

(2013) 07 KL CK 0074

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 14832 and 15154 of 2013

Kerala Private Medical College Management Association

APPELLANT

Vs

Admission Supervisory Committee

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 30
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2013) 3 ILR (Ker) 465 : (2013) 3 KLJ 505 : (2013) 3 KLT 316

Hon'ble Judges : K.T. Sankaran, J;B. Kemal Pasha, J

Bench : Division Bench

Advocate : George Poonthottam, T.R. Ravi and M.A. Vaheeda Babu, for the Appellant; Roshan D. Alexander, Government Pleader, Mary Benjamin, P.K. Babu, Sathish Ninan, Santhosh Mathew, Arun Thomas, Jennis Stephen, P.S. Sanjay, A. Parvathi Menon, Glen Antony, Vanaja, Johnson Gomez, S. Biju, P.T. Sree Valsan Unni and A.G. Basil, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The questions involved in these Writ Petitions are the following:

(1) Whether the Admission Supervisory Committee constituted under the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non Exploitative Fee and other Measures to ensure Equity and Excellence in Professional Education) Act, 2006, Act 19 of 2006 (hereinafter referred to as Act 19 of 2006) has power to cancel entrance examination conducted by the Consortium of Managements, exercising the powers conferred under Sections 4 and/or 5 of Act 19 of 2006?

(2) If so, whether the Admission Supervisory Committee can, after cancellation of such entrance examination, direct the Commissioner for Entrance Examinations, Kerala, to conduct entrance examination afresh?

(3) Whether the Admission Supervisory Committee can direct a fresh entrance examination beyond the time schedule prescribed under the Regulations issued by the Medical Council of India and the specific directions issued by the Supreme Court in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, and *Priya Gupta Vs. State of Chhatishgarh and Others*, ?

(4) Whether the decision of the Admission Supervisory Committee directing the Commissioner for Entrance Examinations, Kerala, to conduct the entrance examination would amount to re-introduction of S. 3 of Act 19 of 2006, which was declared unconstitutional by this Court in *Lisie Medical and Educational Institutions v. State of Kerala* (2007(1) KLT 409)?

(5) What is the legal effect of clause 16 of the consensual agreement entered into between the Government and the Kerala Private Medical College Management Association, in the matter of admission of students in Private Self Financing Medical Colleges, on the cancellation of entrance examination conducted by the Consortium of Managements?

(6) Is Exhibit P8 decision of the Admission Supervisory Committee vitiated due to violation of the principles of natural justice?

W.P. (C) No. 14832 of 2013 is filed by the Kerala Private Medical College Management Association, challenging Exhibit P8 order passed by the Admission Supervisory Committee. The reliefs prayed for in the said Writ Petition are the following:

(i) issue a writ of certiorari calling for the records leading to Ext. P8 and to quash the same.

(ii) Issue a writ declaring that the cancellation of the examination held on 31.5.2013 at MES Raja Residential School, Kozhikode held under the supervision of the Admission Supervisory Committee, is bad in law and in violation of the principles of natural justice.

(iii) Issue a writ declaring that the direction to conduct the examination by the third respondent on 22.6.2013 to fill up the 35% seats in the member colleges of the petitioner is in violation of the law and the directions as contained in the judgment of the Supreme Court.

(iv) Issue a writ declaring that the first respondent has no authority to cancel the examination conducted by the petitioner for admission in the member colleges and Ext. P8 is therefore bad in law.

(v) Pass such other order or direction as this Court may deem fit and proper in the interest of justice.

2. W.P. (C) No. 15154 of 2013 is filed by MES Medical College, Perinthalmanna, challenging the aforesaid order passed by the Admission Supervisory Committee and also for the issue of a writ of mandamus or any other appropriate writ, direction or order commanding the Admission Supervisory Committee to take

appropriate and immediate steps to complete the valuation of the answer papers of the examination held on 31.5.2013 and to declare the results within the time fixed by the Hon''ble Supreme Court. MES Medical College, the petitioner in W.P. (C) No. 15154 of 2013, is a member of the Kerala Private Medical College Management Association.

3. For the sake of convenience, the parties and the contentions are referred to as in W.P. (C) No. 14832 of 2013, since the contentions raised in W.P. (C) No. 15154 of 2013 are also covered by those raised in W.P. (C) No. 14832 of 2013.

4. In the Writ Petition, it is stated that the Kerala Private Medical College Management Association (hereinafter referred to as "the Management Association") is an association of Self Financing Private Medical Colleges in the State of Kerala, except the four colleges under the Kerala Christian Professional College Management Federation. The Management Association is a registered association. It is stated that out of 11 member Medical Colleges, 8 colleges formed a consortium and they decided to conduct a national level competitive entrance test for the purpose of admission of students in the respective Medical Colleges. Those 8 colleges are:

- (1) Malabar Medical College and Research Centre, Kozhikode.
- (2) MES Medical College, Perinthalmanna.
- (3) KMCT Medical College, Kozhikode.
- (4) Sree Narayana Institute of Medical Sciences, Ernakulam.
- (5) Azeezia Medical College, Kollam.
- (6) Travancore Medical College, Kollam.
- (7) Sree Gokulam Medical College, Thiruvananthapuram.
- (8) SUT Academy of Medical Sciences, Thiruvananthapuram.

5. It is stated in the Writ Petition that the Management Association appointed a Controller of Examinations. The prospectus, schedule of entrance test and advertisement material for admission to M.B.B.S. course for the year 2013-14 were submitted to the Admission Supervisory Committee. Correspondences took place between the petitioner association and the Admission Supervisory Committee. It is also stated that on 13.5.2013, the Hon''ble Supreme Court passed an order enabling the conduct of examination by the managements wherever the same was not held. It is averred that the Management Association and the Government entered into Exhibit P6 agreement in the matter of seat sharing and other allied matters. Though the entrance examination was scheduled to be held on 26.5.2013, it was postponed to 31.5.2013 and the same was published in the newspapers apart from giving intimation to the candidates.

6. The Admission Supervisory Committee, by the proceedings dated 28.5.2013, directed the Controller of Examinations of the Management Association to submit

three sets of question papers to the Chairman of the committee. Out of the three sets of question booklets, one was to be selected by the Admission Supervisory Committee and handed over to the Controller of Examinations for distributing the same to the students who appear for the entrance examination on 31.5.2013. The Admission Supervisory Committee authorised Dr. S. Anirudhan, a member of the Committee, to supervise the conduct of the entrance examination as per the requirements of Act 19 of 2006. The Admission Supervisory Committee also authorised the Supervisor to take such staff from the Medical Education Service in consultation with the Principal Secretary to the Health Department and he had to function as the observer while conducting the examination. Directions were also issued to Dr. Anirudhan as to the method of conducting the examination, collection of answer sheets and submission of the same to L.B.S. Centre, Thiruvananthapuram, for valuation. The Admission Supervisory Committee provisionally approved the agreement dated 23.5.2013 (Exhibit P6) entered into between the Government and the Management Association. The prospectus submitted by the Management Association was provisionally approved by the Admission Supervisory Committee.

7. The entrance examination was held at MES Raja Residential School, Kozhikode, on 31.5.2013. It is stated that the Controller of Examinations appointed by the Management Association received 1319 applications and out of them, 917 candidates appeared for the entrance examination. The examination was conducted under the supervision and control of Dr. Anirudhan with the assistance of Dr. Beena of Medical College, Kozhikode. It is further stated in the Writ Petition thus:

8. The candidates were permitted to enter the hall and the examination was conducted peacefully without any hindrance, though there was an attempt to create commotion outside the campus by a group of people who claims to be the students. They were encouraged by the media. After the examination, the answer sheets were sealed and taken under custody by Dr. Anirudhan who had taken the answer papers to Trivandrum for the same to be valued by the LBS Centre as contained in Ext. P7 order.

8. There were widespread agitations by the Students Youth Organisations outside the venue of the entrance test. Allegations were also made by them that the question papers set by the Management Association leaked out and this was done purposely by the Management Association for pecuniary consideration. Allegations also arose that the Management Association gave special tuition to certain candidates on the previous day of the examination for answering the questions contained in the question booklets. It was alleged that the Management Association directed the candidates to contact the agents of the association and their representatives to secure admission in the management quota seats on payment of huge sums. The electronic media telecast news items on 30th May, 2013 (the previous night of the examination), telecasting the conversations between the agents and representatives of the Management

Association and the parents as well as the media persons. The Admission Supervisory Committee felt that the matter requires consideration and discussion with respect to the irregularities in the matter of conduct of the entrance examination. Accordingly, on 3.6.2013, the Admission Supervisory Committee met and decided to call for the materials and evidence with respect to the irregularities, from individuals, organisations, media and the general public. The last date of submitting such materials and evidence was fixed as 6.6.2013. Opportunity was also given to all persons to appear before the Committee at 2 p.m. on 6.6.2013. A press conference was held by the Chairman of the Admission Supervisory Committee requesting all concerned to give materials in their possession touching upon the irregularities in the conduct of the examination.

