

(2008) 04 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 15588, 15596, 15597, 15602, 16108, 16125, 16127, 16135, 16138, 16476, 16481, 16482, 16525 of 2007 and 160, 1234 of 2008

Subha Mishra and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyam Avam Shulk Ka Nirdharan) Adhiniyam, 2007 — Section 5

Citation : (2008) 3 MPLJ 282

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Advocate : N.S. Kale, Raveendra Shrivastava, A.P. Shrotri and Kapil Patwardhan, for the Appellant; Deepak Awasthi, Government Advocate for State, Mrs. Indira Nair with Anoop Nair for Medical Council of India, Dharmendra Sharma, Assistant Solicitor General for Union of India, Naman Nagrath for Association of Private Dental and Medical Colleges, Rajendra Tiwari along with Anoop Mishra for Index College, P.K. Kaurav for Admission and Fee Regulator Committee of Professional Institutions and Arvind Gupta for Universities, for the Respondent

Judgement

Dipak Misra, J.

Regard being had to the commonality of the controversy in this batch of writ petitions it was heard analogously and is disposed of by a singular order. For the sake of convenience the facts in Writ Petition No. 15588/07 are adumbrate herein. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India the petitioners have prayed for issue of a writ of certiorari for quashment of the order dated 26-10-2007, Annexure-P/5, passed by the Admission and Fee Regulatory Committee for Private Unaided Professional Educational Institutions [for short "the Committee"] which has expressed the opinion that the admission of students by the Index Medical College Hospital and Research Centre, Indore, respondent No. 5 herein, to the MBBS Course is invalid

and illegal ab initio being contrary to the provisions contained in the M.P. Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyam Avam Shulk Ka Nirdharan) Adhiniyam, 2007 [Act No. 21 of 2007] (for brevity "the Act") and further de hors the conception of merit as postulated by the Medical Council of India.

The necessitous expose" of facts are that the petitioners 1 to 4 appeared in the DMAT Examination conducted by the Association of Private Dental Medical Colleges M.P. (APDMC) and the petitioners 5 to 8 appeared in the PMT Examination, 2007 conducted by the Professional Examination Board. All of them had secured more than 50% marks and hence, are eligible to get admission in the medical graduation course as per Graduate Medical Education Regulations, 1997 (for short the "1997 Regulations") framed by the Medical Council of India [hereinafter referred to as "the MCI"] the respondent 5, College, issued an admission notice on 29-9-2007, Annexure-P/2, in a daily newspaper, namely, Dainik Bhaskar. The petitioners applied for admission and on the basis of college level counselling they were granted admission in the presence of Observer, Govt. of M.P./APMDC on 30-9-2007 on the basis of their rank in DMAT/PMT Examination. A copy of the list of students which contains the names the petitioners and bears signature of Dr. S.S. Pawar who present as an independent observer deputed by the Govt. of M.P./APDMC, Bhopal has been brought on record as Annexure-P/3. After being admitted the petitioners deposited the requisite fees and other charges and after taking admission they were prosecuting their studies. At that juncture, the Committee vide impugned order dated 26-10-2007, Annexure-P/5, declared the admissions of the petitioner as illegal and cancelled the same.

It is contended that the Committee has passed the order taking recourse to certain provisions of the Act which could not have done inasmuch as the petitioners had appeared in the Common Entrance Test as prescribed under the 1997 Regulations. It is put forth that the powers exercised by the Committee is without jurisdiction inasmuch as reliance on the provisions by the Committee does not confer such jurisdiction on the Committee in praesenti. The Committee has not issued any show cause notice to the petitioners and, therefore, there is gross violation of the principles of natural justice which makes the decision vulnerable in law. The Committee does not have the authority to cancel the admission and by passing the order of cancellation the Committee has exceeded its jurisdiction which makes the order a nullity. As per the provisions of the Act the Committee can initiate action on the basis of a complaint but there has been no complaint which could have set the action in motion. It is contended that the Committee has not been vested with suo motu power under the enactment and in the absence of the same the Committee could not have taken recourse to such a method. The Committee has not recorded any finding that the admissions given to the petitioners are in violation of the Act and the petitioners having obtained more than 50% marks in either of the examinations their admissions could not have been annulled. It is the stand in the petition that the admissions were made in the presence of an independent observer and, therefore, there was

no warrant for centralized counselling as such centralized counselling is done when more colleges are involved and further the observer had not objected to the college level counselling. That apart, the petitioners are not at fault because of non-holding of centralized counselling.

It is in the petition that the cancellation of admission by the Committee is totally arbitrary and the said action is violative of Article 14 of the Constitution of India inasmuch as it not only smacks of arbitrariness but also violative of the Act and is against the principles of natural justice. The petitioners are eligible to get admission as per 1997 Regulations read with section 5 of the Act and had they been afforded an opportunity of being heard they could have satisfied the Committee in that regard. There was no material before the Committee that cases of more meritorious students had been ignored but the Committee has passed the order against the petitioners in flagrant violation of the statutory provisions. It is contended that the Committee is a statutory one and any body created under the Statute has to be guided by the parameters of the Statute and cannot afford to travel beyond it. It is highlighted that the Committee has fallen into grave error by not taking note of the fact that the petitioners have secured more than 50% marks in the competitive examination and were indubitably eligible to take admission under the 1997 Regulations but by an arbitrary action the admissions have been cancelled making their future totally dark and blighted.

A return has been filed by the respondent No. 1, State of M.P. stating that the challenge being to the process of admission to the Professional Course of MBBS in various private institutions, the role of the State Government is not related to the grievance raised in the present writ petition. It is also put forth that no relief is claimed against the said respondent.

