

(2010) 08 KL CK 0264

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 22084 of 2010

Noorbina Banu

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 30(1)

Citation : (2010) 3 KLT 581

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : George Poonthottam, K.M. Firoz and Sujith Mathew Jose, for the Appellant; T.B. Hood, Government Pleader, Alexander Thomas, Murali Purushothaman and Anil K. Narendran, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—Since these three Writ Petitions canvass the same issue, they are being heard and disposed of together by this common judgment. Ranks of parties, pleadings and Exhibits are referred to in this judgment are as obtaining in W.P.(C) No. 2084/2010, unless otherwise made clear.

2. The Supreme Court of India started two judgments relating to admissions to professional colleges in the country with a quotation from Shakespeare's "Othello". The first judgment was in 1995, viz. Convener, MBBS/BDS Selection Board v. Chandan Mishra, . That quotation was extracted by the Supreme Court again in the decision of Medical Council of India Vs. Madhu Singh and Others, . I quote here the first paragraph of the 2nd judgment, which reads thus:

This appeal filed by the Medical Council of India (in short "MCI:") raises important questions regarding desirability of belated admissions to medical colleges in different courses, both pregraduate and postgraduate. The questions assume importance because filing a large number of petitions before various High Courts and this Court has become an annual feature. When the time of admission to

medical courses arrives, immediately comes to mind Shakespeare's Othello, where it was written: "Chaos is come again". The inevitable result is that considerable time is lost by candidates chasing vires instead of virus. This Court in *Convener, MBBS/BDS Selection Board v. Chandan Mishra*, observed as follows: (SCC p. 78, para. 6)

The learned Judges of the High Court, if we may say so with respect in a well-considered opinion expressed their anguish at the insensitivity of the authorities administering medical admission in the State to the need to prevent occasions for repetitive grievances from the student community and had occasions to observe:

Shakespeare in Othello has written "Chaos is come again". This Court has witnessed chaos almost annually when time for admission to MBBS/BDS courses came....

The factual position leading to the appeal, which is almost undisputed, needs to be noted in some detail.

It is distressing to note that even after 15 years, the situation remains the same. Alas, in spite of the Supreme Court beseeching the Central Government and the State Governments in *P.A. Inamdar v. State of Maharashtra* 2005 (4) KLT SN 3 SC : (2005) 6 SCC 537, to come out with a detailed, well thought out legislation on the subject, which is long awaited, the Central Government has not yet found it necessary to do anything in that regard. Although the State of Kerala has attempted one, namely, Act 19 of 2006, it has turned out to be a flop, since the major provisions thereof have been declared as unconstitutional by a Division Bench of this Court in *Lisie Medical & Educational Institutions v. State of Kerala* 2007 (1) KLT 409. Come June, every year and this year also, the admission process in the professional colleges, particularly, medical colleges in the State, is "chaos is come again". These Writ Petitions are part of that chaos contributed by some self-financing medical colleges in the State of Kerala.

3. Although, the State Government started its admission process for admission to professional colleges in Kerala as early as in December, 2009, the consortium of medical colleges whose members have entered into seat sharing agreements with the State Government and whose admission procedure for management seats is under challenge in these Writ Petitions, found it sufficient to start it only as late as on 29.4.2010 by issuing a prospectus, which is produced as Ext. R5(a) along with the counter affidavit filed by them. Based on the same, on the very same day, an advertisement was issued in two Malayalam and one English news papers, inviting applications for admission to the member colleges of the consortium. 1046 students are thought to have responded to the notification inviting applications. A common entrance examination was conducted on 30.5.2010, in which only 751 of them participated. A rank list was published on 20.7.2010 and admissions have been made. That admission procedure is under challenge in these Writ Petitions.

4. The petitioners raise several contentions against the said admission procedure adopted by the consortium. Some of those contentions are common to the 2008 admission also, which was the subject matter of a judgment of mine, which is reported as *Fathimma Haseena P. v. State of Kerala and Ors.* 2008 (3) KHC 544. But, that judgment was challenged by the 5th respondent before the Supreme Court and the Supreme Court had granted a stay. But, on 12.7.2010, the Supreme Court disposed of that SLP by the following order:

In these matters the dispute relates to the admission of students into medical college for the academic year 2008. In view of the interim order passed by this Court, there is no need for any adjudication and no further orders are required to be passed on these Special Leave Petitions.

The Special Leave Petitions are accordingly dismissed.

Going by that order, on dismissal of the S.L.P., the judgment stands confirmed. Of course, the learned Counsel for the 5th respondent would contend that a clarification petition was filed before the Supreme Court, namely, Ext. R5(h) produced in W.P. (C) No. 23373/2010, which is pending.

5. The petitioners raise several contentions against the admission procedure adopted by the 5th respondent. According to them, the procedure adopted by the 5th respondent is not fair, transparent and non-exploitative, as it ought to have been as laid down by the Supreme Court in *PA. Inamdar*" case (supra). The reasons stated by them in support of their contention are as follows:

(a) The first is that the Supreme Court has repeatedly held that it is mandatory for the Government and the other institutions making admission to medical colleges to conform to the time schedule prescribed by the Medical Council of India in respect of various stages of the admission process. They would contend that the results of the entrance examination was not published by 15th June this year, which is one of the schedules fixed by the Supreme Court as well as the Medical Council of India. According to them, as laid down by the Supreme Court in *Medical Council of India Vs. Manas Ranjan Behera and Others*, , even the High Court cannot grant extension of time to comply with the time schedule fixed by the Supreme Court of India.

