

(2014) 09 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5554 of 2014

Punjab Private Self Financed Dental College Association	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Baba Farid University of Health Science Act, 1998 — Section 6(xvii)
Constitution of India, 1950 — Article 14, 142, 15, 15(5), 19
Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee Regulation of Admission Fixation of Non-Exploitative Fee and other Measures to Ensures Equity and Excellence) Act, 2007 — Section 13
Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 — Section 10, 2(b), 2(e), 2(h), 3, 3

Citation : (2015) 1 SCT 571

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Rajiv Atma Ram, Senior Advocate, Arjun Partap Atma Ram and K.V. Aggarwal, Advocates for the Appellant; Aman Bahri, Addl. A.G, Advocates for the Respondent

Judgement

Gurmeet Singh Sandhawalia, J.—The present judgment shall dispose of two writ petitions i.e. CWP Nos. 5554 of 2014 and 16236 of 2013 titled Genesis Institute of Dental Sciences & Research v. State of Punjab & another, as common questions of facts and law are involved in both the writ petitions. Facts are being taken from CWP No. 5554 of 2014, Punjab Private Self Financed Dental College Association v. State of Punjab and others. The present writ petition has been filed challenging the decision dated 31.12.2013 (Annexure P8) whereby, the respondent-State has rejected the representation of the petitioner for exempting it to conduct its own entrance test for admissions to MBBS and BDS courses for the academic session 2014 on account of the fact that admission is to be given on merit on the basis of the common entrance test AIPMT 2014 which was conducted on 04.05.2014 by the Central Board of Secondary Education (in short

"CBSE"). Resultantly, challenge has also been laid to the letter dated 05.11.2013 written by the Government to the CBSE whereby, it gave its willingness to participate in the AIPMT and the public notice issued on 07.11.2013 wherein, it was mentioned that admission to the State quota (85% seats) would be based on merit in the common entrance test AIPMT-2014. The notifications dated 19.12.2013 and 23.12.2013 (Annexures P-5 and P-6), pertaining to post-graduate diploma courses and the authorization to Baba Farid University-respondent No. 3 to hold the said test for MBBS/BDS courses vide notification dated 07.03.2014 (Annexure P9) are also subject matter of challenge.

2. The pleaded case of the petitioner is that it is an association of Private Self Financed Dental Colleges and all private medical and dental colleges are associated with it and it is invoking the extra ordinary writ jurisdiction of this Court. The admissions to medical and dental colleges was being done by the Baba Farid University of Health Sciences (BFUHS). It was pleaded that on 05.11.2013, respondent No. 1 gave its consent for participating in All India Pre Medical/Pre Dental Entrance Test (AIPMT) to be held on 04.05.2014 for filling up 15% All India quota seats. With regard to the 85% State quota seats, a public notice was issued on 07.11.2013 (Annexure P3) that admissions in all Government/Private colleges for MBBS/BDS courses would be based on merit of AIPMT. The petitioner being a body/association of the private medical colleges, was entitled for giving its choice for conducting its own examination as per directions of the Apex Court in Priya Gupta Vs. State of Chhatisgarh and Others, and accordingly, a representation was filed on 26.11.2013 (Annexure P-4) for conducting its own entrance examination. Without considering the representation, notification dated 19.12.2013 was issued for admission in Post Graduate course (Dental Science) for session 2014 on the basis of merit obtained in All India Post Graduate Dental Exam (AIPGDEE) and authority to conduct centralized counseling was given to respondent No. 3-Baba Farid University of Health Sciences. Similarly, notification dated 23.12.2013 (Annexure P6) was issued for admission in Post Graduate Degree/Diploma courses in the Health Sciences Educational Institutions (Medical) for the session 2014 on the basis of merit in the All India Post Graduate Medical Entrance Examination (AIPGMEE-2014). A public notice was also issued that admission would be based on the common entrance test to the Post Graduate Courses in Dental Colleges/Private Institutes in the State of Punjab on the strength of the Examination conducted on 04.05.2014 by the All India Institute of Medical Sciences, New Delhi (its acronym, "AIPGDEE"). The representation of the petitioner was rejected on 31.12.2013 (Annexure P8) and thereafter vide notification dated 07.03.2014 (Annexure P9), notification with regard to admission to MBBS/BDS courses has also been issued on the basis of merit in AIPMT to the Medical/Dental Institutes in the State of Punjab including the ones affiliated to private universities.

3. The State, in its reply, took the plea that the Baba Farid University was the only university which was empowered to make admissions to medical/dental

colleges in the State of Punjab under Section 6(xvii) of the Baba Farid University Act, 1998. Subsequently, The Punjab Private Health Sciences Educational Institutions (Regulations of Admissions, Fixation of Fee and Making of Reservations) Act, 2006 (in short "2006 Regulation Act") was enacted in pursuance of the decision of the Hon'ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, . Section 3(3) of the 2006 Act empowered the State Government to notify the procedure for admission in Private Health Sciences Educational Institutions in a fair and transparent manner on the basis of inter se merit determined by the Common Entrance Test. Reliance was placed upon Full Bench judgment of this Court in Navdeep Kaur Gill and Others Vs. State of Punjab and Others where the validity of the 2006 Act had been upheld. Reference was also made to a Division Bench judgment of this Court in Punjab Private Unaided Medical and Dental Colleges Association and Others Vs. State of Punjab and Others, whereby, centralized admissions had been favoured. The judgment in Priya Gupta's case (supra) was distinguished as it only provided that there should be transparency in making admissions and there should be a uniform pattern. P.A. Inamdar's case (supra) clearly mandated the State to make regulations for providing a common entrance test which could pass the test of Article 19(6) of the Constitution of India. It was accordingly averred that in the larger interest and welfare of the student community and in order to promote merit, achieve excellence and avoid malpractice, it is permissible to regulate admissions by a single window procedure to a great extent which secured grant of merit based admissions on a transparent basis.