A counter affidavit has been filed by the respondent No. 2, Medical Council of India, contending, inter alia, that a time schedule has been approved for completion of admission process for medical and dental courses and a policy-decision has been taken in that regard. Emphasis has been laid on the fact that a candidate has to secure 50% marks in Physics, Chemistry and Biology in 10+2 Examination and he is further required to secure 50% in the combined entrance test conducted by the admitting authority as per the Regulations of the MCI which are statutory, mandatory and binding in nature. It is contended that the responsibility for filling up of the medical seats within the time frame has been laid down by the MCI in pursuance of the directions of the Apex Court. It is the duty of the Council to ensure that admissions are made in the recognized medical course within the sanctioned annual intake capacity of any medical college as per the time schedule. It is put forth that on 31-10-2007 office of Council received a copy of the order dated 26-10-2007 passed by the respondent No. 3, Committee with regard to illegal admissions made in the respondent, College in disregard of the merit of DMAT Examination. The Committee in the order had held that admissions made in the respondent, College were invalid and directed cancellation thereof with the further direction for refund of fees of the

candidates. Upon perusal of the list of candidates admitted along with marks obtained by them in the 10+2 Examination and DMAT Examination 2007, the Council found that the fifth respondent, College herein had given admission to the candidates who had secured less than 50% marks either in Physics, Chemistry and Biology in their 10+2 Examination or in the DMAT Examination conducted by the respondent No. 3, Association thereby not meeting the merit and eligibility criteria required for admission in the Medicines Course as per 1997 Rules. That apart, it was found that some of the candidates were admitted after the last date of admission i.e. 30th September, 2007. The respondent No. 5-College by letter dated 5-10-2007 had furnished a list of admissions stated to have been made in pursuance of the DMAT Examination. As the list was not as per the prescribed proforma the Council by letter dated 24-10-2007 required the respondent No. 5 to furnish a list of admission made in their College. In their turn the College vide letter dated 30-10-2007 furnished another list of candidates stated to have been admitted pursuant to the DMAT Examination. Upon scrutiny of the list furnished by the College the Council, as has been stated, found that the college has either failed to furnish the marks obtained by the candidates in their 10+2 Higher Secondary Examination and in their DMAT Examination, 2007 and the date of admission shown in the list there was variance of dates in respect of date of admission in both the lists. The Executive Committee of the MCI on 3-11-2007 considered the list furnished by the college where the members of the ad hoc committee appointed by the Apex Court were present. The Executive Committee observed that the respondent No. 5 College had made 150 admissions by their own candidates out of which 66 candidates had either failed to obtain 50% marks in Physics, Chemistry and Biology of 10+2 Examination or in the DMAT Examination, 2007 conducted by the respondent No. 3, Association. The Committee further found that 45 general category candidates who had been admitted in the respondent No. 5, College had not secured 50% in DMAT Examination, 2007 conducted by the respondent No. 5. In respect of 84 candidates marks obtained by them in DMAT-2007 were not shown. In view of the aforesaid the Executive Committee decided to issue a discharge notice to all the 150 candidates including 78 candidates who were not eligible for admission in the medical course as per the Regulations of the MCI. The Committee decided to issue a notice to show cause to the respondent No. 5, college how such false information had been given to the MCI. The Dean of the respondent No. 5-College was directed to furnish counselling marks obtained by the students admitted at Serial No. 67 to 150 list supplied by the College. The respondent-College intimated that the matter was pending in the writ petition. Thereafter the Council on 23-11-2007 directed the College to meet the Secretary of the Council along with mark-sheets of 10 + 2 Higher Secondary School Examination, original orders of the respondent No. 3, Association and photocopies of receipts. It is contended that the Committee has found that the admissions have been given in violation of the MCI Regulations and contravention of the merit in DMAT Examination. On that foundation cancellation of admission has been directed which is justified in law.

At this juncture it is worth noting that a reply has been filed by Admission and Fee Regulatory Committee for Professional Institution in the State of Madhya Pradesh in Writ Petition No. 15596/2007 and the same has been adopted in this petition and in that regard an affidavit has been filed. It is the stand of the Committee that the Committee has been entrusted with the obligation to ensure the admission in the institutions in a fair and transparent manner and there should be no exploitation. It is the further stand that the merit is the sacrosanct rule in the process of admission. It is put forth that a common entrance test held by the Association is a must for admission to the colleges. If any professional college chooses not to take common entrance test conducted by the Association then the college will be under obligation to admit the students from the common entrance test conducted by the State.

It is contended that as per law there has to be centralized counselling and a single window system regulating admission has to be followed. Reference has been made to the Regulations framed by the Medical Council of India which provide for in States having more than one University/Board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standard at qualifying examinations conducted by different agencies. In the State of M.P. there are more than one examining body conducting the qualifying examination, namely, M.P. Board of Examination, Central Board of Secondary Education, Open Board, Madarsa Board and Sanskrit Board, etc. and, therefore, the admission cannot be permitted by an education institution imparting MBBS education to admit students other than one common entrance test. In the State of Madhya Pradesh the private dental and medical colleges have formed an association, known as Association of Private Dental and Medical Colleges in the State of Madhya Pradesh (for short "the APDMC") which has conducted the entrance examination DMAT-2007 for admitting the students in their colleges. The State of M.P. also conducts its examination known as PMT. In view of the aforesaid no institution can fill up the seats by determining its own selection criteria. It is further put forth that both the aforesaid tests, namely, DMAT and PMT cannot be made the basis for admitting the students.

It is urged that the respondent committee on receiving information through complaint issued letter to the Index medical college on 26-9-2007 stating therein that no institution can fill its seats through college level counselling and every approved medical/dental college will have to approach the APDMC which has already conducted DMAT for admitting the students through centralized counselling process. A direction was issued to contact the APDMC for securing admission through centralized counselling process. On the same day the treasurer and Coordinator of the APDMC showing their readiness and willingness informed the answering respondent that a programme is to be chalked out in consultation with the Director Mansarovar Dental College and Director Index Medical College for conducting centralized counselling. On 27-9-2007 the Index