(b) The second contention is that the consortium, while conducting the entrance test as common for ten medical colleges, fixed different minimum percentage of marks in the qualifying examination, for admission to the individual member colleges, which was found to be invalid by this Court in *Fathimma Haseena*'s case (supra), which has now been upheld by the Supreme Court by dismissing the Special Leave Petition. Therefore, on that ground, the entrance test conducted on the basis of such an admission procedure is clearly unsustainable, is the contention.

(c) The next contention is that a Division Bench of this Court has in *Lisie Medical & Educational Institutions*" case (supra), specifically held that in view of Section

4 of the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006, (Act 19 of 2006), the entire admission procedure of self-financing educational institutions shall be supervised by the admission supervisory committee constituted u/s 4 of the said Act, which has not been done in this case, as a result of which the admission procedure is vitiated.

(d) They would also contend that in Fathima Haseena's case, this Court has laid down guidelines for the procedure to be adopted by unaided medical colleges, who opt to conduct their own entrance test by selection of students for admission, which have not been complied with by the 5th respondent consortium of medical colleges.

6. A counter affidavit has been filed by the 5th respondent seeking to refute the contentions of the petitioners. According to them, the entire admission procedure has been fair, transparent and non-exploitative. They take the stand that the prospectus issued by them was placed before the Admission Supervisory Committee. They have also taken the assistance of the Admission Supervisory Committee in the matter of conducting the entrance test, is their submission. Therefore, they have strictly complied with the requirement of Section 4 of Act 19 of 2006, is their contention.

7. While admitting that they have not declared the results of the entrance test until 20.7.2010, they would contend that the same is only because the Admission Supervisory Committee had restrained them from publishing the results, which cannot be held against them.

8. Regarding the contention on the basis of different minimum percentage of marks for the qualifying examination for different member colleges of the consortium, the 5th respondent would contend that it is perfectly competent for them to fix a higher percentage of minimum marks for the qualifying examination insofar as there is no prohibition in respect of the same in any legislation or any decision. They would particularly rely on a decision of the Madras High Court, viz. Miss A. Karthiga v. The Secretary and Ors. 2007 (1) KLT SN 68 Mad. : 2007 KHC 3467, wherein a learned Single Judge of the Madras High Court had upheld the autonomy of the private unaided professional institutions to fix a higher minimum mark to be obtained in the qualifying examination in order to become eligible to write the common entrance test.

9. On the issue of non-compliance with the directions in Fathimma Haseena 's case supra, they would contend that since that judgment was under stay by the Supreme Court of India till 12.7.2010, they were not bound to comply with the directions therein. They would further contend that Fathimma Haseena herself had filed a petition for modification of the interim order, which was posted along with the SLP without passing any orders thereon. They would also raise a contention that a clarification petition filed by them is also pending before the

Supreme Court at present.

10. The Admission Supervisory Committee has filed a statement, in which they have detailed the steps taken by the consortium in the matter of selecting the Admission Supervisory Committee, which, although does not state so in so many words, would tend to show that the 5th respondent had not complied with the requirement of Section 4 of Act 19 of 2006.

11. I have considered the rival contentions in detail.

12. The first question to be considered is whether the 5th respondent had complied with the time schedule prescribed by the Supreme Court of India and the Medical Council of India. Admittedly, the entrance test was conducted on 30.5.2010 and the results were published only on 20.7.2010. The Admission Supervisory Committee granted permission to publish the results only on 20.7.2010. On this question, the issue is covered by the decision of the Supreme Court of India in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, and *Medical Council of India Vs. Manas Ranjan Behera and Others*, . Those decisions read together would go to show that the time schedule for various stages of the entrance examination for MBBS admission in the country are mandatorily to be complied with by every medical college in the State, whether Government, aided or private self-financing. In fact, I had considered that question in *Fathimma Haseenas 's case*, wherein, after extracting paras. 8 to 12 of *Mridul Dhar's case*, I had held thus:

xx xx xx

The above would go to show that the Supreme Court issued those directions as having general applicability for all situations and not only in the context of safeguarding interests of students seeking admission in the All India quota alone. As far as the reliance by the counsel for the 5th respondent in *Madhu Singh's case* (supra) is concerned, suffice to say that even if it supports the case of respondents 5 and 6, which itself is not conclusive, the same being an earlier decision of a bench of lesser strength, the later decision in *Mridul Dhar's case*, by a larger bench, would no doubt prevail over the same.

11. I am of opinion that adherence to such a time schedule itself would go a long way in ensuring a fair, transparent and non-exploitative admission procedure. If all entrance examinations for admission to various medical colleges in the State for the same year are completed simultaneously, the chances of manipulations in admission by unscrupulous managements can be reduced to the minimum. Unaided managements will not get the opportunity to doctor their rank list after knowing about the rank list published by the Commissioner of Entrance Examinations. Simultaneous completion of admission process at all levels in all medical colleges in the State would ensure fairness, transparency and non-exploitation in admissions in unaided medical colleges also to the maximum, which is what the Supreme Court repeatedly called for in all their decisions on the subject.

