

(2014) 03 KL CK 0090
In the High Court Of Kerala
Case No : W.P. (C) No. 23893 of 2013

Hanna Thasnim, K.V.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 32

Citation : (2014) 2 ILR 388

Hon'ble Judges : K.M. Joseph, J;A. Hariprasad, J

Bench : Division Bench

Advocate : P. V. Asha and Smt. Vineetha, B., Advocate for the Appellant; Roshan D. Alexander, (Government Pleader), Sri Babu Karukapadath, Sri Syamkumar, (Government Pleaders), Sri P. Samsudin, Sri K.M. Firoz and Smt. M. Shajna, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. The Judgment of the Court was delivered by A. Hariprasad, J.--Writ petition filed under Article 226 of the Constitution of India with following prayers:

(a) declare that petitioner was entitled to be considered in the final phase of allotment for admission to BDS course in Govt. College held on 25-9-2013, on the basis of the higher options registered by her and to be allotted to one of the seats in the Govt. Colleges in preference to any candidate lower in merit;

(b) issue a writ of certiorari or other appropriate writ, order, or direction and quash Ext. P-11 order and the cancellation of higher options registered by petitioner and the allotments made overlooking her merit, based on it and the notifications Exhibits P-8 (a) and P-10 and quash the allotments and admissions/re-allotments granted to the respondents 5 to 8 to BDS course in Govt. Colleges, without considering the petitioner based on her higher options and merit;

(c) issue a writ of mandamus or other appropriate writ, order, or direction commanding the 2nd respondent to review the allotments made on 26-9-2013

and 30-9-2013, i.e. the allotments made on the basis of Ext. P-11 order without considering the higher options of petitioner, for admission to BDS course and to conduct a fresh allotment considering the case of petitioner in preference to candidates with lesser merit, and allot her to one of the Govt. Colleges based on her higher option and to allow her to join the Govt. College, based on such allotment;

(d) or in the alternative direct the respondents 1 and 2 to allow the petitioner to continue her studies in the MES Dental College on payment of fees at the rate admissible in Govt. Colleges or by paying her the difference in the fees payable;

(da) declare that cl. 2.2.1(b) of the prospectus is unconstitutional and cannot be acted upon so as to deny allotments and admissions based on merit and

(db) declare that cl. 1.6 of the prospectus does not enable the respondents to issue orders like Ext. P-11 to grant allotment to students of lower merit after blocking admissions on the basis of merit and higher options.

(e) to issue such other directions as this Hon"ble Court may deem fit and proper

(f) Grant the costs of this petition.

2. Facts in the amended writ petition, in brief, are as follows:

(a) Petitioner passed Higher Secondary Examination conducted by the Board in March, 2012 with 93% marks. She appeared in the National Eligibility cum Entrance Test UG 2013 (NEET) conducted by CBSE for admission to MBBS/BDS course, 2013. She secured rank No. 2172 in the general category. She passed the test for admission to the professional degree courses in engineering and ayurveda/homeo. Petitioner submitted on line application for Kerala Engineering, Agriculture, Medical entrance examination (KEAM) as provided in the prospectus, approved by the Government, for admission to professional degree courses, 2013. Petitioner appeared in the entrance test and results were published on 2-6-2013. She was declared qualified in NEET with rank No. 10189 in all India quota and rank No. 2172 in the State quota. Although she was included in the category of OBC, she was not eligible for reservation and could be considered only as a candidate in general/open category. Result sheet dated 2-6-2013 in respect of the petitioner is Ext. P-1.

(b) The prospectus for admission to professional degree courses, 2013 was issued in December, 2012 which contained the rules relating to allotment/admission to MBBS and BDS courses. Various provisions in the prospectus showed the modalities for completing formalities in submitting the application. As per the prospectus, the admission to MBBS/BDS courses will be regulated on the basis of merit assessed in the State rank list of NEET (UG) 2013. Paragraph 11 provides for Centralized Allotment Process (CAP) and on line submission of options. Relevant portions of the prospectus is produced as Ext. P-2. Stipulations in the prospectus show that a candidate who does not remit the fee/join the college on allotment, will not be eligible for any further allotment in any stream.

From the list of colleges and courses available to the candidates, as appearing in the home page, one candidate will have to fix his/her preference by entering preference numbers for the course-college combination. Clause 11.5.6 in the prospectus (Ext. P-2) provided that all the options registered by the candidate will be processed and if the candidate gets allotted to a seat, he is bound to accept it, failing which he will lose that allotment as well as future claims for any seat or stream. Similarly, a candidate allotted to a course shall remit the fee to the account of the Commissioner of Entrance Examinations (CEE) and take admission to the college, failing which he will lose the allotment and future chances.

(c) Clause 11.6.4 in Ext. P-2 provides that a candidate can cancel/alter the priority of his options before next allotment and the facility for the same will be activated in the home page on dates notified. After each allotment, options below the allotted one will be removed automatically.

(d) Petitioner who qualified in KEAM, 2013, initially joined Government Homeo College and thereafter in Vaidyaratnam Ayurveda College, Thrissur. While so, CEE announced the allotment schedule starting from registration of option on 22-7-2013. First allotment was on 5-8-2013. True copy of the notification issued by the CEE in this regard is Ext. P-3. Petitioner was allotted to BDS Course in Educare Institute of Dental Care, Malappuram (a private self financing college), in the State merit quota. That was her 22nd option. As directed in the allotment memo, she remitted fees therein and Ext. P-4 is the receipt. 2nd allotment was announced to be held on 13-9-2013. In that allotment, petitioner got admitted to MES Dental College, Perinthalmanna, yet another self financing college. Exts. P-5 and P-6 respectively are the notification pertaining to second phase of allotment and receipt for payment of fees. Petitioner had not cancelled any of her higher options. Her options 1 to 9 and 13 to 20 were MBBS and 10 to 12, 21 and 22 were BDS. A true copy of the option list is Ext. P-6 (a).

