

(2009) 09 KAR CK 0062

In the Karnataka High Court

Case No : Writ Petition No's. 22192-22203 of 2009, 22382, 22386-395, 22396, 22406-410, 22413, 22628-634, 22635-641, 22915, 23160, 23492-495, 23496, 23594, 23595-596, 23647-23656, 24232-34, 24440, 24656-57, 24672, 24884, 25371, 25607, 25664, 25884 and 26918 of 2009

Mr. Aiman Ahamed Khan, Minor represented by Natural
Guardian Dr. Shamshad A. Khan and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-09-2009

Acts Referred:

University Grants Commission Act, 1956 — Section 2 (a), 2 (f), 26 (d), 3

Citation : (2009) 09 KAR CK 0062

Hon'ble Judges : V. Gopala Gowda, J;K. Bhaktavatsala, J

Bench : Division Bench

Advocate : Udaya Holla, in in W.P. Nos. 22192-22203 and 23647-23656/2009, Holla and Holla, in W.P. Nos. 22192-22203 and 23647-23656/2009, Jayakumar S. Patil, Associates in W.P. No. 22382 of 2009, Deviprasad Shetty, in W.P. No. 22382 of 2009, R.N. Narasimha Murthy in W.P. Nos. 22386-395/2009, Law Associates in W.P. Nos. 22386-395/2009, L.K. Srinivasamurthy, in W.P. Nos. 22386-395/2009, S. Shivanand, in W.P. Nos. 22386-395/2009, D.N. Nanjunda Reddy in W.P. Nos. 22396 and 22406-22410/2009, Reuben Jacob, in W.P. Nos. 22396 and 22406-22410/2009, M.R. Naik, in W.P. No. 22413 of 2009, M. Mahabaleshwar Goud, in W.P. No. 22413 of 2009, K.S. Bharath Kumar, in W.P. Nos. 22531, 22915 and 23160 of 2009, S. Vishwajith Shetty, in W.P. Nos. 23495-23495 and 23496 of 2009, T.P. Rajendra Kumar Sungay, in W.P. Nos. 22628-634, 22635-22641, 23594, 23595-23596, 24232-24234, 25607 and 26918/2009, M.M. Prashantha, in W.P. No. 24440 of 2009, S. Vijayshankar in W.P. Nos. 24656-24657 of 2009, M.V. Seshachala, W.P. Nos. 24656-24657 of 2009, B.M. Arun, in W.P. No. 24672 of 2009, V.D. Raviraj, in W.P. Nos. 25371 and 25664 of 2009 and Mohan Bhat, in W.P. No. 24884 of 2009, for the Appellant; Ashok Haranahalli and Manohar, AGA for R1, R2, R3, R5 and R6 in W.P. Nos. 22192-22203, 22382, 22386-395, 22396, 22406-22410, 22413, 22531, 22628-634, 22635-22641, 22915, 23160, 23495-23495, 23496, 23594, 23595-23596, 23647-23656, 24232-24234, 24440, 24656-24657, 24672, 24884, 25371, 25664 and 26918/2009, Vijayashankar, for R1, R2 and R3 in W.P. Nos. 22382, 23496, 23647-23656 and 24672 of 2009, N.K. Ramesh, for R2, R3 and R4 G.A. S.D. in W.P. Nos. 22382, 22396, 22406-22410, 22413, 22531,

22628-634, 22635-22641, 22915, 23160, 23495-23495, 23496, 23594, 23595-23596, 23647-23656, 24232-24234, 24440, 24656-24657, 24672, 24884, 25371, 25607, 25664 and 26918 of 2009, N. Khetty, for R5, R6, R7 and R8 in W.P. Nos. 22382, 22386-395, 22396, 22406-22410, 22413, 22531, 22628-634, 22635-22641, 22915, 23160, 23495-23495, 23496, 23594, 23595-23596, 23647-23656, 24232-24234, 24440, 24656-24657, 24672, 25607 and 26918 of 2009, P.S. Dinesh Kumar, for R4, R6 and R9 Served in W.P. Nos. 22382, 22386-395, 22396, 22406-22410, 22413, 22531, 22628-634, 22635-22641, 22915, 23160, 23495-23495, 23496, 23594, 23595-23596, 23647-23656, 24232-24234, 24440, 24656-24657, 24672, 25607 and 26918 of 2009, M. Mahabaleshwar Goud. Advocate for C/R1, R2, R3 and R4 G.A. Sereved in W.P. Nos. 22386-395, 22396, 22406-22410, 22628-634, 23495-23495, 23594, 24884, 25371, 25607, 25664 and 26918/2009, M.V. Seshachala, for R3 and R4 in W.P. Nos. 22531, 22635-22641, 22915, 23160 and 24440 of 2009, C. Mahabaleshwar Goud, for R3 and R4 in W.P. Nos. 24232-24234 of 2009, B. Manohar, G.A. for R1 in W.P. No. 25607 of 2009 and Madhusudan R. Naik, for R3 in W.P. No. 25607 of 2009, for the Respondent

Judgement

V. Gopala Gowda, J.—These batch of writ petitions are filed by the NITTE Education Trust and another, Yenepoya University (a Deemed University), the student-petitioners of both the said Educational Institutions, who are admitted by them on the basis of All India Entrance Examination conducted by it and counselling conducted by them individually, the student-petitioners allocated by the State Government under its 25% quota after conducting examination by the Karnataka Examination Authority (hereinafter called as the "KEA" for short) seeking various reliefs against the Central Government, University Grants Commission (UGC for short), State of Karnataka urging various facts and legal contentions in support of their respective cases, which will be briefly stated in this judgment for the purpose of appreciating the rival legal contentions urged on behalf of the aforesaid parties with a view to answer the contentious points that would arise for our consideration.

2. The facts of each one of the petitioner. Deemed Universities and the student-petitioners of the colleges of the said universities their student-petitioners and the student -petitioners of 25% Karnataka State Government quota are chronologically narrated herein for the purpose of appreciation of their legal contentions urged in these petitions with a view to consider their claim and counter claims and find out as to whether they are entitled for the reliefs as prayed by each one of them.

3. It is the case of NITTE Education Trust that it is a Trust running its Educational Institutions such as Medical, Dental, Nursing, Engineering, Pharmacy and Management in both Under Graduate and Post Graduate courses. It had filed an application on 23.02.2007 to the Central Government under the University Grants Commission Act, 1956 for sanction of status of Deemed University in respect of A.B. Shetty Memorial Institute of Dental Sciences and other NITTE

Institutes likes Usha Institute of Nursing Sciences, NITTE Gulabi Shetty Memorial Institute of Pharmaceutical Sciences, NITTE Institute of Physiotherapy which are being run by the aforesaid trust for grant of status of the Deemed University under UGC Act. The Central Government granted Deemed University status to it u/s 3 of the UGC Act with certain terms and conditions after getting "No objection Certificate" from the Karnataka State Government as required under guideline No. 17 of the guidelines issued by the UGC for the purpose of processing applications of Educational Institutions by the UGC and forward the same along with its opinion to the Central Government for the purpose of exercising its power u/s 3 of the UGC Act for conferment of the status of Deemed University.

4. It is further stated that the Educational Institutions run by NITTE University Trust is for higher studies. The State Government had granted "No objection Certificate" in respect of following Educational Institutions:

- i) BLDE University, Bijapur.
- ii) Sri. Siddhartha Academy of High Education, Tumkur, District.
- iii) Christ University, Hosur Road, Bangalore.
- iv) Jain University, V.V. Puram, Bangalore.
- v) Sri. Devaraj Urs Academy of Higher Education and Research, Tamaka, Kolar,
- vi) K.L.E. Academy of Higher Education and Research, Jakkur, Bangalore.

5. The State Government by issuing "No Objection Certificate" in respect of the aforesaid other Educational Institutions, which are similarly situated that of the petitioner-Institutions without imposing any conditions whereas in the case of this petitioner trust, the State Government has imposed certain conditions when it has issued "No objection Certificate". Imposing 25% of seat matrix for the medical course in the K.S. Hegde Medical Academy of NITTE University, which action of the State Government is arbitrary, unreasonable and it is discriminatory in nature and the same is violative of Article 14 of Constitution of India.

6. It is further stated that the NITTE University Trust wrote to the State Government of Karnataka, Health and Family Welfare Department and Department of Higher Education that it had been notified as Deemed University u/s 3 of the UGC Act. The Post Graduate and Under Graduate admissions for Dental and Medical course seats for the Academic year 2009-2010 would be completed in accordance with the UGC guidelines in their respective Institutions being run by the Trust. Further, it is stated that at the first Instance it had brought to the attention of the State of Karnataka, the aforesaid Departments and KEA that State Government should not allocate any students for Post Graduate Course to A.B. Shetty Dental College and K.S. Hegde Medical Academy College. Despite the same, it had proceeded to allocate Post Graduate seats from the counselling held by the KEA and that they should allocate seats as per the fee fixation made by it

(the Fee Fixation Committee). In this regard, the correspondence made by the Note Trust through letters with the State Government, are produced. The further case of the University is that the KEA issued the seat matrix Notification dated 28.5.2009 allocating Under Graduate seats in various Dental and Medical Colleges in the Kamataka State. In the said Notification; A.B. Shetty Dental Colleges and K.S. Hegde Medical Academy constituent colleges of the NOTE University, did not find a place, The non-inclusion of both the aforesaid Institutions in the first round of counselling of students by the KEA would clearly demonstrate that the State Government had, no intention of counselling the students for aforesaid Institutions of this University for the purpose of seat matrix. However, in the second notification issued by the State Government on 20.07.2009, K.S. Hegde Medical Academy was included. The same was objected by the said Deemed University by its letter dated 20.7.2009 stating that the said College and another it is A.B. Shetty Memorial Institute of Dental Sciences did not find a place in the earlier seat matrix notification and therefore they are not obliged to accommodate the students of Government quota.

7. The further case of NITTE Trust is that it had sent a representation to the State Government and KEA stating that inclusion of their Medical College in the counselling list was contrary to the UGC Regulations. Considering the said representation it had deleted the name of K.S. Hegde Medical Academy from the counselling process. This fact is evidenced from the Government seat position declared by it on the web site as notified on 23.7.2009. However, on 24.07,2009, K.S. Medical Academy came to be unjustly and Illegally Included in the counselling, which is not legal and valid.

8. The Deemed University for the Academic Year 2009-2010 in accordance with the UGC Regulations proceeded to hold an All India Entrance Examination {for short the AIEE) for Dental and Medical courses under the aforesaid Educational Institutions, which had proceeded to notify the calendar of events which had commenced on 23.04,2009 in Its web site. It had proceeded to notify, the last date for receipt of the applications from the interested students and the date of Entrance examination to be held in respect of the aforesaid Professional course in its College wide publicity was made in almost all the leading newspapers throughout the Country. One such publication in the Newspaper and the calendar of events notified is also produced. As per the calendar of events got published by the Trust Entrance Examination was held at 5 centers throughout India viz,, at Ahmedabad, New Delhi, Bangalore, Cochin and Mangalore the students who had appeared in the said examination was intimated the fee fixed by the Fee Fixation Committee which was headed by the retired High Court Judge and the same is accepted by the Trust. The Entrance Examination was conducted by the Trust on 30.5.2009. On 10.06.2009, the merit list of students was announced by the trust. Thereafter, counselling was notified which took place on 15.06.2009. The first batch of students as per the merit list notified earlier was admitted. In so far as 25% seats of the State Government are concerned, the University did not give an undertaking to it in respect of medical academy. It wrote to the State

Government that they were interested in filling up of those seats as per the fee fixed by the Fee Fixation Committee constituted by it which was accepted by it. A copy of the letter addressed to the State Government is dated 26.05.2009. The same was followed by another letter dated 19.06.2009, after the said letters were sent to the State Government, the K.S. Hegde Medical Academy was notified on 20.07.2009 for counselling the students by the KEA for which the University has objected as stated supra.

9. It is stated that it had already admitted the students counselled by it on the basis of merit list, who had taken examination on All India basis in the AIEE conducted at different centres on 30.05.2009 as per the fee fixed by its Committee and they have paid the fee fixed by the University and I year MBBS course was already commenced. The classes have started with effect from 01.08.2009.

