

(2006) 09 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No"s. 11905, 12066, 12075, 12217, 12361 and 12583 of 2006

Ruchi Choudhari and another

APPELLANT

Vs

Judges Committee and others

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

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

Citation : (2006) 4 MPLJ 467

Hon'ble Judges : A.K. Patnaik, C.J;S.C. Sinho, J

Bench : Division Bench

Advocate : Rajendra Tiwari, Udayan Tiwari, Nikhil Tiwari, Aditya Sanghi, N.S. Kale, Kapil, Ms. J. Pandit, Ravishankar Prasad, Harsh Pathak, R.L. Gupta, V.K. Tankha, S.C. Sharma, J.K. Pillai, H.K. Upadhyaya and Brindawan Tiwari, for the Appellant; R.N. Singh, Advocate General with Sanjay K. Agrawal, Dy. A.G. and Sunil Gupta , P.K. Kaurav and Vivek Vishnoi for Intervener, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.

In this batch of writ petitions, the decision of the Committee for monitoring the admission procedure for professional institutions to cancel the Common Entrance Test for admissions to MBBS and BDS courses during the year 2006-2007 in the private unaided Medical and Dental Colleges in the State of M.P. has been challenged.

The facts briefly are that by a Notification dated 9th May, 2006 the State Government appointed a Committee without a retired Judge of the High Court as Chairman for monitoring the admission procedure for professional institutions in the State of Madhya Pradesh contrary to the directions of the Supreme Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, . The Akhil Bhartiya Vidyarthi Parishad (for short ABVP) challenged the Notification of the State Government dated 9th May, 2006 appointing the

said Committee before this Court in W.P. No. 7964 of 2006 and by order dated 12th June, 2006, this Court stayed the said Notification dated 9th May, 2006 and directed the State Government to constitute a Committee headed by a retired Judge of High Court to be nominated by the Chief Justice of the High Court in accordance with the judgment of the Supreme Court in the case of Islamic Academy of Education (Supra). The State Government thereafter appointed a Committee headed by Mr. Justice Chandresh Bhushan, a retired Judge of the High Court and on 4th July, 2006, the Court disposed of the W.P. No. 7964/2006, quashing the Government Notification dated 9th May, 2006 appointing the earlier Committee and quashing the advertisement issued by the Association of Private Dental and Medical Colleges of Madhya Pradesh (for short the Association) for the Common Entrance Test issued before the constitution of the Committee headed by Mr. Justice Chandresh Bhushan but in the said order, the Court directed that the applications submitted by the candidates pursuant to the advertisement and the fees already paid for the Common Entrance Test will be dealt with by the Committee headed by Mr. Justice Chandresh Bhushan (hereinafter referred to as the "Committee").

The Committee then informed the Association that it has been entrusted with the working of the entire process of Common Entrance Test and requested the Association to furnish details in respect of the examination by its letter dated 5th July, 2006. In reply to the said letter dated 5th July, 2006 of the Committee, the Association furnished the required information. The Committee after considering the said information issued some instructions to the Association by letter dated 20th July, 2006. One of the instructions in the said letter dated 20th July, 2006 was that the OMR answer-sheet be marked by candidate by using black ball point pen only and not H.B. Pencil and necessary corrigendum to that effect be also issued by the Association. Pursuant to the said instructions, the Association issued a corrigendum in the local newspaper Dainik Bhaskar dated 23rd July, 2006 that OMR answer-sheets shall be marked by candidates by using black ball point pen and not by H.B. Pencil. Thereafter, the examinations were held on 13-8-2006 in different centres in the State of M.P. as well as other places in the country.