9. Complaints were received by the Admission Supervisory Committee. Some of the aggrieved persons appeared before the committee on 6.6.2013. The Sub-Editor of Reporter T.V. and the reporter of India vision T.V. appeared before the Committee personally and they produced the DVDs containing the recording made by them, the gist of which was telecast in the T.V. channels on the previous night. The Committee watched the DVDs submitted by the representatives of the T.V. channels. Certain candidates also raised complaints before the Committee complaining that one candidate was prevented from entering into the examination hall and admission card was not issued to another candidate to appear for the entrance test. The Secretary of Students Federation of India (SFI), Kerala State Committee, and the State Secretary of the Akhila Bharathiya Vidhyarthi Parishath (ABVP) pointed out before the Admission Supervisory Committee that huge capitation fees were collected by the managements from some of the candidates who appeared for the entrance test.

10. The representatives of the TV channels referred to above appeared before the Admission Supervisory Committee and filed statement that the managements received capitation fee from certain candidates and special training was given to them in the kitchen of the Corporate Office of the KMCT Medical College. The parents of some of the candidates stated before the Committee that the managements demanded Rupees Thirty Five Lakhs for ordinary seats and Rupees Fifty Seven Lakhs for NRI seats as bribe for M.B.B.S. seats.

11. The representatives of the Management Association did not appear before the Admission Supervisory Committee. Of course, no notice was served on them to appear before the Admission Supervisory Committee on 6.6.2013.

12. The Admission Supervisory Committee passed Exhibit P8 order cancelling the M.B.B.S. entrance test conducted on 31.5.2013 at the MES Raja Residential School, Kozhikode. The Admission Supervisory Committee also requested the Commissioner for Entrance Examinations to conduct the entrance examination afresh for all the candidates who had registered for the entrance test conducted by the Management Association on 31.5.2013, provided that they are otherwise

qualified. Exhibit P8 order passed by the Admission Supervisory Committee is under challenge in this Writ Petition.

13. A counter affidavit was filed on behalf of the second respondent. On behalf of the first respondent, a statement was filed. Some of the candidates, who appeared for the entrance examination, filed impleading petitions. The Writ Petitioner filed reply affidavits to the counter affidavit of the second respondent and the statement filed on behalf of the first respondent. In one of the reply affidavits filed by the petitioner, it is stated thus:

It can be seen from the order under challenge, that such a decision has been arrived at even without perusing the documents which the committee ought to have perused. In such an event the committee would not have decided to have another examination on 22.6.2013 as the very agreement got aborted through Ext. P8. This is apart from other impermissibility of conducting an examination contrary to the directions as contained in the judgments of the Apex Court. Further, the said attempt is to reintroduce S. 3 of Act 19 of 2006 which was declared as unconstitutional.

The Writ Petitioner also raised a contention that the right to supervise and guide the entire process of admission under S. 4(6) of the Act 19 of 2006 does not take in the power to cancel an examination.

14. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the Supreme Court formulated triple tests in respect of the admission procedure to be adopted by a private institution or group of institutions, to be fair, transparent and non-exploitative. In P.A. Inamdar and Others Vs. State of Maharashtra and Others, , the Supreme Court held thus:

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfilment of twin objects of transparency and merit.

CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.

137. T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefore subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group institutions, if it fails to satisfy all or any of the triple tests, indicated herein above, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

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

15. Act 19 of 2006 was enacted taking into account the decisions of Supreme Court and also the past experiences of maladministration of the entrance test held by the Consortium/Association of Private Professional Colleges in the State. The constitutional validity of Act 19 of 2006 was challenged in *Lisie Medical and Educational Institutions v. State of Kerala* (2007(1) KLT 409). A Division Bench of this Court held that the provisions contained in Sections 3, 7, 8(b) and (c) and 10 of Act 19 of 2006 and Rules 10 and 11 of the Rules framed under Act 19 of 2006 are invalid and ultra vires the Constitution. It is submitted that the appeal filed before the Supreme Court against the decision in *Lisie Medical and Educational Institutions v. State of Kerala* (2007(1) KLT 409) is pending before the Supreme Court.

16. Even after Act 19 of 2006 was enacted, complaints arose that the Private

Professional Colleges in the State indulged in unhealthy practices and violated the triple tests of the entrance test being fair, transparent and non-exploitative (See Fathima Haneena P. Vs. State of Kerala and Others, , Noorbina Banu Vs. State of Kerala, and Amina Nahna Vs. State of Kerala, . It is submitted that the judgment in Amina Nahna was challenged before the Supreme Court and the appeal is pending. It is also submitted that in Noorbina Banu's case, though the Supreme Court did not reverse the findings, an opportunity was afforded to the managements to conduct the entrance test within a time frame. It is submitted that the Supreme Court dismissed the SLP challenging the decision in Fathima Haneena's case.

17. To properly comprehend the contentions put forward in the Writ Petition, it would be appropriate to extract Sections 4 and 5 of Act 19 of 2006.

4. Admission Supervisory Committee.--(1) The Government shall constitute an Admission Supervisory Committee to supervise and guide the process of admission of students to unaided professional colleges or institutions consisting of the following members, namely:

- (i) A retired Judge of the Supreme Court or High Court - Chairperson
- (ii) The Secretary to Government, Higher Education Department (ex-officio) - Member Secretary
- (iii) The Secretary to Government, Health and Family Welfare Department (ex-officio) - Member
- (iv) The Secretary to Government, Law Department (ex-officio) - Member
- (v) The Commissioner for Entrance Examinations, Kerala (ex-officio) - Member
- (vi) An Educational Expert belonging to the Scheduled Caste or Scheduled Tribe Community - Member

(2) The Admission Supervisory Committee may adopt its own procedure for the conduct of its business.

(3) The terms and conditions of service of the Chairperson and the members of the Admission Supervisory Committee shall be as may be prescribed.

(4) Non-person who is associated with any unaided professional college or institution shall be eligible for being a member of the Admission Supervisory Committee.

(5) A member of the Admission Supervisory Committee shall be removed if he or she does any act, which in the opinion of the Government, is unbecoming of a member of the Committee. The member so removed shall not be re-nominated to the Committee;

Provided that no such member shall be removed from the committee without giving him or her an opportunity of being heard.

(6) The Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional colleges or institutions with a view to ensure that the process is fair, transparent, merit-based and non-exploitative under the provisions of this Act.

(7) The Admission Supervisory Committee may hear complaints with regard to admission in contravention of the provisions contained herein. If the Admission Supervisory Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing a fine upto rupees ten lakhs and the Government may on receipt of such recommendation, fix the fine and collect the same in the case of each such violation or any other course of action as it deems fit and the amount so fixed together with interest thereon shall be recovered as if it were an arrear of public revenue due on land. The Admission Supervisory Committee may also declare admission made in respect of any or all seats in a particular college or institution to be de hors merit and therefore invalid and communicate the same to the concerned University. On the receipt of such communication, the University shall debar such candidates from appearing for any further examination and cancel the results of examinations already appeared for.

(8) The Admission Supervisory Committee may if satisfied that any unaided professional college or institution has violated any of the provisions of this Act, recommend to the University or statutory body for withdrawal of the affiliation or recognition of such college or institution or any other course of action it deems fit.

5. Collection of capitation fee prohibited: (1) No capitation fee shall be collected by or on behalf of an unaided professional college or institution or by any person who is in charge of or is responsible for the management of such college or institution from or in relation to any candidate in consideration of his or her admission to or continuance in any course of study or his or her promotion to a higher class in such college or institution under the management.

(2) Where the Admission Supervisory Committee on receipt of any complaint or is otherwise satisfied that the management of an unaided professional college or institution or any person who is in charge of it or is responsible for the management of such college or institution has violated the provisions of sub-section (1), the Admission Supervisory Committee may after due enquiry recommend to the Government for taking penal action against the management.

(3) The Admission Supervisory Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions, and shall, for the purpose of making any enquiry under this Act, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any witness and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) issuing commissions for the examinations of witnesses and for local inspections and any proceeding before such committee shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code (Central Act 45 of 1860).

18. At first, we will deal with the contention raised by the petitioner that the Admission Supervisory Committee constituted under Act 19 of 2006 has no power to cancel the entrance examination conducted by the Consortium of Managements.

