

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: HON'BLE MR. S. C. SHARMA AND
HON'BLE MR. SHAILENDRA SHUKLA, JJ

WRIT PETITION No. 11117 / 2019

DR. AKANKSHA NAYAK
Vs.
STATE OF MP AND OTHERS

WRIT PETITION No. 10963 / 2019

DR. AAYUSHI AGRAWAL
Vs.
STATE OF MP AND OTHERS

WRIT PETITION No. 11118 / 2019

DR. SHWETA B. SHAH
Vs.
STATE OF MP AND OTHERS

A N D

WRIT PETITION No. 12329 / 2019

DR. SAYALI JAIN
Vs.
STATE OF MP AND OTHERS

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- Counsel for the petitioner : Mr. Piyush Mathur, learned senior counsel appearing with Mr. M. S. Dwivedi, Mr. Akash Vijayvargiya, Mr. Vijay Assudani and Ms. Mini Ravindran, learned counsel for the petitioner(s).
- Counsel for the respondent : Mr. Abhinav Dhanodkar, learned Dy. Advocate General for the respondent – State.
Mr. Sunil Jain, learned senior counsel appearing with Mr. Kushagra Jain, Advocate for the respondent – M.P. Medical Science University and Exam Controller.
Mr. Vivek Sharan, learned counsel for the respondent – Dental Council of India.

- Whether approved for reporting : YES
- Law laid down : 1. A private Dental or Medical College cannot admit a student without there being any counselling by the State Government. Admissions are to be done in accordance with the Rules framed by the State Government known as 'Madhya Pradesh Private Medical and Dental Post Graduate Rules, 2016 (as the matter relates to the year 2016-17, the Rules of 2016 are relevant in the present case).
2. No relief can be granted to a student on the basis of negative equality.
3. The High Court does not have the power to legalise an illegal admission of a student which has been given to him, contrary to the statutory provisions, even though the student has completed the entire course.
- Significant paragraph numbers : 11 to 20

ORDER
(29/07/2019)

PER : S. C. SHARMA, J :-

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No. 11117/2019 are narrated hereunder.

02. The petitioner before this Court has filed this present writ petition being aggrieved by the order dated 2/4/2019, 21/5/2019 and 6/6/2019 passed by the Appellate Authority, Admission and Fee Regulatory Committee, in Appeal No.

42/2019.

03. Facts of the case, as stated in the Writ Petition, reveal that the petitioner has completed her Bachelor's Degree of Dental Science (hereinafter referred as 'BDS Course') from K. D. Dental College, Mathura (UP) which is affiliated with Dr. Bhimrao Ambedkar University, Agra (UP). She did her BDS from 2009-2010 to 2013-2014. The petitioner got herself registered as Dentist in the State of Madhya Pradesh, having Registration No.A-6885 on 28/5/2016 under the Dentists Act, 1948 and the registration is valid upto 31/12/2020. Petitioner has further stated that after completion of internship, she wanted to pursue higher studies. Petitioner has further stated that the Government of India brought in force an Ordinance being Dental (Amendment) Ordinance 2016 by which the National Eligibility Test was made mandatory for admission in BDS Course through out the country and the ordinance exempted only Government seats from the purview of National Eligibility cum Entrance Test, (hereinafter referred to as "the NEET"). The petitioner has also stated that the

Ordinance never provided for the applicability of NEET in respect of MDS Courses in the year 2016-2017. Petitioner has further stated that Hon'ble the Supreme Court in the case of Sankalp Charitable Trust Vs. Union of India and others [W. P. (Civil) No. 261/2016] has issued a direction that the AIPMT 2016 shall be treated as NEET-I and the Central Board of Secondary Education shall conduct NEET-II on 24/7/2016 for admissions to MBBS / BDS Courses for the academic year 2016-2017. The contention of the petitioner is that the applicability of NEET was mandatory only for BDS Courses and in respect of those candidates who have already passed BDS and who wanted admission in MDS for the academic session 2016-2017, the qualification of NEET was not required. Petitioner has further stated that an application was preferred before Hon'ble the Supreme Court in W.P.(Civil) No. 4060/2009 for issuance of a direction in respect of admissions for the academic session 2016-17, for all the seats in Private Dental Colleges and the Hon'ble Supreme Court has passed an order on 17/3/2016 by issuing a direction to select the candidates on the basis of *inter-se*