(e) Third phase of allotment was held on 13-9-2013. In the notification for third allotment it was stated that the higher options of candidates who got allotment in colleges under Christian Professional College Management Federation and Karakonam Dr. Somarwel Memorial CSI Medical Colleges were cancelled since the allotment to those colleges were completed by the second phase allotment. Exts. P-7 and P-7(a) are the documents produced to show this aspect. While petitioner was waiting for the next allotment under the legitimate expectation that she will get a seat in a Government College, it was announced that the allotment to vacant seats in Government Medical/Dental Colleges will be held on 25-9-2013. Exts. P-8 and P8(a) are the notifications showing this fact

(f) But when the website was opened, petitioner found her home page disappeared. It appeared to her that the home page had been blocked by removing the same, denying her an opportunity to participate/to be considered in the further allotment process. Petitioner submitted that in the list of allotment made on 25-9-2013 against the vacant seats in Government Colleges, two

candidates ranked lower to the petitioner are allotted to Government Dental Colleges at Kottayam and Thiruvananthapuram. Petitioner, who is more meritorious than those mentioned above, was compelled to remain in a self financing college. A true copy of the list of college wise last rank details after final phase of allotment is Ext. P-9.

(g) On 1-10-2013, another notification and last rank details were published in the website. It is stated that spot allotment was made against vacant seats on 30-9-2013. From the last rank details, it is seen that students up to rank No. 2744 were granted allotment in State merit category. Exts. P-10 and P-10 (a) are the true copies of notification dated 30-9-2013 and the last rank details after the allotment made on 30-9-2013 respectively. After closing the admissions on 30-9-2013, there appeared three more Government Orders in the website of the 2nd respondent. Ext. P-11 Government Order purported to be dated 24-9-2013 was not available in the website either before filing the writ petition or even on 30-9-2013. Petitioner contended that there is no justification in making allotments after keeping a section of students out of consideration on the ground that they got allotment in self financing colleges, thereby giving an incentive to those who failed to get allotment even in a self financing college in the three phases of allotments. Students like petitioner cannot be penalized in this manner by granting admission to students far lower in rank than them in Government colleges by arbitrary classification. 2nd respondent had not published any notification indicating the possibility of cancellation of higher options in the case of students who got admission in self financing colleges. There was no notice to the students even regarding the date of different phases of allotment. Stand taken by the authorities that higher options of students, who got admission in self financing colleges, were cancelled because of the terms in the agreement executed between the Government and the managements of self financing colleges and that there is a provision in the prospectus making the students bound by the agreements are untenable. Petitioner contended that by the incorporation of such a clause, the respondents cannot deprive the chances of meritorious students like the petitioner. Petitioner, though a meritorious student than many others who got admitted to Government Colleges, is compelled to pursue her study on payment of Rs. 1.5 lakhs in every year in a private self financing college. Therefore, the actions of the respondents are per se illegal and infringing the constitutional and legal rights of the petitioner. Exts. P-8 (a), P-10 and P-11 are unsustainable in law.

3. 2nd respondent filed a counter-affidavit with the following averments:

Facts that the petitioner submitted an application and she secured rank No. 2172 in NEET UG Exam are admitted. She was initially got admitted to Educare Institute of Dental Sciences & Research, Meeyannoor, Kollam for BDS course is also admitted. Thereafter, she was reallocated to MES Dental College, Perinthalmanna. Respondent submitted that admission to professional degree courses, 2013 is based on provisions in the prospectus approved by the

Government. The prospectus (Ext. P-2) contains general informations and rules relating to the entrance examinations for admission to professional degree courses. It further contains rules relating to allotment/admission to MBBS and BDS courses and other connected matters. Rules and Regulations stipulated in Exts. P-2 are policy decisions taken by the Government in exercise of the powers of the State Government. In Clause 11, the allotment process under Ext. P-2 is elaborated. Clause 11 in Ext. P-2 would show that the allotments will be strictly based on options exercised, rank obtained and eligible reservations of the candidates. Therefore, it was cautioned under Clause 11 of Ext. P-2 that the candidates who register options only to those courses/colleges which they are sure to join on allotment. A candidate, if gets allotment to a particular seat based on his option, is bound to accept it, failing which he will lose that allotment as well as his claim for any seat in any stream. It is relevant to note that the prospectus contemplated only one allotment. Further allotments under the prospectus is a matter, although contemplated under the prospectus, the details of the same would be published at the time of each round of allotment, if any. Scheme of allotment and admission contemplated under the prospectus envisages the admission to Government seats. The term "Government seats" explained in the prospectus consists of two types, (i) seats available in the Government and aided colleges and (ii) seats available to Government in private self financing colleges by virtue of agreements. Government entered into agreement with Self Financing Dental College Management Consortium for allotment of students for admission to BDS Course, 2013-2014 subject to the conditions specified therein. MES College is also a member of this Consortium. Similar agreements were executed for MBBS Course as well. Ext R-2 (a) is the Government Order issued pursuant to the agreement On the basis of Ext R-2(a) Government Order, the Government could make allotments to a private self financing Dental College only upto 20th September, 2013. If any seats earmarked for Government is vacant as on 20th September or became vacant after 20th September, the Government cannot fill up those vacant seats by virtue of paragraph 4 in Ext. R-2(a). Ext. R-2(b) is yet another Government Order showing the incapacity of the CEE to re-allot the students after 20th September, 2013. 2nd respondent contended that allotment to private self financing colleges will be subject to Clauses 1.7 and 2.2 in the prospectus. Government thought it fit to issue guidelines for filling up vacancies in Government quota after the second round of allotment it was specified in a Government Order that CEE will not re-allot the students who are already allotted to and admitted in private self financing colleges on or before 20-9-2013. If any allotments were made on the basis of the options exercised by the candidates already allotted to private self financing colleges, several precious seats earmarked for the Government would become vacant, which would be a loss for the State. Therefore, considering all the aspects Ext. R-2(c) order was issued. Cancellation of higher options of petitioner who had taken admission in a private self financing college is only in accordance with the conditions in Ext. P-2 and agreements entered into by the Management Association and the Government, By virtue of such an exercise,

none of the rights of the petitioner is curtailed. Exts. P-8 (a), P-9 and P-10 are not arbitrary or discriminatory. A student who had already exercised a conscious decision to opt for a self financing college cannot at a later stage contend that there is a right to exercise a higher option in the further rounds of allotment. Similarly such a student cannot at a later point of time contend that he has right to be considered in a vacant seat in subsequent round of allotment. Students, who might have secured ranks lower than that of the petitioner, might have exercised their options wisely and got admission to Govt. Colleges. For that alone the petitioner cannot turn round and argue against the prospects and she cannot be given primacy over a student who had exercised his/her option and got allotment in accordance with the prospectus. The petition is legally not maintainable and is liable to be dismissed.

4. After amendment of the writ petition, an additional counter-affidavit was also filed by the 2nd respondent refuting the allegations in the amended writ petition.

