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**(2015) 06 P&H CK 0022**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CWP Nos. 6549, 7090, 6970, 7364, 7499, 7655 and 7195 of 2015

Jaspreet Singh Cheema and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 15-06-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

Dentists Act, 1948 — Section 16A, 20

Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 — Section 2, 2(e)

**Citation :** (2015) 4 SCT 630

**Hon'ble Judges :** Rakesh Kumar Jain, J

**Bench :** Single Bench

**Advocate :** M.K. Singla, for the Appellant; Anant Kataria, DAG, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rakesh Kumar Jain, J.—This order shall dispose of a batch of 7 writ petitions, bearing CWP No. 6549 of 2015 wherein all the petitioners are the students of Guru Nanak Dev Dental College and Research Institute, Sunam, Distt. Sangrur; CWP No. 7090 of 2015 wherein petitioners No. 1 to 7 are the students of Baba Jaswant Singh Dental College, Hospital and Research Institution, Ludhiana; petitioners No. 8 to 42 are the students of Ryat-Bahra Dental College and Hospital, Mohali, District S.A.S. Nagar (Mohali); petitioners No. 43 to 82 are the students of Dashmesh Institute of Research and Dental Sciences, Talwandi Road, Faridkot and petitioners No. 83 to 125 are the students of Luxmi Bai Institute of Dental Sciences and Hospital, Sirhind Road, Patiala; CWP No. 6970 of 2015 wherein all the 35 petitioners are the students of National Dental College and Hospital, Gulabgarh, Dera Bassi, District S.A.S. Nagar (Mohali); CWP No. 7364 of 2015 wherein all the 4 petitioners are the students of the Gian Sagar Dental College and Hospital, Ram Nagar (Banur), Tehsil Rajpura, Distt. Patiala; CWP No. 7499 of 2015 wherein all the 22 petitioners are the students of Saheed Kartar

Singh Sarabha Dental College and Hospital, Sarabha, Distt. Ludhiana; CWP No. 7655 of 2015 wherein all the 43 petitioners are the students of Desh Bhagat Dental College and Hospital, Sri Muktsar Sahib and CWP No. 7195 of 2015 wherein all the 64 petitioners are the students of Sri Sukhmani College and Hospital, Dera Bassi, Distt. Mohali, because a common issue is involved in all these cases. However, for the sake of convenience, the facts are being extracted from CWP No. 6549 of 2015.

2. The common prayer in all these writ petitions is for the issuance of a writ in the nature of certiorari for quashing the letter dated 13.02.2015 issued by the Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the "University") and for issuance of a writ in the nature of mandamus directing the respondents to regularise the admission of the petitioners in their respective colleges in the Bachelor of Dental Surgery (BDS) for the session 2014-15.

3. The brief facts, culled out from the lead case, i.e. CWP No. 6549 of 2015, are that respondent No. 1 issued a notification dated 07.03.2014 for admission to the MBBS/BDS course in Medical and Dental institutes in the State of Punjab for the session 2014-15. The salient features of the said notification are as under:--

"1. The Governor of Punjab is pleased to notify the admissions to Under-Graduate Degree courses i.e. MBBS/BDS for the year 2014 in the Medical/Dental institutes in the State of Punjab including Medical/Dental Institutes affiliated to Private Universities.

2. The Governor of Punjab is further pleased to authorize Baba Farid University of Health Sciences, Faridkot to conduct centralized counselling for admissions on the basis of marks obtained in All India Pre Medical/Pre Dental Entrance Test-2014 (AIPMT) to be conducted by the Central Board of Secondary Education, New Delhi.

3. The admission to the MBBS/BDS courses in all the categories including NRI's will be based on marks obtained in AIPMT.

4. xxx xxx xxx xxx

5. Candidate must have passed in the subjects of Physics, Chemistry, Biology/Biotechnology and English individually and must have obtained a minimum of 50% marks (45% for persons with locomotory disability of lower limbs and 40% for SC/BC) taken together in Physics, Chemistry and Biology/Biotechnology (PCB) in 10+2 examination or other equivalent examination of 10+2.

6. xxx xxx xxx xxx

7. In order to be eligible for admission to MBBS/BDS course, it shall be necessary for the candidate to obtain minimum of 50% marks (45% for persons with locomotory disability of lower limbs and 40% for SC/BC categories) in AIPMT-2014.

8. xxx xxx xxx xxx

9. xxx xxx xxx xxx

10. Admission to private institutions shall be made as per provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservations) Act, 2006.