Various complaints were, however, received by the Committee with regard to the manner in which the said examinations were held and the Committee issued a show cause notice dated 17th August, 2006 to the Association stating that the principle of fair, transparent and non-exploitative admission process as laid down by the Supreme Court in its judgment in the case of P.A. Inamdar vs. State of Maharashtra, (2005) 6 SCC 537 appeared to have been compromised and detailing therein the complaints that had come to the notice of the Committee. In the said show cause notice dated 17th August, 2006, the Committee directed the Association to submit their detailed point-wise reply before the Committee and explain why appropriate action with respect to the examination conducted by the Association on 13th August, 2006 should not be taken. By the said show cause notice dated 17th August, 2006, the Secretary/Coordinator of the Common

Entrance Test conducted by the Association was also directed to appear before the Committee on 19th August, 2006 at 3.30 p.m. On 19th August, 2006, the Secretary of the Association, namely Col. Ashok Khurana appeared before the Committee and submitted two letters dated 19-8-2006. In one letter, he mentioned that information as desired by the Committee is required to be ascertained from Centre Superintendents and Observers of the Examination Centres and a request was made to allow the Association to submit their reply by 22nd August, 2006. In the other letter, the Secretary of the Association, Col. Ashok Khurana stated that allegations made by the candidates as mentioned in the letter dated 17th August, 2006 in paragraphs 1 to 7 were untrue and without any substance, but as far as allegation in paragraph 8 was concerned, the answer-sheets were printed earlier whereas the instructions about the use of black ball point pen were issued later.

In its meeting on 19th August, 2006, the Committee deliberated over the matter and resolved that the examination for admission in private medical and dental colleges would stand cancelled. The abstract of the minutes of the meeting of the Committee held on 19th August, 2006 which contains the aforesaid resolution, is quoted hereunder:

3.1 The Secretariat/Committee has received a request from Secretary of the Association for grant of time to submit reply. No communication has been received from Coordinator. The Committee by a vote of 3 to 1 decided that time should not be granted. The Chairman dissented with majority view and was of the opinion that time should be granted.

2 The Committee then heard Secretary of Association who alone was present in person. He submitted a written submission (Annexure "A") that he deny the contents of complaint. He also submitted in writing that as far as Para "8" of the communication sent to him, is concerned, the answer sheets were printed earlier whereas the instructions about use of black ball point pen was issued later.

3 The matter was deliberated by the Committee and the Chairman expressed his view that as he has already expressed his view earlier that time be granted so that sufficient material for reaching definite conclusion is before the committee and the complaint requires further investigation. The material present before the committee was not sufficient to reach any conclusion, he was not in a position to give any final decision on these complaints and the consequences that should follow.

4 The Member Secretary (Principal Secretary, Medical Education) was of the view that uses of pencil by almost 400 candidates is violation of earlier guidelines of the committee and the fact of the case, as submitted (Annexure "B") by police, raises doubt about transparency and fairness of the process of the examination and therefore, the examination need to be cancelled.

5 Another member Dr. Trivedi agreed with the view expressed by the Member Secretary. Another member Dr. Chauhan, Director of NLIU, is of the view that

admission test should be cancelled in view of the complaint received from the media as well as for the non-observance of the directions given by the committee for smooth conduct of the examination. It has resulted in creating impression that some bungling have taken place. Therefore, in order to ensure justness, fairness and transparency of the examination it will be in the interest of the students and the State that this examination must be cancelled. Thus, out of present 3 members and chairman, i.e. in all four, the opinion of three members i.e. majority was that the examination be cancelled. Accordingly, it was resolved that the examination for admission in private medical colleges should stand cancelled.

6 The office is directed to communicate the decision of the Committee to the Association of Medical and Dental Colleges.

The aforesaid decision of the Committee to cancel the examination was communicated by letter dated 19th August, 2006 to the Secretary of the Association Col. Ashok Khurana, which is quoted hereinbelow:

To,

Col. Ashok Khurana, Secretary, Association of Private Dental and Medical College of M.P. D-MAT House, E-2/51, Arera Colony, Bhopal

The Judges Committee had received various complaints in respect of conduct of D-MAT 2006 Examination held on 13-8-2006 at various places in the country. The committee took cognizance of various news paper reports and complaint with the local police.