5. Additional respondents 5 to 7 filed a counter-affidavit. According to them, the writ petition is not maintainable in law. If the writ petitioner had any complaint against Ext. P-2 prospectus or Ext. R-2(a) Government Order, she should have complained before the Admission Supervisory Committee. Writ petitioner is estopped from challenging the prospectus and the Government Order, more so when she is a beneficiary of the same. Persons who are likely to be affected by the outcome of the writ petition are not impleaded. Petitioner has accepted Ext. P-2 prospectus for admission to professional degree courses and Ext. R-2(a) Government Order. She has participated in the selection process and joined the course on allotment. The writ petitioner did not choose to challenge the provisions of the prospectus before participating in the selection process or long after till the filing of the amendment application. After issuance of the prospectus, All Kerala Self-financing Dental College Management Consortium entered into an agreement on 20-5-2013 and the writ petitioner joined the course based on that agreement. Government Order dated 12-6-2013 [Ext. R-2(d)] has been issued by accepting the agreement and according sanction to the 2nd respondent for including the colleges under the said Consortium in the list of institutions for allotment of students to the 50% of the seats surrendered by the Consortium to the Government. As stipulated in paragraph 4 of Ext. R-2(d), the Government shall not have any claim over such seats after 20-9-2013. In the circumstances, the petitioner, who had opted with open eyes and joined the college under the Consortium, is not entitled to vacate, relinquish or surrender the Government seat after 20-9-2013. Petitioner had taken advantage of the said agreement dated 20-5-2013 and Ext. R-2(d) and has joined the 3rd respondent college accepting the Government Order. So, subsequent to 20-9-2013, she is estopped and not entitled to claim that she should be given permission to participate in the future allotment process after the aforesaid cut off date. Petitioner is not entitled get any of the reliefs claimed.

6. 8th respondent also filed a counter statement. She also adopted the

contentions raised by other respondents. 8th respondent further contended that the petitioner having participated in the selection process pursuant to Ext. P-2 prospectus, cannot be heard to say that the Clauses in Ext. P-2 are unconstitutional. She also prayed for dismissal of the petition.

7. We heard Ms. P. V. Asha, learned counsel for the petitioner, Senior Government Pleader Shri Syamkumar appearing for respondents 1 and 4, Shri Roshan D. Alexander, learned Government Pleader appearing for 2nd respondent, Shri Babu Karukapadath, learned counsel appearing for 3rd respondent, Shri Firoz K.M., learned counsel appearing for additional respondents 5 to 7 and Shri P. Samsudin, learned counsel appearing for 8th respondent.

8. In order to appreciate the case of the writ petitioner, chronology of events is relevant. On 18-12-2012, Government granted approval to Ext. P-2 prospectus. On 5-6-2013, the result of the CBSE - NEET - UG 2013 was announced. As per Ext. P-1, the petitioner secured NEET rank No. 10189 and State quota rank (Kerala) as 2712. Ext. P-3 is the first notification issued by the 2nd respondent announcing the proceedings for on line allotment with schedule of dates for registration of options. Ext. P-3 is dated 22-7-2013. Options had to be given from 22-7-2013 to 29-7-2013. On 27-7-2013, as per Ext. P-12 college-wise rank details after the trial allotment was published. On 29-7-2013, registration of options have been closed. Ext. P-6(a) is the option list of the petitioner. She opted for nine medical colleges and three Government dental colleges. Options 21 and 22 were self financing dental colleges. On 31-7-2013, she got first allotment as per Ext. P- 4 to Educare Institute of Dental Sciences, Malappuram for BDS. Clause 11.4 in Ext. P-2 onwards show the rules and regulations governing allotments through submission of options. Clauses 11.6 onwards in Ext. P-2 prospectus narrate the processing of options and allotment. Clauses 11.6.3 in Ext. P-2 shows that candidates allotted to courses, who remitted fees as prescribed, should take admission in the college allotted as per the schedule prescribed by CEE (2nd respondent). Candidates who did not take admission would lose their allotment as well as claims in all streams. It is contended by the petitioner that in view of this condition, she took admission in the Educare Institute of Dental Sciences for BDS course. She paid the fee prescribed and joined the college on 5-8-2013. On 24-8-2013, 2nd respondent published Ext. P-5 notification for the second phase allotment As per Ext. P-6, petitioner is re-allotted to MES Dental College, Perinthalmanna, yet another self financing college. As she is bound to join the college allotted, on 9-9-2013 she joined the above college. Ext. P-7 is the announcement letter for third phase of allotment dated 12-9-2013. As per Ext. P-7(a), the petitioner found that a student having rank No. 2703 got allotment to a Government College. On 24-9-2013, 2nd respondent announced cancellation of higher options of candidates who were admitted to self financing colleges and aided colleges. On 25-9-2013, Ext. P-8 notification was published by the 2nd respondent in News papers regarding the next allotment to Government Colleges. Ext P-9 notification appeared in the website, announcing allotment to Government Colleges. Ext. P-9 (a), final

allotment list dated 26-9-2013, shows that rank Nos. 2719 and 2741 got allotment to Government Colleges. Learned counsel for the petitioner submitted that this is in total disregard of the merit of the petitioner. On 30-9-2013, Ext. P-10 notification was published regarding spot allotment against vacant seats. As per Ext. P-10 (a), it is seen that students with rank upto 2744 were admitted to Government Dental College at Kottayam and upto rank No. 2741, got allotment in Government Dental College, Thiruvananthapuram. Ext. P-11 is the Government Order issuing guidelines for allotment to vacant MBBS/BDS seats in Government Medical Colleges. It reads as follows:

2. Government have examined the matter in detail and are pleased to issue the following orders:

(a) The Commissioner for Entrance Examinations shall allot students from the Merit list who have already filed options for filling up of the vacant MBBS/BDS seats in Government Medical/Dental Colleges.

(b) The Commissioner for Entrance Examinations will not re-allot students already allotted and admitted in a Self Financing College by the Commissioner for Entrance Examination on or before 20-9-2013.

(c) The admissions made to the vacant MBBS/BDS seats in Government Medical/Dental Courses shall be subject to the outcome of any litigation before any Court of Law.