11. As regards admission to BDS course, the following procedure shall be adopted:

i. Firstly, seats would be offered to AIPMET-2014 qualified candidates who are residents of Punjab.

ii. seats remaining vacant shall be offered to AIPMET-2014 qualified candidates of other state.

xxx xxx xxx xxx"

4. The notification also provided the Selection Committees for holding counselling and finalizing the admissions for BDS course in the government and private institutes, which is as under:--

"For BDS Course:

5. Since the matter in the present case is concerning the admission in the BDS Course in the private institutes, it would be relevant to refer to the provisions of the prospectus for the admission to the private institutes, which is as under:--

"23. Admission to Private Institutes

i) The distribution of seats in private medical institutions would be:

Government quota seats 50%

Management/Minority quota seats 50% (including 15%

NRI quota)

ii) The reservation in private institutes (for Government/Management quota seats) will be as under:

i) Scheduled Caste 25%

ii) Backward Classes 5%"

6. The left over seats in the private/minority institutes were to be filled up in the following manner:--

"24. Procedure for filling left over seats in private/minority institutes

i) The institute shall intimate the date and time for admissions to the Director, Research and Medical Education, Punjab and Registrar, BFUHS at least two weeks before the date of counselling. The University shall prepare a calendar of admission to the management quota seats in such a way that admission dates do not clash.

ii) The private institutions would give wide publicity in at least three leading newspapers one each in English, Hindi and Punjabi before filling up seats and the candidates would be given at least 14 days to apply. Every effort shall be made to ensure that admissions are given on merit and not in a manner which is arbitrary and casts the shadow of favouritism.

iii) The applications shall be received by the institutions directly. Admission form shall not be denied to any candidate. Applications may also be received by Baba Farid University of Health Sciences, Faridkot.

iv) The institute shall not refuse the acceptance of form under any circumstances and shall be bound to issue a receipt of the same. In case of refusal by the institute, the Application Form may be sent to the Chairman Admission Committee/Registrar BFUHS giving details of refusal in the forwarding letter.

v) The admissions made by any Institute on its own without giving due notice to Government/University shall not be treated as legal admission."

7. The notification also provided the Committee to fill up the left over seats after centralized counselling, which is as under:--

"B. For seats left over after central counselling in Government/Management/Minority quota seats in private Institutes including minority institutions.

a. Principal of the concerned College - Chairman

b. Representative of Government - Member

c. Registrar/Joint Registrar/Deputy Registrar of Baba Farid University of Health Sciences, Faridkot. - Member

d. Representative of welfare Department - Member"

8. The Central Board of Secondary Education (CBSE) conducted the All India Pre-Medical/Pre-Dental Entrance Test-2014 (AIPMT-2014) on 04.05.2014. The University published its prospectus online for admission to MBBS/BDS courses on 15.05.2014 in which the notification dated 07.03.2014 issued by respondent No. 1 was also included. The admission process was started for the MBBS/BDS courses on the basis of marks obtained in the AIPMT-2014 but the University informed respondent No. 1, vide its letter dated 27.06.2014, that in the first round of centralized counselling for admission to BDS course conducted on 24th and 25th June, 2014 in which total 11 colleges (including 2 Government Dental Colleges) had participated to fill up 858 seats, only 205 seats were filled up and 653 seats remained vacant, even after exhausting all AIPMT qualified candidates of the State. It is also mentioned that the Punjab Private Self Financed Dental and Medical colleges Association made a representation to it stating that most of the students of the Punjab have got admissions in the neighbouring states on the basis of qualifying marks i.e. 10+2 marks and if the seats in dental colleges of Punjab remain vacant, it will cause a huge loss to the economy of the state and dental colleges. The University recommended that the eligibility for admission to

the BDS course may be relaxed. Thereafter, respondent No. 1 issued a corrigendum on 16.07.2014, partially modifying the notification dated 07.03.2014 by adding sub para (a) below para 2, which is as under:--

"2(a). "However, after considering all the eligible B.D.S. candidates from the AIPMT-2014 merit list, if seats in BDS course still remain vacant, then the remaining seats will be filled through special test conducted by Baba Farid University of Health Sciences, Faridkot on the basis of merit of this test, the admission process should be completed in stipulated period as directed by the Hon"ble Supreme Court of India."

9. Thereafter, the University held a Special Test on 24.08.2014 to fill up the remaining seats of BDS course and the result was declared on 29.08.2014, but after considering all the candidates of AIPMT and Special Test in the centralized counselling, 455 seats still remained vacant.

10. According to the reply filed by the University, respondent No. 1 through the Director, Medical Education and Research, vide its letter dated 22.09.2014, addressed to the University, made it clear that "it is written to you that for counselling admission in MBBS/BDS courses on the basis of 10+2 numbers instead of minimum fixed marks in AIPMT may not be accorded recognition. That admission in year 2014 on the basis as based on 10+2 numbers instead of minimum fixed marks in AIPMT will not accord any recognition and that counselling on the basis of 10+2 numbers may kindly be considered as cancelled and in this regard, orders passed by Hon"ble Court may kindly be properly implemented. Provisions mentioned in the notification of the government, its implementation be made assured". Copies of the aforesaid letter dated 22.09.2014 were also sent to the Desh Bhagat Dental College and Hospital, Kotakpura Road, Sri Muktsar Sahib, Gian Sagar Educational Institutions, Ram Nagar, Banur, District Patiala, PIMS Jalandhar, National Dental College and Hospital, Gulabgarh, Dera Bassi, SAS Nagar Mohali, Guru Nanak Dev Dental College and Research Institution, Bathinda Road, Sunam and the Genises Institution of Dental Sciences and Research, Moga Road, Ferozepur.

