
(1998) 02 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7331 of 1997

Pratibha Gupta and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : AIR 1998 P&H 211 : (1998) 2 RCR(Civil) 324

Hon'ble Judges : K.S. Kumaran, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rakesh Garg, for the Appellant; Rupinder Khosla, D.A.G. (for Nos. 1 and 2), Rajan Gupta, (for NO. 3), M.S. Sethi Amit Singh, (for No. 4), J.S. Khehar and N.S. Gill, (for No. 5), for the Respondent

Final Decision : Allowed

Judgement

G. S. Singhvi, J.—In terms of the directions given by this Court on December 18, 1992 in C.W.P. No. 8789 of 1992 laying down the criteria for admission by migration, the Government of Punjab authorised the Punjabi University, Patiala to hold Joint Migration Test for the students seeking migration to or within Government Medical Colleges in the Punjab for the year 1997. For this purpose, the University issued information brochure containing the guidelines for migration, the eligibility for appearing in the Joint Migration Test etc. Paragraph II (5) of the brochure which is a reproduction of the criteria laid down by the High Court reads as under :--

"5. The Principal of the College where migration is being sought will intimate the number of seats at the time of finalising the migrations. 80% of the seats shall be filled on the basis of inter se merit of the candidates appearing in the test, and 20% seats will be filled on peculiar facts of each particular case for highly exceptional compassionate cases migrating from States other than Punjab but subject to the candidate fulfilling other conditions as enumerated in the Ordinances."

2. The petitioners who have passed Ist year M.B.B.S. examination from Medical College, Bellary; the respondent No. 4, who has passed 1st year M.B.B.S. from J.S.S. Medical College, Mysore and the respondent No. 5 who has passed Ist year M.B.B.S. examination from Coimbatore Medical College, Coimbatore and others appeared in the Joint Migration Test, which was initially slated for March 30, 1997 but which was ultimately held on 10-5-1997. In the merit list declared by University, the names of the petitioners figured at Sr. Nos. 43 and 59 respectively. The names of respondent Nos. 4 and 5 appeared at Sr. Nos. 71 and 24 respectively. On May 10, 1997, the Coordinator, Joint Migration Test issued notice intimating that the Committee will interview the candidates for migration to second Professional MBBS on 12-5-1997. This date was subsequently changed to 13-5-1997. After interviewing the candidates, the Committee admitted 14 candidates against the 80% seats vide Annexure-R.2 dated 13-5-1997. On 20-5-1997, the Coordinator (Entrance Test Cell) notified the list Annexure-R. 3 for provisional admission of five candidates by migration on compassionate grounds. In this list the name of respondent No. 4 appeared at No. 2 among the candidates admitted in Government Medical College, Patiala and the name of respondent No. 5 appeared at Sr. No. 1 among the candidates admitted in Government Medical College, Amritsar.

3. The petitioners have challenged the admissions of respondents No. 4 and 5 on the ground of arbitrariness, mala fides, non-application of mind and violation of Article 14 of the Constitution, Their plea is that the respondents No. 4 and 5 have been admitted due to extraneous reasons ignoring their cases notwithstanding the fact that they deserved admission by migration on highly compassionate grounds. It is alleged that respondent No. 4, who is the daughter of a senior bureaucrat of Punjab, who was till recently Principal Secretary to the Chief Minister, Punjab has been admitted on the basis of concocted ground of illness and " security threat and the admission of respondent no. 5, who happens to be the daughter of senior doctor couple working in Government Medical College, Patiala has been manipulated by concocting the ground of illness.

4. In the written statement filed by respondent Nos. 1 and 2, it has been pleaded that the Committee finalised the admissions against 20% seats on peculiar facts of each case. It is further stated that the Committee decided to give preference to those candidates in whose cases the reasons for consideration on compassionate grounds arose out of circumstances developed after they had obtained admission out of Punjab in comparison to those in whose cases such circumstances were already in existence at the time they took admission outside Punjab. It is further stated that the Committee was of the view that circumstances such as illness, security consideration and persecution etc. which directly affect the candidates would be given priority over those which affect the parents or close relatives, thus affecting the candidates indirectly and migration on compassionate grounds have been allowed keeping in view the above criteria. For the sake of precision, paragraphs 5, 8 and 15 of the written statement filed by respondent Nos. 1 and 2 are extracted below :--

"5. That this para has no relevancy with present case. According to the statement of petitioners, the circumstances are same as were prior to the admission of the petitioners in MBBS 1st Year class at Govt. Medical College, Bellary, Karnataka.

8. It relates to respondent No. 3. However, the actual position is as under :--

The relevant Clause 5 of the Information Brochure at Page 2 for Joint Test for Migration to MBBS 2nd Professional is as under :--

"The Principal of the college where migration is being sought will intimate the number of seats at the time of finalising the migrations. 80% of the seats shall be filled on the basis of the inter se-merit of the candidates appearing in the test and 20% seats will be filled on peculiar facts of each particular case for highly exceptional compassionate cases migrating from States other than Punjab but subject to the candidates fulfilling other conditions as enumerated in the Ordinances."

It is also stated that the Punjab Government vide its letter No. 13/151/92-5 HB3/3124-27, dated 29-1-1997, authorised the Vice-Chancellor, Punjabi University, Patiala to hold entrance test for migration in MBBS/BDS Course for the year 1997 in the State Medical/Dental Colleges and constituted the following committee to finalise the migrations :--

- i) V. C. Punjabi University, Patiala Chairman ii) V. C., G.N.D.U., Amritsar Member
- iii) Principals of Medical Colleges Members Patiala/Amritsar/Faridkot
- iv) Principals of Dental Colleges Members Patiala/Faridkot.

The petitioners in the petition have themselves admitted that they could not be allowed migrations against 80% seats filled on the basis of inter se merit of Joint Migration Test, 1997.