Learned counsel for the petitioner submitted that this Government Order runs contrary to the procedure adopted in the previous year (2012) as is evident from Ext. P-16. Contention of the petitioner is that nowhere in the prospectus or in the subsequent Government Orders till 21-10-2013, it was mentioned that the students, who happened to be allotted to self financing colleges, will not be allowed to upgrade their option to Government Colleges. It is to be remembered that the last date for filling up the seats in self financing colleges was fixed to 20-9-2013. Ext. R-2(d) Government Order never appeared in the website of the 2nd respondent or at any other place before 21-10-2013. Hence, meritorious students like the petitioner were kept in complete dark about the change of rules of the game of allotment. It is contended on behalf of the petitioner that respondents 1 and 2 acted mala fide and with utmost disregard to the constitutional rights of the petitioner and other similarly placed students.

9. Learned counsel for the petitioner contended that the Apex Court time and again declared through its pronouncements that higher the competition for professional degree course admissions, the greater the duty on the part of the authorities concerned to act with utmost caution to ensure transparency and fairness. Judicial pronouncements are aplenty that the principle of merit cannot be compromised. Learned counsel for the petitioner further contended that various clauses in Ext. P-2 do not impose any restriction on a student who was admitted in a self-financing college to move out after the second allotment Ext. R-2 (d), purported to be dated 12-6-2003, appeared in the public domain for first

time only on 27-10-2013. It is the trump card of the 2nd respondent that Ext. R-2(d) restricts migration of a student from a self-financing college to a Government College after 20-9-2013. Not only the petitioner, no other student was aware of such a Government Order till 21-10-2013. Authorities are precluded from acting in blatant violation of the rules already set for admission as revealed from Ext. P-2 and also with utmost disregard to the merit of the students.

10. In order to advance a contention that the change of procedure adopted by respondents 1 and 2 subsequent to the publication of the prospectus is not only illegal, but also vitiated by mala fides, certain pronouncements made by the Apex Court in similar matters have been placed before us. Petitioner places reliance on *Parmender Kumar and Others Vs. State of Haryana and Others*, to contend that once the process of selection of candidates for admission to the course have been commenced on the basis of the prospectus, no change could, thereafter, be effected by Government Orders to alter the provisions contained in the prospectus. Quotations relevant for our purpose are as follows:

26. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the post-graduate or diploma courses in the different disciplines in the medicine which had earlier been indicated in the prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the prospectus, was it within the competence of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the prospectus been started, but also when counselling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing the post-graduate or diploma courses in the reserved HCMS category.

27 & 28. (omitted).

29. As has also been pointed out hereinbefore, this Court in *Rajiv Kapoor and Others Vs. State of Haryana and Others*, took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the Government Orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage", (emphasis supplied). In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the post-graduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by Government Orders to alter the provisions contained in the prospectus. If such Government Orders were already in force when the prospectus was published, they would certainly have a

bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses.

11. The above proposition is beyond a pale of dispute. It is settled law that once the rules for admission are set out in a prospectus, it cannot normally be varied to the detriment of persons seeking admission to various courses through the channels mentioned in the prospectus.

12. Learned Government Pleader contended that the above proposition of law urged by the petitioner is too general in terms, but that is inapplicable to this case as Ext. P-2 prospectus itself show that the Government reserved their right to alter the terms. In other words, it is argued on behalf of the 2nd respondent that Ext. P-2 prospectus itself show the fact that the Government reserved a right to make appropriate changes depending upon future exigencies. To buttress this contention, we have been taken to the definition of "Government seats" in Clause 2.1.1. in Ext. P-2 prospectus, which reads as follows:

2.1.1. Government seats.--Merit seats against which the Commissioner for Entrance Examinations makes allotment are called "Government seats".

(a) Government seats are available in all the Government and Aided Colleges.

(b) The availability of Government seats in self-financing colleges run by institutions under Government control and other private self-financing colleges will be notified separately. Those candidates who seek admission in private self-financing colleges are bound to accept the conditions stipulated in the agreement between Government and self-financing college management(s) and deemed to have accepted such conditions.

Learned Government Pleader also placed reliance on Clauses 1.6 and 1.7 in Ext. P-2 prospectus, which read as follows:

1.6 This prospectus is subject to modification/addition/deletion, as may be deemed necessary by the Government.

1.7 Allotment of seats from the Rank Lists for all courses in self-financing Colleges will be made in accordance with the orders of the Hon"ble Supreme Court of India/Hon"ble High Court of Kerala or orders of the Government of Kerala/Government of India/as per the law in existence at the time of Centralised Allotment Process (CAP) and will be notified separately.

13. It was contended by the learned Government Pleader that the candidates who seek admission on the basis of Ext. P-2 were put to notice of the power reserved by the Government to modify/add/delete any condition to the prospectus as may be deemed necessary by the Government.

14. Decision rendered by this Court in Relly Susan Mathew Vs. Controller of

Entrance Examinations, Trivandrum and Others, shows that the Government can amend the prospectus before admissions were actually effected it was also held that by the amendment, if additional opportunity is given to students to exercise their option and produce certificates, it cannot be held to be illegal because these are all procedural requirements. Learned counsel for the petitioner would contend that in this case, the situation brought out by publishing Ext. R-2(d) was to take away the right of the petitioner which was provided in Ext. P-2.

15. Learned counsel for the petitioner contended that actions of respondents 1 and 2 removing the home page in respect of the petitioner at the final phase of allotment and blocking consideration based on her merit and higher option in the process of allotment to Government Colleges are illegal, arbitrary and unreasonable. Petitioner is guided by the terms and conditions in Ext. P-2 prospectus. If at all there is any vague or general provision provided in the prospectus authorising the Government to alter any condition, it cannot empower them to act unreasonably and contrary to the consistent procedure. The manner in which respondents 1 and 2 blocked the opportunity of meritorious candidates for consideration in the final phase of allotment is unconstitutional being in clear violation of the fundamental rights of the candidates like the petitioner. Petitioner claims that respondents 1 and 2 have violated her fundamental rights provided under Articles 14, 16 and 21 of the Constitution of India in case the higher options of the petitioner were not illegally cancelled, she could have joined a Government College with more facilities and only on payment of fees of Rs. 23,000 per annum. But, she is now compelled to continue her studies in a self-financing college with meagre facilities and payment of fees Rs. 1,50,000 every year. Petitioner contended that respondents 1 and 2 should be directed to undo the injustice done to her by fresh allotment to Government College or she may be permitted to undergo the course in the present college on payment of fees applicable to Government College, directing the Government to meet the additional expenses. Learned counsel for the petitioner contended that is a classic example wherein merit has been sacrificed by the illegal acts of respondents 1 and 2. Following quotation from A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, is strongly relied on by the petitioner:

When protective discrimination for promotion of equalisation is pleaded, the burden is on the party who seeks to justify the ex facie deviation from equality. 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 courses.....