12. In any event, since the Medical Council of India has incorporated the time schedule in the Graduate Medical Education Regulations, the time schedule has attained statutory character. That time schedule can be changed only by the Supreme Court of India which the Supreme Court has occasionally done for very compelling reasons. Respondents 5 and 6 or the colleges, not having chosen to approach the Supreme Court for conducting the test beyond the time prescribed in the schedule so fixed, they cannot now admit students on the basis of a rank list prepared in that test, which has not been conducted in accordance with the time schedule.

3. The 5th respondent admits that they are bound by the last date fixed for completing all admissions viz. 30.9.2008. That date has no relevance to admissions in the All India Quota in so far as admissions to All India Quota has to be completed on or before 22nd August as per the time schedule prescribed. Therefore, their contention that the schedule is fixed only in the context of admission to All India quota has no legs to stand.

In view of that conclusion, neither the Admission Supervisory Committee nor this Court can direct that the time schedule fixed by the Supreme Court and the Medical Council of India need not be adhered to. From the statement of the Admission Supervisory Committee, I find that they were forced to direct so in view of the consistent default on the part of the respondent to answer the queries put by the Committee and to appear before the Committee. Even otherwise, whatever be the reason, it remains a fact that the 5th respondent consortium has not published the results of the examination on or before 15th June, which is the time schedule fixed by the Supreme Court of India and the Medical Council of India. The results of the Common Entrance Test conducted by the Commissioner of Entrance Examinations had already been published in May. As such, the entrance test conducted by the consortium is open for allegations of doctoring of rank list insofar as the rank list of other students who wrote the Common Entrance Test conducted by the Commissioner of Entrance Examinations of the Government has already been published. Therefore, the test conducted by the 5th respondent would not pass the test of transparency. In fact, although discussed first, that is only one of the minor infirmities in the entrance test conducted by the consortium. The major infirmities are discussed below.

13. The next question is whether as laid down by the Division Bench of this Court in *Lisie Medical & Educational Institutions*" case (supra), the 5th respondent had complied with the provisions of Section 4 of Act 19/2006. The necessity to comply with the provisions of that Section has also been considered by me in *Fathimma Haseenas*"s case. In para.38 of the Division Bench decision in *Lisie Medical & Educational Institution*"s case, it was held thus:

38. From the discussion made above, it has to be held that the unaided minority or non-minority institutions have a fundamental right enshrined under Articles 19(1)(g) and 30(1) of the Constitution of India to run educational institutions.

The minority institutions have an additional right which may be called as even a protection to establish and administer the institutions of their choice. The admissions can be regulated by legislation, but such legislation can only and surely be for ensuring the triple test of fair, transparent and non-exploitive procedure in the matter of admission. The State has indeed taken adequate measures in the impugned Act itself that the admissions may be merit oriented. The provisions do adequately take care of a test which may ensure the triple test. The Admission Supervisory Committee has been constituted as per Section 4. It consists of a retired Judge of the Supreme Court or High Court as Chairperson; Secretary to Government, Higher Education Department is to be Member Secretary; whereas Secretary to Government, Health and Family Welfare Department, Secretary to Government, Law Department, The Commissioner for Entrance Examinations, Kerala, and an educational expert belonging to Scheduled Caste or Scheduled Tribe Community are to be Members of the Committee. By virtue of provisions of Sub-section (6) of Section 4, the Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional colleges or institutions with a view to ensure that the process is fair, transparent, merit-based and non-exploitative under the provisions of the Act. The Admission Supervisory Committee in view of Sub-section (7) of Section 4 has the right to hear complaints with regard to admission in contravention of the provisions of the Act and if it may find violation of the provisions it could make appropriate recommendation to the Government for imposing a fine up to Rupees Ten Lakhs. The Committee has also the right to declare admissions made in respect of any or all seats in a particular college or institution to be tie hors merit and therefore invalid and communicate the same to the concerned University. On receipt of such communication, the University shall debar such candidates from appearing from any further examination and cancel the results of examinations already appeared for. The Committee can also recommend to the University or statutory body for withdrawal of affiliation or recognition of such college or institution or take any other action which it may deem fit. The provisions contained in Sub-sections (6) and (7) of Section 4 of the Act provide foolproof procedure from the beginning of the test up to its end which would ensure that the process is fair, transparent and non-exploitative. This is the only right of the State. Having done so, there was no need for the State to frame Section 3 arrogating to itself the complete right of admission and the procedure thereof. This is nationalisation of education and is wholly impermissible. Further, if by virtue of the provisions contained in Section 3 of the Act dealing with the method of admission in professional colleges or institutions, the admissions are now to be regulated or made through the common entrance test conducted by the State only followed by centralised counselling through the single window system by the Commissioner for Entrance Examinations, what was the requirement of making the provision such as Sub-sections (6) and (7) of Section 4. Surely, it cannot be case of the State that the procedure followed by it may be defective or lacking the triple test.