It is also added that after the Joint Migration Test, all the candidates including those who applied on compassionate grounds were interviewed by the Committee on 12-5-1997, After the interview, selection list of the candidates was displayed by the Punjabi University, Patiala of inter se merit category (Annexure R-1). In this list, it was clearly mentioned that candidates interviewed for the compassionate grounds are advised to submit documents in support of their candidature, if not submitted earlier, latest by 19th May, 1997 by 4.30 p.m. at Punjabi University, Patiala. List for this category will be published on 20-5-1997. The committee finalised the 20% seats, only on peculiar facts of each particular case. It was the considered view of the Committee that those candidates in whose case the reasons for consideration on compassionate grounds arose out of circumstances developing after they had obtained admission outside Punjab would be given preference over other candidates in whose cases such circumstances were already in existence at the time they took admission outside Punjab. The committee was also of the view that circumstances such as illness,

security consideration and persecution etc. which directly affected the candidates would be given priority over those which affected parents or other close relatives only and thus affected the candidates indirectly. In the present, the migrations on compassionate grounds have been allowed keeping the above criteria in view. The petitioners have themselves admitted that they are low in merit of Joint Migration Test against 80% seats based on inter se merit of Migration Test. The petitioners further admitted that their father was suffering from heart ailment since 1988 and disability certificates by Assistant Professor, Department of Cardiology, P.G.I.M.E.R., Chandigarh (Annexure P-1) was issued on 19-12-1994. This establishes that the grounds for claiming consideration of compassionate ground in their case were in existence since long before they took admission outside Punjab State i.e. at Govt. Medical College, Bellary, Karnataka.

15. The detailed position has been explained above. The committee has finalised the 20% seats only on peculiar facts of each particular case. It was the considered view of the Committee that those cases where there is any material change in the circumstances after the candidates got admission in Ist year MBBS course in the previous college would be given preference. In the case of the petitioners there is no change in health condition of their father after they got admission in MBBS course at Government Medical College, Bellary in the State of Karnataka."

5. In his written statement, respondent No. 3 has made reference to the directions given by the High Court on December 18, 1992 in CWP No. 8789 of 1992 and has pleaded that high powered committee consisting of Vice-chancellors of Punjabi University, Patiala and Guru Nanak Dev University, Amritsar and Principals of Medical Colleges, Patiala/Amritsar/ Faridkot and Principals of Dental Colleges, Patiala and Faridkot has made admissions after considering peculiar facts of each case. In para 8 of his reply the respondent No. 3 has made almost the same averments as have been made in para 8 of the written statement filed by respondents Nos. 1 and 2.

6. In paragraphs 9, 10 and 11 of the written statement filed by her, the respondent No. 4 has made the following averments to justify her admission against 20% seats :--

"9. Para 9 is vehemently denied. It is correct that the result of 80% general seats was declared on 11-5-1997 and thereafter interviews were held on 13-5-1997. The result of the 20% seats on compassionate grounds was finalised and the list was displayed on 20-5-1997.

It is correct that the answering respondent is daughter of S. Bikramjit Singh, IAS a senior officer of the Punjab Government. He was appointed Principal Secretary to Shri Parkash Singh Badal on 14-2-1997 and was relieved from the post w.e.f. 23-4-1997. This was a tumultuous period for the family of S. Bikramjit Singh. Unfortunately, Shri V. K. Khanna, the then Chief Secretary under Smt. Rajinder Kaur Bhattal, Chief Minister, got a case registered against Shri Bikramjit Singh on

25-2-1997 at 6.05 p.m. The new Government had taken over on 12-2-1997, but the Chief Minister, Shri Badal was not at all taken into confidence nor consulted while getting the case registered against S. Bikramjit Singh. The Government cancelled the Notification the very next morning on 26-2-1997, giving its consent to the investigation by CBI. However, CBI continued with its investigation and conducted a raid with a large contingent of police party on 5-3-1997 at his residence. The answering respondent was that time present in the house and all the proceedings were taken in her presence. She was totally traumatised because she had not witnessed any such occurrence earlier and every thing was going on smoothly in the family. She was extremely perturbed. She was already suffering from asthma and it became a neurology problem. She started getting fits because of this adversity in the family and she could not devote herself to the studies at all. Under the circumstances it became very difficult rather impossible to continue her studies at Mysore, which is very far off place from Chandigarh. In addition, because of the close association of Shri Bikramjit Singh with Shri Badal, threats were being received about the security to the family members of S. Bikramjit Singh and these were communicated by no less a person than the Inspector of Police, Intelligence, through a letter alerting S. Bikramjit Singh for taking due precautions for all his family members. The committee considering migration on the basis of compassionate grounds considered all these factors in detail and thereafter it was thought desirable that the answering respondent in the category of persons who need help at this juncture and her migration was found necessary in order that her family may look after her as she was under constant fits as certified by the Neurologist. A certificate was also produced before the High Powered Committee. Unfortunately, the media also reported her presence at the time of raid. It is definite that had she not been granted migration she could not have continued her studies in Mysore. All these factors weighed while granting the migration to the answering respondent. It is vehemently denied that any consideration of any bureaucratic pressure was exerted. It was a Committee of academicians who considered merits of every candidate as revealed in the application as well as in the interview. It is further stated that there could not be any question of any clout on the part of the father of the answering respondent inasmuch as he was facing a very difficult period of his life in the service career. At such juncture whatever clout one has even that vanishes. The petitioners have come out with wild and baseless allegations merely because they have not been selected. As regards the petitioners it may be stated that there is no such eventuality that in case they were not granted migration they may not be able to continue their studies at the place where they were already studying. After all they sought admission and were studying for year and a half and during this period their father's medical condition has not deteriorated all of a sudden during 1 st Prof. The application on behalf of the answering respondent is attached herewith at Annexure R-4/1.

10. Para 10 is denied. It is further submitted for the kind information of this Hon'ble Court that the answering respondent had already left the College at

Mysore and joined the Government Medical College, Patiala and pursuing her studies since 26-5-1997, after paying the various dues. She was allotted Roll Number and the hostel seat where she now resides. The family of the answering respondents are keeping constant watch and visit her very frequently--four times a week. The answering respondent is also under constant medical attendance and treatment.

11. Para 11 is denied. This Hon'ble Court will appreciate that the petitioners as well as the answering respondent were seeking admission against 20% seats reserved for persons who fall in the category of extreme compassionate grounds. The Committee comprising of such high dignitaries and Academicians could not possibly be influenced by insignificant bureaucrat and the fact (sic) there was no such pressure. It is further stated that the formation of Committee was also in accordance with the directions of the Hon'ble Court and the personnel constituting the Committee were also specified by this Hon'ble Court, which was followed in letter and spirit. Therefore, no law point arises in the present case and the petition is without any merit."

7. She has also enclosed a copy of the letter dated nil (Annexure R-4/1) written by her father to the Coordinator, JMT Entrance Test Cell.