Learned counsel for the petitioner heavily relied on Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, . The questions formulated for decision by the Apex Court are as follows:

(a) Is there any exception to the principle of strict adherence to the Rule of Merit for preference of courses and colleges regarding admission to such courses?

(b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception?

(c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations?

(d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this Court governing the subject?

Facts in the case show that the appellant therein cleared her secondary examination (medical stream) with 75% marks and was eligible for taking medical entrance examination. University issued a notification/advertisement for the entrance examination for MBBS, BDS and BAMS. She applied for the same in the Backward Class B and Dependents of Ex-servicemen category. Her application was accepted. The date of examination was fixed on 12-6-2011 by the University. The appellant was declared successful in the entrance examination having secured 832 marks. Appellant was SI. No. 13 in the Dependents of Ex-servicemen (ESM) category. All concerned were informed that the first counselling for allotment of seats would be held on 14-7-2011 and 15-7-2011. In that counselling the appellant was not admitted to MBBS course as she was lower in merit. Consequently she took admission in the BDS course on that day. Thereafter a declaration was made by the respondents that the second counselling for allotment of seats in MBBS course was to be held on 20-9-2011. The appellant again participated in the counselling but, her name and role number was not declared by the respondents. However, when the list of allocation of seats was displayed, it came to light that though the appellant had not been admitted to MBBS course, candidates who ranked below her in merit list including the 3rd respondent who had obtained 821 marks and was SI. No. 14 in the ESM category, had been given admission to MBBS. In this factual situation, the Supreme Court considered the above questions for determination. According to the learned counsel for the petitioner, question No. (c) is relevant for our purpose. Paragraphs 30 to 32 in the decision read as follows:

30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that

the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others, , Chhavi Mehrotra (Miss) Vs. Director General Health Services, and Arvind Kumar Kankane. Vs. State of U.P. and Others,].

In paragraph 38.3, questions (c) and (d) posed above have been answered thus:

38.3. Questions (c) & (d).--Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment. Where the admissions given by the concerned authorities are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

On the basis of the above decision, learned counsel for the petitioner contended that the petitioner is eligible for admission to a seat in Government College or at least she is eligible to get compensation for the excess fees that she is compelled to pay on account of the wrong committed by respondents 1 and 2.

16. Learned counsel for the petitioner relied on Priya Gupta Vs. State of Chhatisgarh and Others, also. In that decision, the Supreme Court specifically considered the matters of prescribing a time schedule for the admission to MBBS/ BDS courses. In paragraph 41, the Supreme Court enumerated the

disadvantages that may be attracted in relaxing, varying or disturbing the time schedule in the admission process. In paragraph 41(7), it is held by the Supreme Court that preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit. Learned counsel for the petitioner argued that the contention of respondents 1 and 2 that by virtue of the agreement executed between the Government and the Consortium of the colleges, no seat can be filled up at the instance of the Government after 20-9-2013 shall not be a reason to discard the claims of a meritorious candidate. In paragraph 47 of the judgment, the Supreme Court held that all the directions in the judgment shall be complied with by all concerned, including the Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective Universities or dental and medical colleges. It is also cautioned that any default in compliance with the conditions in the judgment or attempt to over-reach the directions shall invite the consequences mentioned in the judgment and penal actions. It is contended by the learned counsel for the petitioner that the authorities herein have acted in flagrant violation of all these guidelines.

17. In answer to this argument, learned Government Pleader submitted that the facts and circumstances in Asha's case (supra) have no application to this case. According to him, the facts therein would show that the appellant in that case was present on the date of second counselling and the dispute relating to her absence at the particular place, when her name was called out, could not be established. In other words, facts in Asha's case (supra) prompted the Apex Court to find that she was not at fault and she pursued her rights and remedies as expeditiously as possible and, therefore, held that cut off date cannot be used as a technical instrument or tool to deny admission to meritorious students.

18. It is contended on behalf of respondents 5 to 7 that Ext. P-2 prospectus clearly indicated that it is subject to modification/addition/deletion as may be deemed necessary by the Government. Learned Government Pleader also contended that in previous years also, changes were made in the terms of the prospectus depending upon the agreements later executed between the Government and the management of self-financing colleges. Much controversy is raised about Ext. R-2(d). We shall examine separately in detail the contention of the petitioner relating to Ext. R-2(d), the Government Order dated 12-6-2013.

19. Learned counsel for respondents 5 to 7 contended that the terms in Ext. P-2 prospectus itself would make it clear that the petitioner was put to notice that after 20-9-2013, she cannot claim up-gradation in option. Reliance is placed on Clause 11.6.5 in Ext. P-2 which says that details regarding further allotment will be notified by the Commissioner for Entrance Examinations, whereby clearly indicating that the Government is reserving a right to make changes subsequent to the prospectus.

20. Learned Government Pleader and the learned counsel for respondents 5 to 7 heavily relied on Clause 11.6.7 in Ext P-2 which reads as follows:

11.6.7. Other Rules related to registering of Options:

(i) Candidate can register all the available options if he/she desires so. However, it is not compulsory that the candidates should exercise all the options.

(ii) A candidate will not be allotted a seat, not opted by him/her.

(iii) A candidate is bound to accept an allotment as per the priority registered in the Option list and he/she has to surrender the seat already occupied by him/her, if he/she is allotted based on options furnished against arising/future vacancy. Request to retain the existing admission after an allotment is made, based on the option registered, will not be considered under any circumstances.

(iv) Failure to report for admission in the allotted institution, after remitting the required fee within the stipulated time, on the specified date will result in the forfeiture of his/her allotment to that course and for any course in any stream. He/she will not be considered for online allotment to any future/arising vacancies in any stream.