11. According to the reply of the University, a public notice was also given by the Government of Punjab through the Director, Department of Medical Education and Research, Chandigarh, in the Tribune dated 28.09.2014. The text of the aforesaid public notice is as under:--

#### "Public Notice

Various Medical/Dental colleges are organizing counseling for filling the vacant admissions of M.B.B.S / B.D.S. Courses in state at college level. In the notification copies issued by these institutions educational qualification for getting admission in M.B.B.S. Courses/B.D.S. Courses is shown as based on 10+2 numbers instead of minimum fixed marks in AI.PMT, which is violation of notification issued by State Government. That as per the provisions mentioned in the State notification No. 5/9/2009-3SS3/1472 dated 7.3.2014 for recruitment of

M.B.B.S./B.D.S. Courses, Baba Farid University of Health Sciences, Faridkot has organized the concerned counselling.

It is informed to general public that state government do not accord any recognition for the vacancy of M.B.B.S./B.D.S. Courses in which counselling is done on the basis of 10+2 numbers instead of minimum marks fixed in A.I.P.M.T. i.e. (50% marks for general category and 40% for reserved category) and if any admission found on the basis of 10+2 numbers then it will be considered cancelled. That admission in year 2014 by private institutions on the basis as based on 10+2 numbers instead of minimum fixed marks in AI.PMT i.e. (50% marks for general category and 40% for reserved category) will not accord any recognition from state government and proceedings for cancelling the certification of these institutions will be started."

12. However, the case set up by the petitioners is that there was a public notice in the Tribune dated 14.09.2014 by their college, namely, Guru Nanak Dev Dental College, inviting applications for admission in the BDS course against the vacant seats. The said notice is also reproduced as under:--

"The Tribune 14/9/14 GURU NANAK DEV DENTAL COLLEGE Patiala-Bathinda Road, Sunam, (District Sangrur), Punjab

A Premier Post Graduate Institute of North India ESTD. in 1996

Admission Notice 2014-15 BDS, Admission Against Vacant Seats

Last Date to apply:- 20th Sept 2014

Date of Counselling:- 25th Sept 2014 (at College Campus)

Application forms can be obtained from College Campus or can be downloaded from college website [www.gnndentalcollege.com](http://www.gnndentalcollege.com).

Preference will be given to qualified candidates of AIPMET-2014/Special PMT for BDS by BFUHS. Seats still remaining vacant will be offered to candidates on the basis of their merit in qualifying examination i.e. 10+2 PCB (with minimum 50% marks) as per clause (e) Section 2 of Punjab Private Health Sciences Educational Institutions Act, 2006.

Contact:93179-41103, 93179-41136

Email: [info@gnndentalcollege.com](mailto:info@gnndentalcollege.com)

PRINCIPAL"

13. It is pertinent to mention here that the petitioners are either those who could not qualify AIPMT-2014 or the Special Test or those who did not opt to compete for both the aforesaid tests and straightway got admission in BDS course only on the strength of their 10+2 marks. They are alleged to have deposited the requisite fee and are even attending the classes since then. According to the petitioners, the college had sent their admission/registration return to the

University on 10.10.2014 which was returned by the University in February 2015, whereas the said return sent to respondent No. 2-Dental Council of India has not been returned back which, according to the petitioners, is deemed to have been accepted and the DCI has approved the admission of the petitioners, whereas the stand of the University is that on 01.10.2014, it had sent a letter to all the Principals of the private colleges affiliated with the University on the subject regarding sending the registration return of students admitted in the BDS course in the year 2014. The text of the letter is as under:--

"It is to inform you that registration return be accepted only of those students admitted in BDS Course in the year 2014, who are qualified (AIPMT-2014) and Special Test for BDS Course according to the Notification No. 5/9/2009-3HB-III/1472 dated 07.03.2014 issued by the Punjab Government. Except this, a public notice was also got issued in The Tribune newspaper by Director, Medical Education and Research, Punjab in reference to the aforesaid subject.

Therefore, you are requested that registration return be sent only of those students who are qualified according to the aforesaid (AIPMT-2014) and Special Test for BDS Course till 10/10/2014."

14. Thereafter, the University issued the impugned letter dated 13.02.2015, which reads as under:--

"This is with reference to your letter No. GNDDC/2014/V/2201 dated 10/10/2014 vide which you have sent the registration return of the students of BDS course, session 2014, admitted in your college, along with original documents. After verification, it is found that your college has admitted 45 candidates who had not qualified AIPMET-2014/Special Test for BDS course and even some candidates had not appeared in AIPMET-14 or Special Test for BDS course. List of these candidates is attached.