4. In the replication filed by the petitioners, reliance was placed upon Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others, and Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others, 2012 (2) S.C.T. 595 : (2012) 4 SCC 701 to submit that the Association was entitled to hold separate entrance examination. Reliance was also placed on various observations made in P.A. Inamdar's case (supra) and T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . The Full Bench judgment in Navdeep Kaur Gill's case (supra) was sought to be distinguished as it was in regard to the fee fixation whereas the Division Bench judgment in Punjab Private Common Aided Medical and Dental Colleges Association's case (supra) was pertaining to filling up of management category seats.

5. Counter affidavit was filed by the State saying that the judgments were not applicable to the facts of the case since the 2006 Act had come into force which was not under challenge and the provisions of the said Act were legal and valid and held the field. Vide letter dated 24.09.2013 written by the Joint Secretary of the CBSE (Annexure R-1), the consent had been sought to participate in the AIPMT-2014 for admission to MBBS/BDS courses. The State had given its consent on 31.10.2013/05.11.2013 (Annexure R2) for the AIPMT which was to be conducted on 04.05.2014.

6. In the connected writ petition i.e. CWP No. 16236 of 2013, challenge is being laid to Clauses 17 and 24(c) of the notification dated 05.06.2013 (Annexure P-2) whereby, the admission to private institutes has been regulated on the basis of the NEET-UG-2013 merit and the admission fees is to be paid by the candidate in favour of the Baba Farid University, Faridkot apart from the prayer that the petitioner be entitled to conduct admissions of management quota including the NRI seats at its own level in accordance with law and to collect fees. Therefore, the issue is the same in both the cases, namely, whether the unaided institutes are entitled to hold an independent common entrance test for admission to medical courses.

7. Senior counsel for the petitioner, Mr. Rajiv Atma Ram, has vehemently submitted that the petitioner-association has a right to hold an independent common entrance test and thereafter to admit on the basis of the same and placed reliance upon the observations of the Apex Court in P.A. Inamdar's case (supra). It is submitted that as per the provisions of the 2006 Act, 50% of the seats are to be management quota seats and they are to be filled up by the college itself and the same had to be filled up by holding a common entrance test on its own whereas by virtue of Annexure P-3, the public notice dated 07.11.2013, admission to all 85% seats of the State quota were being filled up on the strength of the AIPMT which was not permissible. Reliance was also placed upon the judgment of the Apex Court in Christian Medical College Vellore v. Union of India, 2014 (2) SCC 393 to submit that the Apex Court had quashed the NEET conducted by the Medical Council of India/Dental Council of India and that the Full Bench was impliedly overruled by the said judgment. Reliance was also placed upon Priya Gupta's case (supra) and Modern Dental College and Research Centre's case (supra) alongwith judgment of a Division Bench in Pushpa Giri Medical Society v. State of Kerala decided on 04.01.2007 Accordingly, it is submitted that there is no need to challenge the 2006 Act and the relief sought was as per the provisions of the said Act. Reliance was placed upon the affidavit filed by the State to submit that the State had admitted that as per Section 2(e), institutions could fill management quota seats in a fair and transparent manner on their own in the presence of representatives of the authorities. Reliance was also placed upon directions issued in Self Financed B.Ed. Colleges Association, Punjab & another v. State of Punjab & another 2011 (1) S.C.T. 403 : 2011 (1) RSJ 724 and CWP No. 2196 of 2010 titled as Association of Punjab Self Finance College of Education, Mohali & another v. State of Punjab & another decided on 07.07.2010. The 1996 Regulations of Dental Council of India which provided selection by way of merit in qualifying examination were referred to and the fact that the petitioners had opted for a common entrance test as per Priya Gupta's case (supra) and para Nos. 44 and 45 of Full Bench judgment in Navdeep Kaur Gill's case (supra) were referred to, to submit that the case pertains to fixation of fees and the same was not applicable.

8. Mr. Aman Bahri, Addl. A.G., Punjab, on the other hand, very earnestly

projected that the right to conduct the test for unaided institutes had been given to the States and the directions were to be applicable till appropriate legislation was made. It was, accordingly, submitted that once the 2006 Regulations Act came into force, the same would be applicable even to the unaided institutes. Reference was made to the objects and reasons of the Act, to show that there was power to regulate admission and the "Authority", authorized by the State Government was to regulate the admission. The Common Entrance Test which was to be held and admission was to be regulated according to the rules and control was according to the provisions of the Act which did not amount to controlling and running of the institutes and it would only lead to fairness and transparency. It was, accordingly, submitted that in the absence of any challenge to the vires of the Act, which was upheld in Navdeep Kaur Gill's case (supra) by the Full Bench, the State was well justified in holding the common entrance test. Reference was made to the Division Bench judgment passed in the case of Punjab Private Self Financed Dental College Association (supra) to submit that the view had been upheld till the Apex Court and only permission had been given by the Apex Court to file a review, which was subsequently dismissed being infructuous on account of the fact that the academic session was gone by. Accordingly, it was submitted that in Priya Gupta's case (supra), the issue of making admission on the last date was dealt with and a time-frame was fixed and certain observations were made, but no statute, as such, had been discussed and therefore, no right had been given to the privately managed institutes to hold the test. Reference was also made to the observations that if two tests were held within the State, option was to be made for the same before the cut off date for one of the tests, without any such absolute right having been given.

9. Similarly, on issue No. 2, regarding the management quota category, as per Section 2(e), it was submitted that there has to be notification in the official gazette for filling up of the seats by the institutes in a fair and transparent manner by the Department through the common entrance tests. Only aided minority institutes could reserve for themselves the maximum of 33% of the seats of the total sanctioned intake, as per management quota seats whereas under Section 5(4) of the 2006 Regulations Act, the unaided private health sciences educational institutions could only reserve 50% of the total intake from the management quota seats. Section 6 of the Act also provided for reservation in health sciences institutes which provided that for advancing of socially backward classes of citizens or Scheduled Castes/Scheduled Tribes and that there shall be reservation as notified by the State Government in the official gazette. The proviso provided that there would be no reservation to the minority category seats in the minority private health sciences educational institutions. Accordingly, reference was also made to Article 15(5) as per the 93rd amendment of the Constitution of India which gave the power to the State to provide reservation in the non-aided institutes, which was upheld by the Apex court in Indian Medical Association Vs. Union of India (UOI) and Others, to submit that once the law was in place, the legislation was to be seen.