19. Section 4 of Act 19 of 2006 provides for the constitution of an Admission Supervisory Committee to supervise and guide the entire process of admission of students to the unaided professional colleges or institutions. The Admission Supervisory Committee shall consist of a Retired Judge of the Supreme Court or High Court as the Chairperson. The members of the Committee are the Government Officials and educational expert mentioned in sub-s. (1) of S. 4. The Admission Supervisory Committee is empowered to adopt its own procedure for the conduct of its business. The power of supervision and guidance of the entire process of admission conferred on the Admission Supervisory Committee is with a view to ensure that the admission process is fair, transparent, merit based and non-exploitative. This is in tune with the dictum laid down in T.M.A. Pai Foundation case. A restrictive meaning with respect to the power of the Admission Supervisory Committee should not be given in view of the scheme of the Act, the regulations issued by the Medical Council of India and the directions issued by the Supreme Court in Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and Priya Gupta Vs. State of Chhatishgarh and Others, to comply with the time bound conduct of the entrance test and admission of the students in professional colleges. The expression "the entire process of admission" occurring in sub-s. (6) of S. 4 takes in all powers including cancellation of entrance test and issue of orders and directions to take corrective measures either before the conduct of the entrance test or thereafter. The Admission Supervisory Committee is constituted with the avowed object of the entrance test being fair, transparent, merit-based and non-exploitative. There is no meaning in saying that the Admission Supervisory Committee has no power to cancel the entrance test even after the Committee is satisfied that the entrance test was not fair, merit-based, transparent or non-exploitative.

20. The learned counsel for the petitioner submitted that going by the scheme of Act 19 of 2006, the jurisdiction of the Admission Supervisory Committee is recommendative in nature and final decision in the matter has to be taken by the Government, University concerned or Court. Sub-s. (7) of S. 4 empowers the Admission Supervisory Committee to make appropriate recommendation to the Government for imposing a fine up to Rupees Ten Lakhs on the unaided

professional college or institution concerned, on hearing complaints with regard to admission in contravention of the provisions contained in the Act. An enquiry should be conducted by the Admission Supervisory Committee in the matter and the recommendation to the Government can be made only after the Committee finds that there has been any violation of the provisions for admission. On receipt of such recommendation under sub-s. (7) of S. 4, the Government has the authority to fix fine and to recover the same. The Admission Supervisory Committee is also empowered under sub-s. (7) of S. 4 to declare admission made in respect of any or all seats in a particular college or institution to be de hors merit and therefore, invalid. In such an event, the Admission Supervisory Committee shall communicate the same to the University concerned. The University can debar such candidates from appearing for any further examination and cancel the result of the examinations already appeared for. Under sub-s. (8) of S. 4, the Admission Supervisory Committee is also empowered to recommend to the University or statutory body for withdrawal of the affiliation of any unaided professional college or institution, if the Committee is satisfied that such college or institution has violated any of the provisions of the Act. "Recommendation" to the Government, "communication" to the University and the declaration of admission to "be de hors merit", as provided under sub-sections (7) and (8) are all powers which the Admission Supervisory Committee can exercise and each one of them has specific consequence. That consequence is based on the decision to be finally taken on the recommendation or communication to the Government or University. That the Admission Supervisory Committee has no role after making such recommendation to the Government, or after making declaration of admission to be de hors merit and communication of the same to the University, or after the recommendation to the University for withdrawal of affiliation, does not mean that the Admission Supervisory Committee has only the jurisdiction to make such recommendation or declaration. Apart from the power conferred under sub-sections (7) and (8) of S. 4 of the Act, the Admission Supervisory Committee is conferred, under sub-s. (6) of S. 4, wide powers to supervise and guide the entire process of admission of students to the unaided professional colleges or institutions. The power under sub-s. (6) of S. 4 is not restricted by sub-sections (7) and (8) of S. 4. The power under sub-s. (6) of S. 4 is also independent of the power conferred on the Admission Supervisory Committee under sub-sections (7) and (8) of S. 4.

21. Section 5 of Act 19 of 2006 mandates that no capitation fee shall be collected by or on behalf of an unaided professional college or institution or by any person who is in charge of or is responsible for the management of such college or institution from any candidate in consideration of his or her admission to or continuance in any course of study or promotion to a higher class in such college or institution under the management. Where any complaint is made to the Admission Supervisory Committee about the violation of the provisions of sub-s. (1) of S. 5 or where the Admission Supervisory Committee is "otherwise satisfied" of any such violation, the Committee has power under sub-s. (2) of S.

5 to recommend to the Government for taking penal action against the management. S. 15 of the Act provides for penalty for contravention of the provisions of the Act or Rules made thereunder. On conviction, a punishment for a term of imprisonment which shall not be less than one year, but which may extend to three years and fine is provided under S. 15. The power conferred on the Admission Supervisory Committee to recommend to the Government for taking penal action also would not abridge the power of the Committee under sub-s. (6) of S. 4 of the Act.

22. The Admission Supervisor" Committee is empowered to adopt/regulate its own procedure for the conduct of its business and in all matters arising out of the discharge of its functions, as provided under sub-s. (2) of S. 4 and sub-s. (3) of S. 5. The Admission Supervisory Committee, for the purpose of making any enquiry under Act 19 of 2006, shall have all the powers of a civil court under the CPC while trying a suit, in respect of the matters mentioned in sub-s. (3) of S. 5 of the Act. The power given to the Admission Supervisory Committee to regulate its own procedure, is also referable to sub-s. (6) of S. 4. In the matter of supervision and guidance of the entire process of admission, as contemplated under sub-s. (6) of S. 4, the Admission Supervisory Committee can adopt its own procedure and reach at the goal of ensuring that the process of admission is fair, transparent, merit based and non-exploitative. That the Admission Supervisory Committee (after the admission is over) can recommend to the Government to impose a fine upon the management, or to declare admission to be de hors merit or to recommend to the University for withdrawal of affiliation, does not mean that the Committee has to wait till the admissions are over. The consequences of making a "recommendation" or "declaration" or "communication" under sub-sections (7) and (8) of S. 6 or the recommendation to take penal action under S. 5 of the Act are drastic and it may affect the prospects of a particular student or several such students and it may also affect the educational institution as such. The consequences of taking action under sub-sections (7) or (8) of S. 4 or under S. 5 need not necessarily have the effect of rectification. On the other hand, if timely action is taken by the Admission Supervisory Committee by exercising the powers conferred on the Committee under sub-s. (6) of S. 4, the drastic consequences under sub-sections (7) and (8) of S. 4 and under S. 5 could possibly be avoided. If such corrective action is taken by the Admission Supervisory Committee by cancelling the entrance test at the appropriate time, the prejudice caused to the candidates who appeared for the entrance test could, to a great extent, be avoided. It can also be ensured that the entrance test is conducted in a fair, transparent, merit based and non-exploitative manner, by cancelling the test conducted earlier and by conducting an entrance test afresh in a proper manner.

23. For the aforesaid reasons, we hold that the Admission Supervisory Committee constituted under Act 19 of 2006 has power to cancel the entrance examination conducted by the Consortium of Managements.

24. The contention put forward by the petitioner that after cancellation of the entrance examination, the Admission Supervisory Committee has no jurisdiction to direct the Commissioner for Entrance Examinations to conduct the entrance examination afresh, is also without merit. In *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, , the Supreme Court held that if the admission procedure adopted by the private institution or group of institutions does not satisfy all or any of the triple tests, it can be taken over by the State substituting its own procedure. In *Noorbina Banu Vs. State of Kerala*, , after cancelling the entrance test, it was held that admissions can be completed to the management quota from the rank list" published by the Commissioner for Entrance Examinations in the common entrance test, in accordance with the inter se merit of the candidates. In *Amina Nahna Vs. State of Kerala*, , this Court directed the State to take over the admission and to fill the seats in the management quota from among the candidates included in the rank list prepared by the Commissioner for Entrance Examinations, on the basis of merit. In *Amina Nahna's* case also, this court issued such a direction after declaring that the entrance examination held by the Consortium of Private Self Financing Medical College Managements was illegal and void. In the present case, the Admission Supervisory Committee directed the Commissioner for Entrance Examinations, Kerala, to conduct entrance examination afresh for all those candidates who had registered for the entrance test of the Management Association. This will ensure that all the candidates who had so registered for the entrance examination would get an opportunity to appear for the examination to be conducted afresh. We reject the aforesaid contention raised by the learned counsel for the petitioner.

25. The learned counsel for the petitioner contended that if a fresh entrance test is to be conducted, it would have the effect of violating the specific direction issued by the Supreme Court in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, and *Priya Gupta Vs. State of Chhatisgarh and Others*, . In *Mridul Dhar's* case, the Supreme Court issued several directions for the timely conduct of the entrance examinations and admissions in medical institutions. In *Priya Gupta's* case, the Supreme Court followed the decision in *Mridul Dhar's* case and held that the time schedule notified by the Medical Council of India shall be strictly adhered to. In *Priya Gupta's* case, the Supreme Court stated that in the earlier decisions it was not considered as to what consequences should follow where the Central Government or the State Government or the Medical Council of India or the college itself violate the time schedule and it was held thus:

38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from midstream admissions and adoption of an admission process that is transparent, non exploitative and fair are mandatory requirements of the entire scheme.

39...

40. The schedules prescribed have the force of law, inasmuch as they form part

of the judgments of this Court, which are the declared law of the land in terms of Art. 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India regulations.