It is a gross violation of Punjab Government notifications and university has already informed you vide letter No. 15. BFUHS (Regn)/14/23159-63 dated 01.10.2014 regarding not to send registration return of candidates who were not qualified AIPMET-2014 or Special Test for BDS course. Therefore, the admission of these 45 candidates cannot be regularized.

You are therefore directed to struck-off the names of these 45 candidates wrongly selected by you at your own, from the roll of the college and inform the candidates accordingly under intimation to the university.

Please find enclosed herewith all original documents and registration fee of above mentioned candidates as sent by you vide letter referred above.

Further, you are requested to send registration return along with registration fee of candidates who had qualified AIPMT-2014 or Special Test for BDS course only.

No further correspondence in this regard will be entertained."

15. In the reply filed by respondent No. 1 in CWP No. 7090 of 2015, it has been

averred that the State had decided not to give relaxation in the eligibility criteria for admission to the BDS course in view of the decision of the Supreme Court in Civil Appeal No. 4318 of 2012 titled as "Priya Gupta v. State of Chhattisgarh and others".

16. The petitioners in CWP No. 7090 of 2015 have filed replication to the written statement filed on behalf of respondents No. 1 to 4 and during the course of hearing, an additional affidavit was filed by the Director, Research and Medical Education, Punjab dated 20.05.2015 averring that the criteria for selection by way of Special Test was the same as notified in the notification dated 07.03.2014 i.e. minimum 50% marks in the test for general category candidates, 45% marks for handicapped candidates and 40% marks for SC and BC candidates. It is further averred that there were total 1230 seats in the BDS course in the State of Punjab. As per the record provided by the University, total 759 seats were filled on the basis of merit in Special Test conducted on 24.08.2014 and 66 seats were filled on the basis of merit in AIPMT-2014. However, 381 seats were illegally filled by 11 private Dental Colleges on their own, on the basis of marks obtained by the students in the qualifying exam of 10+2 (PCB) despite the fact that they were informed through press note and individual e-mails, not to grant admission on the basis of marks obtained in the qualifying exam of 10+2 (PCB) but the private institutes chose to ignore the warning for extraneous reasons.

17. The petitioners in the lead case, i.e. CWP No. 6549 of 2015, have also filed a rejoinder to the reply filed by respondent No. 3 and placed on record an information secured from the Adesh University under the Right to Information Act, 2005, in regard to the admission given by it. According to the petitioners, the Adesh University had informed that "however, it is intimated that 43 numbers of students were admitted in BDS course for session 2014-15 on the basis of merit of 10+2 (Medical) qualifying examination who did not qualify AIPMET-2014 but appeared in the special test conducted by Baba Farid University of Health Sciences".

18. On the basis of the aforesaid pleadings, learned counsel arguing the lead case has submitted that as per Clause 10 of the notification dated 07.03.2014, admissions to the private institutions are to be made as per the provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservations) Act, 2006 (hereinafter referred to as the "Act") in which Section 2(e) defines "Management Category" which means a category comprising such seats out of the sanctioned intake of a private health sciences educational institution, as may be allocated to the management of such institution by the State Government by notification in the Official Gazette, for filling up those seats by that institution in a fair and transparent manner on the basis of the inter-se merit, determined by a Common Entrance Test or Qualifying Examination, in the presence of the representative of the authority conducting the Common Entrance Test. It is submitted that the seats have been filled up by the self-financed private institutes on the basis of marks obtained in the

qualifying exam of 10+2 (PCB) with minimum 50% marks as per Section 2(e) of the Act. It is further argued that since 2008, the admissions were being given in the similar manner i.e. on the basis of marks obtained in the qualifying exam of 10+2 (PCB) and has referred to the notification dated 31.03.2008, which was amended by a corrigendum dated 22.04.2008, which read as under:--

"1.3 The Governor of Punjab is further pleased to notify that the admission to BDS/BAMS/BHMS course shall be made on the basis of qualifying examination if the candidates qualified in PMET are not available out of the PMET appeared candidates of the corresponding year. The candidates from other states shall also be taken, if Punjab candidates are not available."

19. It is further submitted that even in the neighbouring States of Haryana, Himachal Pradesh and Uttar Pradesh etc., admissions are being made in the similar manner i.e. on the basis of marks obtained in the qualifying exam of 10+2 (PCB) and even respondent No. 3, vide its letter dated 27.06.2014, asked the State Government to relax the eligibility criteria for admission to the BDS course on the representation made by the Punjab Private Self Financed Dental and Medical Colleges Association dated 20.10.2014. It is further submitted that it is only in the year 2014 that the admission made on the basis of the marks obtained in the qualifying exam of 10+2 (PCB) are not being recognized.