10. The State Government has not allocated the students under its 25% quota in accordance with the fee fixed by the University. The same is contrary to the judgment of the Hon'ble Supreme Court in the Islamic Academy of Education and Another Vs. State of Karnataka and Others, , Further, its case is that the State Government should have sent students under its quota on or before 25.7.2009 but, the State Government has failed to do so. It has sent 25% of its students to its College on 24.07.2009. The State Government totally ignored not sending its students to A.B. Shetty Dental College which would clearly go to show that it is being very selective in adopting its allocation process of sending its students under its quota to the Medical College. Further it had failed to notify both the Institutions in the first round of counseling of students dated 28.05.2009. Thereafter, it had included the Medical College of the Trust in the notification in the second round and the same was not included in its web-site on 23.7.09 and thereafter on 24.07.2009 arbitrarily it has been notified to allocate government quota seats to the various socially disadvantaged class of the students.

11. The Medical Academy of the Trust had admitted its students after holding Entrance Examination in respect of 85% of students and balance 15% is filled up by NRI quota. The State Government by sending its students to admit them in the 1 year MBBS Course for the academic year 2009-10 who have taken up Entrance Examination conducted by KEA is contrary to law declared by the Apex Court under UGC Act and the Constitution of India. Therefore, they have filed the Writ Petition seeking for the following reliefs:

(a) issue a writ of mandamus or such other writ or direction declaring that the State Government's insistence of retaining 25% seats in first petitioner university is contrary to law and UGC Act and Regulations and the Constitution of India.

(b) Issue such other-----

(c) Issue a writ of certiorari to quash that part of the order where 25% surrender

of seats is insisted upon by the Central Government who had issued the original permission/affiliation to the first petitioner under order dated 4.6.2008 bearing F 9-13/2007-U.3A, marked as Annexure-D and that part of the order of the UGC granting affiliation to the medical college of the NOTE University bearing No. F 26-5/008(CPP-I), dated 28.3.2009 which is produced as Annexure-F.

12. The petitioner-Yenepoya University has also filed the writ petition No. 22413/2009. The facts pleaded by it are:

The petitioner is a deemed University governed by its own Rules and Regulations in the matter of admission and fixation of fee to various professional courses. For the academic year 2009-10 it has already conducted its own entrance examination for the Medical and Dental Courses. The State Government and the K.E.A. in the first Notification dated 28.5.2009 issued under the Act No. 13 of 2006 have not included its Colleges for allocation of seat matrix under the State Government quota. The said University comprises of Yenepoya Medical College, Yenepoya Dental College, Yenepoya Nursing College and Yenepoya Physiotherapy College, Deralakatte, Mangalore as its constituent unit. The Central Government having recognized it as an institution of higher learning conferred status of Deemed University vide Notifications dated 27.2.2008 and 12.1.2009.

13. It is the case of this University that from the date of granting the status of Deemed University to the petitioner college and other its constituent Colleges are governed by the Rules and Regulations in the matter of admission and fixation of fee to the Post Graduate and Under Graduate Medical Courses, which are being conducted by the above Colleges. The admission process to the said Colleges on merit basis transparently holding All India Entrance Examination under the norms and standards provided by the UGC and from the date of granting status of Deemed University this University and its constituent Colleges are disaffiliated from the previously affiliated University namely, Rajiv Gandhi University of Health Sciences (for short hereinafter called as "RGUHS").

14. Further, it is stated that the State Government and KEA have no authority whatsoever either in the matter of admission of its students to the Medical Course or fixation of fees even otherwise it is a well settled legal principle laid down by the Constitution Bench of the Apex Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and the same is clarified in Islamic Academy of Education and Another Vs. State of Karnataka and Others, and P.A. Inamdar case reported in 2005 (6) SCC 537 insofar as Minority Institutions and Unaided Institutions, there is no power for the State Government to fix its quota of students in the above said courses of their Educational Institutions. It can be only understood possible consensual agreement agreed between unaided Private Educational Institutions and State of Karnataka as held by the Apex Court in P.A. Inamdar's case at paragraphs 126 and 128.

15. In view of the law declared by the Apex Court in the aforesaid case the State Government has been entering into consensual agreement with the private

Educational Institutions as provided under Act No. 13 of 2006 on the basis of consensual agreement entered into between the State and Private Educational Institutions the periodical notifications for seat matrix for the Medical course are issued by the State Government notifying u/s 4 of the Act of 13 of 2006. The fee structure to be charged to its students u/s 5 of the Act, number of seats available as Government seats in a given year. Pursuant to such seat matrix notification and allocation of its quota students admissions are made by the State Government through its agency namely KEA. In the instant case, the College run by this Deemed University through their associations CET and counselling has been made and the students are admitted in its Medical College on the basis of their merit rank arranged in the ranking list. Since there is no consensual agreement between this University that the State Government as covered under the Act No. 13 of 2006, the State Government could not have allocated the seats as provided under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984.

16. The further case of this University is that All India Entrance examination was conducted by it on All India basis to the students who have been admitted in its College by giving wide publicity in different parts of the country and purely on the basis of merit ranking assigned to them and the students have been admitted in the College for the academic year 2009-10. The prayers sought by them are:

(a) Issue a writ in the nature of certiorari quashing the impugned Notification dated 20.7.2009 in No. HFW 473 MPS 2008 insofar as it notifies the petitioner University's constituent unit - Yenepoya Medical College, Mangalore, in the seat matrix for allocation of seats notifying 25 seats of its intake as Government quota seat and

(b) Issue a writ in the nature of the mandamus or such other appropriate writ, directing the State Government not to select and send candidates for being admitted to Medical and Dental courses pursuant to the Notification dated 20.07.2009 in its College and to recall and re-allocate some other college, if such an admission is already granted; and

(c) Issue such other writ, order or direction as deemed fit urging various legal contentions.

17. The application for urging additional grounds is also filed with an additional prayer namely to quash Condition at Sl.No.5(iii) of the Notification dated 27.2.2008 produced at Annexure-"A" to its writ petition and also condition at Sl. No. 6 of the Notification dated 12.1.2009 produced at Annexure-"B" as unconstitutional and without authority of law. Alternatively, to declare those conditions as void and not binding on the said University.

18. The student/petitioners have filed W.P. Nos. 22192-22203/2009. They have stated that the Nttte University Invited applications for holding common Entrance Examination fixing the last date for receipt of the applications on 16.05.2009. It

has conducted Entrance examination on 31.05.2009. In the notification dated 24.04,2009 issued by the said University intimating to the general public through internet is also produced by them which had conducted examination at five centres as pleaded in the NITTE Trust petition, which facts are already adverted while referring to the facts of the case of the Trust in this judgment. It is the case of the students that the said University has followed the procedure to hold entrance examination in accordance with the law declared by the Apex Court. The committee approved the fee fixed by the former judge of Madras High Court Justice T.J. Chowta and former Vice Chancellor Dr. Balveera Reddy and Sri. M. Venugopal and the fee fixed by it was accepted by the University, After announcing the AIEE, results of the student-petitioners along with the other applicants was announced and the, merit list was published. Thereafter, the University on 15.6.2009 called the students for counseling on the basis of the ranking assigned to them. The first 55 students opted for MBBS course on 20.7.209. These batch of student-petitioners formed part and parcel of 27 candidates. It is the case of these students that NITTE is a deemed university under the UGC Act. The same is an independent university not governed by the Karnataka Professional Education Institution (Regulation of Admissions and Fixation of Fee) Special Provisions Act, 2006.

19. The petitioners who were successful in the examination conducted by the University, did not take any seat in any other college or University. If the said University had not given seats in this college, they would have applied and got seats in other colleges or universities. It is now too late for them to approach other colleges or universities for admission. Therefore, the State Government, on its own conduct, not entitled to allocate students under its quota to this college through KEA as the medical college of the aforesaid deemed university was not notified by the State Govt, in its notification dated 28.5.2009 and seat position as shown in the website on 24.7.2009. The allotment of candidates by the State Government to the college of the said deemed university was made without notifying this college in the original counselling process. Therefore, the State Government allocating its students to it is not in accordance with law. The petitioners having no other alternate and efficacious remedy, have approached this Court by invoking the writ jurisdiction seeking the following reliefs.

a) Issue of writ of mandamus or declaration that the allotment of 24 seats by the KEA to the Educational Institutions of NITTE and in MBBS Course for the academic year 2009.-2010 is not in accordance with law, pass such other suitable orders as, this Court may deem fit in the facts and circumstances of the case.

20. The batch of students who are assigned to Yenepoya deemed university are also before this Court in Writ petition No. 22386 & 22395/2009, Brief facts of these petitioners are stated as hereunder:

The University had issued an admission notification inviting applications for the academic year 2009-10 in its medical colleges for 100 seats of MBBS course of

4V2 years with one year internship in various newspapers including Indian Express dated 21.3.2009. Pursuant to the said notification the above said student petitioners applied to the said course within the last date fixed in the notification as 25.4.2009. In the said notification calendar of events are fixed as hereunder:

Issue of Applications 23.3.2009

Last date for receipt of application 25.4.2009

Issue of Halltickets 27.4.2009

Date of Entrance Test 12.5.2009

Publication of answer key 14.9.2009

Last date for receipt of

Objections/informing discrepancies 18.5.2009

Publication of Rank List 15.6.2009

Commencement of counselling 28.7.2009

Last date for admission 30.7.2009

The petitioners appeared for the entrance examination conducted by the said university on 12.5.2009. It had published the merit list of the candidates. It is further stated by the student-petitioners in the above said writ petitions that their ranking was assigned at S.L. Nos. 75-78 and 84-86. They were called for counselling on 28.5.2009 in the order of merit as per their ranking. It had counselled the candidates including the petitioners and they were selected and assigned to the college. They have paid the admission fee to the University along with the demand drafts. The receipts for having paid the fee to the college are also produced in these writ petitions in support of their claim. It is the case of the aforesaid student-petitioners that only after their admission and paying fees to the college, they learnt that the State Government has allocated its quota of students through KEA to the Yenepoya College. They further learnt that the said University being declared as deemed university u/s 3 of the UGC Act, has addressed letter dated 7.5.2009 to the college seeking information regarding seats to be allocated to the said Medical College by it. The University also addressed a letter dated 9.5.2009 informing the KEA that medical college comes within the deemed university and it is not bound to surrender any seats in the course to be filled by second respondent and requested it not to allocate any student to the Yenepoya medical college for the academic year 2009-2010. The student-petitioners are seeking the following relief.

a) Grant a writ of mandamus directing the respondents not to displace the petitioners from the first year MBBS course in the medical college for the academic year 2009-10;

21. The student-petitioners allocated under the State Government quota to K.S. Hegde Medical College which comes under NITTE University, have filed W.P. Nos. 22635-41/2009 (Edn.) and student petitioners allocated by the State Government to the Yenepoya college run by the Yenepoya University have also filed W.P. Nos. 22628-34/2009 (Edn.). Apart from these batch of petitions, there are other individual writ petitions filed were allocated to the above said colleges from the Karnataka State Government quota. Those writ petitions are heard along with these batch of writ petitions. The facts in the nut shell are stated as hereunder:

The KEA is the agency of the State Govt, for the purpose of conducting CET for admission and allotment of students to various professional under graduate and post graduate courses (Medical, Dental, Engineering etc.) in respect of the Government seats based on the marks obtained by the candidates. The KEA has been conducting Central Examination test every year and has been allocating students under the Government quota to various colleges based on the merit ranking obtained by the students in the respective professional courses. It is the case of these petitioners that for the academic year 2009-10 the KEA has issued a brochure/application form for CET 2009 for admission of students to the professional course in respect of undergraduate courses of medical, dental and engineering and other courses mentioning the list of colleges, and the number of available Government seats in each college including the medical colleges run by both the aforesaid universities for first year MBBS course for the academic year. The State Government of Karnataka had also issued a notification dated 20.7.2009 fixing the additional seat matrix for the first year MBBS course for medical colleges, including the medical colleges run by the deemed universities, showing the Government seats as 25% of students out of the total intake of 200 seats to each college. It is stated by the aforesaid student-petitioners that they have appeared for the CET on 6th and 7th May, 2009 conducted by the KEA seeking admission to MBBS course in the colleges shown in the list published in the brochure-cum-application form for CET for the academic year 2009-10. The result was announced on 25.5.2009. KEA had conducted its first round of counselling on 17.7.2009 for MBBS, BDS and other under graduate courses. Thereafter, the KEA on 14.7.2009 informed the students that casual round of counselling would be held on 20.7.2009 to fill up the seats in the notified colleges. The counselling was postponed to 24.7.2009 and the petitioners eligible for admission appeared before the KEA on 24th and 25th Based on their merit ranking and category all of them have been allocated medical seats in the medical colleges of deemed universities for the first year MBBS and they were directed to report to the Principal of the respective medical college on or before 8.8.2009. The KEA has also collected the prescribed tuition fee at the time of admission and they were also issued admission orders. In the writ petitions the petitioners have stated their ranking and the date of appearance for the counselling. The KEA collected a sum of Rs. 42,500/- being the tuition fee and other fees for the first year course and in their favour the orders have been

given. The same are produced as Annexures B1 to B6.

