respondent - University for compliance.