20. It is further submitted that in the notification dated 30.03.2015, issued with respect to admission for the session 2015-16, it is specifically provided that "the admission to the MBBS/BDS courses in all the categories will be based on marks obtained in PMET-2015. However, if the seats are still vacant, then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam)". It is also submitted that in the State of Punjab, there are two Medical Universities; one Baba Farid University of Health Sciences, Faridkot-respondent No. 3 and another is Adesh University-respondent No. 4. It is submitted that the respondent No. 4-Adesh University has admitted the students in the similar manner on the basis of marks obtained in the qualifying exam of 10+2 (PCB) and as such, the petitioners have been unequally treated in violation of Articles 14 and 16 of the Constitution of India.

21. Learned Senior counsel appearing on behalf of the petitioners in CWP No. 7195 of 2015 has argued that the present is a case of exceptional circumstances because despite the admissions having been made on the basis of AIPMT-2014 and the Special Test-2014 conducted by the respondent No. 3-University, a large number of seats in the BDS course remained vacant. It is further submitted that as per Clause 24 of the Government notification dated 07.03.2014, the private institutions had issued advertisements in 3 newspapers of English, Hindi and Punjabi, giving the candidates 14 days' time to submit their applications and the admissions have been made on the basis of merit.

22. Learned Senior counsel for the petitioners has placed reliance upon the decision of this Court in CWP No. 13566 of 2013 titled as Anchal Batra and others

v. State of Punjab and others,, decided on 27.09.2013.

23. On the other hand, counsel for respondent No. 3-University has submitted that all the writ petitions deserve to be dismissed on the ground that the petitioners have not approached the Court with clean hands as they deliberately concealed Annexure R-3/4 dated 22.09.2014 and Annexure R-3/6 dated 01.10.2014 and has relied upon a decision of this Court in the case of Jivan Dass Sethi v. State of Punjab, 1999(3) SCT 115 to contend that if a person does not come to the Court with clean hands, he would not be entitled to any relief. It is further argued that there is no provision in the prospectus, of which the notification dated 07.03.2014 is also a part, providing for admission on the basis of marks obtained in the qualifying exam of 10+2 (PCB) alone and has relied upon a decision of this Court in the case of Amardeep Singh Sahota Vs. The State of Punjab etc., (1993) 2 ILR (P&H) 500 : (1993) 104 PLR 212 , to contend that the prospectus has the force of law and has to be strictly followed. It is also argued that the State Government had not accorded sanction to the private colleges to admit the students on the basis of the marks obtained in the qualifying exam of 10+2 (PCB) and the private colleges have not followed the procedure prescribed in the prospectus for the purpose of making admissions to the BDS course in which the admissions on the basis of the marks obtained in qualifying exam of 10+2 (PCB) alone is conspicuous by its absence.

24. Learned Senior counsel appearing on behalf of respondent No. 2-Dental Council of India (DCI) has also submitted that the DCI, vide its notification dated 25.07.2007, in exercise of the powers conferred by Section 20 of the Dentists Act, 1948, with the previous sanction of the Central Government, made the Dental Council of India Revised BDS Course Regulations, 2007 (hereinafter referred to as the "Regulations"). The relevant provisions with regard to selection of students in the BDS course as per the Regulations read as under:--

"II. Selection of Students: The selection of students to dental college shall be based solely on merit of the candidate and for determining merit, the following criteria shall be adopted uniformly throughout the country:

1. In states having only one Dental College and one university board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;
2. In states, having more than one university/board/examining body conducting the qualifying examination (or where there are more than one dental colleges under the administrative control of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;
3. Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

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

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

i. In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to BDS course must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above and must have passing marks in English.

ii. In case of admission on the basis of competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or any other categories notified by the Government the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the BDS course, he shall not be admitted to that course until he fulfills the eligibility criteria as per above regulations."

25. On 07.02.2015, the DCI wrote to the Secretary (Health) and the Director of Medical Education of all the States/U.T., the Registrar of the all concerned Universities and the Principal of All Dental Colleges in the country in regard to the admission to BDS/MDS Courses in Dental Colleges as per Revised BDS Course Regulations, 2007 and Revised MDS Course Regulations, 2007. The relevant part of the letter dated 07.05.2015, which need to be highlighted, is as under:--

"2. The above regulations clearly indicates that the competitive examination is mandatory for admissions to BDS and MDS Courses except, for BDS Course, in states having only one Dental College and one university board/"examination body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration, and for MDS Course, on the basis of the individual cumulative performance at the first, second, third and Final B.D.S. Examinations, if such examination have been passed from the same

university;

3. It has been observed from the past several years that many of the dental colleges, in various states even having more than one Dental College and one university board/examining body conducting the qualifying examination, are admitting students in BDS Course on the basis of marks of their qualifying examination (10+2) and in MDS Courses on the basis of individual cumulative performance at the first, second, third and Final B.D.S. Examinations even if such examination have not been passed from the same University, without appearing/qualifying competitive examinations, which is mandatory as per Revised BDS Course Regulations, 2007 and Revised MDS Course Regulations, 2007 respectively.

