

(2016) 10 KL CK 0017

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 30697, 30712, 32185, 32186, 32257, 33291
and 33494 of 2016

Prestige Educational Trust

APPELLANT

Vs

The Admission Supervisory Committee for Professional
Colleges in Kerala

RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 KLT 84

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. P. Somarajan, JJ.

Bench : Division Bench

Advocate : Sri. George Poonthottam, Advocate, for the Petitioner; Smt. Mary Benjamin, SC, for the Respondent

Final Decision : Disposed Off

Judgement

Ramachandra Menon, J. - Admissions to the first year MBBS course 2016 - '17 in the two Self Financing Institutions, by name "Karuna Medical College" [petitioner in W.P.(C) Nos. 30712 and 32186 of 2016] and "Kannur Medical College" [petitioner in W.P.(C) Nos. 30697 and 32186 of 2016] is the subject matter of dispute in all these cases. W.P (C) Nos. 30697 and 30712 of 2016 have been filed challenging the orders of approval of the Prospectus passed by the Admission Supervisory Committee ["Committee" in short] imposing some riders effecting "de-reservation" of vacancies in the Management quota and also in respect of "reduction of annual fee" notified in the Prospectus. W.P(C). Nos. 32185 and 32186 of 2016 are the writ petitions filed by the said Institutions against the orders dated 02.09.2016 issued by the Committee, cancelling all the admissions made by the Institutions, on the alleged violation of the relevant orders issued by the Committee and of this Court, for the alleged lack of transparency in effecting admissions. The other writ petitions have been filed by the concerned students, who are aspirants to have admissions to the Institutions concerned but denied admission, for rejection of the applications or loss of

opportunity because of the alleged dubious exercise done by the Institutions.

2. Heard Mr. George Poothottam - the learned counsel for the petitioners in W.P. (C) Nos. 30697, 30712, 32185 and 32186 of 2016, Mr. Rajit - the learned counsel for the petitioners in W.P.(C) Nos. 32257 and 33494 of 2016, Sri. K. Praveen Kumar - the learned counsel for the petitioner in W.P.(C) No. 33291 of 2016, Mr. C.P. Sudhakara Prasad - the learned Advocate General appearing for the State/Department, Mrs. Mary Benjamin - the learned standing counsel for the Admission Supervisory Committee/Fee Regulatory Committee for Professional Colleges in Kerala, Mr. Roshen D. Alexander - the learned counsel for the petitioners in I.A. No. 16103 of 2016 in W.P(C) No. 32185 of 2016 and I.A. No. 16429 of 2016 in W.P. (C) No. 30712 of 2016, Mr. Sunil Shanker - the learned counsel for the petitioner in I.A. No. 16512 of 2016, Sri. T.A. Shaji - the learned senior counsel appearing for the petitioners in I.A. No. 16212 of 2016 and Sri. M.K. Chandra Mohandas - the learned counsel appearing for the petitioners in I.A. No. 16185 of 20160

3. The petitioners are running Self-financing Institutions [besides such other institutions] imparting education in the medical field and such other sectors. It is stated that they are minority institutions having the protection under Article 30 (1) of the Constitution of India, who have not executed any agreement with the Government for sharing seats. From the year 2013-"14 onwards, admissions were stated as being effected by the petitioners strictly "online" from the qualified candidates in the NEET or the Common Entrance Examination conducted by the Commissioner for Entrance Examinations of the State of Kerala. It is stated that there was absolutely no complaint whatsoever from any corner, with regard to the selection process, so far.

4. While challenging the power and competence of the respondent Committee to have issued the impugned orders, it is stated that a similar interference was made by the Committee way back in the year 2013, directing the Principals of similar colleges to provide details of students admitted to MBBS/BDS, simultaneously interdicting the University concerned from permitting the students to participate in the examinations. This was challenged by the aggrieved parties by filing W.P.(C) No. 17328 of 2014, wherein an interim order of stay was granted by a Division Bench of this Court, permitting the students to appear for the examinations. However, after the final hearing, the said writ petition and the connected cases were dismissed, holding that Committee was having power to scrutinise the eligibility, in spite of any complaint in this regard. The said verdict is stated as under challenge before the Apex Court, wherein Ext. P1 [as produced in W.P.(C)No. 30712 of 2016] interim order of stay was passed, in so far as the petitioners therein were concerned. It is stated that, though the said interim order was sought to be vacated, the prayer was not acceded to and the Apex Court, as per Ext. P2, held that the interim order will continue, subject to the result of the proceedings before the Apex Court, however making it clear that it will not prevent submission of documents before the Committee. It is also

pointed out that another interim order was passed by the Apex Court vide Ext. P3, directing the students under the "NRI quota" (15%) to furnish the documents before the Committee for verifying their eligibility. It is stated that the documents have been given in respect of the NRI students and that the Committee has approved the same. The main challenge/question is with regard to the powers of the Committee under Act 19 of 2016.

5. The field of "admission" to the Self Financing Institutions is mostly governed by the law declared by the Apex Court at different points of time, particularly, as laid down in *T.M.A. Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481], *Islamic Academy of Education v. State of Karnataka* [(2003) 6 SCC 697] and *P.A. Inamdar v. State of Maharashtra* [(2005) 6 SCC 537] and the recent judgment in *Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.* [AIR 2016 SC 2601]. The crux of the above decisions, in so far as the present issue is concerned, is that the admission process has to be merit-based, fair and transparent and without any instance of profiteering/exploitation or capitation fee. While discussing the ways and means to have transparency, it has been observed by the Apex Court that execution of "Agreement with the Government", so as to safeguard interest of all concerned, including in the reservation sector and also as to the fees and such other amounts payable, would be one of such methods to bring about transparency. It was accordingly that agreements were being executed by the Self Financing Institutions in Kerala, either directly or through the Management Associations. This year, after much hue and cry, the private Self Financing Institutions executed such agreements with the Government and the admission proceedings were pursued accordingly. However, the two petitioner Institutions before this Court have not entered into any such agreement and have chosen to fill up the seats from the NEET [National Entrance cum Eligibility Test] cleared candidates on their own, after getting the Prospectus approved by the Committee. But various requirements to be complied with, as insisted by the Committee, were stated as not satisfied, which led to interference by the Committee, leading to the writ petitions.

6. The main litigation was lodged for the first time in respect of the academic session 2016 - "17, when a communication was issued by the Government of India addressing the States/Union Territories to complete the process of admission in the relevant sectors by way of "Centralised Admission Procedure". Pursuant to this, two Government orders were issued by the State on 20.08.2016 and 23.08.2016 respectively, taking over the admissions in the Self Financing Sector, to be effected by the Commissioner for Entrance Examinations [CEE in short]. This was sought to be challenged by the Self Financing Institutions represented by their Association and also by other Self Financing Institutions belonging to the Christian Community by way of W.P.(C) Nos. 28041 of 2016 and connected cases. The crux of the challenge was that, by virtue of the law declared by the Supreme Court, the Self Financing Institutions were having absolute authority to effect admissions and in so far as they were effecting the same, based on the NEET list/KEAM list, the admissions and

allotment could not have been taken over by the Commissioner for Entrance Examinations, which virtually has resulted in an indirect attempt to bring back Section 3 of Act 9 of 2006, which provision was struck down as unconstitutional by this Court, as per the verdict rendered in *Lisie Medical and Educational Institutions v. State of Kerala* [2007 (1) KLT 409], though still pending consideration before the Apex Court.

7. When the above matters came up for consideration before this Court, an interim order of stay was granted on 26.08.2016 ; subject to some specific riders/ conditions as extracted below :

(i) Admissions to the MBBS/BDS Courses shall be only on the basis of the ranking of candidates in the rank list of NEET, 2016, on the basis of the inter-se merit among the candidates, who have applied to the respective colleges.