The committee in its meeting on 17-8-2006, decided that the association and the coordinator be asked to submit their reply by 19-8-2006. A show cause notice was issued on 17-8-2006 elaborating the various points of complaint that had come to the notice of the committee which indicated that the principle of fair, transparency and non-exploitative admission-process as laid down by the Hon"ble Supreme Court in its judgment dated 12-8-2005 (P.A. Inamdar vs. State) seem to have been compromised. The notice desired pointwise reply before the committee on 19-8-2006. Col. Ashok Khurana, Secretary of the Association gave his reply vide letter dated 19-8-2006, seeking time to reply by 22-8-2006. The committee in its meeting held on 19-8-2006, Considered the application submitted by Col. Khurana and the additional letter given before the committee on 19-8-2006. The committee considered the complete matter available before it and for the following reasons had decided to cancel the examination conducted by the association on 13-8-2006:

The instruction in the test admit card had mentioned that the candidate should bring along with a good quality black ball point pen, whereas the instruction in the answer sheet expected them to fill up OMR with pencil, thereby creating ambiguity in the mind of the candidate on the pattern of answering the questions.

Col. Khurana in his reply before the committee on 19-8-2006 has accepted that

the answer sheet was printed earlier whereas, the instructions about the use of black ball point pen were issued later. The acceptance of Col. Khurana confirms that there was ambiguity of the instructions regarding answering the question papers.

There were complaints received by police about malpractices in respect of admissions.

In view of the above facts the committee is of the opinion that the justness, fairness and transparency of examination process has been compromised and has therefore, decided to cancel the examination in the interest of students.

Sd/- (M.M. Upadhyaya) Member Secretary Committee for Monitoring Admission Procedures (medical)

Aggrieved by the said decision of the Committee to cancel the Common Entrance Test conducted by the Association on 13th August, 2006, some of the candidates who have taken the said test have filed W.P. No. 11905 of 2006, W.P. No. 12066 of 2006 and W.P. No. 12217 of 2006, the Association has filed W.P. No. 12361 of 2006, a College of Dentistry has filed W.P. No. 12385 of 2006 and Mr. Sanjay Kumar Patani has also filed W.P. No. 12075 of 2006 as a Public Interest Litigation.

Mr. Rajendra Tiwari, learned Senior Counsel for the petitioners in W.P. No. 11905 of 2006 and W.P. No. 12583 of 2006, Mr. Aditya Sanghi, Learned Counsel for the petitioner in W.P. No. 12066 of 2006, Mr. Ravi Shankar Prasad, learned Senior Counsel for the petitioners in W.P. No. 12217 of 2006 and Mr. N.S. Kale, learned Senior Counsel for the petitioner in W.P. No. 12075 of 2006 submitted before the Court that the reasons for which the Committee has decided to cancel the examination is that contrary to the clear instructions of the Committee in its communication dated 20th July, 2006 that OMR answer-sheets be marked by candidates by using black ball point pen only and not by H.B. Pencil, there were instructions on the answer-sheets furnished to the candidates in the examination to fill up the answer-sheets with pencil, thereby creating an ambiguity in the mind of the candidates on the pattern of answering questions and that Col. Ashok Khurana, Secretary of the Association in his communication dated 19th August, 2006 had accepted that the answer-sheets were printed earlier and instruction for using black ball point pen was issued later. They further submitted that these reasons cannot be sufficient to reach a conclusion that the examination that was conducted by the Association on 13-8-2006 was not transparent, or unfair or exploitative. They relied on the decision of the Supreme Court in the case of Islamic Academy of Education (supra) and in the case of P.A. Inamdar (supra) and submitted that the Committee has been entrusted the task to over-see the test and admission process to ensure fairness and transparency in the test and the admissions and unless there were materials before the Committee to establish lack of transparency or lack of fairness in the examination and admission process, the Committee had no power to cancel the examination. They further submitted that as a result of the arbitrary and illegal

cancellation of the examination, more than five thousand candidates, will have to go through another examination for admission to the MBBS or BDS courses in the private unaided medical and dental colleges in the State of Madhya Pradesh.