4. In this connection, the Executive Committee of the DCI in its meeting held on 26.03.2015 at New Delhi, considered the legal opinion dated 16.03.2015 furnished by Council's Advocate, on the issue as to whether the dental colleges can admit students in BDS Course, who are Non Qualified/ Non Appeared Students in CET Examination.

The Executive Committee after discussion and deliberations decided as under:--

The Principal of all Dental Colleges and other competent authorities viz, concerned State Governments, Universities, Director Medical Education be requested to strictly follow the provisions of Selection of Students for admission to BDS/MDS Courses as prescribed in Revised BDS Course Regulations, 2007 and Revised MDS Course Regulations, 2007, respectively, failing which the Council shall take necessary action against such dental colleges, under Section 10B of the Dentists (Amendment) Act, 1993 and Section 16A of the Dentists Act, 1948, as the case may be.

5. The relevant extracts of the Section 10B of the Dentists (Amendment) Act, 1993 and Section 16A of the Dentists Act, 1948, are reproduced hereunder, for your kind perusal and ready reference:--

Section 10B of the Dentists (Amendment) Act, 1993

"10B (1) Where any authority or institution is established for grant of recognized dental qualification except with the previous permission of the Central Government in accordance with the provisions of section 10A, no dental qualification granted to any student of such authority or institution shall be a recognized dental qualification for the purposes of this Act.

(2) Where any authority or institution granting recognized dental qualification opens a new or higher course of study or training including a postgraduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no dental qualification granted to any student of such authority or institution on the basis of such study or training shall be a recognized dental qualification for the purposes of this Act.

(3) Where any authority or institution granting recognized dental qualification increases its admission capacity in any course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no dental qualification granted to any student of such authority or institution on the basis of the increase in its admission capacity shall be a recognized dental qualification for the purposes of this Act. Explanation- For the purposes of this section, the criteria for identifying a student who has been granted a dental qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

#### Section 16A of the Dentists Act, 1948

"16A (1) When, upon report by the Executive Committee or the Visitor, it appears to the Council--

(a) that the courses of study and training or the examination to be undergone in order to obtain a recognised dental qualification from any authority or institution in a State, or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or

(b) that an institution does not, in the matter of staff, equipment, accommodation, training and other facilities, satisfy the requirement of the Councils, the Council shall send a statement to that effect to the Central Government.

(2) After considering such a statement, the Central Government may send it to the Government of the State in which the authority exercises power or the institution is situated, and the State Government shall forward it, along with such remarks as it may think fit to make, to the authority or institution concerned, with an intimation of the period within which the authority or institution may submit its explanation to the State Government.

(3) After considering the explanation, or where no explanation is submitted within the period fixed, then, on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government may, after considering the recommendations of the State Government and after making such further inquiry, if any, as it may think fit, by notification in the Official Gazette, direct that an entry shall be made in Part I of the Schedule against the qualification granted by the authority or institution declaring that it shall be a recognised dental qualification only when granted before a specified date or that the said recognised dental qualification if granted to student of a specified college or institutions affiliated to any University shall be a recognised dental qualification only when granted before a specified date or, as the case may be, that the said recognised dental qualification shall be

a recognised dental qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date:"

6. In view of the above, the decision of the Executive Committee is communicated to you with a request to follow the provisions of Selection of Students for admissions to BDS/MDS Courses as prescribed in Revised BDS Course Regulations, 2007 and Revised MDS Course Regulations, 2007, respectively, to maintain the highest standard of dental education in the country, and the dental colleges shall not be allowed to admit students in BDS/MDS Courses in violation of DCI Regulations and without appearing/qualifying in respective competitive examination, which is mandatory as per DCI Regulations."

26. In regard to the notification dated 30.03.2015 issued by the State of Punjab, counsel appearing on behalf of respondent No. 2-DCI has also produced a letter of the Medical Council of India dated 06.05.2015, addressed to the Director, Directorate of Medical Education, Chandigarh, which has a reference to the Secretary, Health, Government of Punjab and the Registrar, Baba Farid University of Health Sciences, Faridkot, Punjab. The text of the said letter is reproduced as under:--

"This is to bring to your kind notice that the Notification dated 30.03.15 issued by Government of Punjab, Department of Medical Education and Research (Health-III Branch) on the subject - "Admission to MBBS/BDS Courses in Medical and Dental Institutes in the State of Punjab for the Session 2015" was examined by the Council Office. It is noted that Clause 4 of the said notification provides as under:--

"4. The admission to MBBS/BDS courses in all the categories will be based on marks obtained in PMET - 2015. However, if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying exam)."

In this regard attention is invited to clause 5(2) of the Graduate Medical Education Regulations, 1997 lays down as under:

5. Selection to Students: The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:[...]

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

The aforesaid provision of the Graduate Medical Education Regulations, 1997 is mandatory for all the States to follow and has been upheld by the Hon"ble Supreme Court and various Hon"ble high Courts in a catena of judgment and is

binding in nature.