(ii) All the colleges agree that, the applications for admission are received only through on-line and that, the said process provides transparency with regard to the merit as well as the identities of the applicants. Such applications shall therefore be uploaded for the scrutiny of the Admission Supervisory Committee also immediately on the expiry of the last date for submission of applications.

(iii) Since the counsel for the Admission Supervisory Committee has voiced a complaint that some of the colleges have not obtained approval of the Admission Supervisory Committee, for their Prospectus, the admission process shall be proceeded with only on the basis of a Prospectus, for which approval of the Admission Supervisory committee has been obtained.

(iv) The Admission Supervisory committee is directed to either approve or disapprove the Prospectus submitted to them for approval, within three days of such submission.

It is brought to the notice of this Court that the condition No. (i) was subsequently intercepted by the Apex Court in SLP No. 9862 of 2016 filed by the Union of India as per order dated 28.09.2016 [Ext.P16 in W.P.(C)No. 32185 of 2016] holding that counselling could not be conducted by the individual colleges, which shall be only by way of centralised counselling. However, it was made clear that no interference was being made with the admission proceedings already pursued observing that the issue shall be finally thrashed out as decided by the High Court in the writ petitions which are pending.

8. While so, the Committee had issued general directions to the Self Financing Institutions in Kerala as per order dated 04.08.2016, stipulating among other things

- that the Prospectus had to be submitted, got approved and published in the web site [Clause 2],

- that the applications shall be invited only online and that applications obtained by other modes shall stand rejected, adding that inter se merit shall be the basis

[Clause 3],

- that the rejection, if any, shall be notified with valid reason [Clause 4],
- that there shall be no pre-normalization steps of the NEET rank with the Board examination marks [clause 5],
- that the seats in the Management quota, NRI and Lapse seats shall be filled up only from the NEET list, based on the inter-se merit,
- that sufficient time shall be given for furnishing Bank Guarantee and that no denial of admission shall be effected without permission of the ASC [Clause 11],
- that draft admission list has to be published [Clause 12],
- that vacancies resulting on any reason had to be notified [Clause 13], and
- that all information regarding admission/rejection/reasons etc. had to be retained on the website till the admission was approved by the ASC [Clause 15].

9. Since some of the colleges [not the petitioners herein] had not properly complied with the instructions in the said order dated 04.08.2016, a further order was issued by the Committee on 03.09.2016 by way of general instructions, instructing to adhere to the contents of the order dated 04.08.2016. Prospectus of the petitioners was approved only on 06.09.2016/09.09.2016, but, since the Colleges took the stand that inter-se merit was not applicable to the NRI quota as per the relevant Apex Court judgments, the matter was clarified and revised approval order was issued by the Committee on 10.09.2016, clearly holding that, inter-se merit would be the basis for NRI quota as well. It was accordingly that the process and proceedings were rescheduled, specifying the relevant dates, showing 19.09.2016 as the last date for submitting the applications.

10. As mentioned already, the Prospectus of the petitioner Institution [Karuna Medical College] was approved by the Committee as per the order dated 06.09.2016, however subject to the rider that Clause 1.6.2 of the Prospectus [giving break up figures of 35 seats marked against the Management Quota], distributing entire the seats among the dependents of various Trusts Associations and committees, was not sustainable in law and hence would be treated as General Merit Quota. The Committee also reduced the annual fees of Rs. 7.45 lakhs stipulated in the Prospectus in respect of 85 seats [other than NRI 15 seats, where the stipulated fee was higher] to Rs. 4.4 lakhs per annum, for the time being and on final fee regulation, the difference in the fee collected shall be adjusted, as per the finalised tuition fee. Similar order was passed in the case of the other Institution [Kannur Medical College] on 09.09.2016 and the reservation mentioned in Clause 3.6 (B) and 3.6.5 of the Prospectus for the dependents of the Trustee and staff was ordered to be removed, to be filled under general category from NEET 2016 list, based on transparency and inter-se merit. The annual fee stipulated in the Prospectus as Rs. 10 lakhs in the case of the said

petitioner was also provisionally regulated, to be Rs. 4.4 lakhs in respect of 85 seats [i.e. except 15 NRI seats where it was Rs. 18 lakhs per year]. The above extent of "de-reservation" of the Management quota seats and reduction of the annual tuition fee were sought to be challenged by the petitioner Institutions by filing W.P.(C) Nos. 30697 and 30712 of 2016.

11. It was contended by the petitioner in W.P.(C) No. 30712 of 2016 that the petitioner Trust was consisting of several other small Trusts as associate members, being contributories to the main Trust and it was in the said circumstance, that seats available in the Management Quota (35 seats) were decided to be distributed to the dependents of the different Trusts/subsidiaries as given under Clause 1.6.2. It was stated that, by virtue of "Notes 1 and 2" under Clause 1.6.1, the different segments, particularly, coming under "reservation" categories in the Open Quota, it was strictly on merit to the deserving categories. Similarly, a "Note" is provided under clause 1.6.2 as well, which only stated that admission will be given based on the "letters" from the respective Trust/ Association/Committee, to be produced by the concerned student.

12. According to the petitioners, apart from the fact that the "reservation" provided by the "Management Quota" is by virtue of the right as a Minority Self-financing Institution, it is also pointed out that similar "reservations" are made by several other similar Institutions as well, which have been approved by the Committee as per the various proceedings. In order to substantiate the same, the petitioners have produced Ext. P13 prospectus of Dr. Somervell Memorial C.S.I. Medical College, which stands approved as per Ext. P14. Ext. P15 is the prospectus of MES Medical College, Perinthalmanna, which stands approved by the Committee as per Ext. P15. Similarly, in the case of Believers Church Medical College, providing similar reservation, Ext. P17 prospectus stands approved as per Ext. P18. Coming to the Kerala Christian - Professional Colleges Managements" Federation, Ext. P19 prospectus providing such reservation stands approved by the Committee as borne by Ext. P20. However, in the case of the petitioners, a different standard/yardstick was stated as adopted by the Committee, which is cited as an instance of colourable exercise of power. It was also pointed out that similar reservations were being made by the petitioners in respect of the previous years, particularly, for the year 2012-"13 and the prospectus for the said year has been virtually approved by the Committee, as borne by Ext. P10 dated 19.07.2012.

13. With regard to the "Fee structure", it was pointed out that the annual fee collected in the previous year by the petitioners in the case of Karuna Medical College was Rs. 5.4 lakhs ; whereas in the other case (Karuna Medical College), it was Rs. 7.95 lakhs. Considering the balance sheet for the past three years, the overhead expenses being incurred and additional expenditure to be incurred, it became inevitable to have the fee enhanced and it was accordingly, that the annual fee was raised in respect of the petitioner institution in W.P.(C) No. 30712 of 2016 as Rs. 7.45 lakhs and in respect of the latter institution as Rs. 10 lakhs.

It was also pointed out by the learned counsel that in the case of other similar Institutions, the Government had agreed for a fee of Rs. 11 lakhs in respect of Management Quota students and Rs. 12/Rs. 15/Rs. 18 lakhs in respect of NRI students, as discernible from Ext. P21 Government Order dated 01.09.2016 and such other materials. On comparing the rates of fee of the petitioners with the aforesaid Institutions, the fees stipulated in Ext. P8 Prospectus are far on a lower level, which ought not to have been intercepted by the Committee. It was further pointed out that the fees, if at all higher due to some or other reason, could be regulated by the Committee at any time after calling for the records and that the interference made prior to granting of admission will only be detrimental to the rights and interests of the petitioner Institutions.