26. In Priya Gupta's case, it was also held by the Supreme Court thus:

27. Various judgments of this Court have sought to carry forward, with greater clarity, the fundamental requirement as stated in T.M.A. Pai Foundation that the admission process should be fair, transparent and non-exploitative. Every subsequent judgment of this Court has attempted to elucidate one or other aspect of this principle.

27. The Supreme Court also held in Priya Gupta's case that the directions in Mridul Dhar's case were issued, having noticed that there have been irregularities in maintaining the prescribed schedule and that the last few days of the declared schedule are primarily being utilised in an exploitative manner, on account of charging higher fees for securing admission and thereby defeating the principle of admission on merit.

28. The Admission Supervisory Committee held, in the order impugned, that question papers for the entrance examination were deliberately leaked out for pecuniary considerations and that the managements are responsible for the same. Accordingly, the Admission Supervisory Committee cancelled the M.B.B.S. entrance test conducted on 31.5.2013. Having allegedly indulged in malpractices which necessitated the intervention of the Admission Supervisory Committee to cancel the entrance examination, the managements are estopped from raising any contention that the time schedule was violated. We are of the view that the direction issued by the Admission Supervisory Committee for the purpose of conducting entrance examination afresh, in the facts and circumstances, does not violate the directions issued by the Supreme Court in Mridul Dhar's case and Priya Gupta's case.

29. We are also not inclined to accept the contention put forward by the petitioner that the direction given by the Admission Supervisory Committee to conduct the entrance examination afresh, would amount to reintroduction of S. 3 of Act 19 of 2006, which was declared unconstitutional in *Lisie Medical and Educational Institutions v. State of Kerala* ((2007(1) KLT 409). The entrance examination which is directed to be conducted afresh is for the benefit of only

the candidates who had registered for the entrance examination of the Management Association held on 31.5.2013. It would not amount to reintroduction of S. 3 of Act 19 of 2006. Only those candidates would be titled to appear for the fresh entrance examination. The rights of the managements or the consortium of managements are in no way affected by the conduct of fresh entrance test. There cannot be any right for the managements to conduct the test in the manner they like, take huge sums from the candidates, provide question papers to them in advance, clandestinely train them for the test with reference to those leaked out question papers and still claim that their right to conduct the entrance examination cannot be taken away by any authority. Claim for any such unbridled right is contrary to the principles laid down by the Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, .

30. The Admission Supervisory Committee conducted a hearing and the persons who raised complaints appeared before the Committee. They demonstrated to the satisfaction of the Committee that the petitioner indulged in malpractices in respect of the conduct of entrance examination held on 31.5.2013. The visuals recorded by the T.V. channels were exhibited before the members of the Committee. The representatives of the channels were present at the time of exhibiting the video recordings. The Admission Supervisory Committee was satisfied that the question papers were leaked out and special training was given on the previous day of the date fixed for entrance examination to those candidates who paid or offered large sums for admission. The Admission Supervisory Committee held thus:

With the materials having presented before the Committee particularly those produced by Electronics Media, the Committee concluded that there are strong reasons to believe that the integrity of conducting the Entrance Test by KPM CMA has been compromised. The allegation that the question papers have been leaked out to the prospective candidates, prior to the test, for pecuniary considerations, thereby resulting into exploitation as well as defeating various directions given through different judicial pronouncements by the Apex Court, are prima facie established. As per the provisions contained in the Act 19 of 2006, it is necessitated that the equity and transparency be brought into effect while conducting the entrance test. The acts from the part of the Management have also affected the excellence in professional education. Hence the bounden duty of the Committee is to take effective measures to fully achieve the objectives contained in the Act 19 of 2006.

31. We have also watched the DVDs which were produced by the learned Standing Counsel appearing for the Admission Supervisory Committee. The DVDs were played in the chambers with the help of the personnel of the NIC. The exhibition of the DVDs continued for about 1 1/2 hours. All the counsel appearing in the case and the learned Advocate General were present at the time of playing and exhibiting the DVDs. On a fair consideration of the visuals, we are also of the view that the conclusion arrived at by the Admission Supervisory Committee is

not erroneous. The finding made by the Admission Supervisory Committee does not call for any interference, though the Committee employed the expression "prima facie" in paragraph 23 of Exhibit P8 order.

32. The learned counsel for the petitioner submitted that the member of the Admission Supervisory Committee, who was authorised to supervise the conduct of the entrance examinations, did not report to the Committee that any malpractice was committed by the petitioner. It is submitted that in the absence of any such report, the Committee was not justified in taking suo motu proceedings. S. 5(2) of Act 19 of 2006 contains the expression "where the Admission Supervisory Committee on receipt of any complaint or is otherwise satisfied". The expression "otherwise satisfied", takes in suo motu power of the Admission Supervisory Committee. S. 5 of Act 19 of 2006 prohibits collection of capitation fee. The allegation in the present case constitutes the same. In such an event, the Admission Supervisory Committee was justified in taking suo motu action. Sub-s. (6) of S. 4 covers the instances of collection of capitation fee as well. The expression "to ensure that the process is fair, transparent, merit-based and non-exploitative" occurring in sub-s. (6) of S. 4 is aimed at preventing collection of capitation fee, leakage of question papers to favoured candidates on pecuniary considerations as well. The power given to the Admission Supervisory Committee to "adopt its own procedure" and to "regulate its own procedure" under sub-sections (6) of S. 4 and (3) of S. 5 respectively, would also indicate that the Act 19 of 2006 conferred wide powers on the Admission Supervisory Committee, including the jurisdiction to initiate suo motu action. We reject the contention raised by the petitioner that in the absence of any report made by the Supervisor authorised by the Committee that any malpractice was committed, the Admission Supervisory Committee has no jurisdiction to initiate suo motu proceedings.

33. The learned counsel for the petitioner submitted that the petitioner has made it clear in Exhibit P9 letter addressed to the Honourable Chief Minister that the petitioner has decided to withdraw from the Exhibit P6 consensual agreement dated 23.5.2013 executed between the Government and the petitioner. In Exhibit P9, the stand taken by the petitioner is that in view of clause 16 of Exhibit P6 agreement, on cancellation of the entrance test conducted by the petitioner, the agreement would become automatically invalid. The petitioner took the stand that Exhibit P6 agreement has become non-existent.

34. Clause 16 of the Exhibit P6 consensual agreement reads as follows:

16. In the event of cancellation or nullification of the common entrance test conducted by the Association/Consortium in order to admit 35% of management quota seats, this consensual agreement will become null and void.

35. The preamble of the consensual agreement reads as follows:

WHEREAS the Government is desirous of ensuring admission to 50% seats in Private Self-financing professional colleges from the list of students on the basis

of merit from the list of students who have qualified themselves in National Eligibility Cum Entrance Test-UG 2013 (NEET UG-2013), in accordance with merit and complying with the principles of reservations in Government Colleges;

WHEREAS the Government, in accordance with the above social obligation has conducted discussions with the Association and Managements of the Member colleges for arriving at a consensual agreement on mutually acceptable terms;

WHEREAS the Association and Managements of the Member colleges have participated in the discussions have expressed their desire to arrive at a consensus with the Government in respect of admission of students to the above colleges, collection of fees and refundable interest fee deposit from the students in their college;

AND WHEREAS such consensual agreement is within the framework of law as contemplated in various decisions rendered by the Honourable Supreme Court of India;

AND WHEREAS the Government, the Association and the Managements of the Member colleges have arrived at a consensus to fulfill the above objective by entering into an agreement for the academic year 2013-2014;

AND WHEREAS the Association and Managements of the Member Colleges have resolved to enter into an agreement with Government in respect of admission and collection of fees from students admitted for MBBS course 2013-14 in their college on the following terms and conditions:.

36. Paragraph 1 of the consensual agreement provides that 50% of total seats in the member colleges will be filled by the Government from the list prepared by the Commissioner for Entrance Examinations who have qualified in the NEET UG-2013. This provision in the agreement cannot be defeated by clause 16 at all. The present order passed by the Admission Supervisory Committee does not finally cancel the admission to the 35% of Management quota seats. The present order is a step to ensure the triple tests laid down by the Supreme Court in T.M.A. Pai Foundation case. Admission to the 35 % of the Management quota seats can still be made after the entrance examination (directed to be conducted by the Admission Supervisory Committee) is over. On a fair construction of the various clauses in the consensual agreement, we are of the view that, even if clause 16 is enforceable, that stage has not reached.