In view of the settled statutory position, the condition laid down by the Government of Punjab in its notification dated 30.03.2015 that " However, if the seats are still vacant then admissions will be done on the basis of marks obtained in 10+2 (qualifying examination)" is contrary to the mandate prescribed by the Graduate Medical Education Regulations, 1997. The consequence of any admission that is made contrary to the norms laid down by Graduate Medical Education Regulations, 1997 is that the qualification awarded to such person cannot be considered as a recognized medical qualification under the Indian Medical Council Act, 1956. Accordingly, such person is not entitled to be granted registration by any State Medical Council.

Therefore, you are called upon to forthwith remove the aforesaid condition from the Notification and ensure that all admissions are made strictly in conformity with the provisions of Graduate Medical Education Regulation, 997 and is notified to all concerned. This may be treated as Most Urgent.

This issues with the approval of President, MCI."

27. Counsel for respondent No. 2 has also referred to a decision of the Supreme Court in the case of Priya Gupta Vs. State of Chhatishgarh and Others, AIR 2012 SC 2413 : (2012) 5 SCALE 328 : (2012) 7 SCC 433 : (2012) AIRSCW 3354 , wherein various directions have been issued by the Supreme Court together with the consequences and penal action in case of non-compliance of the directions. It is further submitted that as per the regulations, where there are more than one Dental College and one University board/examining body conducting the qualifying examination in the State, the admissions could only be made on the basis of a competitive entrance examination. It is further submitted that the students from the Punjab School Education Board, Central Board of Secondary Education and the Indian Certificate of Secondary Education were there in the State of Punjab where there are admittedly more than one University for the purpose of admission to more than one dental colleges as there are 2 Government Dental Colleges at Patiala and Amritsar and 13 other private Dental Colleges, therefore, it is submitted that there cannot be any admission on the basis of the marks obtained in the qualifying exam of 10+2 (PCB). It is also argued by him that if this procedure is adopted, then the admission would be given to those students who were not initially prepared for taking up the career as a Dental Surgeon, otherwise they would have either appeared in the AIPMT or the State Pre-Medical Test, rather it appears that the seats have been given to those students having no aptitude for medical course, only for the sake of minting money by the private dental institutions.

28. I have heard learned counsel for the parties and examined the available record with their able assistance.

29. The omnibus issue involved in these cases is whether the admission of the petitioner(s) in the BDS course for the session 2014-15, only on the basis of

marks obtained in the qualifying exam of 10+2 (PCB), can be regularized/recognized in the absence of compliance of mandatory provisions of the prospectus and the Regulations?

30. There is no doubt that the prospectus has the force of law and the notification dated 07.03.2014 is the part and parcel of the prospectus issued for the admission to the BDS course for the session 2014-15. Respondent No. 3 was authorized by respondent No. 1 to conduct the centralized counseling for the admission to the BDS course on the basis of marks obtained in the AIPMT-2014 which was conducted by the CBSE. It was categorically provided in the procedure to be adopted for the purpose of admission to the BDS course that firstly the seats would be offered to the AIPMT-2014 qualified candidates who were the residents of the Punjab and the remaining seats would be offered to the candidates of the other States who had qualified the AIPMT-2014. It was mandatory to obtain minimum 50% marks in the AIPMT-2014 to become eligible for admission to the BDS course besides 50% marks in the qualifying exam of 10+2 (PCB). The notification prescribed a Selection Committee for holding counselling and finalizing the admissions to the BDS course and also allowed the admission committee headed by the Principal of the institution concerned, comprising the representatives of the Government and the respondent No. 3-University, to fill up the vacancy generated after the 2nd centralized counselling. A separate procedure is provided for filling up the left over seats in the private/minority institutions for which the institution was required to intimate the date and time for admission to the Director, Research and Medical Education, Punjab and Registrar, BFUHS at least two weeks before the date of counselling so that the University could prepare a calendar of admission to the management quota seats in such a way that admission dates do not clash and for that the private institutions would give wide publicity in at least three leading newspapers, one each in English, Hindi and Punjabi before filling up seats and the candidates would be given at least 14 days to apply. Efforts were to be made to ensure that the admissions are given on merit and not in a manner which is arbitrary and casts the shadow of favoritism and it was further provided that the admission made by any institute on its own, without giving due notice to Government/University, shall not be treated as legal admission.