Mr. Vivek Tankha, learned Senior Counsel appearing for the Association submitted that in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the Supreme Court has clearly held that the private unaided educational institutions had under Article 19(1)(g) of the Constitution of India the right to establish educational institutions and this right includes the right to admit students of their choice. He submitted that in the case of Islamic Academy of Education (supra), however, the Supreme Court while recognizing the aforesaid right of the private unaided educational institutions as explained in the case of TMA Pai Foundation (supra), directed the respective State Governments to appoint a permanent Committee headed by a retired Judge of the High Court to be nominated by the Chief Justice of the State to over-see the test conducted by the Association for private unaided Colleges with a view to ensure that it is fair and transparent. He also referred to the observations of the Supreme Court in paragraph 137 of the judgment in the case of P.A. Inamdar (supra), as reported at page 604 of the S.C.C. that the admission procedure must fulfil the tests of being fair, transparent and non-exploitative and if the admission procedure so adopted by the private institutions fails to satisfy all or any of the aforesaid triple tests, the admission procedure can be taken over by the State substituting its own procedure. He submitted that therefore, till the Committee comes to a definite conclusion on the basis of materials that the examination for admissions was not fair or transparent or was exploitative, the right of the private unaided educational institutions under Art. 19(1)(g) of the Constitution could not be interfered with by cancellation of the examination and by taking over the admission procedure by the State.

Mr. R.N. Singh, learned Advocate General appearing for the State of M.P., on the other hand, relied on the return filed on behalf of the Committee as well as the affidavit of Mrs. I.M. Chahal, Principal Secretary, Medical Education Department, Government of Madhya Pradesh and Member Secretary of the Committee and submitted that it was deliberated and decided by the Committee that pencil would not be used and only black ball point pen would be used and this decision taken by the Committee in its meeting held on 18th July, 2006 was communicated to the Association in the letter dated 20th July, 2006. He submitted that the minutes of the meeting of the Committee held on 13th August, 2006 would show that the Committee monitored the conduct of Common Entrance Test and took a feed back from the Co-ordinator of D-MAT Mr. Y. Uprit and at around 11.00 a.m. information regarding disturbance at a centre at Ujjain was received by the Committee. He submitted that the press also brought to the notice of the Committee and expressed that the complaints raised doubts regarding fairness of the examination. He submitted that at about 12.45 p.m. on 13th August, 2006, some press reporters came to the office specially from Bhaskar Group, Navbharat, Jagran and Hindustan Times and informed the

Committee that some irregularities have taken place at the centre at Satya Sai College for Women, Opposite Kasturba Hospital, Bhopal and these were : one Rajesh Shukla, a candidate from Pipariya, informed that he was a candidate who appeared in the test in Room No. 23 and he was forced to fill up OMR sheet with the red pen, the papers distributed were not in a sealed form like that of VYAPAM, a group of candidates around 15 in number was made to sit in a separate room, some candidates also complained that they had answered some-questions i.e. almost half of the paper and they were made to use H.B. pencils in place of pen. some pencils were distributed in the centres and some pencils were broken into two and then distributed; one Satyanarayan Pandey also informed the Press people that in every question paper, the name and roll number of the student to whom it was given was printed in advance, one candidate also informed that certain candidates had completed the paper within half an hour after commencement of the examination and some of the candidates had informed that they were allotted centres in different town than what they had opted. Mr. Singh further submitted that a person claiming himself as an office bearer of ABVP had submitted a written representation at about 1.00 p.m. complaining about the fairness of the examination and the District Crime Branch had also received some complaints and investigated into the same and recovered some cash and cheques said to have been paid for the promise to clear the candidates in the Common Entrance Test. He also vehemently argued that the antecedents of the Controller of Examination of the Association Mr. A.K. Shrivastava and a Committee Member Dr. B.C. Chhaparwal, who had been deputed to monitor and oversee the valuation of the answer cards were such as would raise doubt about the transparency and the fairness of the Common Entrance Examination.