(Emphasis supplied)

Section 4 of Act 19 of 2006 reads thus:

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

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

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

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

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

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

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

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

(7) The Admission Supervisory Committee may hear complaints with regard to admission in contravention of the provisions contained herein. If the Admission Supervisory Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing a fine upto rupees ten lakhs and the Government may on receipt of such recommendation, fix the fine and collect the same in the case of each such violation or any other course of action as it deems fit and the amount so fixed together with interest thereon shall be recovered as if it were an arrear of public revenue due on land. The Admission Supervisory Committee may also declare

admission made in respect of any or all seats in a particular college or institution to be de-hors merit and therefore invalid and communicate the same to the concerned University. On the receipt of such communication, the University shall debar such candidates from appearing for any further examination and cancel the results of examinations already appeared for.

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

In the said judgment, after quoting the said paragraph and Section 4 of Act 19/2006, I had held thus in paragraph 15:

Going by the said Section and the decision of the Division Bench, the entire process of admission has to be mandatorily supervised by the Admission Supervisory Committee, the 2nd respondent herein, for ensuring that the same is fair, transparent and non-exploitative. Therefore, from the beginning of the admission process, at every stage, respondents 5 and 6 ought to have got approval of the Admission Supervisory Committee in respect of the same. In 2007-08, the Committee had issued Ext. P3 guidelines in the matter, which read thus:

1. The Private Self financing Professional Colleges/Association may invite application for admission to different self financing courses. The application fee including cost of prospectus shall not exceed Rs. 200/-. Wide publicity including advertisement in at least two Malayalam dailies having wide circulation shall be given at least two weeks before the last date to be fixed for receipt of application.
2. Application forms shall be made available from the College to the applicants in person or through post/courier on payment of the above application fee and there shall be facility to download the application form from the Internet.
3. The Colleges or Institutions shall publish on its website and on the notice board, the list of applications received and a rank list showing the rank obtained by each candidate in the CET conducted by the State Entrance Commissioner, within three days of the last date fixed for receipt of application. A copy of such rank list shall be forwarded to the Member Secretary, Admission Supervisory Committee, Ram Mohan Palace (old High Court Building), Ernakulam also.
4. A separate list of applicants for NRI seats, in the order of their merit, based on the marks obtained in the qualifying examination shall be forwarded to the Committee. The name and address of the NRI applicants and his/her relationship to the NRI shall also be specified in each case.
5. The process of admission shall be fair, transparent, merit based and non-exploitative." This year, although the 5th respondent has submitted a scheme, a prospectus and a copy of an agreement with the Government, there is nothing to show that the same was got approved by the Committee, although in Ext. R5(e),

the Committee is stated to have recorded it. Counsel for the Committee states that the committee had decided only to record the same, since the Committee was not consulted while devising the admission procedure as was done last year, when the Committee was consulted at every stage. This time the Committee was not consulted at any stage of the admission process, particularly regarding the crucial stage of setting of the question paper and fixing the mode of valuation. That being so, there is clear violation of Section 4 of Act 19 of 2006, in conducting the impugned test, by respondents 5 and 6, which itself is sufficient to declare the procedure adopted by respondents 5 and 6 as invalid.

14. The question is as to whether the 5th respondent has complied with the requirement of S .4 of Act 19/2006. To hold that they have not, all I need to do is to quote the statement filed on behalf of the 4th respondent Admission Supervisory Committee, which reads thus:

The above Writ Petition is filed for declaration that in the absence of supervision as required u/s 4 of Act 19 of 2006, the entrance test conducted by the 5th Respondent cannot be a valid examination as understood in the eye of law for making admissions in the member colleges of the 5th Respondent; and for other allied reliefs.

2. Since it was reported to the Committee that the 5th Respondent Association had published a Prospectus proposing to conduct the Common Entrance Examination for MBBS course for the year 2010 on 30.05.2010 at Kozhikode, this Respondent by letter No. ASC 291/10 dated 05.05.2010 directed the Secretary of the 5th Respondent Association to submit explanation for non-submission of details with regard to the conduct of the examination and to appear before the Committee on 10.05.2010 with all relevant documents. The photocopy of the letter No. ASC 291/10 dated 05.05.2010 of the 4th Respondent addressed to the 5th Respondent is produced herewith and marked as ANNEXURE-A. In Annexure-A this Respondent informed the Association that the Management Association is legally bound to give prior intimation regarding the conduct of the Entrance examination to this Respondent since the entire admission procedure for selection to the MBBS course is under control and supervision of this Respondent as per Act 19 of 2006 and that the admission process shall be fair, transparent, merit based and non-exploitative. It was to enforce the above principles the Committee issued Annexure-A letter to the 5th Respondent. Yet another letter No. ASC 291/10 dated 07.05.2010 was issued by this Respondent to the 5th Respondent stating that no adjournment would be granted since the entrance examination is proposed to be held on 30.05.2010 and that in the absence of the Secretary the Controller of Examination shall appear on 10.05.2010. The photocopy of the letter No. ASC 291/10 dated 07.05.2010 of this Respondent is produced herewith and marked as

ANNEXURE-B

3. However, on 10.05.2010 adjournment was sought before the Committee on

the ground that the Secretary of the Association is not in station. Accordingly the Committee adjourned the matter. The photocopy of the minutes of the meeting of the Committee dated 10.05.2010 is produced herewith and marked as ANNEXURE - C.

4. On 14.05.2010 another letter was issued to the 5th Respondent stating that the Committee proposes to hold a discussion with the representatives of the association with regard to the conduct of entrance examination. The photocopy of the letter No. ASC 291/10 dated 14.05.2010 is produced herewith and marked as ANNEXURE -D.