10. Senior Counsel for the Dental Council of India, Mr. Gurminder Singh, submitted that the prayer in the connected case was limited to the extent that it was for quashing of Clause 17 and 24(c) of the notification dated 05.06.2013 which got its strength from the statute under Section 5(4) & 5(5) and the said statutes had been incorporated after P.A. Inamdar's case (supra). It was permissible for the State Government which had power under Entry 25 List III of the 7th Schedule of the Constitution of India, which was concurrent list and there was no challenge to the parent provision and therefore, there could be no conflict with the language of Section 3 by which the State Government could regulate the process of admission, fixing of fees and make reservation and under Sub-clause (3) procedure was to be notified by the State Government and it could exempt the minority institutes. Section 3(5) further provided that the exemption granted under Section 4 permitted the minority institutes also to conduct a separate test in a fair, transparent and non-exploitative manner, which was the "Triple Test" laid down by the Apex Court. Under Section 4(2), the authority was authorized by the State Government to hold the common entrance test, except for those institutes which were specifically exempted from such tests. Clause 17 & 24(c) which were being challenged, pertained to the management quota seats and admission had to be made by the Admission Committee, headed by the Principal of the Institute concerned and of the representative of the Government, strictly on the basis of percentile merit, in the NEET-UGC, 2013 and therefore, it was only a regulatory measure.

11. After hearing counsel for the parties, it is necessary to refer to the historical constitution judgments of the Apex court, firstly, to necessarily understand the observations made therein, in the factual context and the legislative intent, thereafter, of the 2006 Regulations Act, which has, obviously, been put in place in view of the observations of the Apex Court. The Apex Court in the case of T.M.A. Pai Foundation (supra), while dealing with the subject of private unaided non-minority educational institutions, held that it was one of the most dynamic and fastest growing segments of post-secondary education. The ideology of privatization had contributed to the resurgence of private higher education institutes and they had a right to admit students, to set up reasonable fee structure, to constitute a governing body and to appoint staff and take action against the employees. Stress was laid upon the prevention of maladministration and the fixing of any right fee structure. Their right to charge fee was held not to be absolute since it was held that education, as such, is to be regarded as charitable and Government could provide regulation to provide excellence in education, forbidding the charging of capitation fee by the institutions and for the purpose of making admission to unaided institutions. The holding of examinations for determining merit for admission to professional and higher educational colleges was, accordingly, projected by holding that there should be a common entrance test, conducted by the institutes or in the case of professional colleges, by Government agencies. Relevant observations read as under:

"57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

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

12. Similarly, a discussion was also made to the regulations which were to be framed for the private unaided professional institutes and it was held that certain autonomy was to be granted in their administration but they could not forgo or discard the principle of merit and they had to be given sufficient discretion in admitting the students. Relevant observations read as under:

"67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be

reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentage can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post-graduation nonprofessional colleges or institutes."

The said judgment was followed by *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, .

13. Similar issue came up for consideration for the academic session 2002-03 in *Desh Bhagat Dental College & Hospital, Muktsar & others v. State of Punjab & others*, 2004 (1) S.C.T. 121 : 2004 (1) PLR 166 wherein, public notice had been issued for conducting admissions to the BDS course and the petitioner had made admissions prior to the said public notice and being aggrieved by the public notice including it, in the notification, challenged the same. The public notice was on the strength of the notification issued by the Department of Medical Education & Research (Health-III), Punjab. The public notice was challenged on the ground that the right to fully administer and admit students of private institutions could not be curtailed, placing reliance upon *T.M.A. Pai's* case (supra). It was held that even unaided privately managed institutions do not have the right of filling up the seats even in the management quota by devising a procedure or by admitting students through a combined entrance test. Relevant observations read as under:

"It is apparent from the conclusions drawn by the Apex Court that in an unaided, privately managed, professional colleges, admissions to students (for seats other than the seats reserved for the management quota) can only be on the basis of merit determined in a common entrance test conducted collectively for all such colleges either by themselves or by an agency nominated by the government. Under the notification issued by the Government of Punjab, Department of Medical Education and Research (Health-III Branch) dated 10.5.2002, admissions to the first year BDS course for the academic session 2002-03 have to be made on the basis of marks obtained in the PMET-2002 conducted by the Medical University. The notification dated 10.5.2002, vests eligibility for taking the common entrance test only in such candidates who fulfill the minimum standards prescribed by the Dental Council of India. No combined test was held by the institutions collectively at their own level, for the academic session 2002-03, there is, as such, no escape from the merit list prepared on the basis of the PMET-2002. In the background of the aforesaid factual position, admissions (to seats other than those allotted to the management quota) could only have been made by the petitioner-college out of students who were allotted to it by the

Medical University on the basis of their merit in the PMET-2002.