medical college intimated the answering respondent that it had received a letter of intent from Government of India, Department of Health and Family Welfare, New Delhi on 25-9-2007 but it had not received the letter of permission from the Central Government so that it could only approach APDMC, Bhopal after receipt of the permission. On 29-9-2007 after closing hours of the office a FAX message was sent by the Index Medical college which was received on 1-10-2007, as 30-9-2007 was a Sunday, contending therein that the Index medical college had got permission from the Central Government, Health and Family Welfare Department for 150 seats as per recommendation of Medical Council of India on 28-9-2007 at 5 p.m. by FAX. It was also stated in the said letter that for the session 2007-08 it had no time to conduct any competitive medical entrance test and, therefore, permission to admit the students in 1st year of MBBS course from out of qualifying DMAT, CBSE, PMT or any other medical entrance test or having more than 50% in (PCB) in 10+2 examination be granted. The college, as set forth, could not have sought for permission from the Committee as it is not permissible in law and accordingly the Committee has called for an explanation from the college as to why after getting the LOP on 28-9-2007 no steps were taken for arrangement of centralized counselling and the Committee was not informed on 28th or 29th September, 2007 during office hours. It was stated in the said letter dated 1-10-2007 Annexure R-6 that any admission which would be in contravention to the existing provisions would be treated as illegal and would stand cancelled if it was so found. As no response was received till 3-10-2007 a direction was issued to report in person. It was mentioned therein that complaints have been received from certain quarters that the college is admitting the students through college level counselling process without getting any due approval from appropriate authorities. The college was directed to produce all relevant documents. The date of appearance was fixed on 5th October, 2007 at 3:00 p.m. On 5-10-2007 the Chairman of the Index medical college appeared in person before the answering respondent and informed that the admission process was completed on 30-9-2007. When asked by the committee to submit the records an assurance was given that the same would be submitted on 6-10-2007 but no records were submitted on that day. A letter was again sent to the college directing to submit all the record forthwith. Despite the said direction the college chose not to submit the records and only filed a list of admitted students along with the reply to show-cause notice on 19-10-2007. It is put forth that on 10-10-2007 the controller of Examination of APDMC informed the Committee that they suggested the Index medical college to issue public notice for open counselling on behalf of APDMC, Bhopal as was done by Mansarovar Dental College, Bhopal. On 30-9-2007 the controller had gone to Indore so that a proper publication could be made and the centralized counselling could be conducted but it came to his notice that an advertisement had already been issued by the Index College and because of the said situation the members of the APDMC did not participate in the admission process. It was the stand of the college before the Committee that it had filed a writ petition before the Apex Court for extension of time but hearing of the writ petition was postponed to

8-10-2007 and hence, the college was not in a position to wait till 8th October, 2007 and had to fill up the seats till 30th September, 2007. The college issued an advertisement in a leading newspaper and accordingly the counselling was arranged on 30th September, 2007. It was asserted before the Committee by the Index medical college that as soon as the students came to the college, the college verified their domicile certificates and DMAT mark-sheets and other documents and signatures of the students and their parents were obtained in the register. It was also put forth that out of 150 MBBS seats, only 87 candidates from the DMAT/CPMT/PMT were available and, therefore to fill up remaining 63 vacant seats the applications were considered on the basis of 10+2 marks and the list of the admitted students was forwarded to the Medical Council of India for approval. It was submitted that the 10+2 students were admitted on the basis of law laid down in *Modern Dental College and Research Institute and others vs. State of M.P. and others*, (2004)8 SCC 213. It was also the stand of the college that the observer of APDMC was present. A prayer was made to the Committee not to take any action as the college was waiting for the decision of the Apex Court. The documents produced before the Committee have been brought on record as Annexures R-13 to R-21. It is put forth in the return that the reply of the college itself shows improper, illegal, unknown, non-transparent, unfair and exploitative admission procedure conducted by the college. The committee was expecting the documents with regard to admission procedure i.e. application forms of the students, counselling register, minutes of the counselling, marks-sheet of the students and details of the fee, etc. but nothing was submitted to it. The reply of the college was considered by the Committee in its meeting held on 26-10-2007.

The Committee on scrutiny of the material came to the conclusion that the College had the information with regard to letter of permission on 28-9-2007 but no efforts had been made by it either to make any arrangement for proper counselling or advertisement. The intention of the college to fill up the seats from the back door is evident from the concealment and misrepresentation of the material information despite the fact that the Committee had intimated the College to go for centralised counselling on 26-9-2007. The college had chosen not to disclose the admission procedure to any one. The College had deliberately made correspondences with the said authorities for extension of time, who are not empowered to extend the date of admission as per law. Writ Petition (Civil) No. 547/07 was filed by the College before the Supreme Court for extension of time and the same was withdrawn on 8-10-1997. The College had not submitted list of admitted students or document with regard to the admission yet the petition was withdrawn which is indication of the fact that no transparent method was adopted while admitting the students. The Apex Court in *Sinhgad Technical Education Society vs. Union of India*, W. P. Civil No. (s) 352/07 had extended the time till 20th October, 2007 permitted the College to fill up the seats from the students of State Entrance Examination. The College had claimed that the admissions were complete on 30-9-2007 and, therefore, the petition was

withdrawn but the completion of the admission does not mean filling up of the seats but it requires that the admission should have been done in a fair and transparent manner after affording due opportunity to all the eligible students. The College, as is manifest, had published an advertisement but the same appears to be an advertisement to contact certain people named in the advertisement to ensure admission. It is quite clear from the advertisement itself that an effort had been made to sell out the seats of MBBS in an unknown method. Only mobile numbers of four people, namely, Dr. K.K. Saxena, Mr. Arun Arora, Dr. Pawan and Dr. Jai were mentioned in the advertisement dated 29-9-2007. The advertisement does not contain the date to approach venue, mode and procedure of admission, eligibility criterion for admission. No procedure for conducting counselling had been reported to the answering respondent. In the reply of the College it had been mentioned that out of 150 MBBS seats only 87 persons from DMAT/CPMT/PMT waiting list had completed the admission formality and thereafter 10+2 students made application for admission and accordingly they were considered and given admission. It also exposit the picture how the students came to know about the admissions being made on 30-9-2007, more so, when considerable number of students were from outside the State of M.P. who have said to have taken admission.