8. The respondent No. 5 has also tried to justify her admission against 20% seats by making the following assertions in para 5 of her reply

"5. That the answering respondent had also applied for migration against the 20% seats reserved for highly exceptional compassionate cases for which she had duly submitted her claim supported by documentary authentication. In-so-far " as the claim of the answering respondent No. 5 for migration against the 20% quota for highly exceptional compassionate cases is concerned, the same was based on medical complications arising as a consequence of the environment of Coimbatore. Details, in this respect, may be summarised as under :--

i) That Coimbatore is famous for the cotton processing industry. The aforesaid industry has the direct effect of pollution in the environment. The polluted environment adversely affected the answering respondent No. 5.

ii) That the pollutants emerging out of the cotton processing industry resulted in extensive Naso Bronchial allergy whereby answering respondent No. 5 suffered extensive sneezing coupled with breathlessness.

iii) That the answering respondent was extensively treated for the aforesaid allergy at the Hospital attached to the Institute. The treatment was, however, ineffective. As a consequence of continuous sneezing, the answering respondent developed low backache medically diagnosed as Prolapsed Inter Vertebral disc. In fact, it would not be incorrect to suggest that the said low back ache became acute as a consequence of the continuous process of sneezing.

iv) That after the treatment at Coimbatore, the answering respondent also sought treatment at Government Institutes at Patiala, where her parents were

stationed. It was only after extensive treatment that the allergy was partially controlled.

v) That on the basis of medical reports from Coimbatore and Patiala, the answering respondent sought migration against the 20% seats re-served for highly exceptional compassionate cases."

9. After having noticed the relevant pleadings we may also notice some of the facts which are borne out from the record produced by the University and the respondent Nos. 1 and 2. The record of the University shows that a decision was initially taken to hold the Joint Migration Test on March 30, 1997, but in view of the representations made by the students and communication of the Government, the date of test was changed to 10-5-1997. After the declaration of result, the coordinator, Joint Migration Test Cell issued telegrams to the members of the Committee that interviews will be held on 12-5-1997. This date was subsequently changed to 13-5-1997. The members of the Committee and the students were informed accordingly. After interviewing the candidates, the Committee declared the list, Annexure-R-2 dated 13-5-1997 consisting the names of 14 candidates. Note 2 incorporated in Annexure-R 2 required the candidates interviewed for compassionate grounds to submit documents in support of their candidature, if not submitted earlier, latest by 19-5-1997 by 4.30 p.m. On 20-5-1997 the Committee announced the list of 5 candidates including respondent Nos. 4 and 5. The minutes of the meeting of the Committee which took place on 20-5-1997 for making admissions against 20% seats on highly compassionate grounds are extracted below for reference purpose :--

"Punjabi University Patiala

Proceedings of the Committee constituted by the Hon'ble Punjab and Haryana High Court vide its order dated 18-12-1992 in CWP No. 8789/ 1992 with regard to migrations of MBBS/BDS (2nd professional) met in the office of the Vice-Chancellor (shifted to the Syndicate Room later) Punjabi University, Patiala on 20-5-1997, in continuation of its previous meeting dated 13-5-1997.

1. As decided in its meeting dated 13-5-1997, the Committee scrutinised all the cases of candidates who applied for migration on compassionate grounds and who were already interviewed in this category (on 13-5-1997).

2. It was noted that out of 18 candidates who applied in the category of compassionate grounds, one candidate namely Ravneet Kaur (Roll No. 172) was absent at the time of interview, and out of the rest 17 candidates, two candidates namely Garauv Pathania (Roll No. 115) and Shalu Garg (Roll No. 126) were found not eligible in this category as both of them were in the colleges in Punjab, and the compassionate cases are to be considered from States other than Punjab.

3. After considering "peculiar facts of each particular case", the Committee unanimously allowed the provisional migrations in 2nd Prof.

MBBS in different Govt. Medical Colleges in Punjab as under :--

S. No.

Roll No.

Name of Candidates

Father's name

1.

116

Shilpi Sehgal

O.P. Sehgal

2.

129

Indeipreet Kaur

Bikramjit Singh

B.

GGG Govt. Medical College, Faridkot

1.

152

Sanjay Mehta

Ramesh K. Mehta

C.

Govt. Medical College. Amritsar

1.

134

Mukta Bansal

C. P. Bansal

2.

179

Paramvir Singh

Jang Bahadur Singh Rai

The migration to various Medical Colleges is subject to fulfilling of other

conditions and requirements as desired by the respective colleges.

The candidates are required to complete the admission formalities including the depositing of fee and other dues within 15 days i.e. by June 5, 1997.

4. As a result of the process of migration, two consequent vacancies (one in the Govt. Medical College, Amritsar and the other in GGS Govt. Medical College, Faridkot) occurred out of the general category to be decided on merit.

About these consequent vacancies, the committee decided unanimously to approach the MCI to allow migrations against these vacancies as otherwise, the infrastructural facilities existing in these institutions for training and well being of students, would remain under/unutilised. The Committee felt that it is in the interest of the students that the consequent vacancies should be filled up out of the general category and strictly as per Merit in the Joint Migration Test. If this is allowed by the MCI, then one candidate out of GGS Medical College, Faridkot shifts to Govt, Medical College, Amritsar, against the vacant seat and the two resultant vacancies at the GGS . Govt. Medical College, Faridkot are to be filled up from the General Merit List. Therefore, the Committee feels that such a decision should be taken which is beneficial to the students studying in the MBBS and are in the line of getting migrations strictly on merit of Joint Migration Test held under the directions of the Hon"ble Punjab and Haryana High Court, Chandigarh in which it was particularly mentioned that the "vacant seats" should be filled up through migrations.

Sd/-

(I.J.S. Bansal)

Co-ordinator

Joint Migration Test."

10. The application form submitted by the petitioner No. 1 shows that on the second page she had made request for migration on compassionate grounds. She also submitted separate application on plain paper, giving ailment of her father as the reason for seeking migration on compassionate grounds. The photostat copy of the disability certificate issued by the Post-Graduate Institute of Medical Education and Research, Chandigarh (Department of Cardiology) was also enclosed along with the application form. Similar application was made by the petitioner No. 2, In the application submitted by her, respondent" No. 4 on 4-4-1997 did not make request for consideration of her candidature for migration on compassionate grounds. Alongwith the application she annexed photostat copies of the Senior Secondary Certificate Examination, 1995, domicile certificate issued by the Government of Punjab, Department of Personnel and Administrative Reforms (IAS Branch), certificate dated 22-1-1997 issued by Jagatguru Shri Shivratheshwara Medical College, Mysore, the mark sheet of MBBS(I) Examination. Though, the application filed by her does not make any reference to any other document, the file produced by the learned Deputy