22. It is further stated that the tuition fee in respect of SC and ST was not collected by the KEA but they themselves have to pay to the respective colleges for their admission. It is their further case that in the admission orders issued by the KEA there is a specific direction to the principal of the respective colleges of the deemed universities that the student shall be admitted immediately to the I year course in terms of the admission orders and if they fail, the petitioners were advised to approach the jurisdictional Deputy Commissioner for enforcement of the admission orders issued by the KEA in terms of the admission rules.

23. Pursuant to the admission orders issued to the student petitioners they approached the respective colleges on 25th and 26th, met the respective principals of the colleges and requested them to accept the admission orders for which they asked the student petitioners to come for reporting to the colleges on 29.7.2009 for the reason that they are awaiting the orders from the Management in that regard. The KEA had fixed 8.8.2009 as the last date for reporting to the respective colleges. They approached the colleges on 29.7.2009 on which date the colleges instead of permitting them to report in terms of the admission orders issued by the KEA, they issued an endorsement to each of the students informing that the said institutions are conferred with the status of deemed university and the State Government has no authority to allocate students under its quota of seats to the colleges run by the deemed universities and admission of 100 students intake fixed by the MCI in the colleges are already admitted and therefore, their admission would amount to excess intake fixed by the MCI. It is also stated that in this regard they had written to the State Government and assured that communication would be sent to them after hearing from the state Government. The endorsement issued to the students are also produced in the writ petition. Since the colleges of the deemed universities have refused the petitioners for reporting to the classes for first year MBBS course arbitrarily, they were constrained to approach the Deputy Commissioner of Mangalore District through their representatives and requested him to enforce the admission orders issued to them by the KEA. The Deputy commissioner though received their representation, has not taken any action in this regard. A copy of the representation is also produced along with these joint writ petitions.

24. It is further stated that on verification made by the petitioners students and their parents it was found that the colleges to which admission orders were sent by the KEA to the colleges are conferred with the status of deemed university after obtaining no objection certificate from the State Government with a specific condition that the institution shall admit 25% of the students sent by the KEA for each academic year out of total intake of students fixed by the MCI to their colleges. In this regard, it is stated that it had come to their notice that there was a memorandum of understanding between the State Government and the colleges run by the deemed universities agreeing to admit 25% of the students allocated by KEA out of total intake of the students fixed by the MCI but they

have refused to permit the petitioners to report to their respective colleges and attend classes not even a single student of the State Government quota seats sent by KEA. Therefore, the action of the Medical colleges and the Deemed universities is in utter violation of the terms and conditions of the "No Objection Certificate" issued by the state Government in their favour that memorandum of understanding and also the terms and conditions mentioned in the notification issued by the Central Government u/s 3 of the UGC Act.

25. The fact of refusing the allocated students by the colleges of the aforesaid universities was brought to the notice of the State Government and the KEA. The State Govt, by its communication dated 29.7.2009 had directed the Medical colleges of the Deemed universities to admit the student petitioners allotted to their respective colleges and under the Government quota to the first year MBBS course for the academic year 2009-10 as per the memorandum of undertaking entered into between the said institutions with the state Government. It is the case of the Student-petitioners that the colleges of the deemed universities conducted Counselling for admission to the first year MBBS course under Management quota on 15.7.2009 and 28.7.2009 respectively and admitted 75 and 100 students respectively which is after the State govt, fixing the seat matrix of 25 students to each of the colleges as notified in its seat matrix notification dated 20.7.2009. They have admitted students on 28.7.2009 with a deliberate intention to deprive seats to the student-petitioners. The student-petitioners have been allocated to the colleges under the Government quota of various categories based on their merit to the first year MBBS Course. The said medical colleges run by the deemed Universities agreed to accommodate 25% of the seats to the State Govt, at the time of obtaining NOC to fulfil its social obligation. They have now refused the students from reporting to their colleges though classes for the course is already commenced from 3.8.2009 and they have made admission of other students to the MBBS course after the admission of 25% quota students of State Government allotted by the KEA and sent admission orders to the colleges. The petitioners being poor merited students belonging to SC/ST and backward classes of the society are not in a position to prosecute their studies if they are not permitted to report for admission in the aforesaid colleges of the Deemed universities. For no fault of them they have not been permitted to attend the classes from 3/8/2009 by the management of the colleges and they would be losing one precious academic year. It is stated that clinicals and practicals are quite essential in medical course. Therefore, they have approached this Court seeking for the reliefs as stated supra. The above said batch of writ petitions are seeking the following reliefs:

I) Issue a writ in the nature of mandamus directing respondent-Educational Institutions run by the aforesaid both the NITTE deemed University and Yenepoya (hereinafter called as deemed University for short) to permit them to report to the I year MBBS course for the academic year 2009-10.

II) Direct all the respective Education Institutions the deemed universities to

approve the admission of the said student petitioners to the first year MBBS course in their respective education Institutions for the academic year 2009-10 and permit them to continue and complete their MBBS course and to appear for examination as and when it falls due as per the regulations governing the course without any interference in their academic curriculum and

III) OR alternatively direct respondents 1 and 2-State Government and the KEA to give admission to the petitioners to any other medical colleges to the first year medical course for the year 2009-10 before the date fixed for admission and permit them to continue and complete the course as per the regulations without interference with their academic curriculum and

IV) Direct the respondents State Government and KEA to pay cost to each one of the petitioners for having made them to approach this Court for no fault of them and grant such other relief or reliefs as this Court deems fit in the interest and justice and equity.

26. It is contended that by Yenepoya college and its university the student petitioners allocated to the Yenepoya medical college under the State Government quota was only provisional and subject to the final orders from this Court in W.P. No. 21693/2009 filed on 24.7.2009 by the said Yenepaya deemed university challenged the correctness of the seat matrix notification dated 20.7.2009 and sought for quashing the same urging various grounds. The said writ petition was not listed before this Court for preliminary hearing with interim prayer but the same came to be dismissed as withdrawn by them by filing a memo on 10.8.2009.

27. The learned Senior counsel Sri. Vijayshankar appearing on behalf of the NITTE University placed strong reliance upon the phrase "the UGC has to secure views from the State Government" contained in Clause 17 of the guidelines framed by the UGC for the purpose of processing the application that will be filed u/s 3 of the UGC Act. It is contended that it has no statutory force in law as they are not the regulations framed by the UGC in exercise of its power u/s 26(d) of the UGC Act and the learned Senior counsel appearing on behalf of the UGC at the time of considering the interim prayer by this Court in these batch of writ petitions on 19.8.2009 had submitted that obtaining of "No Objection Certificate" from the State Government by the Educational institutions of the trust is not required for conferment of status of deemed university under the UGC Act and he had placed reliance upon the decision of the Supreme Court in the case reported in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, in support of his legal contention that the enactment of the UGC Act by the parliament in exercise of its legislative power under Article 246 of the Constitution under Entry 66 of List I of VII Schedule therefore, the Act No. 13/06 was enacted by the State legislature from entry 25 list III of VII schedule, the Central Act must prevail over the said State enactment, with regard to the standards in institutions for higher education in respect of whom the status of deemed university is conferred by the Central Govt, in exercise of its statutory power u/s

3 of the UGC Act, which power is within the exclusive jurisdiction of the Central Government. Therefore, the "No Objection Certificate" was not required to be obtained by the Trust from the State Govt, when the application was submitted by it to the Central Government for grant of status of conferment of deemed university upon its educational institutions.

28. The UGC has to submit its opinion to the Central Government for exercise of its power u/s 3 for grant of conferment of the deemed university upon such Educational institutions, for which it need not ask institutions to get "No objection certificate" from the State Government under the guise of securing the views from it for submitting its opinion to the Central Government for conferment of status of the deemed university upon the Educational institutions of the trust. He has also placed reliance of another decision of the Supreme Court in the case of *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, in support of his legal submission that the Apex Court has examined the provisions of Section 10(k) of the All India Council for Technical Education Act, of 1987 herein after called as AICTE Act. examined with reference to Section 9(7) of Mahatma Gandhi University Act enacted by the State Legislature fell for consideration before the Apex Court with regard to the phrase "views" used by the State Legislature in the Statue does not amount to approval as held at para 22 of the said case. The Apex Court with reference to the above said provisions and the phrase examined and held that merely.

29. The learned Senior Counsel submits that the phrase "to secure the views from the State Government" as contained under Clause 17 of the Guidelines framed by the UGC for the purpose of Section 3 of the UGC Act do not amount to obtaining of "No Objection Certificate" from the State Government by the Educational institutions of the trust and that cannot be the basis for the UGC to render its opinion to the Central Government to exercise its statutory power for conferment of status of Deemed University upon the Educational Institutions of the Trust. Further, he submits that at the time of obtaining "No Objection Certificate" from the State Government an undertaking given by the Trust to it regarding seat matrix to be allocated in its Educational Institutions under the State Government Quota in favour of Scheduled Caste, Scheduled Tribe and other economically weaker sections of the society is not binding upon them as the same is not supported by any statutory provisions of the UGC Act. Therefore, Clause 17 of the guidelines with regard to "securing the views from the State Government" to that extent and the terms and conditions incorporated in the notification issued u/s 3 in respect of Dental College, which are made applicable to the notification issued in favour of Medical College are void abinitio in law. Therefore, he submits that the same is not binding upon it. Hence he has requested for grant of the additional prayer by quashing the said portion of the Clause 17 viz., "UGC to secure the views from the State Government" and consequently strike down the terms and conditions enumerated in the notifications issued by the Central Government in favour of the Educational

Institutions conferring the status of Deemed university as void abinitio in law.

30. Another legal contention urged by the learned Senior Counsel is that exercise of power by the Central Government u/s 3 of the UGC Act, which Act is enacted by Parliament from Entry 66 List-1 of VII Schedule of the Constitution of India is not subject to or controlled by the law made by the State Legislature relating to Entry 25 of List-III of the VII Schedule namely the Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fees) Act, 2006 and Karnataka Professional Educational Institutions (Regulation of Admission and Fixation of Fee)(Special Provisions) Act, 2006 (Act 13 of 2006). The power exercised by the Central Government u/s 3 of the UGC Act is in its exclusive domain and it is not subject to the approval of the State Government. Therefore, the seat matrix notification and allocation of 25% of seats by the State Government to the petitioner university is without authority of law and the same are not binding upon it.

31. Another ground of attack on the impugned allotment orders issued by KEA in favour of the Deemed universities in respect of 25% quota of students of the State Government is that the seat matrix notification and allocation of 25% of the students to the Medical College of the University under Act 13 of 2006, do not authorise the State Government to compel the Deemed University to admit students under its quota selected by them to the MBBS Course. Therefore, the allocation of seats by the State Government through KEA to this Deemed University College is illegal and unenforceable in law and therefore, the same is not binding upon it. Since the students of the Government quota are not entitled for the reliefs as prayed, in their writ petitions and prayed for dismissal of the writ petitions by allowing the writ petitions filed by the University and the students admitted by it on the basis, of merit rank list prepared after AIEE.

32. Further it Is urged by him that there is no consensual agreement between the Deemed University and the State Government as provided under Condition-5 sub-condition (iv) mentioned in the notification, which states that the Trust concerned should also enter into an agreement by way of Memorandum of Understanding that the State of Karnataka as per the decision of the Apex Court. The" provisions of the Act 13 of 2006 are inapplicable to the College, run by the Deemed University. The fee fixed by the State Government is in pursuant to consensual agreements with college, which is inapplicable to the medical college run by the Deemed University. As per the judgment of the Supreme Court, in the Inamdar"s case referred to supra, the Committee constituted by the Trust consisting of Retired Judge of the High Court, a former Vice Chancellor and a member of a Chartered Accountant, they have fixed the fee accepted by the University. They can charge the fee fixed by them, but not the fee which is fixed by the State Government, Further, he submits that, accepting the case of State Government and KEA for the sake of arguments without conceding that they can allot students under its quota to its colleges and such students will have to pay the fees fixed by Committee which was accepted by the universities. Therefore,

the fee fixed by the State Government has no application to its students who are to be admitted in the college of Deemed University and the Act 13 of 2006 does not apply for the academic year 2009-2010 as it was enacted for the sole purpose of keeping the provisions of Act 8 of 2006 in abeyance for the academic year 2006-2007 only.