31. Admittedly, the private institutions offered admission to the petitioners by way of advertisements in the newspaper only on the basis of marks obtained in the qualifying exam of 10+2 (PCB) though respondent No. 1, vide its letter dated 22.09.2014, followed by a public notice dated 28.09.2014, not only informed the University but also the private institutions about its decision that the admission given on the basis of the marks obtained in the qualifying exam of 10+2 (PCB) would not be accorded recognition. It also informed vide letter dated 01.10.2014, addressed to all the private institutions affiliated with the respondent No. 2-University, that they should not send the admission return of those students who have been admitted otherwise than the merit of AIPMT-2014 and Special Test conducted by the University, but still the admissions were made

by the private institutions on their own, of the present petitioners, on the pretext that the admission are being made on the basis of marks of qualifying exam of 10+2 (PCB) in the neighbouring States of Haryana, Himachal Pradesh, Uttar Pradesh and the State of Tamilnadu etc. and also on the ground that the procedure of giving admission to the BDS course on the basis of the marks obtained in the qualifying exam of 10+2 has been continued from 2008 to 2013 and has also been followed in 2015 by the State of Punjab itself.

32. As a matter of fact, the recognition of a Dental course is by the Dental Council of India (DCI) who had issued the notification dated 25.07.2007, notifying the Dental Council of India Revised BDS Course Regulations, 2007, in which it was categorically provided that wherever there are more than one University Board/Examining Body conducting the qualifying examination, the competitive examination would be the only mode for making admission to the BDS course. Later on, vide its letter dated 07.05.2015, the DCI has further clarified that the competitive examination is mandatory for admission in the BDS course and if it is not strictly followed, then necessary action will be taken under Section 10B of the Dentists (Amendment) Act, 1993 and Section 16A of the Dentists Act, 1948.

33. As regards Clause 4 of the notification dated 30.03.2015 is concerned, there is a specific letter of the Medical Council of India dated 06.05.2015 in which it has been observed that the admission to the BDS course on the basis of the marks obtained in the competitive exams is mandatory as per Clause 5(2) of the Graduate Medical Education Regulations, 1997 and in case any admission is made contrary to the norms laid down in those Regulations, the qualification awarded to such person cannot be considered as a recognized medical qualification under the Indian Medical Council Act, 1956, and he may not be granted registration by any State Medical Council.

34. All these facts are sufficient to show that the private institutions, while granting admission to the petitioners, have violated not only the prospectus and the notification dated 07.03.2014 but also the Regulations of the Dental Council of India and the Medical Council of India dated 25.07.2007, 07.05.2015 and 06.05.2015, which are reproduced elaborately in the earlier part of this judgment.

35. The judgment relied upon by learned counsel for the petitioner(s) in Anchal Batra's case (supra) is not at all applicable to the facts and circumstances of the present case, rather the judgment of the Supreme Court in Priya Gupta's case (supra), which has been relied upon by learned counsel for respondent No. 2-DCI, is applicable in which it has been provided that the admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively

held by the nominated agency for the private colleges. It is provided in no uncertain terms that the admission to the BDS course has to be given on the basis of the competitive/entrance test i.e. AIPMT or the State Pre-Medical Test, which was made part of the notification dated 07.03.2014 by way of corrigendum dated 16.07.2014.

36. In view of the totality of the aforesaid facts and circumstances discussed here-in-above, I do not find any merit in the present writ petitions and all are hereby dismissed.

37. Insofar as the plea of discrimination raised by the petitioners vis-?-vis the admissions in the Adesh University to the BDS course is concerned, the information supplied by the Adesh University, under the Right to Information Act, 2005, who had otherwise not filed any detailed reply in this case, clearly shows that 43 number of students were admitted in BDS course for the session 2014-15 on the basis of merit of 10+2 (Medical) qualifying examination who did not qualify AIPMET-2014 but appeared in the special test conducted by the respondent No. 3-University. In this regard, it is ordered that in case the admissions have been made by the Adesh University of the said 43 number of students only on the basis of the marks obtained in the qualifying exam of 10+2 (PCB) and not on the basis of their merit in the competitive exam of AIPMET-2014 or the Special Test conducted by the respondent No. 3-University, the admissions of such students shall also be de-regularized/de-recognized but the petitioner(s) in all these writ petitions cannot take advantage of anything wrong committed by the Adesh University while giving admission to the students to the BDS course only on the basis of the marks obtained in the qualifying exam of 10+2.

38. Before parting, the Dental Council of India/Medical Council of India is directed to take appropriate steps immediately to avoid the unnecessary litigation which may generate on the basis of Clause 4 of the notification dated 30.03.2015, which otherwise runs contrary to the Revised BDS Regulations, 2007 and Graduate Medical Education Regulations, 1997, as mentioned in the letters dated 07.05.2015 and 06.05.2015 issued by the MCI and DCI respectively. The necessary action be taken by the DCI/MCI in this regard within 15 days from the date of receipt of the certified copy of this order.

39. A copy of this order be forwarded to the Dental Council of India and the Medical Council of India for due compliance.

40. Since the petitioner(s), who got admission, attracted by the advertisement given by the private college(s), without approval of the government or the respondent No. 2-University, had spent their valuable time and money, while pursuing 1st year of the BDS course, can always avail their civil and criminal remedies, in accordance with law against the management of their respective college(s).