10. In so far as the management quota is concerned, the question that arises for consideration in this case is whether the admissions made by the petitioner-college at its own level without reference to the combined entrance test, can be acceptable for the management quota? The answer to the aforesaid question has been rendered indirectly by the Apex Court in Islamic Academy of Education's case (supra) in paragraph 13 of its judgment (already extracted above). Observations were made by the Apex Court in respect of admissions in the management quota for institutions enjoying privileges under Article 30 of the Constitution of India i.e. in respect of minority (religious or linguistic) institutions. Even for such institutions, it has been held that admissions to the management quota must be based on merit determined in the combined entrance test. A minority institute can fill up the management quota seats by confining the students admitted against the said quota to students belonging to the particular minority (religious or linguistic) which manages the institute. Even in doing so it is required to make its choice from the merit list prepared on the basis of the combined entrance test, by picking out a candidate higher in the merit list in preference to a candidate lower down in merit. In other words, even a minority institution has not been permitted to admit students by adopting an admission procedure of its own choice. There is, therefore, no question of an institution like the petitioner, which does not enjoy the protection of Article 30 of the Constitution of India, to effect admissions to a professional course without reference to merit determined in the combined entrance test. It is, therefore, inevitable for us to return a finding that an unaided privately managed institution like the petitioner college does not enjoy the right of filling up seats even in the management quota, by devising its own procedure, or by ignoring the merit of candidates determined through the combined entrance test. We, therefore, find no-merit in the first contention of the learned counsel for the petitioner college that the petitioner-college is free to make admissions by evolving its own merit criteria and/or without reference to the PMET-2002.

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23. Having dealt with the submissions advanced by the rival parties, we have arrived at the following conclusions:-

Firstly, it is not open to petitioner-college conducting a professional course to make admissions thereto in a manner other than on merit determined through a common entrance test held by an agency nominated by the State Government.

Secondly, admissions claimed to have been made by the petitioner-college in furtherance of communication issued by the State Government dated 14.11.2002, 20.11.2002 and 17.12.2002 cannot be approved.

Thirdly, breach in the process of regulating admissions whereby less meritorious candidates have been allowed admissions superseding the claims of numerous candidates possessing higher marks cannot be approved.

Fourthly, the interim order passed by the Apex Court on 27.1.2003 will have the effect of restraining the medical university from conducting fresh counselling in furtherance of the public notice dated 9.1.2003 till the decision by the Apex Court in furtherance of the judgment rendered by this Court in Hemlata's case (supra)."

14. The judgment in the case of P.A. Inamdar (supra) was delivered on 12.08.2005, wherein, under Question No. 2, framed by the Apex Court, the admission procedure of unaided educational institutions was discussed. It was held that education, knowledge and learning at graduate and post-graduate levels in technical and professional institutes for individuals, collectively constitute national wealth and directions were, thereafter, issued that institutes situated at one State, may join together and hold common entrance test or the State may itself or through an agency, arrange for holding of such test. It was felt that it was in the interest of the students community and to save it from harassment and exploitation that there could be a single window system and the agency should enjoy the utmost credibility and expertise in the matter to ensure the fulfillment of twin objects of transparency and merit. The said principle was to apply to the non-minority unaided institutes also till regulations were framed and the Admission Committees could, prior to that, oversee admissions, to ensure that merit is not the casualty. Accordingly, it was held that non-minority and unaided institutes should also be subjected to reasonable restrictions since they had an obligation to maintain requisite standards in the professional education and to improve the admission process, for public interest, in a fair and transparent manner and a reasonable fee structure had to be in place. The setting up of Committees for admission and determining fee structure, as laid down in the case of Islamic Academy of Education (supra), could not be violated till suitable legislation or regulation was made. Relevant observations read as under:

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

short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralized counseling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit inter se of the students so chosen.

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

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

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146. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non exploitative terms to all eligible students on an uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and on a reasonable fee structure.

147. In our considered view, on the basis of judgment in Pai Foundation and

various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.

148. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or ad hoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature."

15. It was also further observed that it was for the Central or for the State Government to come out with a detailed, well thought legislation on the subject which would be clear from paragraph 155 of the judgment, which reads as under:

"155. It is for the Central Government, or for the State Governments, in the absence of a Central legislation, to come out with a detailed well thought out legislation on the subject. Such a legislation is long awaited. States must act towards this direction. Judicial wing of the State is called upon to act when the other two wings, the Legislature and the Executive, do not act. Earlier the Union of India and the State Governments act, the better it would be. The Committees regulating admission procedure and fee structure shall continue to exist, but only as a temporary measure and an inevitable passing phase until the Central Government or the State Governments are able to devise a suitable mechanism and appoint competent authority in consonance with the observations made hereinabove. Needless to say, any decision taken by such Committees and by the Central or the State Governments, shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction."

16. On 20.01.2006, the 93rd amendment was made in the Constitution of India whereby State was given the power to make special provisions by law for the benefit of the citizens of educationally backward classes or for the Scheduled Castes or Scheduled Tribes insofar as the special provisions related to the admission to educational institutions including private educational institutions, whether aided or unaided, except minority educational institutions. Clause 15(5) reads as under:

"15(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority

educational institutions referred to in clause (1) of article 30."

17. Article 15(5) of the Constitution of India was upheld by the Apex Court in Indian Medical Council's case (supra) wherein the issue was regarding the right of the Army Welfare Education Society to make admissions in the Army College of Medical Sciences located at New Delhi and to admit students who were the wards and children of the current and former Army personnel. It was, however, held that the admission procedure devised for admitting students to the MBBS course from a pre-defined source, carved out by itself was ultra vires of the Delhi Act, 2007, whereas Clause 5 of Article 15 did not violate the basic structure of the Constitution.