merits for admission in respect of the academic year 2016-2017 Batch from the list of All India Examination conducted by the AIIMS through counselling done by the State. It has been further stated that the State of Madhya Pradesh has framed Rules known as “M. P. Private medical and Dental Post Graduate Course Admission Rules, 2016”. Petitioner has further stated that on account of non-availability of large number of candidates seats were available and in 2016 – 2017 the National Eligibility Test nor the MP Pre-Medical Test was conducted nor any admission test was conducted by the Association of Private Dental and Medical Colleges (APDMC) and in those circumstances the respondent No.8 – Modern Dental College and Research Centre, invited applications for admission from the candidates who were possessing BDS Degree. The last date for admission was 31/5/2016 and the petitioner applied for the same and was granted admission on 31/5/2016.

04. The contention of the petitioner is that the admission was in consonance with the Dental Council of India Revised MDS Course Regulations, 2007 and no illegality was

committed at any point of time in respect of the petitioner's admission. It has been further stated that the information in respect of the admission of the petitioner as well as other persons was forwarded to the Medical University of the State of Madhya Pradesh and the petitioner started prosecuting studies in respect of Master's Degree (MDS Course). Petitioner has further stated that one Anand Rai filed a Public Interest Litigation before the State of Madhya Pradesh at Jabalpur ie., W.P.No. 895/2018 stating that as many as 83 students have been admitted without there being a process of counselling and in the aforesaid Writ Petition, the petitioner was not a party. The Dental Council of India submitted a reply. It has been further stated by the petitioner that the Dental Council of India submitted its reply and categorically stated that in the light of the order dated 28/4/2016 passed by the Hon'ble Supreme Court in W.P. (Civil) No. 261/2016 (Sankalp Charitable Trust Vs. Union of India) and also in the light of the MDS Course Regulation 2007, the admission of 83 students admitted in different medical colleges are lawful.

05. The High Court of Madhya Pradesh has disposed of the Writ Petition directing the Fee Regulatory Authority to take a final decision in the matter in respect of admission of the students to the PG Dental Courses in private medical colleges. The Admission and Fee Regulatory Committee has passed an order on 2/4/2019 declaring the admission of the petitioner and other similarly situated students, as illegal, as the admissions were done without adhering to the process of counselling. The petitioner thereafter preferred an appeal against the order dated 2/4/2019 and an interim order was passed in Appeal No. 42/2019, on 18/4/2019. The petitioner along with other persons were permitted to appear in the examination and thereafter the appellate authority has passed a final order in the matter. The appellate authority has passed an order holding the petitioner's admission as illegal / invalid. The order has been passed on 21/5/2019. The contention of the petitioner is that though the students who have qualified their BDS from the State of Madhya Pradesh, relief has been granted by the appellate authority and the admissions have been held to be valid, but for the

persons like the petitioner who have completed their BDS from other States, the admission has been held to be invalid. A Review Petition was also preferred in the matter by the petitioner and the same was withdrawn by order dated 30/5/2019. The M. P. Medical Science University, Jabalpur has issued Notification on 6/6/2019 cancelling the MDS Examination in respect of the petitioner. The petitioner has raised various grounds before this Court and has challenged the orders passed by the Fee Regulatory Authority as well as by the appellate Authority – respondent Nos. 4 and 5, by which the admissions have been held to be invalid.