Advocate General contains a photostat copy of the application dated nil submitted by the respondent No. 4 containing her request for migration on compassionate grounds. This application is accompanied by a photostat copy of the letter written by Inspector General of Police, Intelligence, Punjab, to the Director General of Police, Punjab, a photostat copy of the certificate dated 15-7-1996 issued by Dr. Mohinder Pratap Arora of Bharat Clinic, Chandigarh and a prescription slip issued by the same Doctor on February 18, 1997 showing that the respondent No. 4 is suffering from Asthama. This file also contains a copy of the letter Annexure-R. 4/1 written by the father of the respondent No. 4. This bears the date 16-5-1997. A photostat copy of the medical certificate issued by Dr. S. K. Bansal of Prakriti Brain and Nerve Research Centre showing that the petitioner is suffering from vascular headache with dizzy spells for the last two years has been enclosed with that letter. This certificate bears two dates i.e. 28-4-1997 and 15-5-1997. Some photostat copies of the newspaper cuttings and the certificates issued by the JSS Medical College on 23-5-1997 are also available in this file.

11. The file containing the application submitted by the respondent No. 5 shows that in column No. 12 of the application form, the following appears to have been inserted in different handwriting :--

"medical certificates submitted for consideration on compassionate grounds."

12. Photostat copy of certificate dated nil issued by Aggarwal Orthopaedics Clinic and two photostat copies of the prescription slips have been enclosed along with the form.

13. Having set out the pleadings and taken notice of the important facts emerging from the record produced by Shri Rupinder Khosla and Shri Rajan Gupta, we may now consider the contentions urged by the learned counsel for the parties.

14. Shri Rakesh Garg argued that the admissions of respondent Nos. 4 and 5 are vitiated due to colourable exercise of power by the authorities of the University. He submitted that the committee constituted in pursuance of the Court's orders has not made admissions as per the criteria enumerated in Para 11(5) of the Information Brochure but on wholly extraneous considerations. He submitted that the decision of the Committee to give time to the candidate to submit documents by 4.30 p.m. on 19-5-1997, which is reflected in the list Annexure-R.2 issued on 13-5-1997, was meant to give time to the respondent Nos. 4 and 5 to manipulate the record and create grounds for their admissions against 20% seats. Learned counsel submitted that the Committee did not at all consider the case set out in the applications submitted by the petitioners and decided to grant admissions to the respondent Nos. 4 and 5 without making comparative evaluation of the grounds disclosed by the applicants. Shri Garg further submitted that the Committee acted under the influence of the parents of respondent Nos. 4 and 5 and, therefore, the impugned admissions should be

declared nullity and a direction be given to the University to admit the petitioners by migration. Shri Khosla and Shri Rajan Gupta argued that the Court should not exercise its writ jurisdiction to interfere with the admissions granted by the High Powered Committee because the peculiar facts of each case were considered by the Committee. Shri Gupta submitted that no finding should be recorded by the Court on the validity of the decision taken by the Committee because it has not been implicated as a respondent. Shri M. S. Sethi, learned Senior Advocate appearing for the respondent No. 4 laid emphasis on the fact that the admission has been granted to his client on the basis of well defined criteria and the factors like security risks and ailment of the respondent No. 4 afforded sufficient justification to consider her case within the ambit of the expression "highly exceptional compassionate cases". Shri Sethi further submitted that the admission by migration cannot be questioned on the anvil of violation of Articles 14 and 15 of the Constitution. He then argued that all the admissions cannot be quashed because the remaining three candidates are not party respondents. He lastly pleaded for maintaining status quo on the ground of long passage of time and also on the ground that irreparable harm will be done to the career of the respondents, if their admissions are now invalidated. Shri J. S. Khehar supported Shri Sethi and urged that the High Court should not exercise its jurisdiction under Article 226 to upset the admissions made in the year 1997. Learned counsel submitted that the petitioners do not have the locus standi to challenge the admissions of the respondents because they have failed to substantiate their claim for migration on compassionate grounds. Shri Sethi and Shri Khehar relied upon :--

- (i) Dhiraj Sarwal and another Vs. The State of Punjab and others, ;
- (ii) Miss Nidhi Kumar Vs. The State of Maharashtra and others, ;
- (iii) Gurpreet Dhaliwal v. State of Punjab, (1994) 4 RSJ 635 ;
- (iv) Nitasha Paul v. Maharshi Dayanand University, (1996) 1 SLR 731 (SC).
- (v) Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others, ;
- (vi) Dr. Ku. Nilofar Insaf Vs. State of Madhya Pradesh and others, ;
- (vii) Ms. Bhawana Narula and others Vs. Ms. Manju Chaudhry and others, ;
- (viii) Dr. Pramod K. Joshi v. Medical Council of India, (1991) 5 JT(SC) 186 : (1991 AIR SCW 744).

15. In reply to the query made by the Court Shri Khosla and Shri Rajan Gupta conceded that the minutes of the Committee do not show consideration of any particular reason which weighed with it for granting admissions to respondent Nos. 4 and 5 in preference to the petitioners. The learned Deputy Advocate General also admitted that although in the written statement of the respondent Nos. 1 and 2 reference has been made to the various factors which were

considered by the Committee while deciding the issue of admissions, those factors are not contained in the minutes of the Committee and the record of the official respondents. Shri Rajan Gupta submitted that the factors which were taken into consideration by the Committee must have been in the mind of its members and it is not possible to outline any particular factor which tilted the scale in favour of the respondent Nos. 4 and 5.

16. We have given our thoughtful consideration to the respective contentions in the background of the facts of this case. Before deciding whether or not the petitioners are entitled to any relief, we deem it necessary to reiterate the well established principle that the Courts should give due respect to the opinion expressed by the academicians and the decisions of the academic bodies on matters relating to admissions, examinations and discipline in educational institutions. However, this does not mean that the Courts should worship such opinions and decisions blind folded and refuse to discharge its constitutional obligations to protect the fundamental, constitutional and legal rights of the citizens. In the scheme of our Constitution the argument that the decisions of academic bodies and educational institutions should remain immune from the power of judicial review vested in the Courts cannot be accepted. What to say of such decisions, the power exercisable by the President under Article 72 to grant or not to grant pardon and the power exercised by the Government to impose emergency under Article 356 do not enjoy immunity from judicial review. In *Kehar Singh and Another Vs. Union of India (UOI) and Another*, and *S.R. Bommai and others Vs. Union of India and others etc. etc.*, , the Apex Court has recognised the Court's power of judicial review even in these matters though the grounds on which the orders passed in such matters can be subjected to judicial scrutiny are extremely limited and it is always desirable not to interfere with the same unless it becomes imperative. It cannot also be ignored that the decisions of educational institutions and academic bodies, which are required to be taken in accordance with the relevant statutes, at times affect the students, teachers and employees and they are always subject to constitutional limitations contained in Articles, 14, 15, 16, 20 etc. Therefore, if the Court finds that such decisions are violative of the statutory or constitutional provisions, then it is the constitutional duty of the Court to intervene and protect the rights of citizens.