33. It is further contended by him that if, the intention of State Government was to include the college of the Deemed University, in its seat matrix it should have done in the first round of counselling itself. All the students who appeared for the counselling of KEA seats were fully aware that the college of the Deemed University was not being counselled. Therefore, it was made to believe that it was not included in the CET counselling process and further made submissions on the principle of equitable estoppel that State Government cannot thereafter proceed once again and send its students to its college for admission in the course for the academic year.

34. In view of the law laid down by the Apex Court in *Bharati Vidya Peetha and Ors. (Deemed University) v. State of Maharashtra* reported in (2004) 11 SCC 217, it is contended by him that the Apex Court has laid down the law in that case that the conferment of Deemed University upon the Educational Institutions u/s 3 of the Act, which is a Central enactment not required to allocate seats to the State Government. Hence the petitioner Trust is not required to oblige and admit the students of State Government under its quota. The admission orders of the KEA under 25% quota is in contravention of the said judgment of the Apex Court. Therefore, it is contended by him that the said admission orders sent by the KEA in relation to the students under Government quota are not binding upon the Medical College of the Deemed University.

35. With regard to the disaffiliation of the Medical College of the NITTE University as per the condition incorporated in the notification issued by the Central Government, it is contended by the learned Senior Counsel that Section 2(a) of the RGUHS Act, 1994 defines "affiliated college" as "a college or institution affiliated to the University in accordance with the statutes". RGUHS (Grant of Permanent Affiliation to Colleges/Institutions and Withdrawal of such Affiliation) Statutes, 1999, prescribes the procedure for grant of permanent affiliation to Medical College run by the NITTE Trust and affiliation of this college is not permanent one. The same was for one calendar year, renewed from year to year. The status of Deemed University conferred upon the educational institutions run by the NITTE Trust vide order dated 24.03.2009, the affiliation of its Medical College to RGUHS is ceased. In any event, the RGUHS as on 25.08.2009 has issued a "No Objection Certificate" for withdrawal of affiliation. In this regard, the learned Senior counsel has placed reliance upon the Division Bench decision of Madras High Court in *Dr. R. Shivaraman v. Mgr University* reported in AIR 1999 Mad. 82. Therefore he has stated that the contention urged by the learned Advocate General Mr. Ashok Haranahalli and the learned Counsel Mr. Rajendra Sungay for student-petitioners that the college is not disaffiliated from the

RGHUS University is wholly untenable on facts and in law. He further submits that the decision of the Inamdar's case referred to supra with all fours supports the case of the petitioner Trust, with regard to the allocation of Government seats on the basis of terms and conditions in the notification are wholly inapplicable to its college.

36. Further the learned Senior counsel Mr. Vijaya Shankar with reference to the condition No. 5(iv) of the notification, issued by the Central Government u/s 3 of the Act is that the college of the Deemed University shall surrender 25% of the seats to the State Government submits that the Central Government has merely referred to the said condition in the notification and not required to impose such condition by the Central Government or by the UGC u/s 3 of the UGC Act. Such a condition could not have been imposed by the Central Government in view of the law laid down by the Supreme Court in Bharati Vidya Peetha case referred supra and therefore incorporation of the said condition by the Central Government in its notification issued in favour of the Deemed University has to be read down by allowing these writ petitions.

37. Mr. M.R. Naik, learned Senior counsel appearing on behalf of the Yenepoya College affiliated to the University has reiterated the legal submissions made on behalf of NITTE University and adopts the aforesaid submissions of the learned Senior counsel on behalf of NITTE Trust with regard to the additional prayer and the other prayers made in the writ petitions filed by the college and the Deemed university: Therefore, there is no need for us to refer to his legal submissions separately in this judgment.

38. Sri. Udaya Holla, learned Senior Counsel appearing for the student - petitioners of the Medical College run by the NITTE University has adopted the submissions made by the Senior Counsel appearing for the NITTE University.

39. In support of the same proposition of law, he has placed reliance on another judgment reported in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., Therefore, learned Senior Counsel submits that the petitioners - students who are admitted in the college on the basis of All India Entrance Examination conducted by the NITTE Deemed University the students of merit ranking admitted after their counselling cannot be disturbed by the State Government from allocating its students of 25% seats through KEA. Therefore, he submits that they are entitled for the relief as prayed in their writ petitions.

40. Sri. R.N. Narasimha Murthy, learned Senior Counsel appearing on behalf of the petitioners/students admitted by the Yenepoya Medical College and its Deemed University on the basis of All India Entrance Examination submits that the conditions enumerated in the notification issued by the Central Government u/s 3 of the UGC Act regarding conferment of status of the Deemed University, upon the institutions run by the said University is contrary to the decision in Bharathi Vidya Peetha case and the conditions enumerated in the notification are void-abinitio in law and opposed to the public policy as stated u/s 23 of the

Indian Contract Act 1872 in support of the above legal submissions, he has placed reliance on the decision of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , which has been approved by the Constitution Bench of the Apex Court in DTC v. Mazdoor Sabha reported in AIR 1991 PAGE 101. Therefore, he submits that the terms and conditions enumerated in the notification u/s 3 of the UGC Act issued in favour of the Educational institutions of Deemed University cannot be made use of by the State Government for allocating its students of 25% who belong to Scheduled Caste and Scheduled Tribe and other Backward Class to fulfill the conditions in the notification. Therefore he submits that the admission of the students to the college on the basis AIEE and merit rank list cannot be annulled by the State Government by allocating its 25% of students under Government quota to the Yenepoya college which is legally not permissible in law.

41. Sri. B.N. Nanjunda Reddy, learned Senior counsel appearing on behalf of some of the students of Yenepoya College in W.P. No. 22396/2009 and 22406-10/2009 who are already admitted to the course on the basis of their AIEE, adopts the submissions made by the aforesaid learned Senior Counsel on behalf of the educational institutions and the students and has further submitted that after the KEA files list of the seats available with it, from the All India quota seats allocated not availed by them. All those seats can be allotted in favour of the 25 students of Government quota to the colleges to avoid the controversy in these cases.

42. Sri. Ashok Haranahalli, learned Advocate General has placed strong reliance upon the terms and conditions enumerated in the notifications issued in favour of the educational institutions affiliated to the Deemed Universities and submits that unless and until the conditions are fulfilled by them, the students of the Deemed Universities should not have been admitted and further has placed strong reliance upon the conditions incorporated in the notifications in so far as the medical college of the NITTE University and further contends that unless its college is disaffiliated from RGHUS the status of Deemed University in respect of its Educational Institutions will not come into force. The contention urged by the Senior Counsel on behalf of the Deemed University of NITTE and its students that the conditions incorporated in the notification have no statutory force in law, is only untenable. The learned A.G. has rebutted the legal contentions urged on behalf of the Deemed Universities and their students with reference to the law laid by the Supreme Court in the case of M. Meenakshi and Others Vs. Metadin Agarwal (D) by LR's. and Others, .

43. When the above submission was made by the learned AG with reference to the said legal principles laid down by the Apex Court, the learned Senior counsel on behalf of the Deemed Universities have requested this Court to consider their additional prayer made in the amendment application which were not pressed into service at the time of making their submission in the amendment applications. The amendment applications were heard together along with the

writ petitions. With reference to the said amendment applications, learned AG placed strong reliance on the decision of the Constitutional Bench of the Supreme Court in the case of Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, , relied upon paragraph No. 11, he submits with reference to additional prayer of the Educational Institutions in the amendment application is not supported by valid grounds to quash the relevant portion referred to supra under clause 17 of the guidelines and terms and conditions enumerated in the notifications by urging valid grounds, in so far as Yenepoya University is concerned are not entitled to get those conditions quashed by granting additional prayer having regard to its conduct that on 24.07.2009 it had filed W.P. No. 21673/2009 seeking for quashing the seat matrix notification dated 20.07.2009 including the students belonging to Yenepoya College in the seat matrix for allocation of 25% seats of Government quota came to be dismissed as withdrawn by it on 10.08.2009, is one more strong ground against the said University to reject the additional prayer.

44. With reference to the statement of law declared by the Supreme Court in Sanjeev Coke Mills case by the Constitutional Bench, the learned Advocate General submits that in the absence valid grounds urged by the Deemed Universities in their amendment applications seeking for quashing the phrase referred to above under clause 17 of the guidelines in the notifications cannot be granted by this Court allowing the writ petitions.

45. Further he placed strong reliance upon the provisions of Rule 2(1) and 2(o) of the Rules regarding the definition of "Government seats" and "the institutions" of the Karnataka Selection of Candidates for Admission to Government seats in Professional Educational Institutions Rules, 2006 (hereinafter called as Rules) framed by the State Government in exercise of its power u/s 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fees) Act 1984. The Government of Karnataka made the rules for the purpose of regulation of the capitation fees and the seat matrix. Rule 2(1) and 2(o) reads thus:

2(1) - "Government seats" means all the seats in Government and University college, 95% of the seat in aided courses in Private Aided Engineering Colleges and 80% of the seat in private aided Indian System of Medicine and Homoeopathy colleges and such of the seat in unaided, minority and non-minority professional educational institutions filled by the CET cell on the basis of consensus between the Government and the Private Professional Educational Institutions and notified by the Government as Government seats.

2(o) - the "Institution" means any professional educational institution or college affiliated to any University and carrying on the activity of imparting education in Medicine, Dentistry, Indian Systems of Medicine, Homeopathy Engineering, Technology and Architecture courses.

46. He further submits that the allocation of seats on each one of the colleges of the Deemed University are with in the definition of the "government seats" as

defined under Rule 2(1) and definition of "institution" as defined under Rule 2(o) of the Rules. These two colleges run by the Deemed University also fall within the definition of institution in terms of the definition of Rule 2(o). Therefore, he submits that unless the conditions enumerated in the notifications issued by the Central Government u/s 3 of the UGC Act are fulfilled by them the status of Deemed University granted in their favour will not come into force. Therefore, he submits that the consensual agreement referred to in Inamdar's case at paragraphs 126 & 128 referred to supra would squarely apply to the facts of both the medical colleges of both the Universities. Therefore, he submits that the reliefs prayed in their petitions and the additional prayer in the amendment application cannot be granted including the relief prayed by the student-petitioners who are assigned to their colleges of the Deemed universities.

47. Sri. Manohar, learned AGA made his submissions on 24.09.2009, contending that the guidelines framed by the UGC for the purpose of Section 3 of UGC Act for professional medical colleges and other institutions for the purpose of processing applications of the Educational institutions for considering and conferring status of deemed universities upon them u/s 3 of the UGC Act and therefore they have got statutory forces. Further, he submits that the Educational institutions who had sought the status of deemed university are required to obtain the "No Objection Certificate" from the State Government for the purpose of getting the status u/s 3 of the UGC Act. The Educational institutions of NITTE trust and Yenepoya college at the time of obtaining "No Objection Certificate", from the State Government have given an undertaking and executed Memorandum of Understanding in its favour and therefore the Central Government has imposed conditions in the notifications on the advice of the UGC, hence the same are binding upon them.

48. Sri. B. Pramod appearing for the Central Government submits that u/s 3 of the UGC Act, the notifications issued by it in exercise of its statutory power conferring the status of Deemed University upon the aforesaid Educational Institutions run by both Deemed Universities is based on the recommendation and advice made by the UGC and therefore it has incorporated conditions in the notifications regarding the seat matrix and related matters. Therefore the conditions incorporated in the notifications at this stage cannot be questioned by the petitioner-institutions as void-abintio in law and not binding on them. As per the conditions of the notification on fulfillment of such conditions by them, the status of Deemed Universities will come into force, otherwise they cannot claim that they are Deemed Universities for the purpose of UGC Act and they can not urge that seat matrix notifications issued by the KEA is not applicable to them.

49. Sri. Dinesh Kumar, learned Counsel appearing for UGC submits that in these batch of writ petitions at the time of considering interim prayer without receiving instructions from his client he has submitted before this Court that "No Objection Certificate" was not required to be obtained by the petitioner Educational Institutions from the State Government for the purpose of submitting its opinion

to the Central Government for conferring the status of Deemed University upon them in exercise of its statutory power under the Act. He further submits that the guidelines framed by the UGC for the purpose of Section 3 of the UGC Act is to process the applications of the Educational institutions that would be submitted to the central Government for grant of the status of Deemed university under the UGC Act. Clause 17 of the guidelines provides for obtaining the views from the State Government referable to obtaining of "No Objection Certificate" from the State Government by the Educational Institutions who had prayed for grant of the status of "Deemed University" u/s 3 of the UGC Act. Further he submits by placing strong reliance upon Section 26(d) read with 2(f) of the UGC Act, regarding the regulations to be framed by it for the purpose of implementation of the Act. They have got statutory force as it is in relation to the conferring status upon the Educational institutions or class of institutions, which may be recognised under Clause 2(f) of the UGC Act, which reads thus:

"University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

50. Sri. Khetty, learned Counsel appearing on behalf of Medical Council of India placed strong reliance upon the statement, of counter filed in W.P. Nos. 22635-41/2009 and 22628-34/2009 with reference to various case laws of the Apex Court on the legal aspect with regard to its power and to supervise the qualifications or eligibility standards for admission of students into the medical institutions and it has got the vigilance over the institutions in respect of medical courses and further submits that regulations of the MCI are binding upon them as the same are mandatory.