14. The learned Standing Counsel for the respondent Committee pointed out that the very first averment that there was no complaint against the petitioners so far, is totally wrong. There were quite a lot of complaints against the petitioners at different points of time, from different corners and these two colleges were never prepared to give documents or details to the Committee and were only going on challenging the power and jurisdiction of the Committee to demand such particulars. The learned counsel submitted that there were serious complaints in respect of the examinations conducted by the Consortium of the Management Institutions in the year 2014 - '15. The questions papers were leaked, enabling the persons of choice of the Management Institutions to get selected and there was some allegation as to the collection of capitation fee as well ; which was almost up to the level of Rs. 31 Crores. Finally, considering the facts and circumstances, the Committee cancelled the examinations conducted by the Consortium, which was challenged before this Court. A Division Bench of this Court upheld the course and proceedings pursued by the Committee as per the decision reported in 2013 (3) KLT 316 [Kerala Private Medical College Management Association v. Admission Supervisory Committee for Professional Colleges], clearly holding that "prior approval" of the Committee is mandatory from the stage of publication of Prospectus and thus asserting the power, competence and jurisdiction of the Committee in all respects. The said decision stands affirmed by the Supreme Court. It was also pointed out that illegal admissions were made by several self-financing institutions, admitting ill-qualified candidates, which was intercepted by the Committee then and there, ordering removal of names of the students from the list and giving appropriate directions/instructions to the University in this regard. The learned standing counsel submitted that the petitioners had not so far produced any documents, other than Ext. P8 Prospectus, to substantiate the actual facts and figures, both in respect of "reservation" and in respect of "fees" and such other aspects. But for mentioning that the reservation in "Management quota" is provided for "dependents" of the specified categories ; to what extent such benefit is payable, what are the norms etc., are not revealed, which is only with an intent to provide admission to the candidates of choice of the Management Institutions on extraneous consideration ; thus paving way for realisation of capitation fee,

which hence was intercepted by the Committee. This is more so, since despite the willingness expressed before this Court while passing the common Ext. P7 interim order dated 26.8.2016 [including the petitioners herein] to furnish all particulars, the same has not been complied with so far.

15. With regard to the reservation in respect of various institutions dealt with under Exts. P13 and P20, the learned Standing Counsel pointed out that "reservation" in the aforesaid case is intended only to children/members as specifically mentioned therein who are quite identifiable in all respects. Unlike this, coming to the case of the petitioners, the word "dependent" itself is nebulous with no identity ; but extendable to any person who produced a "letter" of the Committee/Trust/Association mentioned under Clause 1.6.2 of Ext. P8 Prospectus. It was stated that such "reservation" is not possible, by virtue of the order passed by this Court on 23.09.2015 in W.P.(C) Nos. 26542 and 26769 of 2015.

16. According to the learned Standing Counsel for the Committee, the case has been built up, as if the impugned orders were passed by the Committee merely for not executing agreement with the Government, which is not correct. The execution of agreement has been mentioned in the orders concerned, only to describe the sequence events and that there was no agreement in respect of various other Institutions as well. Still, their prospectus has been approved as per relevant orders, which has been adverted to by the petitioners themselves in these writ petitions. The learned Standing Counsel also made a reference to the figures flowing from Ext. P21 and the position in the case of the petitioners as to the collection of fees. In respect of the different segments, different rates of fee are provided in Ext. P21 and the total amount collected from all the students in respect of the Institutions is to be compared with the position in the case of the petitioners herein, who propose to collect Rs. 7.45 lakhs [in case of W.P.(C) No. 30712 of 2016] and Rs. 10 lakhs [in the case of W.P.(C) No. 30697 of 2016] in respect of 85 seats, while the position with regard to NRI students is @ Rs.13 lakhs [in the case of W.P.(C) No. 30712 of 2016] and Rs. 15 lakhs [in the case W.P.(C) No. 30697 of 2016]. On comparing the figures as above, the Committee found that only a sum of Rs. 4.4 lakhs would be sufficient and it was fixed accordingly, on a provisional basis, subject to production of the relevant records and to have modified later, if necessary.

17. It is for the Self-financing Institutions like the petitioners to find out their own ways and means by stipulating the requisite extent of fees for running the institution. At the same time, care and caution has to be taken to see that such venture does not lead to any profiteering exercise. In the said circumstances, what was the infrastructure and overhead expenses so far is to be taken one hand. What is the additional expenditure/infrastructure provided, including the construction of building, appointment of additional or more competent staff, installation of modern technology, improved infrastructure etc. are to be given due credit on the other hand, for fixing the fee, with a reasonable margin to find

surplus amount for further developments. This exercise, of course, has to be done by the Committee. According to the learned Standing Counsel, merely for the reason that some of the Institutions have already entered into an agreement with the Government by itself does not amount to approval/seal of the Committee as to the "proper fee" in this regard.

It is open for the Committee to scrutinise the fee structure of all the institutions. Even though this Court is not called upon to examine these matters, considering the generality of the facts and circumstances, it cannot but be said that, by virtue of the powers conferred upon the Committee as per Sections 4 and 6 of the Act 19 of 2016 and the law declared by this Court in 2013 (3) KLT 316 [cited supra], it is very much open for the Committee to interfere with, examine, scrutinise the proceedings with regard to the "admission" and also with regard to the "fee structure" and satisfy itself, based on the records to be produced by the Institutions, as to the rationality of the admissions and fee structure.

18. After hearing both the sides, an interim order was passed by this Court on 23.09.2016, virtually sustaining the "de-reservation" ordered by the Committee, placing reliance on the similar order passed by another Bench in W.P(C) Nos. 26542 and 26769 of 2015 on 23.09.2016 and also for the lack of clarity/identity with regard to the dependents and alleged different contributories/trusts/beneficiaries, as dealt with under the relevant clauses of the prospectus. However, coming to the annual fee, considering the balance of convenience, the fee stipulated in the Prospectus was permitted to be collected provisionally, making it subject to further orders to be passed by this Court. It is the version of the petitioner Institutions that they have given effect to the "de-reservation" ordered by the Committee and also by this Court and have finalised the admission accordingly, collecting the fess stipulated in the Prospectus on a provisional basis.

19. The Committee had earlier observed that the petitioner Colleges had not complied with the requirements, particularly, as per the revised approval of the Prospectus ordered on 10.09.2016, whereby the entire admissions were cancelled as per order dated 15.09.2016 and they were required to do the things properly. All the students, including those who had already applied, were set at liberty to apply online. According to the petitioners' institutions, they had not actually effected admissions and hence did not find it necessary to challenge the said order dated 15.09.2016, but sought to rectify the alleged defects, by opening the Web site again inviting applications till and including 19.09.2016, which fact is stated as admitted by the Committee in the subsequent proceedings - though there is a contention for the Committee that web site was open only till 10.00 p.m. on 19.09.2016 and not till the midnight.

20. In the course of further proceedings, the Committee issued a general order on 17.09.2016 to all the Medical Colleges concerned, reiterating the earlier directions and also issuing some additional directions as contained in Clauses 2, 3 and 4 (i) to (vi). The requirements under Clause 4 (i) to (vi) are relevant,

hence they are reproduced below :

"4. The Medical Colleges are also further directed that :-

(i) The details of the total individual on line applications received by the Medical College for the admissions to MBBS 206-17

(ii)The details of the defects noted by the Medical College in respect of the applicants and the method through which such defects were cured/corrected/rectified.

(iii)The total list of eligible applicants for MBBS admissions 2016-17 in the Medical Colleges.

(iv)The total list of rejected candidates from the online applications.

(v)The total list of eligible candidates for admission to MBBS Course 2016-17 under Management and NRI, prepared strictly on inter se merit basing on the NEET rank list.