17. The absence of arbitrariness in the actions and decisions of the public authorities is a sine qua non to save them from the attack of unconstitutionality or ultra vires. It is trite to say that every public authority must act reasonably and its decisions must be free from arbitrariness and bias and must be in public interest. If a decision is arbitrary then it is necessarily violative of Article 14 of the Constitution.

18. Professor H. W. Wade in his book on Administrative Law (6th Edition) observed that the powers of the public authorities are essentially different from those of private persons and proceeded to say :--

".....The whole conception of unfettered discretion is inappropriate to a public

authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law; it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the Crown, Nor is it confined to the sphere of administration : it operates wherever discretion is given for some public purpose, for example, where a Judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.

For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere."

19. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that "be you ever so high, the laws are above you".

20. Almost 30 years ago, Ramaswamy, J. highlighted the need of administrative decisions being free from arbitrariness in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, . His Lordship observed (at p. 1434 of AIR) :--

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is

the antithesis of a decision taken in accordance with the rule of law. (See Dicey -- "Law of the Constitution" -- Tenth Edn., Introduction cs). "Law has reached its finest moments", stated Douglas, J. in *United States v. Wunderlick* (1951) 342 US 98 : 96 LEd 113, "When it has freed man from the unlimited discretion of some ruler..... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1770) 98 ER 327, "means sound discretion guided by law. It must be governed by rule, not humour : it must not be arbitrary, vague and fanciful."

21. Thus, it can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of Governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, . In *Col. A.S. Sangwan Vs. Union of India (UOI) and Others*, , while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled.

22. In L.P. A. No. 761 of 1991, *State of Punjab v. Shri Amar Singh*, decided on January 27, 1998, a Division Bench analysed the various judgments of the Supreme Court including those of *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, ; *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, ; *Kumari Shrilekha Vidyarthi v. State of U.P.*, AIR 1971 SC 537 and culled out various principles, some of which are extracted, below :--

(i) The wide sweep of Articles 14, 15 and 16 takes within their fold not only the legislative instruments and all executive/administrative actions of the State and its agencies/instrumentalities but also contractual matters.

(ii) Every State action must be informed by reasons. It must be fair, reasonable and in public interest and must be free from arbitrariness.

(iii) The basic requirement of Article 14 is fairness in State action irrespective of the nature of power exercised by the State. The State cannot act arbitrarily by way of giving jobs or entering into contracts or issuing quota or licence. Its every action must be confined and structured by rational, relevant and non-discriminatory standard and if the Government departs from such standards or norms, its action is liable to be struck down on the touchstone of Article 14 of the

Constitution.

23. We have examined the decision of the Committee to grant admission to the respondent Nos. 4 and 5 in the light of the above-noted principles and are of the opinion that the same is vitiated by arbitrariness, non-application of mind and consideration of extraneous reasons and is, therefore, violative of Articles 14 and 15 of the Constitution. The information brochure issued by the University, which constituted the touchstone for making admissions by migration will have to be treated as binding on the University as well as the committee in view of the law laid down by this Court in *Amardeep Singh Sahota v. State of Punjab* (1993) 2 PLR 212 ; *Raj Singh v. Maharshi Dayanand University* (1994) 2 SLR 581 (Punj & Har) (FB); *Rahul Prabhakar Vs. Punjab Technical University and Others*, ; *Anil Jain v. Controller of Examinations*, (1997) 3 AIJ 1 (Punj & Har). Thus, the University was bound to make appointments strictly in accordance with the criteria laid down in the information brochure, Para 11(5) of which authorised the University to make admissions against 20% seats on peculiar facts of each particular case on highly exceptional compassionate grounds. A bare perusal of the minutes of the committee's meeting held on May 20, 1997 show that the Committee has not mentioned a word about the consideration of highly exceptional compassionate circumstances which constituted the basis of its decision to grant admission to the respondent Nos. 4 and 5. These minutes also do not give any indication of the material which was considered by the Committee while deciding to grant admission to the respondent Nos. 4 and 5 in preference to the petitioners. The Committee has not based its decision on the grounds of alleged illness put forward by the candidates or the so-called security threat to the respondent No. 4. It has not made any comparative assessment/evaluation of reasons put forward by the various candidates. The only thing which can be seen from Para 3 of the minutes of the Committee is that the Committee has used the stock phrase "peculiar facts of each particular case" which finds mention in paragraph II(5) of the Brochure. This, in our opinion, cannot be treated as application of mind to the grounds of compassion which prompted the committee to allow migration to respondent Nos. 4 and 5. We, therefore, hold that the decision of the Committee to sanction the migration of the respondent Nos. 4 and 5 is vitiated by arbitrariness and is violative of Articles 14 and 15 of the Constitution. The respondent Nos. 1 and 2 and 3 have failed to offer any explanation as to why the Committee did not declare the result of 20% seats on 13-5-1997 when the result of 80% seats had been notified and why the date for submission of documents in support of the cases of compassion had been extended to 19-5-1997. In the absence of any explanation, we find ample justification to accept the argument of Shri Garg that this was done with a view to enable the respondent Nos. 4 and 5 to manipulate the record and claim admission against 20% seats because they found that they will not be admitted on the basis of inter se merit against 80% seats.