51. To impart higher education, higher training, various steps shall be taken for conduct of examination. If the regulations are inconsistent, they will be repugnant to Article 254 of the Constitution of India. It is further submitted that with reference to Entry 66 of VII schedule of list 1 of the Constitution, the legal position has been reaffirmed by the Constitution Bench of the Apex Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, He submits that on the basis of the Judgment of the Supreme Court in the case of *Medical Council of India Vs. Madhu Singh and Others*, the argument advanced on behalf of the students that prejudice would be caused to the students if they are not admitted on the basis of AIEEE rank list, is contrary to the observations made by the Apex Court at paragraph 22. Further he placed reliance upon paragraph 23 in support of his legal contentions that there is necessity for specifically providing time schedule for the course and fixing the period during which admissions can take place making it clear that no admissions can be granted after the scheduled date, which essentially should be the date for commencement of the course. He had placed reliance on para 23 of the Judgment in *Madhu Singh's* case referred to supra in which the following directions are laid down:

- (i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;
- (ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;
- (iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;
- (iv) MCI shall ensure, that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;
- (v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time;
- (vi) no variation of the schedule so far as admissions are concerned shall be allowed
- (vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.

52. Reliance is placed on the decision of the Supreme Court in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, . It has been submitted that for rejection of the memo filed by the NITTE University on 24.9.2009 requesting this Court to delete it from the array of the respondents in the writ petition contending that having regard to the pronouncement of law by the Apex Court in catena of cases with regard to the role of MCI in fixing the intake of seats to the medicine courses both Postgraduate and Undergraduate courses and having regard to the nature of prayers made by the student-petitioners admitted by the deemed universities and allocation of 25% seats by the Karnataka State Government under its quota for admission of them in the under graduate medical course MCI is a proper and necessary party in their petitions. Therefore he contended that the prayer in the memo is wholly untenable in law and requested this Court for rejection of the same. This aspect of the matter has been extensively dealt with by the Supreme Court in SK and others case referred to supra.

53. Learned Counsel Mr. Arun appearing on behalf of some of the student-petitioners of State Government quota allocated to the colleges strongly rebutted the submission made by learned Sr. counsel on behalf of the NITTE University with regard to the regulations framed by the UGC for the purpose of Section 3 of the UGC Act placing strong reliance on the decision of the Supreme Court in State of A.P. Vs. K. Purushotham Reddy and Others, , in support of his contention that the Apex Court after examining the provisions of Articles 245, 255, 256 of the constitution of India with reference to Schedule VII Lists 1 and III, examined the Legislative competency of the Parliament and the State Legislature at paragraph 5 sub-paragraph 8.1 with reference to the guidelines referred to at

paragraph 23 and made certain observations in the said decision at paragraphs 22 & 23 that guidelines framed by the UGC for the purpose of implementation of the UGC Act have got a statutory force, the same are approved by the Apex Court in the said decision. Therefore, he submits that the guidelines framed by the UGC for the purpose of Section 3 under this Act have got statutory force and they are binding upon the parties. Therefore, obtaining the "No Objection Certificate" from the State Government by petitioner-Educational institutions for the purpose of getting the status of deemed university u/s 3 of the UGC Act have got statutory force. Therefore, it is not open for the deemed universities at this stage in these proceedings to turn round and contend that they have no statutory force and not binding upon them after availing the benefit of the same and obtained such status in the notifications got issued u/s 3 of the Act in their favour.

54. The amendment application filed by both the Universities in their respective writ petitions were pressed into service at the stage of reply submission made by the learned senior counsel for the Educational institutions. Since, we have been hearing these batch of writ petitions on various grounds urged by the learned Senior counsel, we thought it proper to allow the amendment applications. Accordingly, we allow the said amendment applications of the petitioner-Educational institutions permitting them to amend the prayer column in their writ petitions by adding additional prayer and also to urge additional grounds in their respective writ petitions by either amending the petitions or filing the amended petitions in the Registry.

55. The memo filed by the NITTE University on 24.9.2009 requesting this Court to delete the MCI from array of respondent in their writ petitions is most untenable. Hence we reject the said memo.

56. One Kum. Amulya.S has filed a Misc. Writ in WP 21672/2009 in the writ petition filed by Kum Prarthana to get herself impleaded stating certain relevant facts. She appeared for KEA examination and she was selected in the category of merit seat from the SC category and her seat is selected under 25% quota of the Government in KS Medical Academic College for the first year MBBS on 25.7.2009 and she wanted to implead herself by producing an endorsement dated 31.8.2008 Annexure-B to the said application informing her that she has been permitted to attend the classes in the said academic college until the disposal of the writ petition and further asked KEA to fill up the balance seats. It is also stated by the learned Counsel Sri Anand Thirtha that the said impleading applicant has also filed a Writ Petition No. 25587/09 seeking the relief as has been prayed by the batch of students/petitioners allocated to the NITTE University. The same is not posted before this Court.

57. In view of the said subsequent event of her filing writ petition, the impleading application does not survive for consideration. Though the said writ petition is not listed today along with this batch of writ petitions, learned Counsel Sri Seshachala, fairly submitted that the said writ petition may also be taken up

along with this batch of petitions and pass appropriate orders. His submission is placed on record and the impleading application does not survive and the same is disposed of and her writ petition also taken up along with these petitions for disposal on merits.

58. With reference to the above said rival, legal contentions, the following contentious points would arise for consideration:

(i) Whether the guidelines framed by the U.G.C. for the purpose of Section 3 of U.G.C. Act have got statutory force?

(ii) Whether the opinion submitted by the U.G.C. to the Central Government after obtaining the views from the State Government can be treated as "No Objection Certificate" of the State Government in favour of the Educational Institutions and and whether the same is legal and valid in law?

(iii) Based on such opinion and advice of the UGC the exercise of power by the Central Government u/s 3 of U.G.C. Act for declaring the educational institutions as Deemed universities with condition for allocation of 25% quota of seats to the State Government is legal and valid?

(iv) Whether the terms and conditions incorporated by the Central Government in the notifications issued by it for declaring deemed Universities are without authority of law and the same are liable to be quashed as null and void?

(v) Whether the petitioner-Educational institutions can be treated as deemed Universities even if they do not fulfill the terms and conditions stipulated in the notifications issued u/s 3 of U.G.C. Act?

(vi) Whether the undertaking given by NITTE trust and M.O.U. entered by Islamic Academy of Education to the Karnataka State Government shall be construed as consensual agreement as held by the Apex Court in Inamdar's case 2005 (6) SCC 537?

(vii) Whether the 25% of State Government quota seats assigned to the educational institutions are not to be admitted?

(viii) Whether the petitioners/deemed Universities and their students/writ petitioners are entitled for the relief, as prayed by them.?

(ix) What shall be the order in the event of admission of students both from the AIEE and 25% Government quota exceeds the sanctioned strength of 100 by the MCI in the petitioner colleges of the deemed universities?

(x) What order?

59. By special order of the Hon''ble Chief Justice, these batch of writ petitions were listed before this Court on 15th September 2009 for hearing. Learned Advocate General made a mention to this Court that the last date for admission of the students in the petitioner-medical colleges was on 30th September 2009 in view of the judgment in Mridul Dhar (Minor) and Another Vs. Union of India

(UOI) and Others, and therefore, requested this Court to take up these matters for hearing on merits before 30th September 2009 and dispose of the same on merits.

60. Learned Sr. Counsel appearing on behalf of the Medical Colleges of the Universities, their students and the students of 25% State Government quota allocated to both the petitioner-medical colleges were heard and accordingly, we took up these matters on 15th September 2009, heard them and matters were adjourned to 16th September 2009 to hear further. After arguments of the learned Advocate General and other counsel were heard, reply submissions were to be heard. At that stage the learned Sr. Counsel appearing on behalf of the Medical Colleges requested this Court to consider the amendment applications regarding the additional prayer made in their applications. They were permitted to argue on the said applications along with the writ petitions. For their further submissions matters were listed on 17.9.2009 learned Sr. Counsel appearing on behalf of the Yenepoya University filed a memo stating that the interim order of stay granted on 16.9.2009 by the Apex Court in the Special Leave Petitions filed by MCI. The stay order is extended until further orders and this fact was brought to the notice of this Bench on 16.9.2009. We adjourned these matters on 17.9.2009 with observation that the learned Advocate General can move the Hon'ble Chief Justice to constitute a Special Bench during Dasara Vacation to further hear these matters before the 30th September 2009 and pass orders which is the last date for admission of the students in the medicine courses. On the memo moved by the learned Addl. Govt. Advocate, Special Bench was constituted during vacation. Accordingly, we have further heard the learned Sr. Counsel on 23.9.2009 with regard to the additional prayer made by the Medical Colleges and reply submissions of learned Counsel for the other parties was also heard by us and their petitions are listed today for dictating Judgment.

61. After considering the relevant facts pleaded by the parties, their rival legal contentions urged by the learned Sr. counsel, learned Advocate General and other counsel appearing on behalf of the Central Government, UGC, MCI, KEA and Students, we proceed to answer the said points framed by us by assigning the following reasons:

POINT No. 1

62. The UGC has formulated the guidelines for the purpose of Section 3 of the UGC Act to consider the proposals of the Educational institutions including the petitioners colleges involved in these writ petitions to declare the Educational institutions as Deemed Universities under the said provision of the Act. Learned Sr. Counsel appearing on behalf of the Educational institutions and the students admitted by them on the basis of their ranking in the merit list prepared by them on the AIEE examination have contended that the said regulations have no statutory force of law. Therefore, they have urged that obtaining NOC from the State Government by the educational institutions to declare their educational institutions as Deemed Universities from the Central Government is wholly

untenable in law. This contention is strongly countenanced by learned Counsel, Mr. Arun appearing for some of the students of 25% quota rightly placing reliance on the decision of the Apex Court in *State of Andhra Pradesh v. Purushotham Reddy and Ors.* referred to supra where the Apex Court examined the legality and validity of the guidelines framed by the UGC for the purpose of regulating, functioning, planning and implementation of the UGC Act. The Apex Court at paragraph 22 in the above referred decision with reference to the guidelines framed by the UGC for the purpose of the said Act has held that they have got the statutory force. In this regard, it is necessary for us to refer to relevant portion from the said Judgment which reads thus:

22. ... On a comparative study of the provisions of Act 26 of 1986 and Act 16 of 1988, the functions of the Commissionerate and the functions of the State Council well nigh are the same except to the extent of stating that the Council should act in accordance with the guidelines issued by UGC from time to time.

63. Para 5 and sub-para 8-1 of the said Judgment refers to the revised guidelines as approved in January 1998. The relevant clauses of said guidelines are referred to in the said decision. The Apex Court has noticed the guidelines and the recommendations sent by the UGC for setting up the Council, powers and functions of the Council, planning and co-ordination to monitor the progress and implementation of such developmental programmes of the Universities prepared by the UGC from time to time. "The Apex Court in the said case with reference to the guidelines framed for the purpose of the Act has been recognised and approved.

23. Once it is held that the duties and functions of the Councils are compartmentalised and they have to act in accordance with the guidelines issued by UGC from time to time, it is preposterous to suggest that the Council acts on its own and/or at the instance of the Government in the field of coordination and determination of standards in institutions of higher education as an independent body.

64. Therefore, guidelines framed by the UGC for the purpose of Section 3 of the UGC Act has rightly placed reliance by learned Counsel Sri Dinesh Kumar on behalf of the UGC contending that the same are referable to Section 26(d) of the UGC Act and they have got statutory force. The relevant portion is extracted above.

26(d). Specifying the institutions or class of institutions which may be recognized by the Commission under Clause (f) of Section 2.