On the basis of qualifying examinations like AIPT, KAIET, AMUPMDC, UP PMT, CPMT, CPET, RPMT, HP, PMT, CPMT, BCECT, AICET. etc. Though there are no notice for counselling, the presence of few students from various other places viz. Rajasthan, Chhattisgarh, Jammu and Kashmir, Himachal Pradesh, Kerala, Chennai, Maharashtra, Haryana were called for counselling. It is found by the Committee that the advertisement was published in daily newspaper Dainik Bhaskar on 1-10-2007 whereas the last date for admission was shown to be 2-10-2007. The Committee has supported the finding by scrutinising the case of certain students. As per MCI norms two conditions were to be fulfilled, first passing in the subjects of Physics, Chemistry, Biology and English by obtaining minimum 50% together with Physics, Chemistry and Biology at the qualifying examinations as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Class the marks obtained in the competitive entrance examination has to be 40%. Some students have not got marks as per the MCI norms and some students who had got higher marks in DMAT Examination have been ignored. On a perusal of the counselling register it is evincible that names of nine students do not appear. The Committee also came to hold that Mr. Gaurav Upadhyay was admitted on 29-9-2007 and had deposited fees on 4-10-2007 which was received by the College but the father of the said Gaurav Upadhyay had filed a complaint that his candidature had not been considered. Considering the various factual and legal position the Committee took the decision that the admissions are not permissible from other than DMAT

or PMT merit list; that there was no proper advertisement to conduct centralized counselling; that the admission process was neither fair nor transparent and the same was highly exploitative; that out of 150 students 138 do not fulfil the minimum criteria; that there was some kind of provisional inclusion in the name of the students in the list of admitted students; that they were intimated that their admissions were subject to approval; that the Committee being a body of expert has taken a decision regard being had to the sanctity of admission; that under the provision of 2007 Act the Committee was under the statutory obligation to perform the duties; and that the action of the Committee cannot be found fault with.

A counter affidavit has been filed by the respondent No. 5 contending, inter alia, that after a lot of endeavour and orders passed by the Apex Court the Medical Council of India decided to recommend the Central Government to issue a letter of permission for establishment of new medical college as Index Medical College and Hospital and Research Centre, Indore. The said letter is dated 20-9-2007. On the basis of the said letter the Central Government issued a letter of intent on 25-9-2007. On receipt of the said letter the respondent No. 5 immediately intimated the Admission and Fees Regulatory Committee for Professional Institutions, Bhopal on 27-9-2007 about the letter of intent. Thereafter the Controller of the Association, namely, Association of Private Dental and Medical Colleges of M.P. (APDMC) issued a letter on 27-9-2007 to the Committee intimating that it has appointed an observer for Indore and Jabalpur. By this letter Dr. S.S. Pawar, Ex-Dean of Students' Welfare, Devi Ahilya Vishwa Vidyalaya, Indore was appointed as an observer for the counselling in the respondent No. 5, College. A letter of permission was issued by the Central Government on 28-9-2007. Communication was sent to the Director, Medical Education on 29-9-2007 for extending the time till 15-10-2007 as it was not possible to complete the admission following the detailed procedure within two days. By another letter Director of Medical Council was intimated that only way out was to admit students in the first year from D-MAT, PMT, CBSE and 10+2 Examination of M.P. Board keeping in view that every student had obtained more than 50% in Physics, Chemistry and Biology. Intimation was also sent to the President of D-MAT on 29-9-2007. Communication was also made to the Principal Secretary, Medical Education, Bhopal intimating the said procedure. Advertisements were published in newspapers on 29th and 30th September, 2007. A committee was constituted by the respondent for maintaining the transparency of admission on 29-9-2007. A meeting of the Committee was held on 30-9-2007 in the presence of the observer and there were 169 students present with their parents. They signed the attendance register. 156 students were admitted and the admission list was signed by Dr. S.S. Pawar, the Observer. 59 students were admitted on the basis of D-MAT Examination, 28 students on the basis of CPMT/PMT and other competitive examinations and 63 were admitted on the basis of 10+2 having secured more than 50% in PCB groups.

It is set forth in the return that the Committee issued a letter on 1-10-2007

stating that it would have been appropriate on the part of the College to inform the Committee. It was stated in the letter that admissions should have been done through the centralised counselling process either by D-MAT 2007 or PMT 2007 and not by the procedure which was adopted by the College. On 5-10-2007 the College submitted an explanation. Thereafter the Committee wrote a letter to the AFRC that the advertisement was issued on behalf of the College and not on behalf of the Association and on this ground they could not participate in the counselling. It is urged that the Association did not conduct the centralized counselling and did not choose to participate in the counselling but allowed their observer to participate. It is contended that the Centralised counselling was not in the hands of the College and it was obligatory on the part of the APDMC to organize the centralized counselling. It is put forth that the Association has wrongly mentioned that there was no counselling on 30-9-2007. The College had issued an advertisement that was published on 1-10-2007. It is put forth that the committee has proceeded on the erroneous premises that the admissions were continued till 2-10-2007 and counselling was done in the absence of the Observer. It is admitted that the College had no option but to conduct admission by college level counselling as out of 169 students 150 students were selected which would show that there was transparency. It is urged that no complaint was ever made to the respondent-College. The students who came forward were given forms of the College and its brochure. The names were mentioned in the order passed by the Committee that they did not appear on 30-9-2007 and as they were not present on that date they did not take admission. They never deposited their DD with the college at any time and as such if their names are not in the final list, it is their fault. The order passed by the Committee is based on certain aspects which were never communicated to the answering respondent in the notice to show cause. The Committee has not appreciated the fact situation and the time constraint, as a result of which such a measure was taken by the respondent-College. It was an extraordinary situation which prevailed and, therefore, such steps were taken recourse to. It is put forth that the respondent, College tried its level best to get the students from D-MAT or from the PMT but because of the time constraint it had to make choice only from amongst the students who had submitted their applications and were available for admission till 30-9-2007. Neither the students can be blamed nor the answering respondent because the letter of permission was received in the evening of 28-9-2007 and only two days were left for finalising the admissions.

It is the further stand of the College that there is nothing suspicious in admitting the students. The only anxiety of the respondent-College was that it had already appointed the staff according to the norms of the MCI and if the students were not admitted it would have been impossible for the College to maintain the staff and pay them salaries on which they were appointed. In view of the said situation admissions were given to the students. Securing of 50% marks in the PCB group and marks obtained in 10+2 and CBSE were taken as criteria in respect of certain students. On the aforesaid footing, a stand is pyramided to

sustain the admissions that had taken place.

We have heard Mr. N.S. Kale, learned senior counsel, Mr. Raveendra Shrivastava, learned senior counsel, A.P. Shrotri, and Mr. Kapil Patwardhan, learned counsel for the petitioner, Mr. Deepak Awasthi, learned Govt. Advocate for the State, Mrs. Indira Nair, learned Senior Counsel along with Mr. Anoop Nair, Mr. Rajendra Tiwari, learned Senior Counsel along with Anoop Mishra, Mr. Naman Nagrath, Mr. P.K. Kaurav, Mr. Dharmendra Sharma, learned Assistant Solicitor General and Mr. Arvind Gupta, learned counsel for respondents.