(vi)All the above particulars are to be published immediately in the website of the Medical College and the same should be made known to all the applicants/candidates/parents/public.

21. Yet another order was issued by the Committee on 19.09.2016, also making it clear that admissions to the NRI quota shall also be on the basis of inter se merit [as incorporated in the order approving the Prospectus of the petitioners College]. Clause 4 of the said order, as to the requirement to be satisfied by all the institutions concerned, is relevant, which hence is extracted below :

"4. It is noted with concern that some of medical colleges have not yet properly published the following information :-

i. Complete online application lists, as applied by the applicants.

ii. The list showing the steps taken by the Medical Colleges to rectify the mistakes of the applicants, if any.

iii. The complete list of eligible candidates with details.

iv. The complete list of rejected candidates with reasons.

v. The rank lists, if the process of counselling is complete, by those colleges as per the prospectus approval order.

vi. The list of proposed candidates for MBBS/BDS admissions to the college(s).

vii. The vacancy position/waiting list of the applicants to be admitted in the Medical/Dental College(s), in the event of transfer/shifting/non joining of the candidates.

viii. In order to avoid the denial of opportunity to the eligible applicants for MBBS/ BDS admissions, on completion of the CEE allotments, the Medical/Dental

College(s) shall fill up such remaining vacancies only from the waiting list, as per the inter se merit and not through Spot Admissions from outside the waiting list.

ix. The list of details of the NRI candidates from the NEET list maintaining inter se merit.

As evident from sub clause (viii) of Clause 4, there is a direction to all the Self Financing Institutions to maintain a waiting list and to have it published, making it clear that there shall be no spot admission under any circumstances, otherwise than from the waiting list.

22. As evident from the order dated 23.08.2016 passed by this Court in W.P.(C) Nos. 30697 and 30712 of 2016, it was an "agreed order" [as agreed by the Association representing the petitioners herein as well] to have had the conditions incorporated therein. It was accordingly, that a stipulation was made to have all the proceedings notified in the website of the Committee, for close monitoring and to ensure transparency. This was never honoured by the petitioner Colleges and according to the Committee, there was patent violation of the orders/direction issued by the Committee at different points of time, more so when the orders issued by the Committee at different points of time were never subjected to challenge. The web site of the colleges was not accessible most times and also not to the requisite extent. The details of the applications, rejected applications, reason for rejection, whether opportunity was given to cure the defects, how that was implemented, details of the list finalised etc. were never accounted by the Colleges. It was referring to the sequence of events and instance of violations, that the admissions effected were cancelled by the Committee, as per the order dated 02.10.2016, entrusting the same with the Commissioner for Entrance Examinations, to be effected in the course of "spot allotment" scheduled on 07.10.2016 [pursuant to the extension of time granted by the Apex Court changing the last date for admissions from 30.09.2016 to 07.10.2016]. This made the petitioner Institutions to approach this Court again, by way of W.P.(C) Nos. 32185 and 32186 of 2016, challenging the orders passed by the Committee on 02.10.2016 (Ext.P17 in the former case and Ext.P11 in the latter case).

23. According to the petitioners, taking a cue from the said Order that any admission after 28.09.2016 could have been only by way of "Centralised Counselling", the Committee simply cancelled all the admissions so far effected as per the impugned order dated 02.10.2016, just with reference to "three complaints" forwarded to the petitioners in W.P.(C) No. 32185 of 2016 [Exts. P7, P9, P11 - which were replied as per Exts. P8, P10 and P12] and "two complaints" in the other case [Exts. P6 and P7 in W.P.(C) No. 32186 of 2016 - which were replied as per Ext. P8 common reply]. The learned counsel submitted that absolutely no power is vested with the Committee to cancel the admissions, which power in fact is vested with the Government ; to be exercised, on satisfying valid grounds in this regard. It was also pointed out that, but for the "three/two complaints" referred to above, no other complaint was forwarded to

the petitioners at any time, referring to any illegality or irregularity or violation of the orders/proceedings in any manner. No notice was issued to the petitioners calling for explanation, nor was there any notice to produce any document in this regard. The Committee took a "unilateral decision", stating that it was monitoring the website and that there were several defects and complaints from different corners, besides violation of the Orders passed by this Court ; without stating in crystal clear terms as to in what manner the duty was not performed by the Institutions. Having denied the opportunity of hearing before passing Ext. P7, fundamental rule of "Audi altram partem" is stated as given a "go-bye". The learned counsel asserted that the admissions given to the concerned students were purely on the basis of "inter-se merit" and it was pointed out that the University had registered the students as well. As far as W.P.(C) No. 32186 of 2016 is concerned, the admission list was forwarded on 27.09.2016, but an inadvertent mistake had crept in, which was corrected and it was duly forwarded to the University vide Ext. P9, which is well within time ; the last date being on 30.09.2016. It was also submitted by the learned counsel that, before passing any adverse order, it was obligatory for the Committee to have conducted an "enquiry" as envisaged under Section 4 (7) of the Act 19 of 2016, which has not been satisfied in the instant case. The subsequent proceedings were brought on record by filing necessary I.A. and interception was sought for.

24. The learned standing counsel for the Committee submits that the petitioners had clearly violated "Condition No(ii)" of the interim order dated 26.08.2016 (Ext. P1) passed by this Court, whereby the applications for admissions were to be received only through "on line", providing transparency to merit and ensuring identity of the applicants, and further that such applications shall be uploaded to the scrutiny of the Committee immediately after the last date for submitting the applications. The submission of the learned Standing Counsel was that since this condition was violated, Ext. P1 stay itself got automatically vacated, thus reviving the Government Orders dated 20.08.2016 and 23.08.2016 taking over the admissions. It was also submitted by the learned Standing Counsel that the Committee had not given any direction to the Government to take over the admissions, but had only "instructed" the Government to take necessary steps, in view of the violation ; which has been given effect to, by the Government. It is further stated that the website was not opened ; that particulars of rejection of applications were not made to the notice of the Committee ; that no chance was given to the applicants to cure the defects and such other adverse circumstances as dealt with in paragraph 4 of Ext. P17 order.

25. Pursuant to the notification issued by the Commissioner for Entrance Examinations [based on the order dated 2.10.2016 of the Committee], as many as 5800 applications (approximately) were stated as received "online". It was also in respect of the vacant seats in the petitioners' colleges and the left over/ returned seats from the different sectors and lapsed seats/surrendered seats as mentioned in the notification itself ; which comes to a total of nearly 400 seats. The point to be considered in the instant cases was with reference to the alleged

deeds and misdeeds in the petitioners' colleges, which made the Committee to intervene and pass the orders under challenge. If there was any violation on the part of the petitioner Institutions in giving effect to the orders passed by this Court or the orders issued by the Committee, or in respect of the terms of the prospectus, it had necessarily to be enquired into and appropriate remedial measures had to be taken. At the same time, care and caution has to be taken to safeguard the rights of the students who otherwise had got admission, based on inter se merit.