Mr. Sunil Gupta, learned Senior Counsel appearing for the intervener ABVP cited the decisions of the Supreme Court in *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, , *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, , *KPSC vs. B.M.V. Vijaya Shankar*, (1992) 2 SCC 206, *Union of India and Others Vs. Anand Kumar Pandey and Others*, , *Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others*, and *B. Ramanjini vs. State of Andhra Pradesh*, (2002). 5 SCC 533 and submitted that the power of judicial review over decisions of educational authorities and recruitment agencies in matters of cancellation of examination is limited and the High Court while exercising the power of judicial review is not to sit as an Appellate Authority and substitute its own decision for the educational bodies or recruiting agencies. He submitted that it will be clear from the judgments of the Supreme Court in the case of *Islamic Academy of Education and P.A. Inamdar* (supra) that the Committee headed by a retired High Court Judge was to act like a regulatory authority. He submitted that the Court will not normally interfere with the decisions of the regulatory authority while exercising the power of judicial review. He vehemently argued that the Committee as the regulatory authority had given

clear instructions to the Association in its communication dated 20th July, 2006 that OMR be marked by candidates by using black ball point pen only and not H.B. pencil and the Secretary of the Association had clearly admitted before the Committee that this instruction of the Committee had been violated as the OMR answer-sheets contained a contrary instruction that the candidates are to use H.B. pencil while answering the questions. He submitted that this reason by itself was sufficient for the Committee to cancel the examination and High Court in exercise of powers of judicial review should not interfere with the said decision of the Committee. He also relied on the decision of the Supreme Court in *Dr. Ramie B. Shah vs. State of Gujarat*, 2006(7) SCALE 364 in which the Supreme Court while upholding the decision of the Division Bench of the High Court finding the Common Entrance Examination for admission to Post Graduate Dental Course in a Dental College in Gujarat to be not fair, transparent and unexploitative, directed a fresh merit assessment test.

In the case of *Islamic Academy of Education (supra)*, the Supreme Court in paragraph 19 of the judgment as reported at page 729 of the S.C.C., directed the State Government to appoint a permanent Committee headed by a retired High Court Judge to be nominated by the Chief Justice to ensure that the test conducted by the Association of Colleges is fair and transparent. Relevant portion of paragraph 19 of the judgment of the Supreme Court in *Islamic-Academy of Education (supra)* is quoted hereinbelow:

19. We now direct that the respective State Governments do appoint a permanent Committee which will ensure that the test conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in-charge of Medical or Technical Education, as the case may be, shall also be a member and act as the Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of Vice-Chancellors of the University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner.

(Emphasis supplied)

Paragraphs 137 and 138 of the Judgment of the Supreme Court in the case of *P.A. Inamdar (supra)*, which deal with the right of private unaided institutions to choose students for admission and the power of the Committee to regulate

admission, are also quoted hereinbelow:

Para 137 : Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission 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 profession education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admission and preventing mal-administration. The admission procedure so adopted by a 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.

Para 138 : It 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 malpractices, 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.

(Emphasis supplied)

It will thus be clear that the entire object of the Committee monitoring the test to be conducted by the Association for admission to the private unaided colleges was to ensure that the test so conducted by the Association of Colleges is fair, transparent and non-exploitative and that merit is not a casualty. Thus, if the Committee takes the decision to cancel the test conducted by the Association, it must come to the conclusion on some materials that the test conducted by the Association of Colleges was not fair or was not transparent or was exploitative. So long as the decision of the Committee to cancel the examination is based on some materials which have a rational nexus with the conclusion reached that the test was not fair or not transparent or was exploitative, the High Court in exercise of power of judicial review cannot take a different view on the said materials because it is not an Appellate Authority over the decision of the Committee.