37. The further question which arises for consideration is whether clause 16 of the consensual agreement is valid. We are constrained to consider this question in this Writ Petition in view of the specific stand taken by the petitioner in Exhibit P9 as well as in the Writ Petition. Clause 16 cannot override the specific provisions of Act 19 of 2006 and the dicta laid down in various decisions of the Supreme Court, including those in PA. Inamdar's case. As stated above, the Supreme Court made it clear in PA. Inamdar's case that if the admission procedure adopted by a private institution or group of institutions fails to satisfy

all or any of the triple tests, it can be taken over by the State substituting its own procedure. Clause 16 of Exhibit P6 agreement clearly overreaches the decisions of the Supreme Court. Clause 16 also tends to override the provisions of Act 19 of 2006, in the sense that it interferes with the consequences of any order, declaration, or recommendation made by the Admission Supervisory Committee under Sections 4 and 5 of the Act. S. 14 of Act 19 of 2006 provides that "the Government may give such directions to any professional college or institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or give effect to any of the provisions contained therein or in any Rules or Orders made thereunder and the management of the college or institution shall comply with every such direction." Clause 16 of Exhibit P6 consensual agreement has the effect of nullifying the power of the Government under S. 14 of Act 19 of 2006. It is well settled that an agreement cannot be validly made to contract out of the statutory obligations. Such an agreement would also be violative of public policy. Clause 16 of the agreement is violative of Act 19 of 2006, against public policy and against the various decisions of the Supreme Court. Hence, clause 16 of Exhibit P6 consensual agreement is void.

38. The learned counsel for the petitioner submitted that Exhibit P8 order passed by the Admission Supervisory Committee is violative of the principles of natural justice. It is submitted that the Admission Supervisory Committee did not afford an opportunity of being heard to the petitioner. The learned counsel appearing for the Admission Supervisory Committee submitted that press releases were issued and wide publicity was given about the enquiry proposed to be conducted by the Admission Supervisory Committee. The persons who raised complaints appeared before the Committee. However, the petitioner did not participate. The learned counsel also submitted that even assuming that no opportunity of being heard was afforded to the petitioner, that by itself is not a ground to issue a writ to quash Exhibit P8 order, in the facts and circumstances of the case. It is submitted that even if the petitioner made appearance before the Committee, on the basis of the materials available before the Committee, no valid defence could be taken by the petitioner.

39. The Admission Supervisory Committee stated in paragraphs 21 and 22 of Exhibit P8 order, thus:

All the persons who have attended the meeting have come of their own on knowing about the sitting of the Committee at NRHM Hall, Trivandrum, from print and electronic media. No special request or invitation was given to anybody. Some of the participants have complained that there was shortage of time to bring all the affected persons before the Committee. But the Committee explained to them that the fastness with which the Committee acted was to safeguard the interest of the students and take such remedial steps which are required to bring about transparency in conducting of the entrance test.

The absence of the representatives from KPM CMA was also discussed. As all the print and electronic media gave wide publicity about the meeting of the

Admission Supervisory Committee, it was felt by the Committee that the absence of the management representatives cannot be said as not deliberate.

40. It is seen from Exhibit P8 order passed by the Admission Supervisory Committee that in the meeting of the Committee held on 3.6.2013, it was decided to request all concerned to produce materials before the Committee before 2 p.m. on 6.6.2013. The Chairman of the Committee was authorised to issue urgent press releases and to give wide publicity about the proposed enquiry to be held on 6.6.2013. Persons interested to participate in the enquiry in person, were allowed to do so. All persons concerned, except the petitioner, participated in the enquiry. There is no case for the petitioner that wide publicity was not given by the Committee about the proposed hearing. The petitioner has no case that they did not know about the enquiry proposed to be made by the Committee on 6.6.2013. The case of the petitioner in this regard is the following: "The petitioner had no notice from the Committee or from any other source in relation to the meeting of the Committee, obviously for the reason that the Committee was scheduled to meet only for receiving complaints and hearing the complainants as the petitioner was not a complainant in relation to the examination so conducted." In the facts and circumstances, we are of the view that the petitioner was aware of the enquiry proposed to be made by the Committee on 6.6.2013 and the petitioner deliberately did not participate. Now the petitioner is clinging on technicalities by raising a contention that the petitioner was not invited for the hearing. Such an approach cannot be permitted to be made by a responsible Association like the petitioner.

41. The learned counsel for the petitioner, relying on Bar Council of India Vs. Union of India (UOI), and Juwarsingh and Others Vs. State of Madhya Pradesh, , submitted that the Admission Supervisory Committee was not justified in deciding the matter without affording an effective and meaningful opportunity of being heard to the petitioner.

42. In Bar Council of India Vs. Union of India (UOI), , it was held:

"The alternative institutional mechanism in Chapter VI-A with regard to the disputes concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the CPC and the statutory provisions of the Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit.

43. In S.L. Kapoor Vs. Jagmohan and Others, , it was held thus:

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any

man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill corner from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs.

44. The learned counsel appearing for the Admission Supervisory Committee relied on *Priya Gupta Vs. State of Chhatisgarh and Others*, , *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, and *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, and contended that in the facts and circumstances of the case, the petitioner could not justify in any manner that the entrance examination was conducted in a fair, transparent, merit-based non-exploitative manner and therefore no writ will issue only on the ground that no notice was served on the petitioner by the Admission Supervisory Committee.

45. In *Priya Gupta Vs. State of Chhatisgarh and Others*, , the Supreme Court held thus:

66. Another challenge which has been raised on behalf of the appellants before us is that the order of cancellation dated 10.9.2010 was passed without affording any opportunity of hearing to these two appellants and, therefore, the order is liable to be set aside, being violative of principles of natural justice. It is, in fact, not in dispute before us that no specific notice had been given to the appellants before the impugned order was passed. We are of the considered view that it is not necessary for this Court to examine this submission in any greater detail because the appellants have now had two occasions to put forward their claim before the Court. The High Court has considered various aspects of the case and has given a complete hearing to the appellants. We have also heard the appellants at great length and have examined their challenge to the order dated 10.9.2010. No prejudice has been caused to them, inasmuch as they have perused their studies despite cancellation of admission and have now been duly heard by the High Court, as well as this Court. Hence, this ground of challenge does not, in any case, survive, particularly in view of the fact that we have also held that the admission to these appellants was given in a completely arbitrary and unfair manner.

46. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, the Supreme Court held:

21. As pointed recently in *M.C. Mehta Vs. Union of India (UOI) and Others*, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Art. 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Art. 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal

as in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . It is not necessary to quash the order merely because of violation of principles of natural justice.

22. In *M.C. Mehta Vs. Union of India (UOI) and Others*, it was pointed out that at one time, it was held in *Ridge v. Baldwin* (1964 AC 40: (1963) 2 All. ER 66 (HL)) that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In *S.L. Kapoor Vs. Jagmohan and Others*, Chinnappa Reddy, J. followed *Ridge v. Baldwin* (1964 AC 40 : (1963) 2 All ER 66 (HL)) and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23. Chinnappa Reddy, J. in *S.L. Kapoor Vs. Jagmohan and Others*, laid down two exceptions (at SCC p.395) namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi Vs. State Bank of India and Others*, Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's *Administrative Law* (5th Edn., pp. 472-75), as follows: (SCC p.58, para 31)

It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala and others Vs. S.K. Sharma*, . In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in *Rajendra Singh Vs. State of Madhya Pradesh and others*, .

25. The "useless formality theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one

conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta Vs. Union of India (UOI) and Others*, referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Gower, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

26. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in *S.L. Kapoor Vs. Jagmohan and Others*, , namely, that on the admitted or indisputable facts, only one view is possible. In that event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued.

47. In *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, , it was held thus:

A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

48. In *Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others*, , the Supreme Court held:

22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. (See *Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others*,). The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See *State of Punjab Vs. Jagir Singh*,) and *Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another*, .

49. Applying the principles laid down in the aforesaid decisions of the Supreme Court, we are of the view that in the facts and circumstances of the present case, the order passed by the Admission Supervisory Committee is not liable to be quashed on the ground of violation of the principles of natural justice. It cannot

be said that there was no notice at all. Public notice was given in the print and electronic media, making known to the public about the hearing proposed to be made. The petitioner knew about the enquiry proposed to be made by the Admission Supervisory Committee on 6.6.2013. Still, the petitioner did not participate in the enquiry. We are of the view that in the light of the materials produced before the Admission Supervisory Committee, even if the petitioner was heard by the Committee, there was no chance of any other decision being taken. Urgent action was necessary on the part of the Admission Supervisory Committee, in view of the time schedule prescribed by the Supreme Court and the Medical Council of India with respect to the admission formalities. Had the Admission Supervisory Committee delayed the proceedings, the candidates who appeared for the entrance examination would have been seriously prejudiced. In the facts and circumstances, we are of the view that a futile writ should not be issued by this Court to quash the order passed by the Admission Supervisory Committee.

50. It is really unfortunate that some of the private self financing Medical Colleges continue to indulge in malpractices in the matter of conducting entrance examination, even though this Court cancelled such entrance tests on earlier occasions. Over the years, an atmosphere of unethical practices, corruption, maladministration and the like have arisen in the matter of filling of the Management quota seats in Medical education sector. Entrance examinations are held at the fag end of the cut off dates prescribed, in an attempt to cover up all misdeeds.