The learned counsel for the petitioners have raised the following contentions:

(i) The order passed by the statutory Committee is in exercise of statutory power u/s 4(9) of the Act and hence, it deserves to be adjudged on the reasonings mentioned therein and the findings cannot be supported by fresh reasonings either by way of affidavit or any other material.

(ii) The impugned order has been passed in complete violation of the principles of natural justice and, therefore, the same is ab initio void. A legal right has accrued in their favour, as they have been allowed to prosecute their studies and their admissions could not have been cancelled without following the doctrines of audi alteram partem as it has visited with serious civil consequences to them. The Committee has not followed a just and reasonable procedure and, therefore, its action is vulnerable.

(iii) Jurisdiction of the Committee is invocable by a complaint and thereafter it is obliged to hold an enquiry and record its findings but in the case at hand all these aspects have been thrown to the winds and the Committee has arrived at the conclusion on the basis of the material which are not germane to the controversy and further without supplying a copy of the complaint to any of the petitioners.

(iv) As the Committee has not afforded opportunity of hearing the question of granting opportunity of hearing by this Court would amount to converting itself into a Court of appeal under Articles 226 and 227 of the Constitution of India which is impermissible. The doctrine of post-decisional hearing would not be applicable to the case at hand as all relevant issues of facts and law for the purpose of exercising power are required to be gone into in the minutest detail and the same cannot be done in exercise of inherent extraordinary jurisdiction.

(v) The decision of the Committee suffers from total non-application of mind inasmuch as the Committee has not actually addressed itself to the fulcrum whether the admission of the petitioners is fundamentally de hors the merit and they are liable to be declared invalid.

(vi) The conclusion arrived at by the Committee are absolutely perverse and suffers from errors which are manifest on record and hence, vulnerable.

(vii) The Committee has erroneously recorded the finding that in the absence of

advertisement there has been no transparency with regard to admission is neither supported by any procedural law and that apart the APDMC had issued an advertisement for admission to the College as per Annexure-R/19.

(viii) The finding with regard to not holding of centralised counselling cannot be upheld as the same could not be possible and in fact not warranted in the extraordinary facts and circumstances which have been exposted.

(ix) In the counselling there has been substantial compliance of requirement of law inasmuch as the same was done in the presence of the representatives of the State of M.P./APDMC as is clear from the list enclosed by the college.

(x) There is no violation of regulations of Medical Council of India in regard to admission process. In view of supervening legislation covering the field by the M.P. Legislature initially an ordinance was promulgated by the Governor of M.P. styled as Madhya Pradesh Niji Vyavasayik Avam Shulk Ka Nirdharan) Adhyadesh, 2007 which came into force with effect from 22-5-2007 and thereafter the Act No. 21 of 2007 has been enacted by the Legislature which has come into force from 4-8-2007. The Act 2007 has complete overriding effect over any other law for the time being in force and, therefore, the MCI Regulations wherever inconsistent have to succumb to the 2007 Act. If the scheme of law as contained in Chapter III is examined it would be quite clear that Regulation 4 of the MCI Regulations pertaining to eligibility of admission of candidate stands corroded by virtue of expressed provision contained in section 5 of 2007 Act. Similarly Regulation 5 which provides for conducting of common entrance test stands repealed by virtue of overriding effect in section 11 of the Act since provisions are made in section 6 of the Act for State for Common Entrance Test to be prescribed by the State Government. The common entrance test as envisaged under Regulation 5 is not the same as has been prescribed u/s 6 of the Act inasmuch as the common entrance test for admission is required by the State Government and not the MCI. Thus, there is clear inconsistency between section 6 on one hand and Regulation 5 of MCI Regulation on the other.

(xi) Section 7 stipulates that when an admission is made in contravention of the provisions of the 2007 Act or the rules made thereunder then alone, it shall be void. Additionally u/s 13 the State has the power and jurisdiction to lay down by means of regulation, the condition of eligibility of admission as well as manner of admission. Thus, on a complete and proper reading of the Scheme of the Act of 2007 it is absolutely crystal clear that the Act is intended to be a self contained code in itself giving overriding effect on the inconsistent provision of the MCI Regulations.

(xii) The petitioners fulfil the basic requirement of merit in terms of eligibility conditions laid down under Regulation 4 of the MCI Regulations and section 5 of the 2007 Act. It is put forth that they have secured 50% and above marks in the Physics, Chemistry and Biology, which is basic requirement of merit in Higher Secondary or School Leaving Examination. The merit adjudged on the basis of

marks secured in CBSE and Higher Secondary Examination fulfil the criteria of merits based selection as held by the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, .

(xiii) In extraordinary circumstances admissions could have been granted in consonance with the law laid down by the Apex Court in Modern Dental College and Research Institute and others vs. State of M.P. and another. (2004) 8 SCC 213.

(xiv) There is no legal bar or prohibition of admission to such eligible candidates who had not appeared in MPPMT or DMAT but had appeared in the competitive entrance test conducted in other States and obtained qualifying marks.

(xv) No rules or regulations have been framed by the State Government under sections 6 and 13 of the Act 2007 to bar admission of any such students and their admissions cannot be treated to be against law.

(xvi) The observations made in Islamic Academy of Education and Another Vs. State of Karnataka and Others, the colleges in different States conform an association which means that students of other States can also come and join the college.

(xvii) When the students are not at fault they cannot be penalized for the fault of the College and the Committee should not have ignored the said aspect.

(xviii) The students who have taken admission being sponsored by the

NRIs their admissions could not have been cancelled as they meet the eligibility criteria.

Mrs. Indira Nair, learned senior counsel along with Mr. Anoop Nair, Mr. Deepak Awasty, learned Government Advocate and Mr. Pushpendra Kaurav resisting the aforesaid submissions contended that Regulations framed by the Medical Council of India are to be followed in the strictest manner and no institution can take any deviant steps. It is urged by them that the action of the Committee cannot be found fault with as the institution had given admission in flagrant violation of the Regulations and adopted a procedure which is non-transparent and exploitive. It is put forth by them that the college was afforded ample opportunity of being heard and after taking into consideration the material, the order of cancellation was passed and, therefore, it is not hit by noncompliance of the principles of natural justice. It is specifically propounded by the learned counsel for the Medical Council of India that the college had not given admission keeping in view the norms prescribed by the Medical Council of India and, therefore, the admissions were cancelled. The learned counsel for the respondents submitted that in view of the enormous illegality committed by the college such an action was taken and hence, no fault can be found with it.