5. While so, a petition was received from Shri. Basil Attipetti against the admission procedure and conduct of entrance examination by the 5th Respondent Association and the said petition was numbered as ASC 320/10 and was posted along with ASC 291/10 with regard to the conduct of entrance examination for MBBS course by the 5th Respondent. Notice was issued to the 5th Respondent to appear on 25.05.2010 in respect of ASC 291/10 and ASC 320/10 filed by Shri. Basil Attipetti. The photocopy of the letter No. ASC 291/10 dated 21.05.2010 is produced herewith and marked as ANNEXURE - E.

6. On 25.05.2010 the Admission Supervisory Committee met and considered ASC 320/10 and ASC 291/10. The Secretary of the 5th Respondent Association though informed the Committee that a Controller of Examination was appointed, the Controller of Examination was not present before the Committee. The Committee noted that the Secretary could not answer the questions put by the Committee. Therefore, the Committee decided that the result of the entrance examination and all admissions pursuant thereto shall be made only after getting approval of the Committee and subject to further orders to be made by the Committee. The matter was then adjourned to 02.06.2010. The photocopy of the minutes of the meeting of the Committee dated 25.05.2010 is produced herewith and marked as ANNEXURE-F.

7. The Committee further met on 02.06.2010 at Thiruvananthapuram. On the said date the Controller of Examination of the 5th Respondent appeared before the Committee. After discussion with the Secretary of the Association and the Controller of Examination the Committee directed the Controller of Examination to file a detailed report on or before 15.06.2010 with regard to the conduct of entrance examination, regarding the issue of notification, preparation of question papers, conduct of examination etc., and also list of candidates selected with their address. The Committee informed the 5th Respondent and the Controller of Examination that the entire admission process including the tests, valuation of answer papers etc., shall be fair, transparent, non-exploitative and merit based and that the guidelines made by the Committee on 24.03.2007 with regard to the conduct of admission procedure has to be observed. With regard to the directions of this Hon''ble Court in the Judgment in W.P (C). No. 24299/2008 dated 05.08.2008, the Committee directed the Association to produce the details of the SLP pending before the Hon''ble Supreme Court. Accordingly, the

Committee posted the matter to 17.06.2010 for submission of report by the Controller of Examination. The photocopy of the minutes of the meeting of the Committee dated 02.06.2010 is produced herewith and marked as ANNEXURE - G.

8. Pursuant to the directions of this Respondent the Controller of Examination of the 5th Respondent Association submitted a report dated 07.06.2010 with regard to the conduct of the entrance examination. The photocopy of the report dated 07.06.2010 submitted by the Controller of Examination of the 5th Respondent before the Committee is produced herewith and marked as ANNEXURE - H.

9. Later, the Committee met on 17.06.2010 and considered Annexure-H report. The Committee observed that though the entrance examination was conducted by the consortium on behalf of 11 Colleges, 6 of the Colleges did not get letter of permission from Government of India and hence admission cannot be made to these Colleges and hence the Committee refrained from granting sanction for publication of the result of the examination. The photocopy of the minutes of the meeting of the Committee dated 17.05.2010 is produced herewith and marked as ANNEXURE -I.

10. The Committee again met on 08.07.2010 and it was observed that the result of the examination will be published only after getting approval from the Committee. The photocopy of the Minutes of the meeting of the Committee dated 08.07.2010 is produced herewith and marked as ANNEXURE-J.

11. The Committee then met on 20.07.2010 and the Secretary of the 5th Respondent produced letter of permission from the Central Government in case of 6 Colleges of the Association. The Committee found that out of 11 colleges 9 colleges have obtained letter of permission from the Central Government. The Committee considering the said fact decided to grant permission to the Association for publishing the result of the examination provisionally. The Controller of Examination also produced a rank list of candidates and the mark obtained by each candidate in the entrance examination. Taking into consideration the entire circumstances and in the interest of expediency, the Committee decided provisionally to allow the Association to publish the rank list. It was ordered that option shall be accepted from the students in respect of the 9 Colleges which got letter of permission. The option if exercised is also made provisional and subject to further orders. It was decided that the other colleges which have not obtained letter of permission from the Central Government, option can be made only after getting such permission. The Committee observed that admission procedure on the basis of merit shall be guaranteed and the Committee will at any time examine such admission procedure in order to see that the merit based admission is not distorted. The Committee also observed that the entire process of admission procedure will be examined by the Committee as and when required so as to ensure that such process was fair, transparent, non-exploitative and merit based. The photocopy of the minutes of the meeting of the Committee dated 20.07.2010 is produced herewith and

marked as ANNEXURE - K.

The decision of the Committee granting permission to the Association for publishing the result of the examination is provisional.