26. Considering the nature of grievance projected from different sources and dealt with by the Committee, in respect of the alleged unlawful rejection of applications, and that the website was not open to all the applicants by virtue of which they could not make applications on time and such other relevant aspects, this Court was of the view that the maximum number of candidates who could be considered [if at all any mischief has been resulted], was the total number of applications received originally by the Institutions, plus the applications rejected by the Institutions and also the applicants who raised complaints before the Committee as to the rejection or loss of opportunity to make applications on time. According to the Committee, the number of complaints is "75" in the case of the petitioner in W.P.(C) No. 32185 of 2016 ; whereas it is "102" in the case of the petitioner in W.P.(C) No. 32186 of 2016. It was accordingly, that a detailed common interim order was passed by this Court on 06.10.2016 ; the operative portion of which as contained in paragraphs 16 and 17, reads as follows:

"16. It is true that there is a stipulation in the notification to the effect that the candidates who have already secured admission in the petitioner's Institutions have also to apply online, to be considered for spot allotment. In so far as the petitioners Institutions are concerned, since applications were preferred "online" and since the website was open till 19.09.2016 (last date for submitting the applications) as stipulated by the Committee based on Ext.P3 revised prospectus and further since the original certificates have already been surrendered by the said students before the petitioners Institutions and the classes have been started it will not proper to compel those students to be present in person before the Commissioner with the original documents. In the said circumstances, it will only be proper to grant liberty to the petitioners Institutions to be present before the Commissioner for Entrance Examinations, (who is also a member of the Committee) with all the relevant records including the particulars of the applications received, those rejected as defective, details of defects, the final rank list of the students concerned and such other aspects to substantiate their case as to the transparency and inter se merit. The alleged satisfaction of inter se merit shall be scrutinised by the Commissioner in the course of said proceedings, while considering the applications including those applications preferred by the students already admitted as aforesaid. This Court makes it clear that the students who have already admitted by the colleges, even if have not submitted any fresh "online" application pursuant to the recent notification issued by the Commissioner shall be considered as valid applicants. It is open for

the Commissioner to verify the proceedings in the light of the relevant records to be produced by the petitioners Institutions and the outcome of the proceedings, effecting/ensuring admission strictly on inter se merit to be finalised tomorrow, shall be made available to this Court as a report, after serving copy to both the sides.

17. Adverse consequence if any pursuant to the orders under challenge shall be kept in abeyance till the matter is finalised by this Court in respect to the petitioners Institutions. Appropriate arrangements shall be made by the Commissioner for Entrance Examinations to have separate treatment in the case of the petitioners Institutions, to the possible extent. List the matters on 13.10.2016."

27. Pursuant to the above order, according to the petitioner Colleges, their representatives were present before the Committee all throughout with all the relevant records, but, only a cursory approach was displayed by the Commissioner, who without verifying whether any violation of inter-se merit was involved in the Management quota, simply added the 35 seats under the Management quota, to the General/Open Merit quota ; leaving 15 NRI seats and made some additions/deletions without any basis. The petitioners contend that, there was no fault or mistake even according to the "CEE" in respect of "70 admissions", whereas only 30 students were found as liable to be removed from the list of Karuna Medical College [W.P.(C) No. 32185 of 2016] and in their place, a list was prepared showing 30 persons, who were to be substituted. This was done, wrongly recording that the petitioner College had not submitted all the relevant documents. In the case of Kannur Medical College, the CEE observed that the documents were not supplied and the authorities of the College, when asked to register their names in the register refused and left the scene in the morning itself. Several other incriminating circumstances are also mentioned therein with reference to non-compliance of the requirements/directions issued by the Committee as per orders passed on different dates. It is stated that the observations, findings and reasoning given by the Commissioner are not at all correct or sustainable. It is also pointed out that an additional affidavit has been filed on behalf of the petitioners on 24.10.2016 [along with I.A. Nos. 16421 and 16422 of 2016 in W.P.(C) No. 30712 of 2016]. Copies of the relevant Trust deeds of the member Trusts/contributories are stated as produced before this Court, however, adding that in view of the interim order passed by this Court on 23.09.2016, only merit based selection was made and no reservation in favour of different Trusts/associations was ever given effect to.

28. With regard to the "fee structure", according to the learned counsel for the petitioner Institutions, the point to be considered is, whether the fees fixed by the college will result in any exploitation. It is not for the Committee to fix the fees, but, the right is vested with the college itself. The fee is fixed based on several factors. The infrastructure facilities in the Government College and the colleges in the private sector are almost the same and hence the Committee

cannot ignore per head cost of the student pursuing the studies in the Government Medical College and the probable expenses payable in respect of such studies in the private self financing institutions. Regulation of fees can be effected by the Committee only after verification of the documents and affording an opportunity, which stage is still to come, submitted the learned counsel.

29. According to Smt. Mary Benjamin, the learned standing counsel for the Committee, the petitioners do not deserve any sympathy at all, who have all along been flouting the orders passed by the Committee at different points of time and also the interim orders passed by this Court. It has been conceded by the Colleges that they did not get sufficient students in the initial rounds of allotment and hence "spot allotment" was made. The Committee had passed a detailed order on 19.09.2016 to the effect that the Institutions had to prepare and maintain a "waiting list" based on inter-se merit and that no spot allotment was to be made otherwise than on the inter-se merit from the waiting list. It is stated that in the case of the Karuna Medical College, as against the merit quota, only 11 students were admitted in the first round of allotment and 39 seats were lying vacant. In the next round of allotment, 11 more candidates came to be admitted, thus leaving 28 seats vacant. Admittedly, these seats have been filled up by "spot allotment" on 28.09.2016 ; which could not have been legally effected by the petitioner Institution, by virtue of the specific orders passed by the Committee. In response to the contention of the petitioner institution that no power is vested with the Committee to scrutinise the proceedings, once the list is given to the University, the learned standing counsel for the Committee pointed out that the position has already been made clear by this Court at different points of time, including as per the decision reported in 2013 (3) KLT 316 [Kerala Private Medical College Management Association v. Admission Supervisory Committee for Professional Colleges] holding that the Committee is having power at all stages. The position has been considered by another Bench of this Court as well as per the common judgment dated 10.04.2015 in W.P.(C) No. 17328 of 2014 and connected cases to the effect that the University is having only a limited role in this regard.

30. According to the learned Standing counsel, execution of agreement is not a matter of concern for the ASC, which may be a matter of consideration for the Government and that the Committee is acting strictly in conformity with the powers and functions in relation to Sections 4, 5 and 6 of the Act 19 of 2006. Same yardsticks have been applied to the petitioner Institutions and also to the Colleges, who have executed agreement with the Government for seat sharing. In response to the contention of the petitioner Institutions that the Committee has already approved Prospectus of the various private Self Financing Institutions, providing for reservation in the management quota, it is stated that, in the case M.E.S., they have surrendered 50% seats to the Government, to be filled up on merit quota, following the principles of reservation. It was accordingly, that 10% reservation in the management quota [i.e. 5 seats] was permitted unlike the position in the last year. Similar circumstance is stated as

prevailing in respect of the other Institutions as well, whose Prospectus has been approved by the ASC. The learned counsel also submits that, though the Trust deeds of all the different entities mentioned in clause 1.6.2 of Prospectus [in respect of Karuna Medical College] have been produced before this Court, apart from Ext. P24, [which is the Trust deed of the petitioner Institution], no provision is brought to the notice of this Court as contained in Ext.P24 to incorporate the different Units/Contributories as part of the petitioner Trust, to invoke Clause 1.6.2 of the Prospectus and for conferring the benefit of reservation. It is also stated that, no dependency is established. 35% reservation provided therein is only for accommodating the members of minority community who runs the Institution ; whereas the seats have been filled up by candidates belonging to various other communities, which is not correct or sustainable having given room for collection of capitation fee.

31. Pursuant to the common interim order dated 06.10.2016 passed by this Court and the exercise pursued by the Commissioner for Entrance Examinations in the spot allotment held on 07.10.2016, separate reports have been filed in both the above writ petitions, followed by an affidavit dated 15.10.2016 in support of the same. The said report in W.P.(C) No. 32185 of 2016 [in respect of the Karuna Medical College] states that, pursuant to the "de-reservation" ordered by the Committee in respect of the 35% Management Quota, for want of clarity/identity/segregation among different groups [which was left intact by this Court while passing the order dated 06.10.2016], the said seats were also considered as part of the merit seats to ensure transparency. The report says that there was no proper co-operation from the part of the petitioner Institution and all the relevant documents were not made available, but for submitting some documents of the choice of the petitioner, that too, without containing all the relevant details. The observations of the Commissioner in paragraph 11 of the report, including as to the various lists/documents submitted by the petitioner Institution are relevant, which are extracted below :

"The proceedings of the Spot Admission Process started at 9.30 am on 07.10.2016 at the Old Auditorium, Govt. Medical College, Thiruvananthapuram. Officials including the Director of Medical Education, the Joint Director of Medical Education and officials representing various Medical/Dental Colleges were also present. The representatives of Karuna Medical College reported at the venue of the Spot Admission and they had furnished the following records.