18. Thereafter, a Constitution Bench of the Apex Court in Pramati Educational and Cultural Trust (r) and Others Vs. Union of India (UOI) and Others, , has upheld the validity of the said Article and held that it was not ultra vires of Article 19(1)(g) of the Constitution of India and rejected the submission that there was a distinction between aided and unaided institutions. The later were held liable to comply with the provisions of Article 15(5) and only the minority institutions were given the right to be out of the ambit of the Right of Children to Free & Compulsory Education Act, 2009. Relevant observation reads as under:

"24. We may now examine the contention of Mr. Nariman that clause (5) of Article 15 of the Constitution fails to make a distinction between aided and unaided educational institutions and treats both aided and unaided alike in the matter of making special provisions for admission of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. The distinction between a private aided educational institution and a private unaided educational institution is that private educational institutions receive aid from the State, whereas private unaided educational institutions do not receive aid from the State. As and when a law is made by the State under clause (5) of Article 15 of the Constitution, such a law would have to be examined whether it has taken into account the fact that private unaided educational institutions are not aided by the State and has made provisions in the law to ensure that private unaided educational institutions are compensated for the admissions made in such private unaided educational institutions from amongst socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes. In our view, therefore, a law made under clause (5) of Article 15 of the Constitution by the State on the ground that it treats private aided educational institutions and private unaided educational institutions alike is not immune from a challenge under Article 14 of the Constitution. Clause (5) of Article 15 of the Constitution only states that nothing in Article 15 or Article 19(1)(g) will prevent the State to make a special provision, by law, for admission of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes to educational institutions including private educational institutions, whether aided or unaided by the State. Clause (5) of Article 15 of the Constitution does not say that such a law will not comply with

the other requirements of equality as provided in Article 14 of the Constitution. Hence, we do not find any merit in the submission of the Mr. Nariman that clause (5) of Article 15 of the Constitution that insofar as it treats unaided private educational institutions and aided private educational institutions alike it is violative of Article 14 of the Constitution."

19. It is, thus, keeping in view the abovesaid observations made by the Apex Court, one has to examine the 2006 Regulations Act which came into force from 25.03.2006. The objects and reasons of the Act would throw light on the intention of State Legislature to bring in the said legislation which was not only for the purpose of fixing fee. In the objects and reasons, the process of admission needing to be regulated with the objective of making merit based transparent process of admission was there apart from the reservation which was to be provided for the advancement of socially and educationally backward citizens. The objects and reasons reads as under:

"Statement of Objects and Reasons: With a view to strike a fair, just and transparent balance between the interests of students and the management of private health sciences educational institutions in Punjab, there is an imperative need to fix reasonable fee. While affordable education needs to be made available to students, the private institutions need to be allowed reasonable profit to cater to their expansion as well as replenishment expenses. Further there is a need to provide for reservation and advancement of socially and educationally backward classes of citizens and for the scheduled castes and scheduled tribes. Separate and special quotas need to be fixed with regard to the Open Merit seats, Management Quota seats, etc. The process of admissions needs to be regulated with the objective of ensuring a merit based and transparent process of admissions. Hence, "The Punjab Private Health Sciences Educational Institutions (Regulations of Admission, Fixation of Fee and Making of Reservation) Act, 2006."

20. Section 2(b) of the Act provides that the common entrance test would mean an entrance test conducted by the State Government or by any authority authorized by it. Under Section 2(e), it is provided that the seats to be allocated to the management of such institutes by the State has to be done by the notification in the official gazette for filling up of the seats by the said institution in a fair and transparent manner on the basis of inter se merit, determined by a common entrance test or qualifying examinations. Section 2(h) provides that the category of seats which were allocated by the State Government would be filled up in a fair and transparent manner, through centralized receipt of application and centralized counselling, on the basis of inter se merit. Section 2(b), 2(e) & 2(h) reads as under:

"2. (b) "Common Entrance Test" means an entrance test, conducted by the State Government or any other authority, authorized by it;

(e) "Management Category" means a category comprising such seats out of the

sanctioned intake of a private health sciences educational institution, as may be allocated to the management of such institution by the State Government by notification in the Official Gazette, for filling up those seats by that institution in a fair and transparent manner on the basis of the inter se merit, determined by a Common Entrance Test or Qualifying Examination, in the presence of the representative of the authority conducting the Common Entrance Test;

(h) "Open Merit Category" means a category of seats comprising such; seats out of the sanctioned intake of an institution, as may be allocated by the State Government by notification in the Official Gazette, for filling up those seats in a fair and transparent manner through a centralised receipt of applications and centralised counselling on the basis of the inter se merit, determined by a Common Entrance Test or Qualifying Examination, but excluding the seats of the management category or minority category;"

21. Section 3(1) of the Act further provides that the State Government could regulate admissions and fix fee and make reservations for different categories for admissions to the private health sciences institutes whereas sub-clause (3) further provided that State Government was to ensure that admissions in a private health sciences educational institutions are made in a fair and transparent manner, on the basis of inter se merit, determined by the common entrance test or qualifying examinations, as may be the case, in accordance with the procedure adopted and notified by the State Government. Similarly, sub-clause (4) provides that the State Government could exempt the minority institutions from the purview of that sub-section. Sub-clause (5) further provided that exemption granted even to the minority institutions would not mean that the said minority institution could conduct a separate test, without following the fair, transparent and non-exploitative procedure, for the minority un-aided institutions which was to be determined in accordance with merit, as determined by the said authority. The authority was also further authorized by the State Government for conducting the common entrance test, except for those institutes which were exempted from such tests under Section 4(2). Section 3 & Section 4 reads as under:

"3. Regulation of admission, fixation of fee and making of reservation.-(1) The State Government shall regulate admission, fix fee and made reservation for different categories in admissions to private health sciences education institutions.

(2) For the purpose of determining the fee, the State Government may require any private health sciences, educational institution to furnish such information, as it may deem appropriate.

(3) The State Government shall ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of the inter se merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure,

notified by the State Government in the Official Gazette:

Provided that the State Government may, by notification in the Official Gazette, exclude the diploma or certificate courses, offered the private health sciences educational institutions from the purview of the provisions of this sub-section.

(4) Notwithstanding anything contained in sub-section (3), the State Government may, exempt minority institutions from the purview of that sub-section.

(5) Consequent upon the exemption granted under sub-section (4), a common authority of the respective minority institutions, shall conduct a separate test in a fair, transparent and non exploitive manner for admission of students in minority institutions in accordance with the merit, determined by the said authority.

(6) In case, it is found that the aforesaid separate test has not been conducted in a fair, transparent and non-exploitive manner, the State Government shall have the power to cancel the same and direct the concerned authority to reconduct the test.