51. The inaction on the part of the Government, even after the entrance examination was cancelled as per Exhibit P8 order, is disturbing. The Government have power under S. 14 of Act 19 of 2006 to give such directions to any professional college or institution as in its opinion are necessary or expedient for carrying out the purposes of the Act or give effect to any of the provisions contained therein or in any Rules or Orders made thereunder and the management of the college or institution shall comply with every such direction. S. 14 also empowers the Government to give such directions to the officers or authorities under its control which in its opinion are necessary or expedient for carrying out the purposes of the Act. The Government could issue directions to the Petitioner or any member of the Petitioner Association to implement the decision of the Admission Supervisory Committee. That power could effectively be exercised in the present case to protect the interests of the student community in general and the candidates who appeared for the entrance examination in particular. We hope the Government would take appropriate expeditious steps in this regard.

B. Kemal Pasha, J.

52. I had the advantage of going through the judgment prepared by my learned brother K.T. Sankaran J. Fully concurring with all the reasoning, observations and findings of my learned brother, I wish to add the following:

53. Questions (1) and (2):-The eleven-Judges" Bench in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, had gone into the pros and cons of education through aided and unaided schools, undergraduate colleges and professional colleges, in the country. It was found that the private educational institutions are a necessity in the country and that the same is evident from the fact that, while the number of Government maintained professional colleges have more or less remained stationary, more private institutions are coming up. It was held that the right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure including qualified staff and the prevention of maladministration by those in charge of management. It was further held that the fixing of a rigid fee structure, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

54. In the case of unaided educational institutions like schools and colleges upto undergraduate level, the Apex Court has approved absolute autonomy to the management in the matter of its entire administration. At the same time, in the case of unaided professional educational institutions, it was held that the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. It is based on the principle that the concept of education is, in a sense, regarded as charitable. Therefore, it was held that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. The object should not be to make a profit, in as much as education is essentially charitable in nature.

55. Pai Foundation (supra) lays down the principle that, for an admission in a professional institution including unaided professional institution, merit must play an important role. In the case of applicants seeking admission to a professional institution in order to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. It was held in paragraph 59 in the decision noted supra as follows:-

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

56. It was further held that a College or a professional educational institution has to get recognition from the University concerned, which normally requires certain conditions to be fulfilled before recognition. Such conditions of affiliation or recognition which pertain to the academic and educational character of the institution to ensure uniformity, efficiency and excellence in educational courses are valid, and they do not violate even the provisions of Art. 30 of the

Constitution; but conditions that are laid down for granting recognition should not be such as may lead to Governmental control of the administration of the unaided private educational institutions.

57. The real task before the seven-Judges Bench in *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, was to cull out the ratio decidendi of *Pai Foundation* and to examine if the explanation or clarification given in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, runs counter to *Pai Foundation*. In *P.A. Inamdar*, it was held that there is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a Common Entrance Test or the State may itself or through an agency arrange for holding of such test.

58. It was further held that such an agency conducting common entrance test must be one enjoying utmost credibility and expertise in the matter, as it would better ensure transparency and merit. In order to ensure merit, the admission procedure should undergo a triple test, i.e., it should be fair, transparent, and non-exploitative.

59. In paragraph 137 of *P.A. Inamdar* it was held that all institutions imparting same or similar professional education can join together for holding a Common Entrance Test satisfying the above said triple tests. The State can also provide a procedure for holding a Common Entrance Test in the interest of securing fair and merit based admissions and preventing maladministration. The procedure for admission so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated above, it can be taken over by the State substituting its own procedure.

60. In the backdrop of the above decisions rendered by the Apex Court, the provisions contained in the *Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006* (hereinafter referred to as "Act 19 of 2006") have to be analysed.

61. It has to be noted that while upholding the validity of some of the provisions including S. 4, most of the provisions of Act 19 of 2006 such as Sections 3, 7, 8(b) and (c), 10 etc. were struck down as unconstitutional by a Division Bench of this Court in *Lisie Medical and Educational Institutions v. State of Kerala* (2007(1) KLT 409). As per S. 4(1) of Act 19 of 2006, the Government shall constitute an Admission Supervisory Committee to supervise and guide the process of admission of students to unaided professional colleges or institutions consisting of the members as noted thereunder. As per S. 4(2) of the Act, the Admission Supervisory Committee may adopt its own procedure for the conduct of its business. As per S. 4(6), the Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional

colleges or institutions with a view to ensure that the process is fair, transparent, merit based and non-exploitative. As per S. 4(7), the Admission Supervisory Committee may hear complaints with regard to the admission in contravention of the provisions contained thereunder.

62. The learned counsel for the petitioners have canvassed an argument that the Admission Supervisory Committee has no power under the scheme of Act 19 of 2006 to cancel an entrance examination conducted by the Consortium of Management and to order the conduct of a fresh examination by the said Committee or the machinery of the State. As noted above, the object of the constitution of Admission Supervisory Committee is to supervise and guide the entire process of admission of students to unaided professional colleges or institutions. It clearly denotes that the Admission Supervisory Committee has the power to supervise and guide the entire process of admission. It can be understood that the "process of admission" and "admission" are two different connotations. The process of admission is the pathway to the destination, i.e., admission. Therefore, the process of admission deals with the entire steps upto the stage of admission, for the selection of entitled aspirants to the admission on the basis of merit through fair, transparent, and non-exploitative methods. On going through the provisions contained under S. 4(6) of the Act, it is further evident that the legislature has carefully used the terms in respect of the powers given to the Admission Supervisory Committee as "supervise and guide the entire process of admission of students", with a view to ensure that the process is fair, transparent, merit based and non-exploitative. Therefore, S. 4(6) deals with the powers of the Admission Supervisory Committee to supervise and guide the entire process of admission, and not the admission. At the same time, S. 4(7) deal with the power of the Admission Supervisory Committee to hear complaints with regard to the admission in contravention of the provisions contained thereunder. If the Admission Supervisory Committee, after enquiry, finds that there have been violation of the provisions for admission, on the part of the unaided professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing fine upto Rupees Ten Lakhs. The Government may, on receipt of such recommendation, fix the fine and collect the same or to take any other course of action as it deems fit. The Admission Supervisory Committee may also declare admission made in respect of any or all seats in a particular college or institution to be de hors merit and therefore invalid and communicate the same to the concerned University.

63. On such recommendation, the University shall debar such candidates from appearing for any further examination and cancel the results of the examination already appeared for. Here, it has to be noted that what has been dealt with in S. 4(7) is not the process of admission whereas it is with regard to any violation of the provisions for admission. The powers conferred on the Admission Supervisory Committee under S. 4(7) can be said to be recommendatory in nature, which can be exercised during the post admission stage. It has to be noted that the powers conferred on the Admission Supervisory Committee under S. 4(6) are totally

independent of the powers conferred under S. 4(7). Even though the learned counsel for the petitioners have strenuously contended that the powers of the Admission Supervisory Committee can at the most be recommendatory in nature as contained under S. 4(7), and it has no power to cancel the examination conducted by the Consortium of Managements, we are not impressed by the said argument.

64. The entire "process of admission" contained under S. 4(6) deals with the invitation of application, scrutiny of applications, list of preparing the candidates who have preferred valid applications, fixing of the date of examination, the issuance of hall tickets and the proper conduct of the examination. Not only that, it also extends to all the stages prior to the admission. As and when the admission is made, the stage goes to S. 4(7). In the matter of admission, the powers of the Admission Supervisory Committee is limited, i.e. merely recommendatory in nature. It is because of the fact that all the stages prior to the admission comes through the scrutiny, supervision and guidance of the Admission Supervisory Committee. At the same time, the powers of the Admission Supervisory Committee under S. 4(6) of the Act to supervise and guide the entire process of admission is unfettered and absolute, of course, subject only to judicial review.

65. Even prior to the valuation of the answer papers, the Admission Supervisory Committee has found that there were serious complaints that question papers were leaked out and that the Managements had supplied the question papers to their favourites in order to see that they should come through the examination as successful candidates. On a perusal of various complaints, and on watching the DVDs produced by the TV Channels, the Committee came to the conclusion that serious irregularities had crept in the examination, and the integrity and merit have been compromised. In such a case, it cannot be said that the Admission Supervisory Committee has no power to cancel the examination and to order a fresh examination as ordered in this case, and that it should wait till the completion of the admission and then to recommend the Government that there are violations of the provisions for admission. It cannot even be imagined that the legislature has such an intention in their contemplation in legislating Sections 4(6) and 4(7) of Act 19 of 2006. If the Admission Supervisory Committee feels that there were no proper notification inviting application, it cannot be said that the Committee has no power to direct fresh notification. Likewise, if the Committee gets reliable information that many of the applications are unnecessarily rejected for giving way to the favourites of the Managements only to attend the test, or that hall tickets were not issued to many of the candidates other than such favourites of the Managements, it cannot be said that the Admission Supervisory Committee shall still wait for all the stages upto admission and then to complain to the Government by invoking powers under S. 4(7) of Act 19 of 2006. When the Committee has absolute power to supervise and guide the entire process of admission, the Committee can correct any error, default, or malpractice committed during the process of admission and they need

not wait to pass on to the stage of S. 4(7). If the interpretation as the one relied on by the learned counsel for the petitioners is accepted, the provisions under S. 4(6) would not have any meaning at all.