24, No doubt, in the written statement filed by the respondents Nos. 1 and 2 an attempt has been made to justify the admission of respondent No. 4 by

concocting the grounds like illness, security consideration and persecution etc. but having carefully perused the record of the case as well as the files produced by Shri Khosla and Shri Gupta, we cannot refrain from regretfully observing that the Principal, Government Medical College, Patiala, who has filed reply on behalf of respondent Nos. 1 and 2 has travelled beyond his brief. A bare perusal of paragraph 8 of the written statement shows that the same have been tailored to support the respondent No. 4. The use of phrase "security considerations" and word "persecution" have been coined to support the application submitted by the respondent No. 4 and the letter written by her father after the declaration of the first list on 13-5-1997. The statement that "the circumstances which developed after the admission of candidates to Ist MBBS course" is intended to help the candidatures of respondent Nos. 4 and 5. It is interesting to note that the averments made in paragraphs 1 to 15 of the written statement have been verified by the learned Principal to the best of his knowledge and belief as derived from the official record but the official record does not support the written statement. It does not show that the security considerations and persecution of respondent No. 4 were taken into consideration for granting admission to her. It also does not talk of circumstances developing after the admission of the candidates to Ist MBBS course. In fact the statement of Shri Rupinder Khosla and Shri Rajan Gupta, which they made in reply to the query of the Court, clearly shows that the record of the University does not contain any material to show that the grounds of illness, security considerations and persecution were taken into consideration by the Committee. Shri Gupta's assertion that the criteria followed by the Committee must have been in the mind of its members completely falsifies the assertion made in paragraph 8 of the written statement filed on behalf of respondent Nos. 1 and 2. To us, it appears that the Principal, Government Medical College, Patiala, has created these grounds to secure favour from the father of the respondent No. 4, who was at one time was Principal Secretary to none else than the Chief Minister of Punjab.

25. There are several other reasons which cast serious doubt about the bona fides of the decision of the Committee. These are :

(i) no explanation has been given by the official respondents as to why the Committee chose to give opportunity to the candidates to submit documents up to 19-5-1997 in support of their claim for admission against 20% seats. In the normal course the documents filed along with the application forms submitted by the candidates only should have been taken into consideration while determining their eligibility to be admitted on highly exceptional compassionate grounds. The extension of the date appears to be stage managed with a view to help the candidates like respondent Nos. 4 and 5; because they could not get admission by migration on the basis of inter se merit;

(ii) in the application filed by her for appearing at the M.B.B.S. Joint Migration Test, the respondent No. 4 did not express her desire to be considered for

migration on compassionate grounds nor did she produce documents about her illness or security risk. When, how and under what circumstances the application dated nil filed by her for consideration of her case for migration on compassionate ground found its way in the file prepared on the basis of her first application has not been explained by the official respondents;

(iii) that apart, in the application dated nil allegedly filed by her, the respondent No. 4 claimed migration by making the following statement :

"My father was appointed Principal Secretary to the Chief Minister, Punjab on 14-2-1997. Since then I have been receiving threatening calls from undesirable elements along with other family members. From the security point of view it is difficult for me to continue any studies at Mysore because of security risk. Report of the Inspector General of Police, C.I.D., Punjab, regarding the security threat is enclosed herewith for your perusal. Besides I am suffering from Asthama for the last two years and wet climate of Mysore aggravate the problem further."

This application does not contain any reference to the registration of case against her father by the C.B.I., the raid conducted at his residence on March 5, 1997 or about her presence on that day or her having suffered mental harassment on that account. It also does not make reference to the certificate issued by Dr. S. K. Bansal on 28-4-1997/15-5-1997.

(iv) A perusal of the letter written by the Inspector General of Police shows interpolation in the date under the designation of the Inspector General of Police. It can be seen with naked eyes that the date appears to have been altered from 12-5-1997 to 22-4-1997. The respondent No. 4 has not explained this interpolation. Moreover, that letter merely mentions that the respondent's father and members of his family would also face threat to their security. It does not speak of any threat given to the respondent No. 4 at Mysore.

(v) the medical certificate issued by Dr. Mohinder Pratap Arora is dated July 15, 1996 and the prescription slip bears the date February 18, 1997, The prescription slip appears to have been created in order to justify the petitioner's prayer for change of the geographical area and the medical certificate issued by Dr. S. K. Bansal is highly suspicious because it bears two dates i.e. 28-4-1997 and 15-5-1997;

(vi) what prompted the father of the respondent No. 4 to write letter dated 16-5-1997 after the candidates had been interviewed by the Committee on 13-5-1997 has not been explained. The very fact that such letter was written and the documents were produced by the respondent No. 4 after 13-5-1997 lends credibility to the argument of the learned counsel for the petitioners that the admission of the respondent No. 4 was manipulated after it was found that she will not get admission against the 80% seats;

(vii) the application filed by the respondent No. 5 shows that in para 12 the words "medical certificate submitted for consideration on compassionate

grounds" have been added subsequently with different ink and in different hand writing. This interpolation appears to have been made after the respondent No. 5 found that she will not get admission against the 80% seats;

(viii) the certificate dated nil issued by Aggrawal Orthopaedics Clinic and the prescription slips dated 1-6-1996 do not in any manner support her cause for migration on compassionate grounds;

(ix) it appears that these documents were subsequently inserted in the record to create ground for migration on compassionate grounds after the respondent Nos. 4 and 5 found that on the basis of their merit, they will not be able to get admission by migration.

26. For the reasons mentioned above, we hold that the admissions granted to the respondent Nos. 4 and 5 by migration is vitiated due to arbitrariness and violation of Articles 14 and 15 of the Constitution.

27. This leaves us with the issue whether the admission granted to the respondents should be cancelled or they should be allowed to continue with their studies. Shri Sethi and Shri Khehar laid emphasis on Para II of the Information Brochure issued by the university and submitted that the petitioners cannot be given admission in view of the expiry of the time limit fixed by the University and no useful purpose will be served by cancelling the admission of the respondents. They also submitted that the career of the respondents will be seriously jeopardised if their admissions are cancelled at this later stage.

28. We have given our anxious and thoughtful consideration to the submissions of Shri Sethi and Shri Khehar. The delay between the date of grant of admission and the date of decision of a petition is a factor which is ordinarily taken into consideration by the Court not to cancel the admissions of the candidates but having regard to the facts of this case and the manner in which the record appears to have been manipulated, we feel that it would amount to doing grave injustice to the petitioners and to the public if the admissions of respondent Nos. 4 and 5 are not quashed.