- (1)List of applications received under Open Quota - 1389 applicants.
- (2)Merit List of applications received under Open Quota - 1389 applicants.
- (3)List of applications received under Management quota - 50 applicants
- (4)Merit list of applications received under Management quota - 50 applicants
- (5)List of applications received under NRI Quota - 20 applicants
- (6)Merit list of applications received under NRI Quota - 20 applicants.

(7)List of candidates allotted and admitted in the 1st and 2nd Online phases and in the Spot Allotment under Open, Management and NRI Quota

(The dates of the respective allotment have not been provided in the list)

[Annexure 14 - copy of lists]

32. After scrutiny, the Commissioner observed that several discrepancies were noted and that only 11 candidates had joined among the 50 open quota seats in the first allotment, whereas in the second round of allotment, another batch of 11 candidates were allotted ; thus leaving 28 seats unfilled, which admittedly were filled up only by "spot allotment". It is also stated that the records furnished as per Annexure A14 by the representatives of the College were not sufficient to ascertain the category-wise allotment of each candidate, the last rank of allotted candidates in each category and the last rank of the merit candidates allotted ; whereas category was seen erroneously mentioned in the final list of the candidates allotted. It is also mentioned in paragraph 14 of the said report that the three officials of the college had informed that all other records were kept in their office and that they would collect it by e-mail. It is further pointed out, in paragraph 15, that even after 7.00 p.m. the officials of the college were not in a position to furnish the documents sought for, but were trying to delay the process, which made the Commissioner to finalise the proceedings based on the available materials.

33. After such scrutiny, the Commissioner observed that inter-se merit was violated by the College and that 30 students were liable to be removed from the list of 100 candidates admitted and that the eligible 30 students identified by the Commissioner had to be substituted in their place, as given under paragraph 16 (g) and (f) of the report. Various other relevant aspects are also referred to in the said report and the Commissioner has sought to direct the Admission Supervisory Committee to scrutinise all the records relating to the 100 seats.

34. In respect of the petitioner in W.P.(C) No. 32186 of 2016 [Kannur Medical College], the learned counsel for the petitioner pointed out that, though the authorities of the College were present on the spot 07.10.2016, no student had turned up before the Commissioner seeking for any admission in the petitioner's College during the spot allotment held on 07.10.2016, thus contending that nobody was having any grievance with regard to the admission. According to the Commissioner, as contained in his report dated 13.10.2016, the petitioner college took the process only in a cursory manner and did not produce the relevant records, but for submitting "five lists" of their choice as detailed in paragraph 12, which is reproduced below :

"12. The proceedings of the Spot Admission Process started at 9.30 am on 07.10.2016 at the Auditorium, Govt. Medical College, Thiruvananthapuram. Officials including the Director of Medical Education, the Joint Director of Medical Education and officials representing various Medical and Dental Colleges were also present. The representatives of Kannur Medical College, Anjarakkandy,

Kannur reported at the venue of the Spot Admission only at 11.30 am and they furnished the following records.

1. List of total applications received (without NEET rank and Roll. No) - 448 applicants.
2. List of disqualified applications : 7 applicants.
3. Category-wise Merit list (without NEET rank and Roll No.) - 448 applicants
4. List of candidates admitted - 150 candidates
5. List of students registered with KUHS - 150 candidates

[Annexure 14 - copy of lists]

The persons who claimed to be the representatives of the college didn't furnish the letter of authorisation from the college authorities. When they were asked to register their attendance, they immediately left the counselling hall around 12"O clock without registering their attendance.

It is stated that the so called lists produced by the petitioner college did not contain the relevant/most valid information, particularly, as to the NEET rank, Roll No. and such other details of the candidates. There were several discrepancies, such as, duplicate entry of candidates, mis-match of roll Nos. in the NEET, erroneous entry of NEET rank etc. It is also stated that, though the Admission Supervisory Committee had furnished the list of complainants, their eligibility could not be ascertained due to the fact that the NEET rank of the candidates was not furnished by the College. As mentioned in paragraph 12 of the report extracted above, when the authorities of the College were asked to register their attendance, they immediately left the premises around 12"O clock, without registering their attendance.

35. During the course of hearing, an attempt was made by the learned counsel for the petitioner Institution, with reference to the contents of the counter affidavit and also the documents produced, particularly Ext. P14 e-mail, that the NEET rank or the roll number did have no relevance in deciding the merit of the candidate and that it was only after 7.00 p.m. that the representatives of the College were asked to provide the roll No. of the candidates. On the basis of such request, it is stated that the roll Nos. of the candidates were supplied by way of e-mail at "8.01 p.m". It was submitted that, this by itself was a piece of evidence to show that the authorities of the college were present then and there and further that, the defects noted were only minor mistakes or clerical errors. Ext. P14 e-mail of course shows the time and origin, but, the same cannot be treated as of any evidential value to show that authorities of the college were present at that time i.e. 8"O clock on 07.10.2016. If the petitioners were required to furnish the relevant particulars and they were having the relevant records, it could have been submitted it then and there and there was no need, necessity or occasion to have it sent by e-mail. Even though an opportunity was

given by this Court in the last round exercise, to save the admissions, if the same was correct and sustainable, the said opportunity is not seen effectively utilised by the petitioners.

36. By virtue of the relevant provisions under the Act 19 of 2016, the power to scrutinise the validity of the admissions maintaining transparency and merit based selection, avoiding any element of profiteering/collection of capitation fee, is vested with statutory authority i.e. upon the Committee [Admission Supervisory Committee as well as Fee Regulatory Committee]. With regard to the Admission, the question to be considered is ; whether the necessary steps in this regard were pursued by the Institution, in conformity with the orders [to the extent they are unchallenged] passed by the Committee to govern the field and the Prospectus approved by the Committee. As mentioned already, it was clearly stipulated that the applications had to be received only online ; that all the particulars had to be published in the website, (including the particulars of the applications received, particulars of the defects, if any, particulars of the list finalised and such other aspects). What were the defects pointed out and how the students concerned were given opportunity to rectify etc., are not discernible from the pleadings/proceedings filed by the petitioner Institutions. The burden was very heavy upon the shoulders of the petitioners, more so, when it was for them to have established the transparency and fairness at all levels, particularly, when their deeds had never come to the scrutiny of the Government, for having not executed any agreement, which is one of the methods to assess transparency as made clear by the Apex Court. If any application has been received by any mode other than "online", such application has to be rejected and admission given to such candidate is liable to be cancelled. But for that reason, this Court does not find it necessary to have the entire admission process cancelled, as ordered by the Committee, vide impugned orders, to be taken over by the Commissioner for Entrance Examinations. If the admissions have been actually effected by the College after obtaining application through "on line" and strictly based on inter-se merit, such admissions are liable to be saved to the said extent, protecting the rights and interests of eligible students. The power to scrutinise the relevant records or conduct an enquiry under Section 4 (7) of the Act is obviously vested with the Committee and not solely on the Commissioner, though he happens to be a member of the Committee. It is accordingly, that the Commissioner has rightly made a mention in his report filed before this Court, that the proceedings might be caused to be scrutinised by the Committee, giving the particulars of 30 candidates identified by him as eligible to be substituted based on inter-se merit, in the list of 100 students stated as admitted, after deleting the students who have already been admitted ; but found ineligible. This Court is of the view, that this exercise has to be done by the Committee immediately, taking the proceedings to a logical conclusion, as to who all are eligible to continue ; who are to be deleted from the list finalised by the college and who are to be substituted in their place ; limiting the said exercise among the persons already admitted by the College, the 69 candidates

considered by the Commissioner on 07.10.2016 [leaving out 12 candidates who have already secured admissions elsewhere and two candidates who were found as not eligible under the zone of consideration] and the relative claims of the petitioners in W.P.(C) Nos.32257 and 33291 of 2016. Impleading petitioners in the different I.As filed before this Court are the candidates who are stated as found eligible by the Commissioner, to be substituted in the place of the 30 identified/ineligible candidates.