66. The power of the Admission Supervisory Committee to order the conduct of a fresh examination and also to order such fresh examination to be conducted by an authority under the control of the State need not be doubted. Such powers can be clearly seen from paragraph 59 of *Pai Foundation (supra)*. In fact, the said paragraph recognizes only common Entrance Test by the Government agencies alone in the case of unaided professional colleges. Similarly, in *P.A. Inamdar (supra)* it was clearly held in paragraph 137 that the admission procedure adopted by a private institution or group of institutions if fails to satisfy all or any of the triple tests, indicated above, it can be taken over by the State substituting its own procedure. Here, in this case all the admission procedure were not taken over by the Admission Supervisory Committee or by the State, whereas the Admission Supervisory Committee has cancelled the examination conducted by the Consortium of Managements on the ground that it was not transparent, as also there were malpractices, and has ordered a fresh examination to be conducted by the machinery of the State, which are absolutely permissible through the decisions of the Apex Court mentioned above. Therefore, there is no doubt that the Admission Supervisory Committee has power to cancel such an examination on the ground that it failed to satisfy any of the triple tests, and to order a fresh examination to be conducted through the machinery of the State.

67. Questions (3) and (4):-The learned counsel for the petitioners have taken up a contention that the Admission Supervisory Committee has no power to tinker with the positive directions of the Apex Court in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, , followed by *Priya Gupta Vs. State of Chhatisgarh and Others*, regarding the time schedule prescribed in the conduct of the examination.

68. The Ministry of Health and Family Welfare, Government of India convened a meeting of the State Health/Medical Education Secretaries and Vice Chancellors of the Universities of Health Science, and as a result of the discussion, issued a directive dated 14.5.2013 to the Secretaries of Health and Medical Education in all the States and Union Territories and all the Universities awarding Medical/Dental degrees, laying down the policy guidelines of admission of students and other allied matters, laying down the schedule for the completion of the various stages of admission processes, commencement of academic sessions and closure of admissions in courses of medicine etc. to be applicable to all Medical and Dental Colleges in the country for the academic session 2003-04 onwards. The said directive also included the cancellation of admission granted after the last date of closure of admission and also warned the candidates of the consequences of conducting admission after the last date for closure of admissions. The time schedule for the completion of the admission process for medical and dental

courses were clearly specified in it, and as per the same the conduct of entrance examination for MBBS/BDS courses shall be during the month of May. The Medical Council of India, taking note of the said directive, issued notification dated 25.2.2004 with the approval of the Central Government laying down the time schedule for the completion of the admission process for the first MBBS course, on the very same lines noted in the above directive dated 14.5.2003.

69. I would like to recall the observation of the Apex Court in paragraph 28 of Priya Gupta (supra), on noticing that there have been irregularities in maintaining the prescribed schedule and that last few days of the declared schedule are primarily being utilised in an exploitative manner on account of charging higher fees for securing admission and thereby defeating the principle of admission on merit. The managements were having 31 days altogether for the conduct of the examination. At the same time, it is pertinent to note that they have deliberately chosen the last date, i.e., 31st May, 2013 for the conduct of the examination. It is true that they are entitled, to conduct the examination even on 31st May when the Apex Court has fixed the schedule as aforesaid. Especially when they have preferred the 31st day of May, 2013 for the conduct of the examination, is it permissible for them to conduct the examination in whatever manner they like by overlooking transparency and fairness and then to contend that the Admission Supervisory Committee is bound to swallow the said examination as such and has no power to order its cancellation and a fresh examination? It is mere commonsense to think that when the Admission Supervisory Committee is empowered to cancel such an examination conducted by violating transparency and fairness, and to order the conduct of a fresh examination, such a fresh examination cannot be conducted on 31.5.2013 itself. In such a circumstance, when they have decided to conduct the examination on 31.5.2013 with a deliberate intention to flout all the directives of the Apex Court regarding the triple tests to be complied with, they cannot be heard to say that the Admission Supervisory Committee has no power to order a fresh examination or to contend that such power by the Admission Supervisory Committee will amount to tinkering with the time schedule prescribed by the Apex Court. The exercise of such a power conferred on the Admission Supervisory Committee through S. 4(6) of Act 19 of 2006 cannot be treated as one violating the directives of the Apex Court.

70. The Admission Supervisory Committee or even this Court cannot extend or vary the time schedule fixed by the Apex Court. At the same time, based on the discussions made above, we are not impressed with the argument of the learned counsel for the petitioners that the order passed by the Admission Supervisory Committee is in violation of the directives of the Apex Court. Further, we do not find any meaning in the argument that Ext. P8 tends to reintroduce S. 3 of Act 19 of 2006, which was declared unconstitutional by this Court.

71. Question (5):-The learned counsel for the petitioners have strenuously argued that when the Management do not want an examination that too in the

light of "abrogation of Ext. P6 agreement as per clause 16" therein, the Admission Supervisory Committee cannot conduct the Entrance Test As I have already stated earlier, the conduct of the examination cannot always be an absolute prerogative of the Managements. If the Managements fail to satisfy the compliance of the triple tests and if there is any flagrant violation to overlook merit, the State can take over the entrance examination as held in *Pai Foundation* (supra) and *P.A. Inamdar* (supra). When the State decides so, the Management cannot say that the Management do not want such an examination.

72. Now coming to clause 16 of Ext. P6 agreement, it is a pity to note that the Government have stooped before the Management in incorporating clause 16 in Ext. P6 agreement which can clearly be termed as "contracting out". When the legislature has incorporated S. 4(1), 4(2) and 4(6) in Act 19 of 2006 by giving specific powers to the Admission Supervisory Committee, it is not permissible for the Government "to contract out" by taking away the powers of the Admission Supervisory Committee to cancel the examination. On going through Ext. P6 as a whole, it is evident that clause 16 can be separated from the rest of the provisions in the agreement. Clause 16 states,

In the event of cancellation or nullification of the Common Entrance Test conducted by the Association/Consortium in order to admit 35% of Management quota seats, this consensual agreement will become null and void.

The said provision is a flagrant violation of the powers conferred on the Admission Supervisory Committee as contained in S. 4(6) of the Act 19 of 2006. When the Admission Supervisory Committee has the power to supervise and guide the entire process of admission, it necessarily involves the power to supervise and guide a proper Common Entrance Test. In case of leakage of question papers or lack of transparency, or deliberate malpractice from the part of the Managements in conducting the Entrance Test, the Admission Supervisory Committee has the power to cancel such an examination and to order a fresh examination. In such case, clause 16 in Ext. P6 tends to take away the said power of the Admission Supervisory Committee, and therefore, clause 16 in Ext. P6 is mere contracting out against a statute, which is not permissible under law. On going through clause 16 of Ext. P6, it is evident that the same is against public policy and therefore, the said clause is void. The parties cannot contract out against a statute.

73. In *Shri Lachoo Mal Vs. Shri Radhey Shyam*, , it was held that the general principle is that everyone has a right to waive and agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with, without infringing the public right or public policy. Here, S. 4(6) of Act 19 of 2006 is not one meant for any right of the Management or the Government; whereas, it is one to prohibit the infringement of public rights based on public policy; came into the statute through the directives of the Apex Court. The Government cannot waive any such benefits given to the aspirants among the public, derived through the

directives of the Apex Court. Any of the provisions of Act 19 of 2006 does not permit any such contracting out. It was held in *P. Dasa Muni Reddy Vs. P. Appa Rao*, , as the courts normally do not permit contracting out against Statutes, there can be no contracting in also. One of us, K.T. Sankaran J. had an occasion to deal with the principle of contracting out, in *District Rural Development Agency v. Asharaf* (2011(2) KLT SN 61 (C. No. 79)), wherein also it was held that any such contracting out is impermissible. In Halsbury's Laws of England, Volume 8, Third Edition, it is stated in paragraph 248 at page 143:

As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory condition may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the Legislature has expressly provided that any such agreement shall be void.

When a special statute governs the parties, contracting out is not permissible. Matters being so, the incorporation of clause 16 in Ext. P6, being mere contracting out, is clearly impermissible and therefore, clause 16 of Ext. P6 is void and inoperative. Parties have to proceed with Ext. P6 as if clause 16 is not there in it. Therefore, the Managements cannot take a stand that the Admission Supervisory committee has no power to order a fresh examination when they do not want any such examination. The Managements have no right to say so, as clause 16 in Ext. P6 agreement is void and inoperative.