29. The record of the writ petition shows that it was filed on 24-5-1997. The notice of motion was issued on May 26, 1997. Though, the case was posted for May 29, 1997, it appears to have been taken up on May 30, 1997. On that day, it was adjourned to June 10, 1997 to enable the counsel for the respondents to file their respective replies. On June 10, 1997, it was adjourned to 7-7-1997 for arguments. On 7-7-1997, it was again adjourned to July 23, 1997 for arguments. On July 23, 1997, it was adjourned to 1-10-1997 on the written request made by the counsel for respondent No. 4. On 1-10-1997, the case does not appear to have been taken up but it was adjourned to 26-11-1997. On 26-11-1997, it was adjourned to 13-1-1998 on the request made by the learned counsel. On 13-1-1998, respondent Nos. 1 and 3 were directed to produce the original record in the Court and the case was adjourned to January 15, 1998. On January 15, 1998, it was again adjourned to January 19, 1998 to enable the counsel for

respondent No. 3 to find out if there is any other record available. On January 19, 1998, the Bench, headed by the Hon'ble Chief Justice ordered the transfer of the case to IVth Division Bench because of certain undesirable developments which took place after the previous date of hearing. On January 20, 1998, the documents filed by the petitioners along with C.M. No. 1124 of 1998 were taken on record. Simultaneously, the respondents were given opportunity to file additional affidavit. On January 22, 1998, the counsel for respondent No. 4 filed photostat copy of the letter dated 23-6-1997 written by the Secretary, Medical Council of India to the Principal, Government Medical College, Patiala conveying the Council's no objection to the migration of respondent No. 4. The case was then adjourned to 23-1-1998. On that day the arguments were heard and the judgment was reserved and the learned Deputy Advocate General was directed to produce record relating to respondent No. 5.

30. From the various order-sheets, it is clear that the petitioners cannot be blamed for delay in the decision of the writ petition. They approached the Court just after four days of the issuance of the impugned admission list. The case was adjourned on at least four occasions at the request of the counsel for the respondents. On July 23, 1997, it was adjourned for two months and eight days at the request of the counsel for the respondent No. 4. Therefore, we cannot non-suit the petitioners merely because some time has been consumed in the decision of the writ petition.

There have been several decisions of the Apex Court and of this Court on the issue whether the illegal admissions made should not be disturbed because of long passage of time. In Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, their Lordships gave an idea of the factors which would normally weigh in the mind of the Court while dealing with the issue of illegal admissions. The Apex Court observed that some day illegal admissions will have to be quashed irrespective of the consequences of the Court's orders. The relevant portion of that decision is extracted below :--

"Cases in which admissions granted to students in educational institutions are quashed raise a sensitive human issue. It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. Where irregularities are committed in admitting students it is not until a period of six months or a year elapses after the admissions are made that the intervention of the Court comes into play. The time consumed in disposal of such cases by the High Court and Supreme Court creates difficulties in adjusting equities between students who are wrongly

admitted and those who are unjustly excluded. Inevitably, the Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul : once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions. It is found that this situation has emboldened the erring authorities or educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the Courts will leave the admissions intact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institution. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. The authorities who made admissions by ignoring the rules of admission cannot be allowed to contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students or that in regard to Medical Colleges the Indian Medical Council will not sanction additional seats."

31. As will be seen hereafter, the warning given in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, has been translated into reality in subsequent decisions. However, before doing that we may notice the Constitution Bench decision in C. Channabasavaiah Vs. State of Mysore and Others, , in which the Apex Court examined and found that the recommendations made by the Mysore Public Service Commission were vitiated due to flagrant violation of Articles 14 and 16 of the Constitution and arbitrariness. One of the contentions urged on behalf of the respondents was that the Court should not invalidate the appointments after long lapse of time. While rejecting the contention, their Lordships observed as under (at p. 1296 of AIR) :--

"It is very unfortunate that these persons should be uprooted after they had been appointed but if equality and equal protection before the law have any meaning and if our public institutions are to inspire that confidence which is expected of them we would be failing in our duty if we did not even at the cost of considerable inconvenience to Government and the selected candidates do the right thing. If any blame for the inconvenience is to be placed it certainly cannot be placed upon the petitioning candidates, the candidates who this order displaces or this Court."

(Underlining is ours)

32. In Chander Chinar Bada Akhara Udasin Society and Others and Yasar Shaff and Others etc. Vs. State of J. and K. and Others etc., , a three Judges Bench of the Supreme Court refused to grant indulgence to the candidates who were admitted in violation of the directions, orders and principles formulated by the Supreme Court. While doing so, the Apex Court observed (at pp. 402-403 of AIR) :--

"It is unfortunate that due to the indifferent attitude of the State Government and haste shown by the appellant-Society, the so-called selected candidates, who are said to have been admitted, are virtually on the roads. But only on equitable grounds, a procedure which is not sanctioned by law cannot be approved only to mitigate the hardship of such candidates who have sought admissions in the medical college aforesaid."

33. In Gurdeep Singh Vs. State of Jammu and Kashmir and others, , their Lordships refused to sustain the admission granted to respondent No. 6 in M.B.B.S. for the year 1991-92 on human considerations and observed that the above gain by illegal means, if permitted to remain, will jeopardise the purity of process. Some of the observations made in this decision, which are quite instructive, are reproduced below :--

"What remains to be considered is whether the selection of respondent 6 should be quashed. We are afraid, unduly lenient view of the Courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in Courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of Courts into private benevolence. This tendency should be stopped. The selection of respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent 6. We do so, though, however, reluctantly."

(Underlining is ours)

34. In State of Punjab and others Vs. Renuka Singla and others, , their Lordships

refused to allow the respondent to continue the admission granted to the respondent in B.D.S. even though she had left B.A.M.S. course for the purpose of seeking admission in B.D.S. and held as under :--

"The admission in Medical Course through out India is governed by different statutory provisions, including regulations framed under different Acts. During last several years efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter attempt is also apparent and discernible by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. It cannot be disputed that technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infra-structure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on "compassionate ground". The High Court should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. According to us, there does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent No. 1 on "compassionate ground" and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10A and Section 10B(3) of the Dentists Act referred to above."

(Underlining is ours)

35. In *Sarup Singh v. Punjab State Agricultural Marketing Board*, (1996) 2 RSJ 751, a learned single Judge held that relief cannot be denied to a litigant merely because delay in the disposal of the case.

36. Reference in this connection also deserves to be made to the decision of the Supreme Court in *Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel*, ; The facts of that case show that the respondent had approached the Industrial Tribunal for regularisation of his service on the ground that he has put in 1034 days of service between 1978 and 1982. The Tribunal granted relief to him on the basis of the circular issued by the appellant and award rendered in another case. The High Court dismissed the writ petition filed by the appellant. While reversing the order of the Tribunal and the judgment of the High Court, the Apex Court rejected the plea raised on behalf of the respondent that his status should not be changed after lapse of long time and held as under (at P. 3005 of AIR) :

"Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. If the reasoning given by the Tribunal is accepted, the statutory recruitment rules would become nugatory or otiose and the department can favour any person or appoint any person without following procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get any , chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion. It is therefore not safe to bend the arms of law only for adjusting equity."