65. By a careful reading of the guidelines framed by the UGC for the purpose of processing the applications of the Educational Institutions u/s 3 of the UGC Act who will be seeking the status of Deemed University from the Central Government under UGC Act, we have noticed that on the basis of the said guidelines, petitioner-Educational institutions have acted upon and processed their applications, UGC had sought "views" of the State Government on their

applications, which can be construed as obtaining NOC from the State Government. In fact, the petitioner-Educational institutions obtained NOC after having fully understood that obtaining of NOC from the State Government is a must to get them declared as deemed universities from the Central Government on the opinion and advise of the UGC. The petitioner Educational institutions have given undertaking and also executed the Memorandum of Understanding in favour of the State Government to obtain NOC at the time of processing their applications. By a careful reading of the guidelines including Clause 17 with regard to the phrases contained therein "to secure the views" by the UGC from the State Government is for the purpose of submitting its opinion and to give its advise to the Central Government to exercise its power for grant of the status of Deemed University upon the Educational Institutions, which is referable to Section 26(d) of the Act and therefore they have got a statutory force in law. Therefore, we have to accept the legal submissions made on behalf of the UGC and the student-petitioners of 25% Govt, quota that guidelines framed for the purpose of Section 3 of the UGC Act have got statutory force and the same have been accepted and acted upon by the parties. In fact petitioner Educational institutions of Deemed Universities have processed their applications on the basis of said guidelines. Therefore, the said Clause 17 of the guidelines of the UGC is legal and valid and the reliance placed upon by the learned Senior counsel upon the decisions of the Supreme Court by reported in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, at para-48, which reads thus:

48. Any State legislation which stultifies or sets at naught an enactment validly made by Parliament would be wholly ultra vires. We are fortified in our view by a Constitution Bench decision in *R. Chitralekha v. State of Mysore* where power of the State under Entry II List II (as it then existed), and Entry 25 List III qua Entry 66 List I came up for consideration. Subba Rao J. after quoting the following passage from *Gujrat University v. Krishna Rnaganath Mudholkar* (SCR p. 139): (*R. Chitralekha* case, at SCR P.379)

The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within Entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an all-India or other basis impossible or even difficult.

and another decision of the Supreme Court reported in 2005 5 SCC 231 at para-22 in support of their contention that the Clause - 17 of the guidelines under which the views of the State Government obtained by the UGC have no statutory force is not tenable in law. Para-22 reads thus:

22. As held in *T.N. case* the Central Act of 1987 and in particular Section 10(k) occupied the field relating to "grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with.

So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterised as requiring the "approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void.

(Emphasis supplied by me)

66. The submissions made in this regard by the learned Sr. Counsel placing reliance upon the above decisions referred to supra are not well founded in view of the fact that the petitioner-Deemed educational institutions have accepted and acted upon the same, processed their applications and obtained the status of the Deemed University from the Central Government. Accordingly, point No. 1 is answered against the Educational institutions and in favour of the UGC and the State Government.

Point Nos. II to VIII:

67. As could be seen from the letters dated 17.10.07 and 17.05.07, sent by the Secretary of the Government, Health and Family Welfare Department (Medical Education) to the Under Secretary of UGC with reference to the NITTE Trust and Islamic Academy of Education respectively who had applied to the State Government to obtain NOC to get the status of deemed university by them, the State Government, on consideration of their request, has decided to issue NOC in their favour for the purpose of declaring their Educational institutions as deemed universities subject to the condition that the institutions run by them shall give an undertaking in the form of MOU to the effect that 25% of the seats of intake fixed by the MCI surrendered to both post graduate and under-graduate seats in the Medicine course. Issuance of the NOC by the State Government in their favour is subject to the condition that both the said Educational Institutions of the deemed universities shall strictly adhere to the policy of the State Government with regard to the admission of students in their colleges of its quota by it from time to time. The President of the NITTE University and Chairman of IAOE have given undertaking in the form of affidavit and MOU in favour of the State Government in terms of NOCs issued by the State Government to them. On the basis of the letters referred to supra, undertaking and MOU, the UGC examined the claim of the educational institutions and recommended their cases to the Central Government by submitting its opinion and gave its advise to declare the petitioner-educational institutions as deemed universities subject to fulfilment of the conditions enumerated in Clauses 5(iii) and 5(iv) of the Notification dated 27.2.2008 in respect of Yenepoya University as per clause 6 of notification dated 12.1.2009 and clauses 5(iv) and (v) of notification dated 4.6.2008 in respect of the NITTE Trust. In view of Clause 6(iii) of notification dated 24.3.2009 issued by the Government of India, all the conditions stipulated in the notifications referred to above will be continued in

force and they should be complied with by them. The relevant conditions from the respective notifications are extracted hereunder:

Notification dated 27.2.2008

Clause 5(iii): The Islamic Academy of Education, Mangalore and Yenepoya University Trust shall strictly adhere to the condition imposed by the State Government of Karnataka (Health and Family Welfare Dept.) while issuing its NOC vide its letter No. HFW/233 MPS/2007 dated 17.5.2007 that the Institution shall be surrendering 25% of seats (both UG and PG) to the State Government" the Trusts concerned should also enter into an agreement by way of a "Memorandum of Understanding" with the State Government of Karnataka as per the latter's direction.

Clause 5(iv): The Trusts concerned shall also adhere to the policy of the State Government of Karnataka on admission of students to Medical and Dental Colleges as stipulated from time to time.

Notification dated 4.6.2008

Clause 5(iv): The NITTE Education Trust, Mangalore, Karnataka and NITTE University Trust, Mangalore shall strictly adhere to the condition imposed by the State Government of Karnataka (Health and Family Welfare Dept-Medical Education) while issuing its NOC vide its letter No. HFW 366 MPS 2007 dated 17.10.2007 that the -25% of seats (both undergraduate and Post-graduate seats) shall be surrendered to the State Government." The Trust concerned should also enter into an agreement by way of a "Memorandum of Understanding" with the State Government of Karnataka, as per the latter's direction.

Clause 5(v): The Trusts concerned shall also adhere to the policy of the State Government of Karnataka on admission of students to Medical and Dental Colleges as stipulated from time to time.

68. As per condition 5 of the Notification dated 4.6.08 in respect of the NITTE university, the declaration as made above in the said Notification shall come into effect only after fulfilment of the aforesaid conditions and condition No. 5(iv) incorporated in the copy forwarded to the NITTE Trust clearly states that it shall strictly adhere to the condition imposed by the Government of Karnataka (Health & Family Welfare Department - Medical Education) while issuing its NOC vide its letter No. HFW 366 MPS 2007 dated 17.10.07 that the "25% of the seats (both Under graduate and Post Graduate seats) shall be surrendered to the State Government". The Trust concerned should also enter into an agreement by way of a "Memorandum of Understanding" with the State Government of Karnataka, as per the latter's direction.

69. The aforesaid Clauses and sub-clauses incorporated in the Notifications referred to supra are applicable to the Notifications dated 24.03.09 & Notification dated 12.01.09 respectively in view of Clauses 6 & 6(iii) issued in favour of the

said universities u/s 3 of the UGC Act, which clause clearly states that all conditions that were stipulated in MHRD Notifications dated 4.6.08 and 27.02.08 conferring the status of deemed universities upon the petitioner-Educational Institutions shall continue to be in force and shall be complied with by them.

70. In the Notifications dated 4.6.08 and 27.2.08, there is a specific condition imposed upon the said universities that they shall strictly adhere to the conditions imposed by the State Government at the time of obtaining NOC by them and further they were directed to enter into an understanding with the State Government regarding the Seat-matrix and related matters.

71. In the case of NITTE University, it has given undertaking in the form of affidavit which document is made available for our perusal by the NITTE deemed university which reads thus:

I N.V. Hegde, S/o Late Justice K.S. Hegde, aged about 68 years, residing at "Sadanand" Shivbagh, Kadri, Mangalore, President, NITTE Education Trust do hereby give an undertaking that in terms of the No Objection Certificate issued by the Govt. of Karnataka, the A.B. Shetty Memorial Institute of Dental Sciences will comply with the same.

President Sd/-

72. In so far as IAOE is concerned, it has executed an MOU with the State Government by its Chairman. The relevant portion reads thus:

Whereas the said Institution agrees to voluntarily surrender to the Government of Karnataka 25% (twenty five percent) of the sanctioned intake in the courses from time to time stated above, during each year unconditionally and irrespective of any other circumstances which may arise in future at the various courses (colleges run by the Islamic Academy of Education, Mangalore) to be filled by the candidates selected by the Government of Karnataka as per its admission procedure/reservation policy, subject to the approval of the statutes of deemed university by the respective statutory authorities. Those students who are selected under this quota will have to pay the fees as prescribed by the State Government fee fixation committee.

Sd/- Chairman

73. A reading of the undertaking and MOU given by the President of NITTE Education Trust and IAOE to the State Government on the basis of the letters dated 17.10.07 and 28.12.2007 submitted by the State Government to the UGC. It has been stated that the State Government has decided to issue No objection certificates in their favour for establishment of the deemed university in respect of their medical colleges subject to the condition that the institutions shall give an undertaking in its favour in the form of MOU to the effect that 25% of the seats shall be surrendered to the State Government both from the Graduate and Post-Graduate seats in the course. Pursuant to the above said letters, the undertaking and MOU in the above terms was given by the NITTE trust and IAOE

to the State Government regarding the seat matrix in the course of medicine.

74. The notifications issued by the UGC declaring the petitioner Educational institutions as deemed universities is on the basis of NOC obtained by them from the State Government subject to the condition that they would adhere to its policy regarding sharing of 25% of seat matrix in the medical colleges and professional courses run by them to fulfil its social obligation to the students belonging to the SC, ST and other backward classes of the society. On the basis of the same, the opinion was submitted by the UGC and also gave its advise to the Central Government to declare the said institutions as deemed universities. It has considered its opinion and the exercised its power u/s 3 of the UGC Act, granted the status of deemed university u/s 3 of the UGC Act upon the said Educational Institutions with certain conditions incorporated in the aforesaid relevant Notifications issued in their favour. Having acquired the status of deemed university by them by giving undertaking and MOU to the State Government has allocated its 25% quota seats as agreed by them to admit students of its quota to the I Year MBBS Course for the academic year 2009-2010 in their colleges. Therefore, now it is not open for them to turn round and contend that the said conditions Incorporated in the Notifications issued in their favour are without the authority of law of the Central Government and therefore, the same cannot be enforced against them which contention of them is wholly untenable in law. Hence, the said contention urged on their behalf cannot be accepted by this Court to quash the conditions incorporated in the Notifications as prayed by them as their contention is unfounded and contrary to the law declared by the Apex Court in the cases of Preethi Srinivasa and P.A. Inamdar. As we have already held, while answering the Point No. I holding that clause-17 of the guidelines framed by the UGC for the purpose of processing the applications of the educational institutions who will be seeking the status of deemed university under the UGC Act have got statutory force for the reasons recorded by us. With reference to the decision of the Supreme Court in the case of State of Andhra Pradesh v. K. Purushotham Reddy and Ors. referred to supra and therefore, it is not open for the petitioner-deemed universities to seek the relief by way of additional prayer in their writ petitions to quash that portion of the guidelines under clause 17 "obtaining the views of the State Government" at the time of considering their applications contained therein contending that there is no statutory requirement for the Educational Institutions to obtain such views from the State Government under the provisions of the UGC Act. We have examined further contention urged on behalf of them that "obtaining "No Objection Certificates" from the State Government amounts to approval of views as stated in Section 10(k) of the Mahatma Gandhi Universities Act which phrase is interpreted by the Supreme Court in the case of Prof. Yashpal and Anr. v. State of Chhattisgarh and Ors. (supra) upon which strong reliance is placed by the learned Sr. Counsel in support of this contention that under the guise of obtaining views from the State Government by the UGC for submitting its opinion to the Central Government, "No Objection Certificate" from the State

Government is not required in law. The said decision has no application to the fact situations for the reason that Section 3 of the UGC Act provides that the Central Government may, on the advise of the UGC, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed recognised to be a University for the purpose of the Act and, on such a declaration being made, all the provisions of the Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2 of the UGC Act.