Our attention was drawn to Sub-clause (iii) quoted above to argue that a candidate is bound to accept an allotment as per the priority in the Option list and he/she has to surrender the seat already occupied by him/her, if he/she is allotted based on options furnished against arising/future vacancies. It is also clarified therein that any request made to retain the existing admission after subsequent allotment will not be considered under any circumstances. Learned counsel for the respondents would argue, therefore, that there is a clear indication in this clause that once a candidate exercises his/her option based on college--course particulars, he/she is bound to act in accordance with the rules in CAP. Stated differently, when a candidate who got admitted to a particular seat according to his/her option is asked to move to the next place in accordance with his/her option, he/she will have to surrender the earlier option and then move to the next higher option. He/she cannot refuse to do so as per the terms of Ext. P-2. In this case, the situation is that after 20-9-2013 the Government will have no right to admit a student to a self-financing college with whom the Government had entered into a seat sharing agreement it is, therefore, clear that after 20-9-2013, petitioner's claim for admission to Government college cannot be considered because she cannot surrender the seat already occupied by her after 20-9-2013. Learned Government Pleader would contend that the term "surrender" mentioned in the above rule means surrender of the seat to the Government. After 20-9-2013, as the Government cannot fill up any vacant seat in a self-financing college, the petitioner or any similarly placed student cannot surrender the seat to the Government and, therefore, the claim of the petitioner is unsustainable. Learned Government Pleader contended that Ext. R-2(a) dated 12-6-2013 clearly shows the terms and conditions in the agreement between the Government and the Kerala Self-financing Dental College Management

Consortium. Learned Government Pleader would contend that the contents of Ext. R-2(a) were known to the petitioner and other students. Learned Government Pleader would further contend that in paragraph 4 of Ext. R-2(a), it is specifically mentioned that the management concerned shall be entitled to fill up the seats given to the Government, which remained unfilled till 20-9-2013. Learned counsel for the petitioner disputed the contention of the contesting respondents that Ext. R-2(a) was published on 12-6-2013. In the amended writ petition as well as in the reply affidavit, the petitioner reiterated the contention that Ext. R-2(a) was not available in the website of the Government till completion of the admission process. According to the petitioner, Ext. R-2(a) was seen inserted in the website subsequent to filing of the amended writ petition. Specific case of the petitioner is that Ext. R-2(a) was uploaded in the website only on 25-10-2013. So, what will be the effect of not publishing Ext. R-2(a) on 12-6-2013 will have to be considered. We shall do it in the succeeding part of this judgment. Learned Government Pleader relied on Ext. R-2(c) order. Ext. R-2(c) order dated 24-9-2013 clearly stated the reasons for not considering the request of the students already admitted in self-financing institutions for re-allotment to vacant seats in Government Medical/Dental Colleges. In Ext. R-2(c), it is specifically stated that such a course will create lapsing of Government merit seats in self-financing institutions. Learned Government Pleader submitted that this is in complete harmony with the terms in Clause 11.6.7 in Ext. P-2 mentioned above.

21. Learned Government Pleader further contended that as there was no mistake or mala fides on the part of respondents 1 and 2, the petitioner is not entitled to claim either a shift to a Government Dental College or to claim compensation for the excess fees to be paid in a self-financing college. Learned Government Pleader relying on the decision of the Supreme Court in *State of Kerala and Others Vs. Kandath Distilleries*, contended that a writ of mandamus cannot be issued in this case as the petitioner failed to establish a legal right in herself and respondents 1 and 2 had not failed in their legal duty. Indubitably, grant of a relief in a petition for issuance of a writ of mandamus is discretionary. It is also argued that the court cannot impede the exercise of discretion of an authority acting under the statute by issuance of a writ of mandamus. Following quotation is relied on by the learned Government Pleader

.....The court cannot impede the exercise of discretion of an authority acting under the statute by issuance of a writ of mandamus. A writ of mandamus can be issued in favour of an applicant who establishes a legal right in himself and is issued against an authority which has a legal duty to perform, but has failed and/or neglected to do so, but such a legal duty should emanate either in discharge of the public duty or operation of law.....

22. Learned Government Pleader further contended that the claim of petitioner that her fundamental rights under Article 14 of the Constitution of India have been violated is without any basis. According to him, the rights of the petitioner

and that of a student who got admitted to a Government College fall within two different classes. There is rational and reasonable differentiation in the rights of the said students falling in two different classes. Therefore, it is contended based on Mohan Kumar Singhania and others v. Union of India and others 1992 Supp. (1) S.C.C. 594 that there is no violation of principles under Article 14 of the Constitution of India. Following quotation is relied on:

Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The cherished principle underlying the above Article is that there should be no discrimination between one person and another if as regards the subject-matter of the legislation, their position is the same. (Vide Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others,) or in other words its action must not be arbitrary, but must be based on some valid principle, which in itself must not be irrational or discriminatory [vide Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,]. As ruled by this Court in Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, and Gopi Chand Vs. The Delhi Administration, that differential treatment does not per se constitute violation of Article 14 and it denies equal protection only when there is no rational or reasonable basis for the differentiation. Thus Article 14 condemns discrimination and forbids class legislation but permits classification founded on intelligible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The Government is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not scientifically be perfect or logically complete. As observed by this Court more than once, every classification is likely in some degree to produce some inequality.

23. Learned Government Pleader contended that the administrative action challenged in the writ petition is perfectly justifiable on sound legal principles. There is no mala fides or arbitrariness in the process of allotment made to various colleges. Learned Government Pleader contended that the admission of a student to a college is not merely on the marks secured. His/her option also plays a vital role in getting admission to the institution shown in the option list. In other words, the authority cannot discard the option exercised by a candidate at the time of making allotment. That itself is an indication to show that merit is not the sole criterion in admitting students to various professional colleges. In this case there was no mala fides or lack of transparency or fair deal. The prospectus and Government Orders have given discretion to the authorities to take a decision, of course subject to the merit of the students and the option exercised. The scope of judicial review would remain limited as there is no vitiating circumstances established by the petitioner.

24. Learned Government Pleader further contended that there cannot be any criticism against the decision taken by the Government, based on the agreement

between the Government and the Self Financing College Management Consortium, that the students who got admitted to self financing colleges cannot move out of the same after 20-9-2013. This decision was taken in accordance with the terms and conditions in Ext. P-2 prospectus as well as those in the binding contract between the Government and the Consortium, which is binding on the students as well. As mentioned above, students were put to notice of the reservation of the power by the Government to make addition/deletion/alteration in the terms and conditions of the prospectus.

25. Learned counsel for respondents 5 to 7 contended that the petitioner is not entitled to get any relief because, if her claim is allowed, so many other students will be consequently adversely affected and they are not brought on record in this proceedings. Hence she is not entitled to get any relief.