Examining the decision taken by the Committee to cancel the examination/test conducted by the Association in the present case, we find from the abstract of the minutes of the meeting of the Committee held on 19th August, 2006 as well as the contents of the letter dated 19th August, 2006 of the Principal Secretary of the Committee to the Secretary of the Association quoted above that the

instruction on the answer-sheets to fill up OMR with H.B. pencils contrary to the instructions of the Committee to fill up the OMR with black ball point pen and some police complaints are the reasons for cancellation of the examination conducted by the Association on 13th August, 2006. Although in the minutes of the meeting of the Committee held on 19th August, 2006, it has been stated that to ensure justness, fairness and transparency in the examination, it will be in the interest of the students and the State that the examination must be cancelled, there is nothing either, in the minutes of the meeting held on 19th August, 2006, or the letter dated 19th August, 2006 to the Association to show how the instructions in the answer-sheets to fill up OMR with pencil instead of black ball point pen has resulted in lack of transparency or lack of fairness in the Common Entrance Examination. In paragraph 3.4 of the abstracts of the minutes of the meeting held on 19th August, 2006 of the Committee, however, the Member Secretary of the Committee expressed the view that use of pencil by almost 400 candidates is in violation of the earlier guidelines of the Committee and the fact of the case as contained in the complaint in Annexure B by the Police raised doubt about the transparency and fairness in the Common Entrance Test and, therefore, the examination needs to be cancelled. A link was, therefore, sought to be suggested by the Member Secretary between use of pencil by 400 candidates in violation of earlier guidelines and the complaint before the Police about malpractice by candidates with some roll numbers or D-MAT numbers.

With a view to find out as to whether there was really such a link, by our order dated 1-9-2006, we directed the Registrar (Judicial) and the Additional Registrar (J-1) of this Court to examine all the answer cards of the candidates and find out as to whether in the answer cards, there have been any erasing, overwriting, interpolation or tampering of any other kind and to make out separate list of answer cards with Roll Numbers which have been marked in pencil and marked in pencil and pen for the purpose of finding out the marks secured by the candidates, who have marked the answer cards in pencil and pencil and pen compared to the marks secured by the candidates who have marked their answer cards by pen. By the said order dated 1-9-2006, we also directed the Registrar (Judicial) and the Additional Registrar (J-1) to find out the marks that the candidates with Roll Numbers 40226, 40184, 49487, 40497 and D-MAT Code No. 105317, 10381, 102357 have secured because in the Police investigation made in Crime No. 405/2006 registered in M.P. Nagar Police Station, Bhopal, there have been allegations with regard to candidates with the aforesaid roll numbers and D-MAT Code numbers. By the said order dated 1-9-2006, we also directed the Registrar (Judicial) and the Additional Registrar (J-1) to make out a separate list of answer cards from the Centre at Satya Sai College, Bhopal in view of the allegations of irregularities made before the Press reporters at the Centre at Satya Sai College, Bhopal for the purpose of finding out as to how the candidates, who sat in the said centre, have done in examination compared to the candidates in other centres. Pursuant to the said order, the Registrar (Judicial) and the Additional Registrar (J-1) carried out the aforesaid exercise in