75. The applications of the petitioner Educational institutions who had sought the status of deemed universities from the Central Govt, under the Act, the UGC followed the guidelines and asked the educational institutions of deemed universities to obtain the views from the State Government that is followed by them and requested the State Government for issuing "No Objection Certificate", at that time, they have given an undertaking to the State Government as stated above. On the basis of their undertaking and MOU entered into with the State Government the advise was given by the UGC to the Central Government and it has accepted the same and exercised its power and incorporated the conditions referred to supra in the Notifications. The status of deemed university obtained by the petitioner-Colleges, the same would come into force only on fulfilment of the conditions enumerated in the Notification by them. Therefore, they cannot challenge the terms and conditions incorporated in the notifications in their petitions by retaining the status of deemed university declared by the Central Government. The status of deemed universities was granted to the said Educational Institutions subject to the condition of fulfilment of conditions enumerated in the Notifications and undertaking given to the State Government in the MOU agreeing to share 25% of the seats to it in their colleges. Therefore, the legal contention urged on behalf of the NITTE Trust to quash that portion with regard to obtaining the views as contained in the clause-17 of the guidelines and the conditions to share seats of 25% quota in favour of the State Government are without authority of law by urging untenable grounds and therefore, the additional prayer of it cannot be granted by this Court as the petitioner Institutions are not entitled for such reliefs. The Central Government, after satisfying the advise given by the UGC and on the basis of the undertaking given by the petitioner-Educational Institutions to the State Government with regard to the seat matrix and other related matters, it has exercised its power u/s 3 of the UGC Act and granted the status in their favour. If they had not given such undertaking to the State Government the UGC would not have advised the Central Government to exercise its power for conferment of status of deemed university upon them is one more strong reason for us not to grant the relief as prayed by them to quash the conditions enumerated in the respective notifications. Such relief also cannot be granted by this Court in exercise of its discretionary jurisdiction for one more reason namely the conferment of status of deemed university in their favour must be taken in its entirety they cannot retain the order favourable to them by seeking to quash the conditions which require

them to fulfil their obligations as agreed upon them at the time of getting status of deemed university. The stand of the Institutions at this stage that they are not required to fulfil the conditions after obtaining no objection certificate by them from the State Government is not the sine qua non in law to get the status and undertaking given and MOU entered into with the State Government by them in its favour is wholly untenable in law for the reason, if they had taken such stand at the initial stage the UGC would not have processed the applications submitted by them and it would not have submitted its favourable opinion and gave advise to the Central Government and in that event, the status of deemed university could not have been granted by it in their favour and further, the conduct of the petitioner Educational Institutions by agreeing to share the seats of 25% to the State Government at the time of considering their applications and got the notifications issued with conditions, now not honouring the same by them and wanted to enjoy the status of deemed university is their inconsistent and contradictory stand which would reflect their conduct is also one of the strong reason which disentitles them for the reliefs since the petitioner-Institutions have acted upon the guidelines and given the undertaking and entered MOU respectively with the State Government in the form referred to supra with regard to the seat matrix and related matters to fulfil its social obligations, which is the policy of the State Government to discharge of their constitutional obligation towards the students of socially and educationally oppressed class and weaker sections of the society who have been neglected from ages who are in a disadvantageous position in the society and therefore the State Government has to provide professional Education to them for their upliftment and provide an opportunity to them to serve the Society. Therefore, it had formulated its policy in this regard by enacting State laws in exercise of its legislative power under Article 246 of the Constitution of Entry 25 of List III of Seventh schedule which is permissible in view of the law declared at para 81 in Preethi Srivatsava case referred to supra and it has given "No Objection Certificates" in their favour with the above conditions. The undertaking was obtained from the institutions and they had agreed to allocate the seats for admission of such students of Government quota in their colleges. Therefore, it is not open for them at this stage to take a "U turn and contend that conditions imposed upon them in the Notifications are void-ab-initio in law for want of statutory policy under UGC Act. The said contention of the learned senior counsel on behalf of the petitioner-Institutions is untenable in law for the reason that the guidelines framed for the purpose of Section 3 of the UGC Act is referable to Section 26(d) of the UGC Act, which stipulates that specific institutions or class of colleges which may be recognised by the Central Government for declaring them as deemed universities as defined under Clause (f) of Section 2 of the UGC Act after following the procedure prescribed therein.

76. The petitioner-Educational Institutions are also not entitled for the additional relief as prayed in their applications as they have not urged legal, valid and tenable grounds in their petitions to exercise our jurisdiction and power under

Article 226 of the Constitution of India. In this regard, Sri. Ashok Haranahalli, learned Advocate General has rightly pointed out the Constitutional Bench decision in the case of *Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.*, reported in AIR 1993 SC 239. Para-11 is extracted hereunder:

... we have serious reservation on the question whether it is open to a court to answer academic or hypothetical questions on such consideration, particularly so when the serious constitutional issues are involved. We (judges) are not authorise to make disembodied pronouncements on serious and cloudy issue of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conception. It is but right that no important point of law should be decided without a proper lis between parties properly ranges on either side and a crossing of the swords. We think it is in expedient for the Supreme Court to delve into problems which do not arise and express opinion thereon.

77. No proper lis raised by the petitioner Institutions in support of their reliefs in the writ petitions to facilitate the Central Government and the UGC to meet such contentions. We are of the view that the grounds urged by the NITTE Institution & Islamic Academy of Education are fully unfounded upon which this Court cannot exercise its power to read down the terms and conditions incorporated in the notifications. In support of the above legal contention learned Advocate General relied upon the decision of the Apex Court in the case of *M. Meenakshi v. Metdin Agarwal* referred to supra.

78. Strong reliance is placed by the learned Senior counsel for the Educational institutions upon the decision of *Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another*, referred to supra. Paragraphs 17 & 18 are extracted hereunder:

17. If the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in Parliament even at a time when "education" fell under List II, we find no reason now not to accept the arguments advanced on behalf of the appellant that once an institution comes within the scope of Entry 66 of List I, it falls outside the control of the provisions of Entry 25 of List III.

18. u/s 3 of the Act, deemed university status will be given to those institutions that for historical reasons or for any other circumstances are not universities and yet are doing work of a high standard in specialised academic filed compared to a university and that granting of a university status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the university system. Guidelines for considering proposals for declaring an institution as deemed to be university were also issued by UGC. Under the said guidelines aspects relating to admission were specifically entrusted with UGC and admission could be made only through a common entrance test on all-India basis. Such an exercise was intended to maintain a

uniform standard and level of excellence. As we have pointed out, admission plays a crucial role in maintaining the high quality of education. And for the proper maintenance of academic excellence, as intended by the UGC Act, admission to deemed university have to be made under the control of UGC. This further goes to show that admission procedure to a deemed to be university is fully occupied by Entry 66 of List I and the State cannot exercise any powers over admission procedure.

In view of the law laid down in the above paragraphs, the status of deemed Universities granted in favour of the educational institutions under UGC Act by notification dated 26.4.1996 is rightly distinguished by learned Counsel Mr. Arun by placing reliance upon the facts at paragraphs 1 and 2 of that the said decision, it has no application to the facts of cases on hand for the reason that on 13.6.1996 UGC issued Office memorandum declaring Bharati Vidyapeeth as deemed University in terms of Section 3 of UGC Act without the conditions regarding seat sharing with State Government was incorporated in the notification issued in its favour, whereas in the notifications issued in favour of the petitioner-institutions there are specific conditions imposed that status of deemed universities will come into force on fulfillment of the terms and conditions enumerated therein, the learned Advocate General has rightly placed reliance upon the decision of the Apex Court in the case of *M. Meenakshi and Ors. v. Metdin Agarwal (DCA)* by LRs and Ors. referred to supra in support of the contention that the conditions incorporated in the notifications are legal and valid in law as the same were incorporated by the Central Government, which had the jurisdiction and farther submits that the same cannot be read down by this Court for granting reliefs prayed by the petitioner-educational institutions. It is worthwhile for this Court to extract the relevant paragraphs from the said decision which reads thus:

17, The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The plaintiff although being a person aggrieved could have questioned the validity of the said orders, but did not choose to do so. Even if the orders passed by the competent authority were bad in law they were required to be set aside in an appropriate proceeding, They were not the subject-matter of the said suit and the validity, or otherwise of the said proceeding could not have been gone into therein and in any event, for the first time in the letters patent appeal.

18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullified.

79. The status of deemed University will come into effect in respect of their Institutions only after fulfillment of the conditions incorporated in their respective notifications whereas in the case of Bharati Vidyapeeth there are no such terms and conditions stipulated in the notification issued in its case. Further, the law laid down in the said case in the backdrop of interim order granted on 19.5.1997 to the following effect was continued till the date of disposal of the case which reads as follows:

We are informed that the examination process had already begun as early as February 1997. In the larger public interest, we are of the view that the petitioner will conduct an all-India entrance test and will grant admission strictly on the basis of the merit of the candidates. Admission so granted will be subject to the final orders, that will be passed by this Court.

(Emphasis laid by this Court)

80. The said interim order was continued till the disposal of the said writ petition is the reason for deciding the said case in addition to the other relevant fact namely that there was no condition mentioned in the notification stating that on fulfillment conditions the status of deemed University will come into effect in respect of Bharathi Vidyapeeth's case. Therefore, reliance placed on the said decision by the learned Senior Counsels on behalf of the deemed Universities and its students is of no assistance to them. For another reason the said decision cannot be applied to the fact situation in view of the law laid down by the Constitutional Bench at paragraph 81 in the case of Dr. Preethi Srivatsava referred to supra.

81. Further the conditions incorporated in the notifications issued by the Central Government in favour of the petitioner-institutions on the advice of the UGC also cannot be read down by this Court in view of the decision of the Constitutional Bench of the Supreme Court in the case of P.A. Inamdar and Ors. v. State of Maharashtra and Ors. reported in (2005) 6 Scc 537 in which at paragraph 68 T.M.A. Pai Foundation v. State of Karnataka is referred to, which case is decided by 11 Judges reported in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has held thus. The relevant paragraph reads as follows:

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and

have applied to the college concerned for admission, while the rest of the seats can be filled up on the basis of counselling by the State apencu. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. Graduation and post-graduation non-professional colleges or institutes.

(Emphasis made by this Court)

82. In our considered opinion, observations made in the above case with all four applicable to the facts of the case on hand in view of the fact that the State legislature has enacted the aforesaid statutory enactments regarding reservation of seats for admission and related matters to the professional courses even in Private unaided Educational Institutions to cater to the need of rendering professional education to the weaker sections of the Society to fulfill its social obligation.

82(a) Further, in view of the decision of Constitutional Bench in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, para-81 which is extracted hereunder:

81. The old Entry 11 of List II, as earlier existing in the Constitution of India, read as under:

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

While Entry 25 of List III as now existing in the Seventh Schedule of the constitution reads as under:

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

However, after the deletion of Entry 11 from List II and redrafting of Entry 25 in the Concurrent List as in the present form, it becomes clear that all aspects of education, including admission of students to any educational course, would be covered by the general entry regarding education including technical and medical education etc., as found in the Concurrent List but that would be subject to the provisions of Entries 63 to 66 of List I. Therefore, on a conjoint reading of entry 66 of List I and Entry 25 of List III, it has to be held that so long as Parliament does not occupy the field earmarked for it under Entry 66 of List I or for that matter by invoking its concurrent powers as per Entry 25 in the Concurrent List, the question of admission of students to any medical course would not remain outside the domain of the State Legislature. It is not in dispute that up till now Parliament, by any legislative exercise either by separate legislation or by amending the Indian Medical Council Act, 1956 has to legislate about the

controlling of admissions of students to higher medical education courses in the country. Therefore, the only question remains whether the Indian Medical Council Act enacted as per Entry 66 of List I covers this aspect. If it covers the topic then obviously by the express language of Entry 25 of List HI, the said topic would get excluded from the legislature field available to the State Legislature even under Entry 25 of the Concurrent List.

(Emphasis supplied)

In view of Constitution Bench decision, undertaking given and the memorandum of understanding executed by both the Educational Institutions in favour of Karnataka State Government and consequent undertaking given by them the State Government, the conditions incorporated in the notifications issued by the Central Government while declaring the said Educational Institutions as deemed universities are legal and valid and the same is in conformity with the principle laid down in the above case.

83. By a careful reading of the pronouncement of law made in the P.A. Inamdars"; Constitution Bench of the Supreme Court, the policy of the Karnataka State Government relating to seat matrix in favour of the students who belong to socially, economically weaker section is recognized by the Apex Court. In view of the above decision of the Apex Court which is later to the Bharathi Vidyapeeth case and the decision of the Constitution Bench will be binding upon the parties. With reference to the law laid down by the Supreme Court in the above cases, the legal contentions urged by Sri. Ashok Haranahalli, learned Advocate General that the Government seats under Rule 2(1) and Rule 2(o) of the Rules framed u/s 14 of the Act, 1984, have got a statutory force. The said provisions are applicable to the petitioner-Educational Institutions is well founded as the same is in conformity with the pronouncement of law made by the constitutional Benches in the above, referred cases with reference to the Constitutional provisions, hence his submission shall be accepted by this Court, accordingly we accept the same. Later portion of Rule 2(1) regarding definition of Government seats clearly stipulates that 25% of the seats must be allocated to the Private Educational Institutions. Based on the policy of the State Government "No Objection Certificates" were secured by the deemed Universities at the time of processing their application. Therefore, incorporating the conditions by the Central Government in the notifications issued has recognized the fact that certain percentage of seats should be given to the State Government to discharge its social obligations while exercising its statutory u/s 3 of the UGC Act, which is the parliamentary law regarding higher education. The State Government having regard to its Educational policy in relation to professional courses has enacted the law framed rules in exercise of its statutory power u/s 14 of the provisions of the Act of 1984 to discharge its constitutional obligation with reference to Article 15 of the Constitution and seat sharing is required to be made by the Private Unaided Professional Educational Institutions in favour of the weaker and poorer sections of the society is well recognized in the decision of

P.A. Inamdar cited *supra*, that in terms of Rule 2(1) of the Rules 25 of the Government quota is perfectly in conformity with the above decision, which is one more strong reason for us not to grant, the reliefs to the petitioner-educational institutions to read down the terms and conditions regarding allocation of 25% students of the Government quota to the petitioner-Medical Colleges.