Mr. Rajendra Tiwari, learned senior counsel appearing for the college, respondent No. 5 herein, submitted that the present one is an extraordinary situation and,

therefore, the college had to take such a step to give admission to students and by no stretch of imagination it can be said that it is marred by basic concept of merit. It is put forth by the learned senior counsel that there were only two days for admission and, therefore, all possible steps were to be taken to have the transparency and to give admission to the students who had passed the D-MAT and PMT examinations and further the students who have passed the examinations conducted by other associations in other States were given admission which would go a long way to show that the college was absolutely conscious about the merit and had no intention to deviate from the same. It is also canvassed by him that the Committee has unnecessarily attributed the motive to the college which really does not exist and cancellation of the result on the ground that there is no transparency and it is exploitive are based on no acceptable reasons. The learned counsel has submitted that all the admissions were done prior to the cut off date and, therefore, the application before the Apex Court was not pressed and hence, no irregularities were committed. It is canvassed by him that the students who had the eligibility criteria had been admitted and hence, there has been substantive compliance of the Regulations framed by the Medical Council of India. Learned senior counsel further submitted that the discrepancies pointed out by the Medical Council of India could have been reconciled had an opportunity been given by Medical Council of India prior to taking adverse steps.

Before we advert to the justifiability and sustainability of the action taken by the Committee it is seemly to refer to certain decisions relating to the field of education and medical education and also the view expressed by the Apex Court from time to time with regard to how ill-conceived sympathy destroys academic discipline.

In State of Maharashtra Vs. Vikas Sahebrao Roundale and others, .

..Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.

In Guru Nanak Dev University Vs. Parminder Kr. Bansal and another,

We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal

position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions.

In C.B.S.E. and Another Vs. P. Sunil Kumar and Others,

But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students. In view of the aforesaid premises, we set aside the impugned judgment of the Division Bench of the Kerala High Court as well as the interim orders issued by the single Judge in several petitions out of which the writ appeals arose and the writ petitions filed by the respondents stand dismissed.

In Madhyamic Shiksha Mandal, M.P. vs. Abhilash Shiksha Prasar Samiti and others, (1989) 9 SCC 236

...It is extremely difficult for the Board to identify the innocent students from those indulging in malpractice. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again.

In Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others,

We are not unconscious or oblivious of grave injustice which might be done to some of the students, may be even majority, because of refusal by this Court to interfere but we cannot ignore the deterioration in the standard of discipline of academic institutions. How this should be regulated or controlled should best be left to the discretion of those who are entrusted with this responsibility. If this Court starts substituting its own opinion in place of opinion expressed by authorities it shall result in chaos. It is well known that due to conduct of others even innocent persons suffer but the sufferings of few has to be tolerated in the larger interest of the society. As is usual in such matters it is only the few who are responsible but to protect the bona fide or the genuine if a decision is given which erodes the discipline and vitiated the atmosphere of the academic institutions then it is better to restrain and refuse.

In Harish Verma and Others Vs. Ajay Srivastava and Another, a two-Judges Bench of the Apex Court relying upon the decisions rendered in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, and The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others, expressed the opinion that the admissions given to in-service candidates who have secured marks less than

the minimum prescribed by Regulation 9 framed by the Medical Council of India were likely to be struck down and accordingly set it aside. Their Lordships directed that the counselling have to be done afresh to the extent necessary. We think it appropriate to quote the observations of their Lordships:

The counselling shall have to be done afresh to the extent necessary. We are conscious of the fact that there would be some delay in commencement of post-graduation studies and to some extent the 2002 and 2003 batches would overlap. However, that is a situation which cannot be avoided. It is an inevitable consequence for which the successful candidates for the year 2002 and 2003, i.e. those who will be held entitled for admission in post-graduation courses of studies consequent upon this judgment, cannot be made to suffer for no fault of theirs. It will be for the State of Rajasthan, if necessary then in consultation with the Medical Council of India, to sort out the difficulties and to run the regular courses of the studies.

In *Dr. Sadhna Devi and others Vs. State of U.P. and others*, a two-Judge Bench of the Apex Court expressed the opinion that the circular issued by the State Government directing that there shall be no minimum qualifying marks for Scheduled Castes/Scheduled Tribes/Other Backward Classes candidates in the written examination for admission to postgraduate and diploma courses was liable to be quashed inasmuch as importance of merit is the only criterion for admission to the Postgraduate medical courses.

In *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, it has been held as under:

26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or Medical Council of India and make out a case of justification consistently with the fore-quoted observation of this Court in *Dayanand Medical College and Hospital's case (supra)*.

Be it noted, a Constitution Bench in *Dr. Saurabh Choudhary and Others Vs. Union of India (UOI) and Others*, by a majority view expressed the opinion that it would be appropriate to hold and direct that the decision in *Saurabh Chaudri and Others Vs. Union of India (UOI) and Others*, should be made applicable only prospectively from the academic year 2005-06.

In *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, their Lordships while fixing the time schedule has expressed the view as under:

32. Having regard to the professional courses into consideration, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCL colleges, new or old, students, Boards, universities, examining authorities etc. are required to strictly adhere to time schedule wherever provided for; there should not be mid-stream admission; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether State or Management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.

Thereafter their Lordships in sub-paragraphs 11 to 15 of Paragraph 35 has laid down as follows:

11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

The time schedule for grant of admission to postgraduate courses shall also be adhered to.

For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.

Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

Time schedule provided in Regulations shall be strictly adhered to by all concerned failing which defaulting party would be liable to be personally proceeded with.

We have referred to the aforesaid decisions to have a clear picture of the law governing the field relating to admission in Medical and other educational institutions. The Medical Council of India has framed a set of Regulations, namely, "Regulations On Graduate Medical Education, 1997" (in short "1997 Regulations"). Chapter II of the Regulations deals with admission, selection, migration and training. Regulation 4 prescribes eligibility criteria for admission to the medical course. Under the eligibility criteria passing of qualifying examination has been prescribed in addition to many other aspects. Regulation 5 which deals with selection of students stipulates that in States having more than one university/board/examining body conducting the qualifying examination, a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies. Clause 5 of the said regulation deals with the procedure for selection to MBBS course. It is apposite to reproduce clause 5 of Regulation 5:

5. Procedure for selection to MBBS course shall be as follows:

(i) in case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in clause (2) of Regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

(ii) In case of admission on the basis of competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics Chemistry and Biology at the qualifying examination as mentioned in clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of the candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive examination be 40% instead of 50% as above:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.