presence of the representatives of the Association, the Committee and the State Government and have submitted a report. Copies of the said report dated 12-9-2006 furnished by the Registrar (Judicial) and the Additional Registrar (J-1) were furnished to the counsel for all the parties. The said report indicates that out of a total of 944 successful candidates, answer cards containing interpolations by candidates who have used pencil are only 9 and those who have used pen and pencil are only 2. The aforesaid report dated 12-9-2006 of the Registrar (Judicial) and the Additional Registrar (J-1) also states that none of the candidates with Roll Numbers 40226, 40184, 49487 and 40497 in respect of whom there were police complaints (Crime No. 405 of 2006) could succeed in the examination. It is also stated in the report that candidates with D-MAT Code Nos. 105317 and 102357 and roll numbers 40651 and 47457 in respect of whom there were police complaints, could not succeed. Regarding the Satya Sai College Centre, it is stated that out of a total 500 candidates who appeared in the test from the said centre, 51 candidates have come out successful. It is thus clear from the report dated 12-9-2006 of the Registrar (Judicial) and the Additional Registrar (J-1) that there is no link established between the use of pencils and the success of candidates using H.B. pencils, candidates who had been named in the Police complaints had not succeeded and the number of successful candidates from the Satya Sai College Centre was not extraordinarily high. It is also clear from the report of the Registrar (Judicial) and the Additional Registrar (J-1) dated 12-9-2006 that the candidates who have used pen only, pencil only, or pen and pencil, have been given their respective marks for their answers. There is, therefore, no unfairness as such, suffered by the candidates on account of instructions for answering the OMRs in pencil contrary to the instructions of the Committee.

Instructions issued by the Committee of course were required to be followed by the Association and we do not at all approve of the conduct of the Association in not ensuring that the OMR answer cards did not contain a contrary instruction that H.B. pencils would be used on the OMRs, but unless the failure on the part on the Association to follow a particular instruction of the Committee actually resulted in unfairness or lack of transparency or exploitation in the Common Entrance Examination, the Committee should not have cancelled the examinations taken by 5000 and odd candidates for admission to MBBS and BDS courses in private unaided colleges in the State of Madhya Pradesh. As we have held above, the entire object of the Committee overseeing or supervising the test conducted by the Association for admission to the private unaided colleges was to ensure that the test is fair and transparent and non-exploitative and the Committee has to remain focused on this object while taking the decision to either cancel or not to cancel the test.

In the report dated 12-9-2006 of the Registrar (Judicial) and the Additional Registrar (J-1), it is also stated that during the scrutiny of answer cards of successful candidates, it was detected that in some of the answer cards, circles were filled in two distinct ways, some circles were neatly and precisely filled and

other circles were imprecisely filled and the latter category of circles seems to have been filled hastily and the total number of answer cards of successful candidates with circles filled in two such distinct ways has been stated to be 210 (of whom 86 appeared from Maharaja Ranjit College, Indore, 32 appeared from Mankunwar Bai College, Jabalpur, 26 appeared from Jawaharlal Nehru College, Bhopal and 16 appeared from Satya Sai College, Bhopal). This observation made by the Registrar (Judicial) and the Additional Registrar (J-1) in the report dated 12-9-2006 raised a doubt that some of the circles in the aforesaid 210 answer cards of successful candidates may have been filled up subsequently after the examination for the purpose of ensuring that these 210 candidates are selected for admission. But a submission was made by Mr. N.S. Kale, learned Senior Counsel for the petitioner in W.P. No. 12075 and 2006 in course of hearing that there is no mention in the said report dated 12-9-2006 of the Registrar (Judicial) and the Additional Registrar (J-1) whether in the answer cards of unsuccessful candidates, circles have also been filled in two distinct ways in the same manner and that in absence of this material, no inference can be drawn that some of the circles of the 210 candidates may have been filled up subsequently to ensure their selection. In view of the said submission of Mr. Kale, we directed the Registrar (Judicial) and the Additional Registrar (J-1) on 14-9-2006 to scrutinize the answer cards of unsuccessful candidates to find out whether the answer cards of unsuccessful candidates also contain circles filled in two distinct ways and in pursuance of the said direction, the Registrar (Judicial) and the Additional Registrar (J-1) have submitted a report dated 15-9-2006 that after scrutiny of 4525 answer cards of unsuccessful candidates, they have found that 263 such unsuccessful candidates have filled up the circles in the answer cards in two distinct ways. (As stated in the Annexure-F to the report dated 15-9-2006 of the 263 unsuccessful candidates, 22 have appeared from Government P.G. College, Bhopal, 15 from J.L.N. Secondary School. 17 from Satya Sai College, Bhopal, 8 from Kelke Public School, Delhi. 9 from S.D. Public School. New Delhi, 11 from Madhav Rao S. College, Gwalior, 7 from Government S.D. College, Gwalior, 94 from Maharaja Ranji College, Indore. 14 from Home Science College, Jabalpur, 31 from Mankunwar Bai College, Jabalpur, 5 from Lucknow, 6 from Raipur, 3 from Rewa, 6 from Sagar and 15 from Ujjain). Copies of the said report dated 15-9-2006 have been furnished to the counsel for all the parties and the interveners in the course of hearing. Thus, in the absence of any other material, it is difficult to hold, on the basis of the observation made by the Registrar (Judicial) and the Additional Registrar (J-1) in their report dated 12-9-2006, that the 210 successful candidates whose answer cards contain circles filled in two distinct ways were selected for admission on extraneous considerations and some of the circles in the answer cards were filled in subsequently to ensure their selection.