37. Coming to the question of reservation in the Management Quota effected by the petitioner colleges, no factual particulars have been brought forth by the Kannur Medical College [petitioner in W.P. (C) No. 32186 of 2016] before this Court to sustain their cause of action. In the case of the petitioner in the other case [W.P.(C) No. 32185 of 2016 - Karuna Medical College], though copies of the Trust deeds of the different entities as mentioned in Clause 1.6.2 of the Prospectus have been produced before this Court [besides producing copy of the Trust deed of the petitioner establishment as Ext. P24], the connection between Ext. P24 and the other Trust deeds is not referred to or established. It is also an admitted fact that there is no difference in the fee structure between the "Open quota" and the "Management quota" candidates. The reservation under the "Management quota" is intended to the dependents/members of the minority community, who established the college, whereas the admissions stated as given by the petitioners in the said category includes several others as well. That apart, it has been conceded by the petitioner in para 12 of the affidavit dated 23.10.2016 filed along with I.A. 16421 and 16422 of 2016 in W.P.(C) No. 30712 of 2016 that, in view of the interim order dated 23.09.2016, the stipulation for reservation has not been given effect to and that admission has been made based on the inter-se merit among the persons eligible. Considering the facts and circumstances and the sequence of events, this Court finds it just, fit and proper to hold that the order passed by the Committee ordering "de-reservation" and to have the vacancies filled up on merit basis, does not warrant any interference. The interim order passed by this Court on 23.09.2016 is made absolute. This is equally applicable in the case of both the petitioner Institutions.

38. The learned counsel for the petitioner Institutions submitted that there is no merit in branding the petitioners as belligerent litigants and that the petitioner Institutions are having every right to contest the matter, if any order is passed detrimental to their rights and interest. The learned counsel pointed out that, in the earlier rounds of litigation, the Committee had sought to intrude into the field of admission even without any complaint and hence it was subjected to challenge then and there. In respect of the current academic year, since there were complaints, which, according to the petitioners, though are not correct or sustainable, by virtue of the power of the Committee, it could be caused to be scrutinized, however, adding that such scrutiny might be restricted to 30 students identified by the Commissioner, as no lapse/fault was found in respect of others by the Commissioner [in the case of Karuna Medical College]. In view of the decision already made as to the nature of complaints, sequence of events,

admitted failure on the part of the petitioners in causing the publication of the details in the website of the Committee in terms condition No. (ii) of the agreed interim order passed by this Court on 26.08.2016 and the admitted lapse as to the non-publication of the corrected Prospectus in the website of the college and such other circumstance brought on record, this Court is of the view that there is failure/lapse on the part of the petitioners and the entire admissions are liable to be scrutinised by the Committee to ensure that admission was conducted in a fair and transparent manner without any element of profiteering. The ineligible candidates are to be weeded out and only the eligible persons are to be permitted to pursue the studies. It is ordered accordingly.

39. With regard to the "Fee structure" as well , we find it appropriate to make the interim order dated 23.09.2016 absolute and in view of the observations already made, it is for the petitioner Institutions to substantiate the facts and figures before Fee Regulatory Committee, to sustain the fees sought to be realised from the students as contained in the Prospectus and provisionally permitted to be collected by this Court, as per the interim order. It is for the petitioner Institutions to produce the audited balance sheets as to the income and expenditure for scrutiny and verification. Based on the records to be produced, a final decision shall be taken by the Committee, of course, after affording an opportunity of hearing to the petitioner Institutions and the annual tuition fee shall be finalised accordingly. If the Committee finds that the annual tuition fee stipulated in the Prospectus and provisionally collected by the Institution is more than the requisite extent, as fixed by the Committee, the residual portion shall be caused to be reimbursed to the concerned students or permitted to be set off against the fees payable in respect of future years. The Bank Guarantee, if any, furnished by the students shall be caused to be got modified to the said extent. This exercise has to be finalised at the earliest.

40. It is true that the last date for effecting the admissions to Medical Colleges was stipulated was 30.09.2016, which however was extended by the Apex Court as mentioned already to 07.10.2016. It was accordingly, that the spot allotment was permitted to be effected on 07.10.2016. A doubt may arise as to whether more meritorious candidates, if any, but left out [as identified by the Commissioner in the spot allotment on 07.10.2016] could actually be admitted, since the last date for admission, i.e. 07.10.2016 is already over.

41. The question whether the last date stipulated as 30.09.2016 is ultimate or not had come up for consideration before the Apex Court in *Asha v. Pt. B.D. Sharma University of Health Sciences and Others* [AIR 2012 S 3396 : (2012) 7 SCC 389]. The questions considered therein, as dealt with in paragraph 5, are in the following terms.

"5. The questions are :-

(a) Is there any exception to the principle of strict adherence to the Rule of Merit for preference of courses and colleges regarding admission to such courses ?

(b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception ?

(c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations ?

(d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this court governing the subject ?"

42. These questions have been answered by the Apex Court, as contained in paragraph 31 which is reproduced below :

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer *Arti Sapru and others v. State of J. and K. and others* [(1981) 2 SCC 484] : (AIR 1981 SC 1009); *Chavi Mehrotra v. Director General Health Services* [(1994) 2 SCC 370] ; and *Aravind Kumar Kankane v. State of UP and others* [(2001) 8 SCC 355] : (AIR 2001 SC 2800 : 2001 AIR SCW 2851).

43. Applying the above position to the given set of facts and circumstances, this Court is of the view that the right of an eligible candidate, if there is no fault on

his side, shall not be refused to be acted upon, if it is because of the wrong process and procedure adopted by the concerned college, if such deed/misdeed is established, which otherwise will only give premium to the wrong-doer. The eligible/ineligible persons have already been identified, well within time i.e. on 07.10.2016, which was the last date/extended date for admissions. The rest is only a verification and confirmation as a consequential exercise to be done by the Committee. Further, in the instant case, there is a clear direction given by the Supreme Court, while considering the challenge against the interim dated 23.08.2016 passed by this Court and finalising the SLP preferred by the Union of India as per Ext. P16 order produced by the petitioner W.P(C) No. 32185 of 2016. Condition No. (i) of the said interim order was intercepted by the Apex Court on 28.09.2016, holding that, counselling was not to be done by the individual colleges and that centralised counselling was the intent. The Apex Court observed that, no interference was being made with the admissions already effected, however making it explicitly clear in the last paragraph [unnumbered 7th paragraph] as follows :

"This issue shall be finally thrashed out and decided by the High Court in the writ petitions which are pending before it. "

In the light of the above direction given by the Apex Court, it is obligatory for this Court to see that proceedings are to be taken to a logical conclusion and there is a corresponding duty to the Admission Supervisory Committee as well, to give effect to the said order passed by the Apex Court and finalise the process of admission, ensuring fair play/merit/transparency/inter-se merit etc.