It is very clear and admitted that before publication of the prospectus, the 5th respondent had not sought and obtained the approval of the Admission Supervisory Committee for the prospectus issued on 29.4.2010. Of course, they claim to have informed the committee about the various stages of the conduct of the entrance test. After the event, the 5th respondent had submitted a copy of the prospectus and notification inviting applications before the Admission Supervisory Committee. I am not satisfied that that would be sufficient compliance with Section 4 of Act 19/2006. An effective supervision would be there only if the 5th respondent obtained prior approval for the prospectus as also the notification inviting application. In fact, the 5th respondent ought to have consulted the Committee before taking decision at every stage of the test like the mode of setting question paper, selection of the examiners to set the question papers, the mode of valuation, selection of the valuers and the like. Although the 5th respondent has produced some communications in this regard addressed to the Admission Supervisory Committee, it remains a fact that there was no effective supervision by the Admission Supervisory Committee for the common entrance test. At no stage of the test was there prior consultation with the Admission Supervisory Committee. No representative of the Admission Supervisory Committee supervised the entrance test. There was no request to the Committee to make arrangements in that regard. It is clear from the documents produced before me that although the Admission Supervisory Committee repeatedly requested the Controller of Examinations for the common entrance test to explain the procedure adopted by him, he appeared before the committee only on 2.6.2010 after the test was over. That can hardly be said to be compliance with Section 4 of Act 19/2006. From the statement and documents submitted by the Admission Supervisory Committee, I get the impression that the 5th respondent did not take the Committee seriously at all and they were only going through the motion of making it appear that there was consultation. In fact, apparently on the strength of the stay order of the Supreme Court, there was an obvious attempt to by-pass the Committee, which cannot be permitted, if the test is to satisfy the triple tests of being fair, transparent and non-exploitative.

15. In fact, in para. 19 of the Fathimma Haseena 's case, I had issued the following guidelines for conducting the entrance test in future:

19. I also direct that subject to any future change in law, for coming years, the following requirements shall be strictly complied with by unaided medical colleges, who opt to conduct their own entrance test for selection of students for admission:

(a) The time schedule prescribed as per the Medical Council of India Regulations

as approved by the Supreme Court of India in Mridul Dhar's case (supra) shall be strictly followed. If, for any reason, entrance test cannot be conducted within the said time schedule, admission shall be completed by admitting students from the rank list published by the Commissioner of Entrance Examinations of the Government of Kerala for the year, ensuring inter se merit of the candidates, subject to orders that may be issued by the Supreme Court of India, if any, in that regard.

(b) At every stage of the admission process, viz. issue of notification inviting applications, preparation of prospectus, issue of application forms, setting of question papers, deciding the method of valuation, publication of list of applicants, conduct of written test, preparation of rank list, counselling etc., approval from the Admission Supervisory Committee appointed u/s 4 of Act 19 of 2006 shall be mandatorily obtained, failure of doing which also would render such selection invalid.

(c) Notification inviting applications shall contain all essential particulars and shall be published in all leading daily newspapers, both Malayalam and English, sufficiently early.

(d) Application forms shall be made available by post and courier also and candidates must be permitted to submit applications in forms downloaded from the Internet. The Government shall ensure that the colleges make available sufficient number of application forms through Public Information Officers of the Government of Kerala in each District Collectorate.

(e) After the last date fixed for submitting applications a list of applicants who have submitted valid applications, shall be published including in the Website.

(f) The results of the entrance test with marks obtained by each candidate and the rank list prepared shall also be similarly published, accessible to individual candidates.

(g) Separate lists of admitted candidates in each category shall be duly published, accessible to the candidates.

These directions are not exhaustive and in addition to the same, all directions issued by the Admission Supervisory Committee for ensuring a fair, transparent merit based, non-exploitative admission procedure as contemplated in the decision of the Supreme Court of India in PA. Inamdar's case shall also be strictly complied with, which, of course, shall be subject to judicial review. As nearly as possible, the conduct of the Common Entrance Test shall conform in form, procedure and substance with that conducted by the Commissioner of Entrance Examinations of the State of Kerala.

But, most of those have not been complied with this year. The contention that my judgment was under stay till 12.7.2010 does not appeal to me. The stay does not mean that they need not be complied with. They have chose not to comply with the same at their risk insofar as the directions are based on Section 4 of Act

19/2006, which the 5th respondent is statutorily bound to comply with. Those guidelines are also intended to ensure that the test conducted is fair, transparent and non-exploitative. The 5th respondent has also not given any reasons as to how they are prejudiced by complying with the same and why they are not bound to follow the same. They also have no case that those guidelines are cumbersome or difficult to comply with. In fact, those are fair procedures which should ordinarily be complied with, in any fair and transparent common entrance test, which in fact are substantially followed by the Government, while conducting the Common Entrance Test through the Commissioner of Entrance Examinations. As such, I have no doubt in my mind that the common entrance test conducted by the 5th respondent is vitiated for non-compliance with Section 4 of Act 19/2006.

16. The question as to whether fixation of different minimum marks for the qualifying examination for different member colleges would spell out a fair, transparent and non-exploitative admission procedure, has been considered by me in Fathimma Haseena 's case/In respect of the same, I have held thus:

In this connection, it is interesting to note Ext. R5(a) notification issued by the 6th respondent, which reads thus:

Applications from eligible candidates are invited for admission to MBBS, 2008-2009 against 35% of seats in the following member colleges of the Kerala Private Medical College Management Association.

Qualification: Pass with fifty percent marks in Higher Secondary examination of Kerala with Biology, Physics and Chemistry as optional subjects or examination recognized equivalent thereto. The minimum percentage of marks for Biology, Physics and Chemistry put together at the qualifying examination fixed by the college for admission is given against the name of the college concerned.