4. Eligibility criteria for admission.-(1) The eligibility criteria for admission to a private health sciences educational institution shall be such, as may be determined and notified by the State Government from time to time.

(2) The State Government or any other authority, authorised by it, shall conduct the Common Entrance Test for making admissions to all private health sciences educational institutions in the State of Punjab, except for those, which are specifically exempted from such test.

(3) Admission in all private health sciences educational institutions, except those, which are specifically exempted under this Act, and in the case of Foreign Indian Students, shall be made on the basis of the inter se merit of the candidates, determined in accordance with the Common Entrance Test."

22. Thus, from the reading of the above sections, it would be clear that admission is to be made on the basis of common entrance test, in accordance with the procedure which was to be notified by the State Government. The State Government had a right to exempt the minority institutions under the said purview of the common entrance test. Even they were to follow the method of "Triple Test" which was held by the Apex Court in the aforementioned judgments, which was to be fair, transparent and non-exploitative. Under Section 4(2), the State Government or any other authority which was authorized by it, could conduct the common entrance test. Once the State Government has acted on the observations of the Apex Court and enacted the 2006 Regulations Act, then reference to the observations in the judgments referred to by the Senior Counsel for the petitioner would be of no basis since one will have to see the legislation which has already been put in place. The assessment of the action of the Government to reject the plea of the petitioner to hold separate Common Entrance Test has to be seen on the strength of the Act, provisions of which are

not subject matter of challenge in the present case. Reference can be made to the observations of the three Judges Bench of the Apex Court in People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, . The issue in the said case was the right of information about the candidates contesting elections to the Parliament or State Legislature and the right to vote and the directives given earlier by the Court wherein they were entitled to operate only till the law was made by the Legislature and once legislation had been made, whether the legislation was to be seen or the earlier directions. It was, accordingly, held that an independent assessment has to be made and not the word to word effect has to be given to the directives issued by the Court as an ad hoc measure, when the field was unoccupied by the legislation. Relevant observations read as under:

"32. When the Parliament, in the aftermath of the verdict of this Court, deliberated and thought it fit to secure the right to information to a citizen only to a limited extent (having a bearing on criminal antecedents), a fresh look has to be necessarily taken by the Court and the validity of the law made has to be tested on a clean slate. It must be remembered that the right to get information which is a corollary to the fundamental right to free speech and expression has no fixed connotation. Its contours and parameters cannot be precisely defined and the Court in my understanding, never meant to do so. It is often a matter of perception and approach. How far to go and where to stop? These are the questions to be pondered over by the Legislature and the Constitutional Court called upon to decide the question of validity of legislation. For instance, many voters/citizens may like to have more complete information-a sort of bio-data of the candidate starting from his school days such as his academic career, the properties which he had before and after entering into politics, the details of his income and tax payments for the last one decade and sources of acquisition of his and his family's wealth. Can it be said that all such information which will no doubt enable the voter and public to have a comprehensive idea of the contesting candidate, should be disclosed by a prospective candidate and that the failure to provide for it by law would infringe the fundamental right under Article 19(1)(a)? The preponderance of view would be that it is not reasonable to compel a candidate to make disclosures affecting his privacy to that extent in the guise of effectuating the right to information. A line has to be drawn somewhere. While there cannot be a lip service to the valuable right to information, it should not be stretched too far. At the same time, the essence and substratum of the right has to be preserved and promoted, when once it is brought within the fold of fundamental right. A balanced but not a rigid approach, is needed in identifying and defining the parameters of the right which the voter/citizen has. The standards to be applied to disclosures vis-?-vis public affairs and governance AND the disclosures relating to personal life and bio-data of a candidate cannot be the same. The measure or yardstick will be somewhat different. It should not be forgotten that the candidates' right to privacy is one of the many factors that could be kept in view, though that right is always subject to overriding public

interest.

33. In my view, the points of disclosure spelt out by this Court in the Association for Democratic Reforms case should serve as broad indicators or parameters in enacting the legislation for the purpose of securing the right to information about the candidate. The paradigms set by the Court, though pro tempore in nature as clarified supra, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(1)(a). Though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens at large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is crucial, by any objective standards, is not denied. It is for the Constitutional Court in exercise of its judicial review power to judge whether the areas of disclosure carved out by the Legislature are reasonably adequate to safeguard the citizens' right to information. The Court has to take a holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens' right to information to know about the personal details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. It is not a proper approach to test the validity of legislation only from the standpoint whether the legislation implicitly and word to word gives effect to the directives issued by the Court as an ad hoc measure when the field was unoccupied by legislation. Once legislation is made, this Court has to make an independent assessment in the process of evaluating whether the items of information statutorily ordained are reasonably adequate to secure the right of information to the voter so as to facilitate him to form a fairly clear opinion on the merits and demerits of the candidates. In embarking on this exercise, as already stated, this Court's directives on the points of disclosure even if they be tentative or ad hoc in nature, cannot be brushed aside, but should be given due weight. But, I reiterate that the shape of legislation need not be solely controlled by the directives issued to the Election Commission to meet an ad hoc situation. As I said earlier, the right to information cannot be placed in straight jacket formulae and the perceptions regarding the extent and amplitude of this right are bound to vary."

23. It is in this background that letter dated 31.10.2013/05.11.2013 (Annexure P-2) was written by the Government to the CBSE in response to the letter dated 24.09.2013 (Annexure R1), whereby the CBSE had fixed a date for the 27th All India Pre-Medical/Pre-Dental Entrance Test for admissions to MBBS/BDS courses for the academic session 2014-15 under 15% seats of All India Quota under Government Medical/Dental Colleges. The test was to be held on 04.05.2014 and

the Government gave its consent on 31.10.2013/05.11.2013 (Annexure P-2), to participate in the said test and thereafter, also issued the public notice on 07.11.2013 (Annexure P-3) that admissions to the said quota of 85% seats would also be filled in, on the basis of merit list of the AIPMT, to be conducted on 04.05.2014. Similarly, for post-graduate degree courses, notifications were issued on 19.12.2013 and 23.12.2013 (Annexures P5 & P6, respectively), for admissions for the Dental & Health Sciences Educational Institutions (for the session 2014-15). The 2006 Regulations Act was subject matter of challenge before the Full Bench in the case of Navdeep Kaur Gill (supra) and the following questions were framed wherein the fee fixation and the admission procedure was also subject matter of consideration. The said questions read as under:

"In view of above pleadings, the questions raised can be framed as under:-

1. Whether fee fixation by FFC for the period prior to sessions 2006-07 is excessive as stated by the students (Category I) or low as stated by the colleges (Category II)?