44. The last question to be considered is, with regard to the alleged violation of the various orders passed by the Committee at different points of time and the interim orders passed by this Court as well. Many of the orders passed by the Committee at different points of time are not under challenge. It was to ensure fair-play and transparency, maintaining inter-se merit and to avoid instance of any capitation fee, that the necessity to submit application only "on line" was stipulated, firstly as per order dated 04.08.2016. This was incorporated as part of the conditions in the interim order dated 23.09.2016 passed by this Court in W.P.(C) Nos. 30697 and 30712 of 2016. It was further stipulated in the order dated 06.09.2016/09.09.2016 passed by the Committee while approving the Prospectus of the petitioner Institutions and reiterated in the subsequent order dated 10.09.2016, while passing the revised order approving the Prospectus. This was insisted in the subsequent order dated 15.09.2016 as well. It is asserted by the petitioners that they have accepted application only "on line" (which has to be substantiated before the Committee by producing copies of the print outs showing the date and time of filing the application and by such other means). No materials or proof is produced before this Court, despite the vehement denial and assertion made by the Committee. It was also directed by the Admission Supervisory Committee, that revised Prospectus shall be published and that application shall be invited accordingly with regard to the objected

clauses ; particularly as to "reservation" and such other relevant aspects. Even though there is a case for the petitioners that "revised prospectus" was issued, it was conceded during the course of arguments, that no such revised prospectus was published on the web site. It is equally important to note that as per the notification issued by the petitioner Institution [Karuna Medical College] on 14.09.2016, it was mentioned that filling up of the vacancies in the "Management quota" will be made only as per the norms already notified, which runs contrary to the orders passed by the Committee as on that date. Though it could be said that petitioners wanted to challenge the stipulation regarding the "de-reservation" and in fact it was challenged by filing W.P(C) Nos. 30679 and 30712 of 2016, along with the challenge against the reduction of fees, the order passed by the Committee was not intercepted with regard to the "de-reservation". But what disturbs this Court equally or more is with regard to the course and procedure pursued by the petitioner Institutions as to the interim order dated 23.08.2016, particularly "condition No.(ii)". As per this condition, it was very much obligatory for the petitioners to have uploaded all the applications stated as received online, to the notice of the Admission Supervisory Committee to have it scrutinized, immediately after the last date for submitting the applications. Had the proceedings been duly notified by the Colleges to the notice of the Admission Supervisory Committee then and there, giving effect to the various orders to the extent they were unchallenged, the proceedings could have been pursued and finalized, without much difficulty, enabling all concerned, to understand their position. It is also relevant note that the version of the Committee that the so called lists stated as produced before the Commissioner [pursuant to the interim order passed by this Court on 06.10.2016] were not made available before the Committee for scrutiny and no material has been produced before this Court as well, to show it, if otherwise. There are several lapses on the part of both the petitioner Institutions, which has spoiled much time of this Court as well, besides that of the Committee and the Governmental authorities, including the Commissioner. As mentioned already, the interim order dated 26.08.2016 passed by this Court was "an agreed order" as clearly reflected from Condition No. (ii) therein and as such, the laxity on the part of the petitioner Institutions to give effect to the same in the right spirit and perspective cannot, but be deprecated in the strongest possible words, which should attract heavy cost ; which however is limited to Rs. 1,00,000/- each [Rupees One lakh only by each of the petitioner institutions].

In the above facts and circumstances, all the above writ petitions are disposed of in the following terms :

The interim order passed by this Court on 06.10.2016 with regard to the course pursued by the Committee effecting "de-reservation" of the Management quota seats is made absolute.

It shall be for the Admission Supervisory Committee to scrutinise all the relevant records to be produced by the petitioner Institutions with regard to the entire

admissions made by them in respect of the 100 seats and other concerned as mentioned above, including the copies of applications stated as submitted "online" and weed out the applicants, if any, came through other modes.

Right of the eligible students to get admitted, based on the inter-se merit among the students already admitted by the petitioner Institutions and those identified by the Commissioner for Entrance Examinations in the spot allotment held on 07.10.2016 and the relative claim of the petitioners in W.P(C) Nos. 33291 and 33257 of 2016 shall be considered and finalised by the Committee after hearing the petitioner Institutions.

The petitioners shall produce all the relevant records in connection with the admissions as aforesaid before the Committee by 10.00 am on 31.10.2016 and the proceedings shall be finalised by the Committee at the earliest.

With regard to the fee structure, the petitioner Institutions shall produce audited balance sheet and such other relevant records, for the relevant years, as called for by the Committee, for regulating the fees in terms of the provisions of the Act 19 of 2006, within two weeks from the date of receipt of a copy of this judgment.

The Committee shall finalise the proceedings with regard to the regulation and fixation of annual fee payable by students concerned within a further period of three months, of course, after affording an opportunity of hearing to the petitioner Institutions.

If the Committee finds that the Annual Fee finalised by the Committee after perusing the relevant records and after hearing the petitioner Institutions is less than the fee stipulated in the Prospectus and collected from the students concerned, further course of action shall be provided, either to cause the excess to be refunded or set off against the annual fee payable for the future years.

Necessary orders shall also be passed for causing the Bank Guarantee, furnished by the students concerned with regard to the satisfaction future annual fee, to be modified to an appropriate extent.

Consequential orders shall be issued by the Committee with regard to the registration of the eligible students by the Statutory authorities concerned.

The petitioner Institutions shall satisfy the cost ordered @ Rs. 1,00,000/- each (Rupees One lakhs each] each to the Kerala State Mediation and Conciliation Centre, Ernakulam within one month, failing which, necessary certificate shall be issued by the Registrar General to the beneficiary concerned for realisation of the amount by way of appropriate steps.

Considering the larger public interest involved and to safe guard the rights and interest of the students and others at large, it shall be incorporated hereafter in the Prospectus of all concerned, that particulars of applications [to be submitted only "online"], schedule of dates in respect of the various steps/procedures in connection with the admission, particulars of the defects noted, if any, date

enabling the students to rectify the defects, particulars of rejection of application, if any, with reasons, particulars of the list of admitted students, in the different rounds of allotment ; "Waiting list" of the candidates on inter-se merit to be considered for spot admission in respect of the vacancies, if any, resulted on or before the cut off date etc. shall be simultaneously published in the website of the Committee as well, along with publication to be effected in the website of the College. Necessary orders in this regard shall be incorporated in the "Order of Approval" of the Prospectus and it shall be a part of "Agreement", if any, executed between the self-financing institutions and the Government and also the relevant G.O.s if any, issued in this connection.

sd/-

P.R. Ramachandra Menon, Judge

sd/-

P. Somarajan, Judge

The following corrections are made in the judgment dated 28.10.2016 in W.P.(C) No. 30697/2016 and connected cases, vide order dated 01.11.2016 in W.P.(C) No. 30697/2016 and connected cases :

- i. The year "2013" appearing in the first sentence of paragraph 4 starting with "While challenging the power and competence....." stands corrected as "2014".
- ii. The year "2014 -"15" appearing in the 3rd sentence of paragraph 14 starting with "The learned counsel submitted" stands corrected as "2013 - "14".
- iii. The "Act 19 of 2016" appearing in the last sentence of paragraphs 4 [at page No. 5] and 17 [at page No. 20] stands corrected as "Act 19 of 2006".
- iv. The date of order passed in W.P.(C) Nos. 26542 and 26759 of 2015 shown in the first sentence of paragraph 18 starting with "After hearing both the sides,....." as "23.09.2016" stands corrected as "23.09.2015"
- v. The date "06.10.2016" appearing in the first portion of last paragraph [direction portion - at page 59] starting with sentence "The interim order" stands corrected as "23.09.2016".