(Underlining is ours)

37. We may now refer to the judgments relied upon by Shri Sethi and Shri Khehar. In *Dhiraj Sarwal and another Vs. The State of Punjab and others*, , the learned single Judge held that there is no legal and vested rights in the students seeking migration from one Medical College to another Medical College which could be enforced by writ jurisdiction by the High Court. The facts of that case show that the petitioners, who were admitted for M.B.B.S. professional course in the Medical College, Amritsar, sought migration to the Government Medical College Patiala. Their plea was contested by the respondents on the ground that there is no right to migration which can be enforced by issuance of a writ. The learned single Judge upheld the contention of the respondents. A careful reading of that decision shows that the issue of arbitrary exercise of power for granting admission by migration was neither raised nor considered by the learned single Judge.

38. In *Miss Nidhi Kumar Vs. The State of Maharashtra and others*, . Mrs. Justice Sujata V. Manohar of the Bombay High Court, as she then was, held that no student has fundamental right or even legal right to obtain transfer from one Medical College to another and the guidelines issued by the Medical Council of India in respect of migration do not have statutory force. The learned Judge held that the student cannot claim migration, as of right during the middle of the course. That decision has no bearing on the issue raised in this petition because the learned Judge was not called upon to decide the issue of violation of Article 15 due to arbitrary exercise of power by the respondent-university to grant admission to the respondents.

39. In *Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others*, , their Lordships reversed the direction given by the High Court to admit the respondents who were admittedly, less meritorious than other candidates. However, their Lordships did not quash the admission granted to the respondents due to lapse of time. A careful reading of this decision shows that no general proposition of law has been laid down by the Apex Court on the issue of upholding the appointment illegally granted to/

secured by a candidate. 40. The facts of *Dr. Ku. Nilofar Insaf Vs. State of Madhya Pradesh and others*, , show that the appellant, who was more meritorious than one Dr. Dev Raj Jain, was given admission in Master's Degree Course in Radiology, However, the High Court of Madhya Pradesh quashed her admission on the ground that she had secured admission in Gandhi Medical College, Bhopal in M.B.B.S. course by transfer from M.S. Ramaia Medical College, Bangalore in the year 1984. While reversing the decision of the High Court, their Lordships held that Dr. Jain was not - entitled to seek invalidation of the admission granted to the appellant in the year 1989 on the ground of alleged illegality in her transfer from Bangalore to Bhopal in the M.B.B.S. course. This decision does not contain any proposition which can help the case of the respondents Nos. 4 and 5.

41. In *Dr. Pramod Kumar Joshi v. Medical Council of India* AIR 1991 SCW 744 (supra), their Lordships dismissed the writ petition filed by Dr. Joshi on the ground that the session is almost complete and it would not be proper to allow admission to him at a late stage and disturb others. In *Nitasha Paul v. Maharshi Dayanand University*, 1996 (1) SLR 731 (SC) (supra), their Lordships held that the admissions of the respondents were vitiated due to arbitrariness but declined to cancel the same. Instead, they directed the respondents to grant admission to the appellant by creating an additional seat in terms of the directions given by the lower Court.

42. In *Gurpreet Dhaliwal v. State of Punjab* (1994 (4) RSJ 635) (supra), a Division Bench of this Court held that admission by migration cannot be equated with fresh admission on merit.

43. A careful analysis of the various decisions shows that in the recent years the Apex Court has strongly expressed itself against the practice of showing compassion to sustain the illegal admissions, though in one or two cases grounds of compassion seems to have prevailed with the Court. However, in none of the decisions relied upon by Shri Sethi and Shri Khehar any proposition of law has been laid down which can be treated as a precedent for sustaining illegal admissions in each and every case. On the other hand in *Chander Chinar Bada Akhara Udasin Society and Others and Yasar Shaff and Others etc. Vs. State of J. and K. and Others etc.*, ; *Gurdeep Singh's case* (1995 Supp (1) SCC 188) (supra) and *State of Punjab and others Vs. Renuka Singla and others*, , their Lordships have laid down and reiterated the proposition that the Court should not come to the rescue of the candidates who have been benefited by illegal admissions under the orders of the Court or otherwise. The reason for this approach can easily be traced into the multi-fold increase in the number of petitions filed to challenge admissions in the professional courses on the ground of violation of the prospectus/advertisement/brochure, the University Acts and the Rules and Articles 14 and 15. In a number of cases the Courts have found that the admissions are vitiated by fraud, favouritism and nepotism and virtually an illegal market has developed in the country which caters to the illegitimate aspirations of less qualified and less meritorious candidates. In our view the time

has come when the Courts must firmly deal with the cases in which it is found that the admissions have been made in violation of the statutes etc. or the action of the public authorities in making admissions is vitiated by arbitrariness or mala fides. In all such cases, the Courts should refrain from sustaining the admissions on the ground of lapse of time between the date of admission and the date of decision of the writ petition etc. The principles laid down in the three decisions referred hereinabove as also in Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, should be applied in all such cases in order to sustain the people's faith in the system of administration of justice. The time has come when consideration of equity and compassion must give way to the provisions of law.

44. In the present case, we have found that the admissions of the respondents Nos. 4 and 5 against 20% seats are vitiated due to patent arbitrariness, non-application of mind and violation of Articles 14 and 15. The manner in which the admissions of respondents Nos. 4 and 5 have been manipulated and the attempt made by the respondent Nos. 1 and 2 to justify their admissions by unfounded grounds show that these admissions have been secured by use of extraneous influence. Therefore, we do not find any justification to uphold the same.

45. Before concluding, we may briefly dispose of the argument of the learned counsel that the writ petition should be dismissed because of the non-impleadment of other candidates. In our view the failure of the petitioners to implead other three candidates cannot result in denial of relief to them. The Court will not quash the admissions of the candidates who are not party-respondents but it can certainly quash the admissions of respondents Nos. 4 and 5 and direct the Committee to reconsider their cases along with the case of the petitioners.

46. Accordingly, the writ petition is allowed. The admission of the respondents Nos. 4 and 5 to second year M.B.B.S. are quashed. The respondent No. 3, is directed to re-convene the meeting of the committee for considering the cases of the petitioners and the respondents Nos. 4 and 5 afresh in accordance with the criteria laid down in Para II(5) of the information brochure. The committee shall take fresh decision within 15 days of the submission of certified copy of this order.

47. The Registry is directed to supply a copy of this order to the parties dasti on payment of prescribed fee.