Sl. No. Name of Medical College Min.% of Marks for Phy. Che. and Bio. 1. Dr. Somervell Memorial C.S Medical College, Karakonam. TVPM. 75% 2. Kannur Medical College, Anjarakandy, Mamba P.O., Kannur Dist. 50% 3. Karuna Medical College, Vilayodi, Chittur, Palakkad Dist. 60% 4. MES Medical College, Perinthalmanna, Malappuram Dist. 60% 5. Sree Gokulam Medical College, Venjaramoodu, TVPM Dist. 50% 6. SUT Medical College, Vencode, Thiruvananthapuram Dist. 50%. Age: 17years as on 31.12.2008.

The Application form and Prospectus can be had by hand from 5.7.2008 from any of the above colleges on production of Demand Draft for Rs.750/- (Rupees Seven Hundred Fifty only) drawn in favour of Secretary, Kerala Private Medical College Management Association (KPMCMA) payable at SBT, Statue, Thiruvananthapuram. Application will not be sent by post. Filled in applications with documents shall be submitted as per instructions contained in Clause 3-2 of the Prospectus.

Although a Common Entrance Test is proposed to be conducted for all the six

colleges together, separate minimum marks for the qualifying examinations are fixed for the six member colleges. The notification does not speak of a Common Entrance Test. Clause 3.2 of the prospectus reads thus:

3.2 Submission of Application Form: A candidate can choose a maximum of three of the six colleges mentioned in Clause 1.1 above and such choice shall be specifically stated in the relevant column in the Application form. Such candidates will be considered for selection for admission to the college/colleges of choice made in the application. The applications of candidates who write the name of more than three colleges in the Application Form will not be considered. So also the applications of candidates who do not possess the minimum marks at the qualifying examinations and or for optional subjects viz. Physics, Chemistry and Biology prescribed for the college concerned in Annexure 1 Series related to the college in the Prospectus will not be considered. All the columns in the Application form shall be filled in giving the correct information and details following the instructions in the prospectus. The Application form along with the following documents shall be submitted to any of the colleges of choice so as to reach the same to the addressee (colleges) on or before the last date fixed for receipt of applications in the admission notification issued by the Association. (For address of colleges see Annexure I Series).

- a) Self attested copy of school record/copy of SSLC in proof of date of birth.
- b) Self attested copy of mark list at the qualifying examination.
- c) Self attested copy of pass certificate of the qualifying examination.
- d) Self attested copy of eligibility/equivalency certificate obtained from the University concerned in Kerala by candidates who have passed the qualifying examination from authorities other than the State of Kerala/CBSE/ISCE.
- e) Self attested copy of course and conduct certificate from the institution last attended.

Note:

A photo copy of the application along with copies of the above documents has to be submitted to the other college(s) of choice, if any.

(emphasis supplied)

If the candidate does not get admission to any of the three Colleges chosen by him/her, even if the candidate is higher in rank than those who have chosen the other colleges, he/she will not get admission. I am at a complete loss to understand how a common rank list can be drawn up in the Common Entrance test so conducted with the above parameters. Further the photograph of the candidate is not required to be furnished in the application, without which how can the 6th respondent ensure identification of the candidate in the examination hall? As per Ext. P4 prospectus, the examination was to be held at selected centres at Thiruvananthapuram and Kozhikode. The counsel for the petitioner

would submit that there was only one centre, which submission was not denied by counsel for respondents 5 and 6.

17. I am completely satisfied that such an admission procedure cannot certainly satisfy the triple tests of being fair, transparent and non-exploitative as contemplated by the Supreme Court. Therefore, I have no hesitation to hold that the Common Entrance Test conducted by the respondents cannot be the basis for admission to any of the six Medical Colleges this year as proposed by them. Accordingly, I declare that the test conducted by respondents 5 and 6 on 27.7.2008 is not fair, transparent or merit based and non-exploitative and therefore the six Medical Colleges who are members of the 5th respondent are not entitled to make any admission on the basis of the rank list prepared pursuant to the said test.

This time also, a similar prescription was there in the prospectus and the notification inviting applications, wherein for the different member colleges, this time numbering 11, different percentage of marks for the qualifying examinations were fixed as eligibility for admission viz. 50%, 60%, 65%, 70% and 75%. Para 3.2 of the prospectus for the year 2008 substantially corresponds to para 3.4 of this year's prospectus produced as Ext. R5(a), which reads thus:

3.4. Submission of Application Form: A candidate can choose for admission a maximum of three of the colleges mentioned in Clause 1.1 above and such choice shall be specifically stated in the relevant column in the Application Form. Such candidates will be considered for selection for admission to the college(s). on the basis of choice made in the application. All the choices will be treated on the very same footing. However, if the chance/ turn of a candidate arises for more than one college the candidate would be considered for allotment to the college the name of which is mentioned as first among the colleges chosen. The application of candidate who writes the name of more than three colleges will not be considered. So also the applications of candidates who do not possess the minimum marks for optional subjects, viz. Biology, Physics and Chemistry as prescribed for the college in Clause 2.2 and in Annexure 1 series related to the college concerned will not be considered, All the columns in the Application form shall be filled in giving the correct information and details strictly adhered to the instructions in the prospectus. The Application form along with the following documents in proof of details/information furnished in the application shall be submitted to "The Controller of Examination, Kerala Private Medical College Management Association, International Students Centre, LMS Compound, Thiruvananthapuram, PIN-695033 so as to reach the same to the addresses before 4.00 p.m. on 14.05.2010.