On a perusal of the language employed in clause (5) of Regulation 5 of the 1997 Regulations it is absolutely clear that when there is more than one university/board/examining body conducting the qualifying examination, a competitive entrance examination should be held so as to achieve a uniform evaluation and in the competitive examination 50% marks is to be required in respect of general candidate who has met the eligibility criteria and in respect of candidate belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes it is 40%. We may note that in the State of M.P. there are number of universities and, therefore, the said clause applies in full force and it is futile to contend that the admissions could be given on the basis of marks obtained in 10+2 examination. To these categories of students there cannot be departure from the Medical Council of India Regulations. It has been so stated in Gopal Teerthani (*supra*).

The next aspect that requires to be dealt with in the backdrop of the submissions put forth by the learned counsel for the petitioners in support of the stand of the college and the combatting stand of the Medical Council of India, the Committee and the State is whether the committee could have taken such steps against the college. Submission of the learned counsel for the petitioners is that 2007 Act came into force on 4th August, 2007 and the object of the Act is to provide for

regulation of admission and fixation of fee in private professional educational institutions in the State of M.P. It is proponed that in certain areas the State of M.P. has not prescribed the procedure and, therefore, action could not have been taken and there is repugnancy between the provisions of the Act and the Medical Council of India Regulations in view of section 11 of the Act and hence the Act has to prevail. To appreciate the aforesaid submission anatomy of the enactment requires to be scanned. Section 3(a) defines appropriate authority and section 3(d) defines common entrance test. As per dictionary clause common entrance test means an entrance test, conducted for determination of merit of the candidates followed by centralised counselling for the purpose of merit based admission to the professional colleges or institutions through a single window procedure by the State Government or by an agency authorised by it. Chapter II of the Act deals with admission and fee regulatory committee. Section 4 provides for constitution, composition, disqualification and functions of the committee. Sub-sections (9) and (10) of the said section empowers the committee to hear the complaint with regard to admission in contravention of the provisions contained in the Act. The said section stipulates that the committee has power to declare admission made in respect of any or all seats in a particular college or institution to be de hors merit and, therefore, invalid and communicate the same to the concerned university. Be it noted that the aforesaid provision also empowers the committee to recommend the Government for imposing a fine upto rupees ten lakhs and the Government may on receipt of such recommendation fix the fine and collect the same in case of each violation or decide any other course of action as it deems fit. Sub-section (10) of section 4 postulates that if the committee is satisfied that any unaided professional college or institution has violated any of the provisions of the Act, after approval of the State Government recommend the University or appropriate authority for withdrawal of the affiliation or recognition of such college or institution or decide any other course of action as it deems fit. To have a complete picture it is apposite to reproduce sections 5, 6 and 7 of the Act:

5. Eligibility. -- The eligibility for admission to a private unaided professional educational institution shall be such as may be notified by the Appropriate Authority.

Common entrance test. -- In private unaided professional educational institution, admission to sanctioned intake shall be on the basis of the common entrance test in such manner as may be prescribed by the State Government.

Admission. -- Every admission to private unaided professional educational institution shall be made in accordance with the provisions of this Act or the Rules made thereunder and every admission made in contravention thereof shall be void.

Section 11 of the Act has been laid immense emphasis by Mr. Ravindra Shrivastava, learned counsel for the petitioner. It is as under:

11. Act to have overriding effect. -- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

It is highlighted by the learned senior counsel for the petitioners that the State Government has not prescribed any procedure for holding the common entrance test and no action could have been taken for not taking students who had not appeared in the common entrance test. That apart, eligibility has also not been notified by the appropriate authority and, therefore, section 11 which has the overriding effect comes into play as there is inconsistency in the provisions of the Act and Medical Council of India Regulations. On a perusal of the 1997 Regulations and the provisions of the Act we do not find any repugnancy or inconsistency. The Regulations framed by the Medical Council of India deals with the manner in which the selections are to be made. There are provisions in the Act. The Rules might not have been framed under the Act which would lead to make the admission void if there is any contravention. Section 11 postulates that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. As we perceive, there is no inconsistency between the provisions of the Act and the 1997 Regulations. Hence, we are of the considered opinion that the Medical Council Regulations would have full play in the case at hand and no exception can be taken to the same.

The next question that emanates for consideration is whether the students who had passed 10+2 examination and have been extended the benefit of admission whether their admissions can be saved. We have already interpreted Regulation 5 of 1997 Regulations. The competitive entrance examination is a must for the purpose of selection for admission. There cannot be any kind of deviancy in that regard. Thus, the students who been have admitted on the basis of the said marks, their admissions have to be cancelled.

The next question that emerges for consideration is whether the admissions should be cancelled because of allegation that the admissions were given beyond 30-9-2007 and without recourse to centralised counselling. Submission of Tiwari and Mr. Shrivastava, learned senior counsel is that there was an emergent situation and, therefore, centralised counselling could not be strictly adhered to. Their submission is that the observer was present. Per contra, Mr. Kaurav has submitted that the observer did not participate. Be that as it may, participation of the observer does not amount to centralised counselling. A finding has been arrived at by the Medical Council of India that the admissions were given after the cut off date. This has to be really taken note of. We may note that it is vehemently put forth by the learned counsel for the petitioners that all admissions were made before 30th September, 2007. That could have been a matter of scrutiny. However, as advised at present, we are not inclined to sustain the cancellation on these two grounds as some of the students who have taken

admission on the basis of obtaining 50% marks in DMAT and PMT Examination and prosecuting their studies. Though the act of the College is really impermissible yet as the merit has not been totally given unceremonial burial in respect of some students we do not want to axe the said admissions. Needless to emphasise there has to be scrutiny of the marks obtained in respect of both the examinations.