84. The learned Counsel Mr. Rajendra Kumar Sungay, rightly has pointed out that the status of deemed University will be acquired by the NITTE Educational Institutions only on the fulfillment of condition No. 5 incorporated in the notification dated 4.6.2008 which shall become effective on the declaration made that its college is disaffiliated from viz., Rajiv Gandhi University of Health Sciences (for short "the RGUHS). In this regard, Sri. N.K. Ramesh, learned Counsel appearing for KEA has filed a memo along with the letter dated 11.9.2009 addressed to the Administrative Officer of the KEA, wherein it is indicated whether K.S. Hegde Medical Academy has been disaffiliated from the RGHUS or not. The contention urged by the learned Sr. Counsel placing reliance upon Section 2(a) of the Act regarding the definition of affiliation has to be read along with the statutes framed by the senate of the RGUHS. Section 2(a) of the Act reads thus:

affiliated college" means a college or institution situated within the University Area and affiliated to the University in accordance with the Statutes prescribed and includes all colleges and institutions deemed to be affiliated to the University under this Act;

85. There is no provision of affiliation under the RGUHS Act for grant of affiliation to its colleges on the basis of year to year as contended by the learned Sr. Counsel. The disaffiliation of a College is governed by the statute No. 3 framed by the Senate in exercise of its statutory power u/s 45(6) read with clause (g) of Section 33 of RHUHS Act. It is an undisputed fact, as could be seen from the letter addressed by the Registrar of the said University to the Administrative Officer of the KEA, that K.S. Hegde Medical Academy and other colleges of the deemed universities are still under affiliation of the RGUHS till they complete the course. The said statement of the Registrar of RHUHS abundantly makes it clear that the K.S. Hegde Medical College is not disaffiliated. The reliance placed upon the decision in Shivaraman's case referred to *supra*, has no application to the facts of this case as the notification in the said case has come into force with immediate effect whereas the notification in respect of this college subject to the condition of the disaffiliation of it from RGUHS. Hence, it has remained as a private medical college affiliated to RGUHS. The status of deemed university to the Educational Institutions of NITTE Trust has not yet come into effect, is one more strong reason for us to hold that undertaking given by the NITTE Trust to the State Government agreeing to share 25% of seats in its College is not binding upon it.

86. For the foregoing reasons assigned by us in answer to the contentious point

Nos. II to VIII, the petitioner-deemed Universities are not entitled for any relief including the additional relief as prayed by them and therefore their prayers in the petitions are liable to be rejected.

Answer to Points IX & X:

87. Further, the peculiar relief sought for by the Yenepoya Educational Institution in the writ petition is a writ of mandamus declaring the State Government either insisting or retaining 25% seats in the colleges run by its deemed university and in insofar as the NITTE University is concerned the original prayer is for issue of a writ of certiorari for quashing the notification issued by the State Government in allocation of seats to the extent of 25% of its intake as Government quota and a writ of mandamus cannot be granted by this Court for the following reasons.

88. As we have already held insofar as the NITTE University is concerned, disaffiliation of its Medical College has not taken place, it has not acquired the status of deemed University, even assuming that deemed University status is applicable to it, it shall fulfil the conditions of notifications dated 4.6.2008 and 24.3.2009. Having regard to the conduct of NITTE Trust and NITTE College giving an undertaking by its President to the State Government agreeing to share 25% of seats of the intake fixed by the Medical Council of India, the State Government allocated its seats after selecting the meritorious students from amongst the students who belong to scheduled caste, scheduled tribe and OBC Group by conducting the counselling by the KEA. As per the Inamdar's case cited supra since it is not yet disaffiliated from RGUHS, it had remained to be a Private Unaided Professional Educational Institutions in terms of Rule 2(o) of the Rules and therefore the consensual agreement as observed by the Supreme Court in Inamdar's case, is applicable to the case on hand since it had given the undertaking of sharing of 25% seats to the State Government. Therefore the seat matrix notification cannot be quashed. Further, the Yenepoya deemed University is also bound by such MOU instead of discharging its commitment to the State Government by accepting 25% seats allocated to it, it is seeking the relief for issue of a writ of mandamus and certiorari as extracted supra to the State Government, which prayers are misconceived and therefore, such reliefs cannot be granted by this Court in its favour in their petitions. The petitioner-Educational Institutions having agreed to share the seats in their professional educational institutions to the State Government at the time of obtaining No objection certificates by them for obtaining the status of deemed university upon its medical colleges from the Central Government, after obtaining the notifications declaring as such with conditions, not honouring its commitment to the State Government in not permitting the students of State Government quota of 25% who have been admitted by the KEA to the petitioner colleges and made them to approach this Court to litigate the matter and further their approach to this Court by filing writ petitions urging untenable grounds in support of their misconceived prayers cannot be appreciated by this Court. For the reasons recorded above, if the deemed universities medical colleges have admitted its

students on the basis of AIEE beyond 75%, those students seeking for issue of a writ of mandamus and other reliefs as extracted above is once again untenable in law and their prayers also cannot be granted by this Court in view of the Judgment of the Supreme Court in *Mriduldar v. Union of India* and Ors. reported in 2005 (5) SCC 65, upon which, the learned Counsel Mr. Khetty has rightly placed reliance upon the said decision wherein the Apex Court has emphasized the need of strict enforcement of the time schedule and further it has given direction at para-35 (11) held that any admission made by the College in excess of the sanctioned intake fixed by MCI is not permissible at all. The relevant portion of the said directions/observations made by the Apex Court in the above case are extracted as hereunder:

35 (11). If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

89. Again at para-32 in the above case the Apex Court held regarding time schedule and excess admission which para is extracted as hereunder:

32. Having regard to the professional courses, it deserves to be emphasised that all concerned including Governments, State and Central both, MCI/DCI colleges - new or old, students, Boards, universities, examining authorities, etc., are required to strictly adhere to the time schedule wherever provided for there should not be admitted and the admissions should not be in excess of sanctioned intake capacity or in excess of quota of anyone whether State or management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.

(Emphasis laid by this Court)

90. In view of the law laid down by the Apex Court in the said decision and having regard to the undisputed fact viz., the students admitted by both the colleges to the deemed Universities on the basis of their merit rank list prepared on AIEE are also before this Court by filing their writ petitions, we have extracted relevant facts and the reliefs prayed by them. The batch of the students out of Karnataka State Government quota of 25% are admitted in the Yenepoya College subject to certain conditions incorporated in the endorsements issued to them stating that they are taken as they shall not be continued in the course after 30th September 2009. In this view of the matter, the students of both the medical colleges of deemed universities who are seeking the reliefs as extracted in the earlier portion of this Judgment for the reasons stated supra by us they are not entitled for reliefs.

91. The student-petitioners of both the colleges of deemed universities who come under 25% State Government quota must succeed in their writ petitions. Accordingly, admission orders that would be issued on or before 30.9.2009 which

is being the last date for admission to the course should be permitted to report for admission and attend the classes of the I Year MBBS Course for the academic year 2009-10 by the KEA in respect of the medical colleges of deemed universities.

92. The submissions made by the learned Senior Counsel Mr. Uday Holla on behalf of the students of K.S. Hegde Medical Academy College of NITTE University by placing reliance upon the decision of the Apex Court referred to supra, regarding promissory estoppel have no application to the fact situation in view of the conditions incorporated in the notifications issued in favour of the University by the Central Government which are in conformity with the Act of 1984 and Rules of 2006 and the undertaking given by the educational institutions agreeing to share 25% of seats to the State Government to fulfill its obligations to the poorer sections of the Society as per its policy held by the Apex Court in the T.M.A. Pai and P.A. Inamdar cases referred to supra. Further, in view of the definitions of "Government seats" and "Institution" as defined under Rules 2(1) & (o) of the Rules, the allocation of 25% seats to the State Government cannot be put against them by urging the plea of promissory estoppel against the Medical College which plea is not legally permissible in law for the reason that the above plea is not available for the students against the educational institutions as it is opposed to law regarding seat sharing by the private professional institutions to the State Government.

92(a) Further, the reliance placed by the learned Senior Counsel, Mr. R.N. Narasimha Murthy, on behalf of the student-petitioners of Yenepoya college who have been admitted in the course, has contended that the conditions incorporated in the notification regarding seat sharing of 25% is opposed to Section 23 of the Indian Contract Act of 1872, and the law laid down by the Apex Court in the cases of Central Inland Board and DTC referred to supra, in support of his legal submission that the terms and conditions incorporated in the notifications issued by the Central Government u/s 3 of U.G.C. Act are opposed to the public policy is wholly untenable in law, the reliance placed upon the above-said decisions are misplaced and the same do not support their cases as they have no application to the fact situation in view of the decisions of the Apex Court in the cases of T.M.A. Pai & P.A. Inamdar, referred to supra.

93. The students who are admitted by the petitioner-Educational Institutions of both the universities over and above 75% of the management quota will be the excess of intake fixed by the MCI which is not legally permissible in view of the submission made by learned Counsel Mr. Khetty on the basis of decision of the Apex Court in Mruduldas case referred supra. Therefore, the students who are admitted by the colleges beyond their quota and intake fixed by the MCI on the basis of the merit ranking list prepared on the basis of All India Entrance Examination conducted by them and not permitting the students of the State Government quota of 25% seats from reporting in their colleges and attending the classes on the ground that they are excess is wholly illegal and therefore, the

students of Educational Institutions of both the petitioner universities are not entitled for the reliefs as prayed by them. Mr. Khetty very fairly made submission on the basis unreported decisions of the Apex Court that the excess admission made by the Medical Colleges of both the petitioner universities of more than intake fixed by the MCI the seats less than 25% of State Government quota which seats can be filled up by their students after the last date viz, 30.9.2009 if the State Government and KEA do not send their admission order to their colleges after admission of students on counselling on 30.9.2009 for this academic year in their colleges such number of seats shall be carried/forwarded to the Government quota for the next academic year to that extent of number of their seats reduced for the next academic year which number will be 13 insofar as NITTE University is concerned and in so far as Yenepoya University is concerned, it is 5.

94. In the result, We pass the following order:

(i) Writ Petition Nos. 24656 & 24657/2009 and 22413/2009 filed by note University and Yenepoya University fail and they are hereby dismissed.

(ii) The students admitted to the Yenepoya and NITTE Universities through counseling by the Karnataka Examination Authority shall be admitted to I year M.B.B.S. Course, if not yet admitted, on the fee structure fixed by the State Government and they shall be permitted to continue to attend the classes, examination etc., accepting the fee fixed by the State Government;

(iii) Since the NITTE and the Yenepoya Universities would admit only 12 and 20 students, respectively, during the current year, as against the Government quota, and if any student/students among 12 and 20 of the Government of Karnataka quota seats who are allocated and admitted/yet to be admitted, on further counseling by KEA and allocating them to other colleges, as 30.9.2009 being the last date for admission to the course, to that extent the respective colleges of both the universities shall be made over such number of seats to the State Government quota for the next academic year 2010-2011.

(iv) It is made clear that the NITTE University and YENEPOYA University selected and admitted, but they could not be accommodated during the current academic year 2009-2010 in excess of the sanctioned strength, those candidates may be admitted in the next academic year-2010-2011. as against the Management quota of those Universities.

(v) The directions at SI. Nos. (iii) and (iv) are issued as per the law laid down in *Mrkidul Dhar (Minor) and Anr. v. UOI* and *Ors. (2005) 5 SCC 65*.

(vi) Accordingly the other writ petitions are disposed off.

Rule is issued and the same made absolute.

The Registry is directed to issue operative portion of the order to the learned Counsels appearing for the parties.