26. In reply to the above arguments, learned counsel for the petitioner contended that Ext. R-2(d) was published only on 21-10-2013 though it bears a date, 12-6-2013. Respondents have no case that Ext. R-2(d) was published in the website of the 2nd respondent or it was available in public domain before 21-10-2013. This fact is indisputable. It is, therefore, contended by the learned counsel for the petitioner that respondents cannot be heard to say that the entire transaction was fair and transparent. Further the reasonableness of the classification of students studying in Government Colleges and those in self financing colleges is also challenged by the learned counsel for the petitioner.

27. We have anxiously considered the contentions raised by the learned counsel for the petitioner and the respondents. Fact that students having lesser rank than the petitioner have been admitted to Government Colleges remains undisputed. Learned counsel for the petitioner vehemently contended that merit shall be the sole criterion for admission to professional courses and this principle has been repeatedly proclaimed by the Apex Court. Heavy reliance is placed by the petitioner on Asha's case and Priya Gupta's case (supra). In answer to this argument, learned Government Pleader would contend that going by the scheme of Ext P-2 prospectus, it cannot be stated that merit is the only indicator in securing allotment to professional colleges. Modalities of allotment have been specifically prescribed in Ext. P-2. The exercise of option also plays a vital role in securing admission, contended the learned Government Pleader and the learned counsel for respondents 5 to 7. Various sub-clauses in Clause 7 in Ext. P-2 show how to apply for entrance examination. Clause 11 specifies the details of CAP and online submission of options. Our attention is drawn to a sentence in Clause 11 in Ext. P-2, which reads as follows:

.....Candidates should register options only to those courses/colleges which they are sure to join on allotment. If the candidate fails to remit fee/join the college, he/she will not be eligible for any further allotment in any stream.

Learned Government Pleader relied on Clause 11.4.1 in Ext. P-2 which mandates the necessity of the candidates registering options. Clause 11.5 in Ext. P-2 deals

with the procedure for registering options. Learned Government Pleader relied on Clause 11.6.7 in Ext. P-2 (quoted above) to contend that the importance of exercising options is reiterated in this Clause. Therefore, it is evident that merit alone cannot be taken as the element for claiming admission it is true that the students, including the petitioner who had applied for KEAM--2013, are expected to read and understand the various Clauses in Ext. P-2. Learned Government Pleader contended that if we disregard the option exercised by a student and allot him/her to a college or course purely on his/her merit, it will cause violation of the rights of another meritorious student, who wisely exercised his/her option. Hence, it is contended that the exercise of option is also a very relevant factor in CAP. We are of the view that in the allotment process visualised by Ext. P-2, it cannot be said that merit alone is the criterion. Options exercised by candidates definitely have an important role to play in the matter of allotment. Ratio in Asha's case and Priya Gupta's case (*supra*) can be applied if only the petitioner establishes that her rights according to merit and option have been violated.

28. Another contention raised by the learned counsel for the petitioner is that there is a change of procedure adopted after publication of Ext. P-2 prospectus and it caused prejudice to the petitioner. Stand taken by the contesting respondents is that Ext. P-2 prospectus itself shows the right of the Government to make appropriate changes on subsequent dates to meet the exigencies. For this, Clause 1.6 in Ext. P-2 is relied on. Ext. R-2 (a) Government Order dated 12-6-2013 shows the terms and conditions of the agreement executed between the Government and the Kerala Self Financing Dental Colleges Management Consortium to share seats in self financing colleges. As per the agreement and Ext. R-2(a) Government Order, 50% of the seats in the member colleges will be filled up by the Government as allotted by the 2nd respondent from the list prepared for the entrance examination in the NEET UG--2013. Answering respondents would contend that only on the basis of the agreement executed by the Government and the Management Consortium, students, including the petitioner, could get admission to BDS course. That is, if there was no agreement between the Government and the Management Consortium of self financing colleges, the petitioner would not have secured admission. It is, therefore, contended by the contesting respondents that the petitioner cannot now turn around and argue that she was wronged by the action on the part of respondents 1 and 2. Learned Government Pleader contended that petitioner is a beneficiary of Ext. R-2(a) Government Order. She has opted for admission to BDS in self financing colleges also. Had she not done so, whether she could get admission to Government Dental College or not is only a matter of sheer chance, which nobody can predict with certainty. We find that the petitioner willingly opted for admission to self financing colleges also. Therefore, there is force in this argument of the answering respondents. However, contention of the petitioner is that Ext. R-2(d) came to light only on 21-10-2013 even though it is purported to be dated 12-6-2013. As per the agreement executed between the Government and the Management Consortium, admission to Government seats in the self

financing sector should be completed before 20-9-2013. After that date, the Government will have no right to admit any student to a self financing college. It is the case of the petitioner that the restriction placed in Ext R-2(d) that a student who is admitted to a self financing college will not be allowed to upgrade his/her option after 20-9-2013 was unknown not only to the petitioner, but to anyone participated in the admission process. According to the petitioner, Ext. R-2(c) Government Order dated 24-9-2013 was a shock and surprise whereby it is mentioned that the 2nd respondent will not re-allot the students already allotted and admitted in self financing colleges on or before 20-9-2013. It is, therefore, contended by the learned counsel for the petitioner that petitioner's constitutional rights have been violated by Ext. R-2(d), which was published long after the cut off date.

29. Learned Government Pleader and the learned counsel for respondents 5 to 7 replied that the petitioner cannot be heard to say that she was not aware of the fact that she will have to surrender the seat already occupied by her if she is allotted to another college, based on her options furnished, against arising/future vacancy. This is contained in Clause 11.6.7 (iii) of Ext. P-2. It is also contended that the petitioner got a large spectrum of colleges for seeking admission only on account of the agreement executed between the Management Consortium and the Government. In Clause 2.1.1 (b) of Ext. P-2, the meaning of the terms "Government seats" have been explained and also it is clearly mentioned that those candidates who seek admission in private self financing colleges are bound to accept the conditions stipulated in the agreement between the Government and the Self Financing Colleges Management Consortium and deemed to have accepted such conditions. As mentioned earlier, the prospectus was published in December, 2012. The agreements between the Government and the Management Consortium for MBBS, BDS, etc. could be signed only much after the publication of the prospectus as it was a product of a long drawn negotiation. Learned Government Pleader, therefore, contended that it is not possible to incorporate all the conditions that may come up in future in Ext. P-2. It is also contended by the respondents that there is inordinate delay in filing the petition. This contention of the respondents does not create much impression on us. We are not of the opinion that the petition is unduly delayed so as to deny the relief claimed on that score. However, we do not find any good reason to hold that if Exts. R-2(a) and R-2(d) had been published on 12-6-2013 itself, the petitioner would have been in a better position. Learned counsel for the petitioner argued that if Exts. R-2(a) and R-2(d) were published on time, the petitioner would have confined her options to Government Colleges. We cannot buy this argument as a good one. No prudent student, who earnestly wishes to pursue studies in professional colleges, would have taken the risk of confining her options to Government Colleges, fully knowing the limited number of seats available therein. Only because of the fact that Government executed an agreement with the Self Financing College Management Consortium, large number of seats were made available and students could be admitted. Ground realities and