At the hearing of these cases on 14-9-2006, Mr. R.N. Singh, learned Advocate General submitted before us that the reports of the Police would also show that there were complaints of mal-practice in respect of candidates having roll

numbers 44304 of Gwalior Centre, 440887 of Jawaharlal Nehru College. BHEL and OMR Nos. 1042205, 102361. 111729 and D-MAT No. 103811. Therefore, by our order dated 15-9-2006, we also directed the Registrar (Judicial) and the Additional Registrar (J-1) to furnish a report as to whether the candidates with the aforesaid numbers had succeeded and in the report dated 15-9-2006 of the Registrar (Judicial) and the Additional Registrar (J-1) have stated that candidates with Roll Nos. 44304 and 40887 did not succeed and it was not possible to ascertain the result of remaining candidates on the basis of OMR numbers and D-MAT numbers as the appropriate data was not available with them.

The aforesaid discussion would show that the conclusion of the Committee in its meeting held on 19th August, 2006 as communicated by the letter dated 19th August, 2006 to the Association that the fairness and transparency of the examination process has been compromised is in the realm of doubt and is not supported by materials. More than five thousand candidates who have taken the Common Entrance Test on 13th August, 2006, in different centres in Madhya Pradesh and other places in the country, presumably after a lot of preparation and study, cannot be made to suffer a second examination only because doubts had arisen in the mind of the members of the Committee that the examination was not transparent or fair. It appears from the affidavit filed by the Member Secretary of the Committee as well as the minutes of the meeting of the Committee held on 19-8-2006 that the doubts were raised on account of complaints from the press. Media certainly can be a watch-dog for ensuring that the entrance examination held for admissions into Dental and Medical Colleges are held in a fair and transparent manner and that there is no exploitation and that merit is not a casualty in the examination but the Committee has to verify the truth of these complaints of the Media that the examination held for admissions into the private unaided Dental and Medical Colleges was really unfair or not transparent or was exploitative or that merit was a casualty before deciding to cancel the examination taken by more than 5000 candidates. But we find that the Committee has not verified the truth of these complaints made by the Press and have yet decided to cancel the examination.

In *Dr. Romie B. Shah and others vs. The Suite of Gujarat and others* (supra), the Division Bench of the High Court of Gujarat had found that the common entrance examination conducted by the College for admission into the MDS Course was not fair and transparent and non-exploitative and the Supreme Court affirmed the said finding of the Division Bench of the High Court. But in this case, there are no materials placed before us to come to a finding that the common entrance examination conducted on 13th August, 2006 by the Association for admission into the MBBS and BDS courses in the private unaided colleges in Madhya Pradesh was not fair, transparent or non-exploitative.

In the result, we allow these writ petitions and quash the impugned decision of the Committee in its meeting held on 19th August, 2006 and the impugned letter dated 19th August, 2006, to the Association.

All the answer cards of the candidates and other documents produced before the Court kept in box duly locked be returned to the Member Secretary of the Committee or her authorized representative.