74. Question (6):--The main attack by the learned counsel for the petitioners as against Ext. P8 order of the Admission Supervisory Committee is that it has failed to observe the solemn principles of natural justice in passing such an order. It is argued that the Admission Supervisory Committee has not extended an opportunity of being heard to the Managements regarding the complaints dealt with by the said Committee, as against the conduct of the examination. It seems that serious allegations of malpractice including the leakage of question paper were specifically raised by various students organizations, and some of the students who attended the examination hall pointing out that the question papers were leaked out by the Managements and that a training was imparted by the Management to a section of the aspirants who are the favourites of the managements just on the previous day of the said Entrance Test by giving answers of the questions. It was specifically alleged that such a training programme was conducted on the previous day in a restricted area where entry was only for those students whom the Management wanted to give admission for pecuniary consideration. The Admission Supervisory Committee received various complaints including those of electronic media persons who had video graphed it. The conversation between the agents and the representatives of the Management on the one side and the parents as well as the media persons on the other side, were video graphed using hidden cameras. The telecast of the

same was there on the night edition of various T.V. Channels, that too on the previous night of the entrance test.

75. There were complaints that some of the students who got the question papers prior to the examination have not only written all the answers but also have not even used the worksheets attached to the question booklets in order to arrive at the answers while solving the problems. It is alleged that the said training programme was imparted as aforesaid, in the kitchen of the corporate office of the K.M.C.T. Medical College. We have watched the DVDs, at the Chambers of my learned brother K.T. Sankaran, J. in the presence of the learned Advocate General and counsel for all the parties. It is a fact that we could observe some brisk activities going on, that too, clandestinely in a secret manner at the kitchen side of the corporate office of the K.M.C.T. Medical College, on the previous day of the entrance test. We could see students and their parents coming through the rear side of the corporate office that too not through the road or pathway, but through the plantain plantation to have entry to the kitchen. The talks by the agents, parents, and other persons which were separately recorded and video-graphed show that there were arrangements for the payment of amounts varying from Rupees 35 lakhs to 57 lakhs to the Managements as capitation for procuring seats for MBBS admission. The DVDs clearly reveal the lack of transparency in the matter. When there is lack of transparency, the concerned Entrance Test was liable to be cancelled and the Committee has rightly done so, through Ext. P8.

76. According to the learned counsel for the petitioners, they could have explained the matters contained in the complaints as well as the DVDs., had an opportunity been given to them and that they could have proved that those complaints are false. The conduct of Entrance Test was only one step in the process of admission. The answer sheets were not valued and results were not published. When all the complaints, the protests and the DVDs, reveal lack of transparency, the Admission Supervisory Committee has cancelled the Entrance Test and ordered a fresh Entrance Test through the best machinery of the State. Even if an opportunity was given, it could not have improved the situation and could not have created any transparency or fairness on the part of Management. The Admission Supervisory Committee has not resorted to such a "useless formality" of collecting any further evidence in the matter, as they were satisfied of the absolute lack of transparency and fairness.

77. Advocate Sri. P.K. Babu, learned counsel for the respondents 4 and 5 and Smt. Mary Benjamin learned counsel for the Admission Supervisory Committee have pointed out that, in the absence of any prejudice or legal injury due to the acts of the Admission Supervisory Committee in passing Ext. P8, there is no meaning in complaining about the non-compliance of the principles of natural justice in the matter. After all, what is the prejudice or legal injury to which the Managements are put when the Entrance Test was cancelled and a fresh Entrance Test was ordered? If they are ready to comply with the triple tests, they cannot

have any complaint at all in the matter. The petitioners have no case that they have no faith in the Commissioner of Entrance Examination of Kerala, or that the Commissioner of Entrance Examination of Kerala has no competency or expertise or experience in the matter. In the conduct of a fresh examination through the best machinery of the State, they cannot have any prejudice at all. Likewise, they cannot have any legal injury also.

78. In this respect, Sri. George Poonthottam and Smt. Vaheeda Babu, learned counsel for the petitioners have pointed out that there is loss of reputation to the Managements as they would be unnecessarily branded as persons who had leaked out question papers and committed malpractices. When there is lack of transparency or fairness, it is for the Admission Supervisory Committee to step in and to act. When timely supervision and guidance were called for, Admission Supervisory Committee had stepped in and cancelled the Entrance Test which lacked transparency and ordered a fresh Entrance Test. Even if an opportunity is granted, definitely, it would have been useless and it would not have improved the situation and that the results would have been the same. The learned counsel for the petitioners have relied on the decision of the Apex Court in *S.L. Kapoor Vs. Jagmohan and Others*, wherein it was held in Paragraph 24 as follows:-

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.

There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. Whenever possible, the principle of natural justice should be followed. The learned counsel for Respondents 4 and 5 has relied on the decision in *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, wherein it was held that any straight jacket formula cannot be evolved for the application of the principles of natural justice, and it may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise. It was further held that a court of law does not insist on compliance with useless formality, and will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences.

79. In *Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another*, it was held.

The question as to what extent principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in a straightjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality.

The principle that in addition to breach of natural justice, prejudice must also be proved, has been developed in several cases. In *K.L. Tripathi Vs. State Bank of India and Others*, , also the principle that not mere violation of natural justice but de facto prejudice had to be proved, was laid down.

80. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, , it was held that the "useless formality" theory is an exception, and that it will fall within the exception if it is shown that on the admitted or indisputable facts, only one view is possible, and in that event no prejudice can be said to have been caused. In *Punjab National Bank and Others Vs. Manjeet Singh and Another*, , it was held.

The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The Court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice.

81. In *Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others*, , it was held in paragraph 22:

The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. (See *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash*). The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case.

In *State Bank of India and Others Vs. Bidyut Kumar Mitra and Others*, it was held in paragraph 40, "By now the legal position is well settled and defined. It was incumbent on the respondent to plead and prove the prejudice caused by the non-supply of the documents. The respondent has failed to place on record any facts or material to prove what prejudice has been caused to him."

In *M.C. Mehta Vs. Union of India (UOI) and Others*, , it was held as under:

We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed.

82. The precedents on the subject laid down by the Apex Court as noted above, have settled the principle that in order to complain about the non-observance of the principles of natural justice, the party shall plead and prove the real prejudice caused to him due to the non-observance of the principles of natural justice, at least to the prima facie satisfaction of the Court.

83. If there is no prejudice or legal injury on account of the non-observance of the principles of natural justice, such a plea or contention is liable to be thrown out by treating it as a useless formality. There should be a reasonable chance of success in order to attract a contention of non-observance of the principles of natural justice. In a case wherein the result would be the same even if the principles of natural justice are complied with *stricto sensu*, such application of the principles of natural justice would be a useless formality. Here, in this case, the lack of transparency and fairness from the part of the Management in the conduct of the Entrance Test was established. Even if an opportunity was given to the Managements, it could not have improved the situation and it could not have resulted in a different decision in favour of the Management. In such a circumstance, the swift action taken by the Admission Supervisory Committee in this regard is only to be appreciated, as they wanted to avoid any wastage of time. Matters being so, there is no meaning in contending that the Admission Supervisory Committee has failed to observe the principles of natural justice in the matter. Apart from all the above, this Court will not issue futile Writs.

84. Lastly, Adv. Smt. Vaheeda Babu has invited our attention to the decision in Sanjoy Narayan Editor in Chief Hindustan and Others Vs. Hon. High Court of Allahabad thr. R.G., , wherein it was held:

The unbridled power of the media can become dangerous if check and balance is not inherent in it. The role of the media is to provide to the readers and the public in general with information and views tested and found as true and correct. This power must be carefully regulated and must reconcile with a person's fundamental right to privacy. Any wrong or biased information that is put forth can potentially damage the otherwise clean and good reputation of the person or institution against whom something adverse is reported. Pre-judging the issues and rushing to conclusions must be avoided.

As discussed earlier, the acts of the Consortium of Managements in the conduct of the examination lacked transparency and fairness. A person's or institution's fundamental right to privacy cannot extend to a secret conduct of a training programme by leaking out the question papers to the favourites of such person or institution with a view to favour the favourites of the person or institution to come through the examination, in which other aspirants are also participating. The Consortium of Managements should not have forgotten that now-a-days the camera-eye intrudes anywhere and everywhere. That can be objectionable only when it intrudes into the fundamental right of privacy of a person. On watching and viewing the DVDs., we do not think that the Admission Supervisory Committee was carried away or became biased in any manner. News channels,

which got information regarding the secret conduct of such a training programme rushed to the scene, collected materials and conducted the telecast just on the previous night of the Entrance Test. All the same clearly reveal the lack of transparency and fairness in the conduct of the Entrance Test. These writ petitions are devoid of merits and are only to be dismissed.

Order of Court

For the aforesaid reasons, we dismiss the Writ Petitions.