imponderables will have to be considered while appreciating the contention of the petitioner that she would have safely landed in a Government Dental College had Exts. R-2(a) and R-2(d) been published promptly. We are of the view that even if she was put to notice of Exts. R-2(a) and (d) at the appropriate time, she could not have claimed a better right for reasons mentioned above as well as she was bound to move through the channel provided in Ext. P-2. In other words, even if we notice that there was some delay in publishing Ext. R-2(d), the petitioner would not have been in a better position, because she derived benefits out of the agreement between the Government and the Management Consortium. It is difficult to predict as to whether she would get admission to a Government College in the absence of opening up of avenues in self financing colleges on account of the agreements executed between Government and Management Consortium, especially when we consider the role the options of candidates play in the admission process. Therefore, the contention of the petitioner that she suffered prejudice on account of non publication of Ext. R-2(d) on or before 12-6-2013 cannot be countenanced.

30. Learned counsel for the petitioner contended that petitioner's fundamental rights guaranteed under Article 14 of the Constitution of India have been violated by the illegal and arbitrary act of respondents 1 and 2. It is trite that equal protection means the right to equal treatment in similar circumstances, both in the privilege conferred and in the liabilities imposed. Law declared by the Apex Court is that what Article 14 prohibits is the unequal treatment of persons similarly situated. [Shri Kishan Singh and Others Vs. The State of Rajasthan and Others,]. The principle of equality does not mean that every law or administrative decision must have universal application for all persons who are not by nature or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. It would be inexpedient and incorrect to think that all laws or administrative decisions have to be made uniformly applicable to all people in one go. In the sphere of legal and contractual relations, the State, its instrumentalities and public authorities are enjoined in a manner that is fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good. The action must be in the interest of general public and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Learned Government Pleader contended that the students, who got admitted as per the stipulations in Ext. P-2 to Government Colleges in accordance with their merit and option form one class and those who got admitted to self financing colleges on the basis of their merit and option form another class. Their rights and liabilities are distinctly classified in Ext. P-2 itself. That classification is vivid and it is perfectly reasonable. Learned Government Pleader contended that it is all the more important to remember that only because of the agreement between the Government and the Management Consortium, students like the petitioner got a broader avenue to study in the desired stream. Reasonableness of classification

depends on the objects to be achieved by doing so. Only requirements are that the decision making process should be transparent, fair and reasonable. According to the learned counsel for contesting respondents, Ext. R-2(d) Government Order was published in the larger public interest and by no stretch of reasoning it can be said that the said notification is arbitrary or illegal. All administrative actions are to be judged on the test of fair play, at the same time, considering the need for some free play in the joints, [see - Fasih Chaudhary Vs. Director General, Doordarshan and Others,].

31. Burden of showing that a classification rests upon an arbitrary and not on a reasonable basis or the discrimination is apparent and manifest is upon the person who impeaches the administrative decision to be violative of the guarantee of equal protection. If any state of facts can be reasonably conceived that would sustain the classification, the existence of that state of facts at the time the law was enacted or decision was taken can be presumed. The above said presumption can be rebutted not only by referring to the contents of law or the administrative decision itself, but also by extraneous evidence. In this case, the fact that the agreement executed between the Government and the Management Consortium of self financing dental colleges enured to the benefit of a large number of students will have to be considered. Those students who willingly opted for self financing colleges along with Government Colleges form a distinct class and those who opted for Government Colleges alone form a different class. This classification is expressly discernible from the terms in Ext P-2 itself. Therefore, we do not find any illegality, arbitrariness or unfair deal in the classification as mentioned above. Hence, we are unable to find that the rights of the petitioner guaranteed under Article 14 of the Constitution of India have been violated.

32. The alleged violation of fundamental rights under Article 16 of the Constitution of India also could not be established by the petitioner. Rights under Article 16 of the Constitution are only instances of application of the general rule of equality laid down in Article 14 of the Constitution. Article 16 also does not debar a reasonable classification in the matter of appointment or promotion. Petitioner's apprehension appears to be about the possible future disadvantages that may be attracted due to studying in a self financing college. However, in the absence of establishing any violation of petitioner's fundamental rights, we are of the view that this contention of the petitioner is also unsustainable. Likewise, we do not find any merit in petitioner's contention that her rights under Article 21 have been violated. Upshot of the discussion is that the petitioner cannot claim an allotment to a Government Dental College.

33. Petitioner's next claim is regarding payment of compensation for the excess fees that she is called up to pay for continuing studies in a self financing college. On that ground, learned counsel for the petitioner claimed compensation from the State for the difference in the fees that she is compelled to pay for the fault of the respondents. Learned Government Pleader opposed this contention by

contending that the petitioner is not entitled to get any compensation as she failed to establish any infringement of her fundamental right. It is contended that the condition precedent for claiming compensation is the infringement of fundamental right by an arbitrary or capricious action on the part of the public authority and in the absence of such a fact, she is not entitled to get compensation. Reliance is placed on Rabindra Nath Ghosal Vs. University of Calcutta and Others, to urge this proposition. Following quotation is relevant:

The courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act.

34. As we have already found that there is no infraction of petitioner's fundamental rights, we are unable to approve the petitioner's claim for compensation. We find that the petitioner failed to establish any legal or constitutional right to claim any of the reliefs in the petition.

35. Even though we found that the petitioner has not suffered a legal injury by the delayed publication of Ext. R-2(d) for the reasons stated above, we hope that the authorities will bestow more attention and care to avoid such complaints in future. It has been time and again clarified by judicial pronouncements of this Court and the Apex Court that in such matters fairness and transparency of administrative actions alone will be appreciated. Hence prompt action is also a necessary concomitant of the above-mentioned virtues. Therefore, we would caution the authorities to be more careful and vigilant so as to avoid any room for complaint in future.

In the result, the petition is dismissed.

There is no order as to costs.