2. Whether fee fixation and admission procedure violate fundamental right of the colleges under Article 19(1)(g) of the Constitution (Category IV) and whether the impugned notification issued under the said Act prescribes exorbitant and arbitrary fee violating right of students (Category III)?"

24. Question No. 2 was answered in paragraphs No. 44 & 45 of the judgment and it was held that the admissions regulated on the basis of common entrance test inter se merit was not to be held invalid, being permissible regulatory measure and were not held as interference with the autonomy of the unaided institutions. Relevant paragraphs read as under:

"44. We may now consider the contention raised on behalf of the Colleges that the Act was violative of Article 19(1)(g) of the Constitution in authorizing fee to be fixed and admissions to be made. Section 7 is enabling provision for determining the fee. It provides for fixing the fee having regard to the minimum norms of infrastructure and facilities prescribed by the concerned council. Criticism against the provision is that the institutions are denied right to fix fee as per their own infrastructure and such fee could be interfered with only on the ground that the same was exploitative and did not have nexus to the cost incurred. Conduct of Common Entrance Test and making of admissions by the State under Sections 3 to 6 is challenged as being interference with the autonomy of unaided institutions.

45. We are unable to accept the submissions. The Act is a regulatory measure. Section 3 provides for regulation of admissions, fixation of fee and making of reservation. The fixation of fee by the State is by way of regulation. We have already left the question of reservation open in absence of challenge to Article 15(5) or any other statutory provisions. The admissions are regulated on the basis of Common Entrance Test and are made on inter se merit and cannot be held to be invalid being permissible regulatory measure."

25. The Division Bench in Punjab Private Unaided Health & Dental Sciences (supra) also noticed the Full Bench judgment passed in Desh Bhagat Dental College and Hospital Kotkapura Road, Muktsar and others (supra) and dismissed the writ petition of the association whereby it sought to admit students against the management category seats by reconducting admissions at a centralized place and held that there had to be no harassment to the students.

26. Heavy reliance upon Priya Gupta's case (supra), is without any basis since a perusal of the judgment in detail would go on to show that the dispute therein mainly pertained to the non-adherence of the cut off date which has resulted in admissions to the less meritorious candidates. The admission of the said candidates had been cancelled who had been shown favoritism and given admission on the last date, i.e., on 30.09.1996 and meritorious ones had been left out. However, the said candidates whose admission was set aside by the High Court, having almost completed the course, were subjected to payment of "5 lacs costs to the colleges in question and allowed to continue the course. It was in such circumstances the Apex Court also laid down the schedule of admissions and observations were also made regarding the admission by Centralized Counselling. The observations which have been referred to counsel for the petitioner in paragraph 30(ix), thus, were in this context and thus, would not have any bearing in the present factual matrix of the case since no such regulations were subject matter of challenge in the said case and the issue in question was not whether the State had the power to hold the common entrance test over the unaided institutes.

27. A Division Bench of the Delhi High Court in WP(C) 3262 of 2013 titled Association of Self Financing Institutions & another v. Guru Govind Singh Indraprastha University & another decided on 09.05.2014 also repelled the challenge to the validity of Section 13 of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation on Non-Exploitative Fee & Other Measures to Ensure Equity & Excellence) Act, 2007. In the said case also, the Association wanted to fill vacant seats by adopting any other fair, transparent and merit based method and had challenged the second counselling procedure adopted by the Guru Gobind Singh Indraprastha University, which provided that admission was to be made through a Common Entrance Test. It was the plea of the petitioners therein that due to the restrictions of admitting students only through merit list prepared by the Common Entrance Test, seats were falling vacant and the institutions were being prejudiced. The contention was repelled by the Division Bench by holding that the autonomy granted by the educational institutions must be seen with public purpose and the freedom under Article 19(1)(g) of the Constitution of India did not imply that the State could not regulate the educational institutions in public interest. Reliance was placed upon the observations of the Apex Court in T.M.A. Pai's case (supra). Relevant observations read as under:

"31. The proposition that thus emerges is that the autonomy granted to private

unaided institutions does not - and cannot - restrict the State's authority and duty to regulate academic standards. Conversely, the State's authority cannot obliterate or unduly compromise these institutions' autonomy. In matters of ensuring academic standards, the balance necessarily tilts in favour of the State, given the intensely public nature of the activity in question and the State's duty to maintain standards. In fact, the Supreme Court in TMA Pai Foundation recognized this scheme of matters, in stating that "the right to administer, not being an absolute one, there could be regulatory measures for ensuring educational standards and maintain excellence thereof and it is more so, in the matter of admission to undergraduate Colleges and professional institutions."