The next aspect is whether the respondent-college could have admitted the students who have secured qualifying marks in the examinations conducted by AIPT, KAIET, AMUPMDC, UP PMT, CPMT, CPET, RPMT, HP, PMT, CPMPT, BCECT, AICET, etc. It is canvassed by the learned Sr. Adv. for petitioners that term "State" would include "States". It is contended by the learned counsel for the petitioners that the Apex Court in Islamic Academy of Education (*supra*) has held that the colleges in different States can form an association which means that students of other States can also come and join the college. As far as the first submission is concerned it is noted to be rejected as the language employed in section 1 clearly stipulates that the Act extends to the whole of Madhya Pradesh. That apart section 2(d) only uses the term "State Government" and by interpretation it cannot be held that it includes entrance examination conducted by all the States in the country. That is not what is understood by the plainest and simplest language use and hence, the question of entering into any further debate on that score does not arise. Thus the said submission stands repelled.

The second facet of the said submission is that the college in different states can form association. In Islamic Academy of Education (*supra*) it has been held that the words "common entrance test" clearly indicates that each institution cannot hold a separate test and the management can admit the students only on the basis of common entrance test conducted by the State Government or on the basis of the common admission test to be conducted by the association of all colleges of a particular type in that State i.e. medical, engineering and etc. Common entrance test held by the association must be for admission to all the colleges of that type in the State. It has been held therein if any professional college chooses not to admit from common entrance test conducted by the association then that college must necessarily admit the students by common admission test conducted by the State. On a perusal of the said judgment we do not find anything which would bolster the submission of the learned counsel for the petitioners. We may note with profit in P.A. Inamdar (*supra*) it has been held that an association can be formed by the colleges within the State or outside the State but it is evident and not in dispute that no intra-State association has been formed. On the contrary APDMC has been constituted. In view of the aforesaid the students who have passed the qualifying examination from other associations could not have been extended the benefits of admission. That is against the norms of the norms of Medical Council of India and also the judgments of the Apex Court. It is urged by Mr. Shrivastava that due to paucity of time such a procedure has been taken recourse to. Learned senior counsel has submitted that this is a mere irregularity but not illegality and hence, it should be ignored.

We really fail to fathom how the college could admit such students and it is further perplexing how the said students could be available within a span of two days as the college got the letter of permission only on 28-9-2007. In any case the college could not have admitted such students and hence, this category of the students have to face cancellation and no sympathy can be shown. As has been stated this kind of action is really subversive of academic discipline and sympathy would only be granting premium to the wrongdoer.

The next facet that is required to be dwelled upon is whether the college has really not marred or guillotined the merit while granting admission. The learned counsel appearing for the college submitted that it had admitted students who had acquired qualifying marks in DMAT examination held by APDMC and the PMT by the State Government. The Medical Council of India has produced a chart in respect of DMAT students and PMT students. On a perusal of the said chart it is perceptible that two lists were submitted to the Medical Council of India by the College. In the first list one set of marks were shown and in the second list another set of marks have been given. Instead of elaborating, we intend to give few examples. In the case of one Swati Mehta in the first list the marks shown were 98 and in the second list it is 105. In the case of one Rahul Karode it is 105 marks in the first list and as per the second list he has got 41 marks. In the case of Varun K. Jain no marks were submitted in the first list whereas in the second list he has been shown to have obtained 35 marks. In the case of Subhi Tripathi, the first list shows no marks but the second list showed 13 marks. These discrepancies have been pointed out by the Medical Council of India the committee did not have the privilege to see the said lists. Hence, we are inclined to direct the Committee to verify the lists produced by the Medical Council of India whether the students have obtained the requisite marks in the PMT conducted by the State or DMAT held by the APDMC.

Before we part with the writ petitions we may state that in one of the writ petition though constitutional validity of the provisions of the 2007 Act have been challenged, the same was not argued at all and hence, we refrain ourselves to advert to the same.

In view of the aforesaid premises we record our conclusions and directions in seriatim:

- (i) The stand of the petitioners and that of the college that no competitive entrance examination was necessary for admitting the students in the college, being sans substratum, is totally untenable.
- (ii) The holding of an entrance test is imperative in view of the Regulation 5(5) of 1997 Regulations.
- (iii) There is no repugnancy between the provisions contained in 1997 Regulations and 2007 Act as no inconsistency is perceived.
- (iv) The college could not have admitted the students who had got qualifying

marks in the examinations conducted by the association of colleges from the other State as the same is absolutely impermissible in view of the fact singular association has been formed in the State.

(v) The argument that the term "State" occurred in the dictionary clause of 2007 Act includes the States in the entire country is fallacious and have no legs to stand upon.

(vi) The students who have been given admission on the basis of the marks obtained in the examinations conducted by other associations from other States their admissions have to be cancelled and hence, cancellation of their admission by the Committee cannot be found fault with.

(vii) The students who have been extended the benefit of admission on the basis of 10+2 marks their admissions cannot be sustained and hence, cancellation of their admissions is given stamp of approval.

(viii) Though there might have been admissions in respect of some students after the cutoff date and without following centralised counselling it is equitable in the obtaining factual matrix as a one time measure not to cancel such admissions but to get them scrutinised only for the purpose of merit. The students who have been admitted on the basis of the qualifying marks in the DMAT and PMT examinations their marks shall be scrutinised by the Committee on 1-5-2008. The students who intend to appear before the Committee can appear with the documents and advance their cases with the Committee. The Medical Council of India is directed to send its representative to remain present when such scrutiny takes place.

(ix) As far as the students who have been admitted on the basis of NRI quota, they shall be governed by the decision rendered in Anshul Tomar vs. State of M.P. & ors., W. P. No. 13393, 2007 decided on 8-4-2008.

(x) The students whose marks are to be scrutinised by the Committee are hereby permitted to continue their course as there is an interim order permitting the students to prosecute their studies.

(xi) The students, cancellation of whose admission has been confirmed they are debarred from attending the classes as they are ineligible to prosecute studies.

(xii) As the college had admitted the students beyond the norms the respondent No. 5 - college is directed to refund the admission fee with interest at the rate of 9% per annum within a period of four weeks.

(xiii) As the respondent No. 5 college has not followed the procedure and taken path to deviancy, the Committee is directed to recommend the State to take steps keeping in view the provisions u/s 4(9) and (10) of the 2007 Act.

Accordingly, the writ petitions are disposed of. There shall be no order as to costs.