- a) Self attested copy of SSLC or equivalent certificate in proof of date of birth.
- b) Self attested copy of mark list at the qualifying examination.
- c) Self attested copy of pass certificate of the qualifying examination.

d) Self attested copy of eligibility/equivalency certificate obtained from the Kerala University of Health and Allied Sciences by candidates who have passed the qualifying examination from authorities other than the State of Kerala/CBSE/ISCE.

e) Self attested copy of course and conduct certificate from the institution last attended.

f) Self attested copy of the community certificate issued by competent authority by those who claim the benefit of mandatory reservation under Clause 3.2.

g) Certificate in original by candidates who claim the benefit under Clause 3.3.

h) Any other document/certificate required to be produced with the application.

(emphasis supplied)

The reasoning given by me in Fathimma Haseena 's case for holding that such a procedure would not be fair, transparent and non-exploitative applies to the above clause also. The decision of the Madras High Court viz. Karthiga 's case (supra) is not relevant to decide the issue since in that decision, the validity of fixation of different minimum marks was not in question and only the validity of fixation of a higher minimum than the one prescribed by the State Government was alone the issue.

18. In Fathimma Haseena's case, I had frowned upon the procedure adopted by the 5th respondent in publishing the notification inviting applications only in Deshabhimani and Kerala Kaumudi dailies. I had specifically directed in my judgment that the notification inviting application shall contain all essential particulars and shall be published in all leading newspapers in Kerala both in Malayalam and English, sufficiently early. This year, although they have added one more newspaper, namely, The Hindu, the leading news papers in Malayalam have been still avoided. Desabhimani and Kerala Kaumudi dailies have circulation only among a very limited section of the people of the State and majority of the population cannot afford to subscribe to both a leading Malayalam daily and Hindu newspaper.

19. Then again, I find a disturbing stipulation in Ext. R5(b) notification inviting applications to the effect that the application will not be sent by post, to which also I had taken exception in Fathimma Haseena's case. The stipulation that candidates who wish to appear for the examination from all over Kerala should come over to the office of the Controller of Examination or the member colleges for purchasing the application form does not appear to be a fair procedure at all. I fail to understand why when for all other examinations in Kerala, including the Common Entrance Test conducted by the Government, applications can be had by post also, for this important examination applications by post is dispensed with. No reasonable explanation is forthcoming from the 5th respondent for such stipulation also. My experience is that during the past years, there were complaints that when approached, the self-financing medical colleges would

refuse to issue application forms for the entrance examinations unless the candidate undertakes to comply with certain additional demands not included in the prospectus. In this connection, it may be noted that for about 500 management seats only 1046 applications were received out of which only 751 appeared for the common entrance test. It is difficult to believe that in Kerala where there is a very heavy rush for admission to MBBS course, there would be only such ridiculously low turn out of applicants, especially when more than a lakh of students write the common entrance test conducted by the Government every year. In fact, in Fathima Haseena 's case (supra) also, I had pointed out this infirmity thus:

...The notification specifically states that applications will not be sent by post. In this connection, it is pertinent to note that last year there was more than one Writ Petition before me complaining that application forms for admission to some of the unaided medical colleges were issued to only those who agreed to pay capitation fee. At least to obviate such a complaint application forms should have been issued by post to those who seeks the same. Another foolproof and less time consuming system would have been to make facility to download the application form from the Internet....

I am of opinion that refusal to provide application forms by post would promote such illegal methods by unscrupulous managements. Therefore, the stipulation that applications will not be sent by post does not satisfy the triple test of being fair, transparent and non-exploitative.

20. I also find that 6 of the member colleges of the 5th respondent consortium did not have permission from the Medical Council of India even on 7.6.2010 when the Controller filed his report before the Admission Supervisory Committee. I fail to understand how colleges who did not have permission to run the colleges for the year could start an admission process at all, that too, as part of a consortium of colleges similarly placed. Insofar as those colleges could not adhere to the time schedule prescribed by Supreme Court, their permission having come late, they could have made admissions only from the rank list prepared by the Commissioner of Entrance Examinations, at least.

21. For all these reasons, I am of opinion that the common entrance test conducted by the 5th respondent-consortium for admission to its member colleges does not satisfy the triple test of being fair, transparent and non-exploitative as contemplated by the Supreme Court in PA. Inamdar''s case (supra) and therefore that test is declared as void and inoperative. Therefore, the 5th respondent is not entitled to make any admission on the basis of the rank list prepared pursuant to the said test. In order to comply with the time schedule fixed by the Supreme Court of India and the Medical Council of India, the only alternative now available for the 5th respondent is to complete the admissions in the member colleges to the management quota also from the rank list published by the Commissioner of Entrance Examination of the Government of Kerala in the common entrance test conducted this year in accordance with

the inter se merit of the candidates. Since I had already issued certain guidelines for future conduct in Fathimma Haseena 's case, which have not been interfered with by the Supreme Court, I reiterate those directions, which have already been quoted by me in para. 14 supra.

The Writ Petitions are allowed as above.