28. Reliance by the Senior Counsel for the petitioner on the judgment of the Apex Court in *Christian Medical College, Vellore & others v. Union of India*, (2014) 2 SCC 393 would be of not much assistance in view of the fact that the challenge in the said judgment was to the notifications and regulations issued by the Medical Council of India whereby an attempt was made to regulate the admissions to the MBBS and Post-Graduate courses, run by different State Governments and private agencies. Perusal of the said judgment would go on to show that the notification was primarily struck down on the ground that the right guaranteed under Article 36 of the Constitution of India to religious and linguistic minorities, to establish an educational institution of their choice, would be curtailed. It was held that the right of MCI & DCI to prescribe standards did not extend to controlling admissions to MBBS and Post-Graduate courses run by the different institutions in the Country. A certain degree of control could be exercised and in such circumstances, it was held that the right to admit students in different courses could not be interfered with. It was noticed that the regulations were beyond the authority of the MCI and the DCI and therefore, in such circumstances, the said view was taken on the basis of the regulations, which were subject matter of consideration and under challenge. In the present case, there is no challenge to the parent Act which has already been upheld by the Full Bench. In such circumstances, reliance upon *Christian Medical College* (supra) is without any basis.

29. Reliance upon *Modern Dental College and Research Centre* (supra) wherein the Apex Court had observed that surrendering of total process of selection of the private unaided institutions was unreasonable and illegal, would not be of any help to the petitioner since a perusal of the same would go on to show that they were interim orders, passed by the Apex Court and counsel for the petitioner is not in a position to point out that the SLP had been finally decided. For precedent to be binding, there has to be final decision and interim directions, issued in a pending case, would go with the final decision and cannot be taken into consideration by this Court. The said principle of as to what is the "ratio decidendi" and the authoritative and binding element of the final judgment, laying down the precedent is to be taken into consideration and not the interim orders. Reference can be made to the observations made by the Apex court in *State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha*, . Relevant

observations of the judgment read as under:

"21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. 22. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non-payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-ordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and Kapila Hingorani (II)."

30. Similarly, reliance upon the judgment in Self Financed B.Ed. Colleges Association, Punjab (supra) which pertained to the dispute of Common Entrance Test held for the B.Ed. course, would be of no avail since the judgment was in the context of the regulations framed by the National Council for Teachers Education Act, 1993 and was to be on the basis of the policy of the State Government. A perusal of the judgment would go on to show that it was based on the observations of the law laid down in P.A. Inamdar's case (supra) & TMA Pai Foundation's case (supra) and therefore, is distinguishable since in the present case, under the 2006 Regulations Act, there is a specific procedure laid down to provide a Common Entrance Test. The judgment is also based upon a Division Bench decision of this Court passed in CWP No. 9547 of 2006 titled The Association of Education Colleges (Self Financing) of Haryana v. State of Haryana & others, decided on 22.08.2006. In the said case also, there was no Act in question which was the subject matter of challenge and the judgment was based on the law laid down in P.A. Inamdar's case (supra) and therefore, reference to the Division Bench judgment by the counsel for the petitioner would be of no help in view of the State legislation which has come into force.

31. Similar would be the position to the judgment of the Single Judge Bench of this Court passed in Association of Punjab Self Finance College of Education,

Mohali (supra). The case pertains to the Elementary Teachers Training Course. The said judgment is again based on the judgment of Self Financed B.Ed. Colleges Association's case (supra) and does not take into account any provisions of the Act which govern and provide for the Common Entrance Test.

32. The petitioners in Punjab Private Unaided Medical & Dental Colleges Association (supra) had claimed right of admission, independent of the University, on the basis of merit determined by the Common Entrance Test while dealing with filling up of seats under Management-NRI quota. It was contended that the management quota seats under Section 2(e) of the 2006 Regulations Act, could not be filled up by the University. The right to fill up seats on the basis of Common Entrance Test was upheld and the writ petitions were dismissed by the Division Bench holding that it would be in the interest of students who are seeking admission and would avoid harassment. Relevant observations read as under:

"11. The Private Unaided Institutions are claiming a right to admit students against the management category seats. Such right would be exercised by the Management in its campus, meaning thereby that a student has to move from one institute to another for seeking admission. Such admission process has the possibility of alluring the management to admit the students otherwise than on the basis of merits picking up a student down below in the common entrance test. The possibilities of any infraction of the merit has been addressed by the State Government by regulating admission at a centralized place, wherein students will be admitted in order of merit and allowed to deposit the fee. Therefore, at one place, all the aspirants will be able to seek admission without any difficulty and ensure that merit is not given a go by. If there is delay in sending fee, the process can be streamlined, but the action of the University in regulating admission at one place is in the interest of all students, who can seek admission on the basis of merits in a private institution of their choice at one place only. On the other hand, apart from the harassment of the students, the possibility of admitting students otherwise than on merit cannot be ruled out as the students as per the merit will not be able to reach the institutes located throughout the State. In fact, such process finalized by the University will be able to meet the apprehension and challenges noticed by the Supreme Court in Indian Medical Association's case (supra)."

33. Submission of Senior Counsel for the petitioner that an SLP was preferred against the said judgment and liberty was granted to file appropriate review petition. Admittedly, a perusal of the order of the Apex Court dated 09.07.2012 would go on to show that liberty was only given to file an appropriate review petition, after arguing for quite sometime and the judgment of this Court was not set aside, as such.

34. Reliance upon the Division Bench judgment of the Kerala High Court in WP (C) No. 18899 of 2006 titled Pushpagiri Medical Society v. State of Kerala & others decided on 04.01.2007, would also not be of any help to counsel for the

petitioner since the provisions of the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation on Non-Exploitative Fee & Other Measures to Ensure Equity & Excellence in Professional Education) Act, 2006, were a subject matter of consideration. The vires were under challenge and the provisions contained in Sections 3, 7, 8(b)(c) & 10 along with Rule 10 & 11 were found to be invalid and ultra vires. In the present case, the vires of the 2006 Regulations Act have already been upheld by the Full Bench and neither there is any challenge raised to it and in such circumstances, the said judgment is not applicable. Accordingly, keeping in view the above discussion and in view of the fact that the Act itself provides the procedure for holding of a common entrance test for private health institutes and the Act, having been upheld by the Full Bench and there being no challenge to the vires of the Act, the decision of the Government in rejecting the representation of the petitioner for exemption, is well justified and there is no scope for interference in the said decision. Accordingly, both the writ petitions are hereby dismissed.