06. The contention of the petitioner is that the respondents have failed to consider the regulations framed by the Dental Council of India in exercise of the powers conferred under Sec. 20 of the Dentist Act, 1948 in its proper perspective and they were granted admission in view of the provisions of MDS Course Regulation 2007 and, therefore, the impugned order deserves to be quashed. It has also been argued that the appellate authority has ignored the supremacy of the Dental Council of India which is the

supreme body and the admission of the petitioner was in consonance with the Regulations of 2007 and, therefore, the impugned orders passed by the respondent No. 4, deserves to be quashed.

07. The petitioner has also raised a ground that the AFRC has not followed the mandatory provisions as contained under Regulation 11 of the Act of 2007 while conducting an enquiry in the matter; principles of natural justice and fair play were not followed; and, therefore, the order passed by the AFRC deserves to be quashed. A ground has also been raised that the appellate authority has also erred in law and facts, in holding that the petitioner's admission was contrary to the Rules. It has been argued that the students from the State of Madhya Pradesh have been found eligible and validity of their admissions have been upheld and there cannot be a discrimination in respect of the students who have obtained a Degree of BDS from other Colleges outside the State of Madhya Pradesh. It has also been argued that the petitioner was fulfilling the requisite qualification prescribed for the admission, as provided under the Rules of

2016. 85% seats were required to be filled up by the Competent Authority and as large number of seats were lying vacant, the Colleges have filled up the seats and the petitioner's admission cannot be termed as invalid or contrary to the Rules. It has also been argued that the merit has not been compromised and there was no complaint from any student that less meritorious persons have been granted admission ignoring the claim of more meritorious students. Lastly, it has been stated that the petitioner has completed the entire course and cancellation of admission, as has been done at the verge of completion of the course, will cause substantial injury to the petitioner. The petitioner has prayed for the following reliefs:

(A) That the Writ Petition may kindly be allowed by setting aside the Order Dt. 02.04.2019 (Annexure P/12) passed by the Responent No. 4 (AFRC) so far it relates to the Petitioner.

(B) That consequently the Impugned Order Dt. 21.05.2019 (Annexure P/17) passed by the Appellate Authority of Admission and Fee Regulatory Committee in Appeal No. 42/19 so far it relates to the Petitioner may kindly also be ordered to be quashed / set-aside;

(C) That by further quashing the Notification

Dt. 06.06.2019 (Annexure P/19) issued by the Respondent University whereby MDS exam of the Petitioner has cancelled may also kindly be set-aside / quashed.

(D) That the Respondents may also kindly be directed to conduct and allow the Petitioner to participate in the Practical Examination and also to declare the final results.

08. A detailed and exhaustive reply has been filed on behalf of the Dental Council of India and the stand of the Dental Council of India is that a PIL was filed before this Court ie., WP No. 895/2018 and this Court by order dated 10/8/2018 has directed the AFRC to scrutinise all admissions in respect of the admissions granted by Private Un-aided Dental Colleges. It has also been stated by the DCI that the AFRC by order dated 2/4/2019 has held that the admissions done by the Un-aided Private Dental Colleges, without counselling process conducted by the Counselling Authority of the State of Madhya Pradesh in the year 2016-17, are invalid. It has been further stated by the DCI that as many as 83 students who were admitted in various private medical colleges preferred an appeal before the appellate authority and even the Colleges have preferred appeals in

the matter. It has been stated that the appellate authority has held the admission of those students to be invalid who have passed their BDS course from the Universities located outside the State of Madhya Pradesh, like the present petitioner. The respondent DCI has placed heavy reliance upon the Revised MDS Course Regulations 2007 and the contention of the respondent – DCI is that the admission granted in the matter by the College in question, without there being a counselling process, is illegal and the view taken by the AFRC and the appellate authority does not warrant any interference. The DCI has thus stated that the petitioner and other identically placed students are not entitled for any relief. The admission given to the students, without there being any process of counselling by the College, cannot be validated.

09. The State of Madhya Pradesh has also filed a reply and they have supported the order passed by the AFRC dated 2/4/2019 and the order passed by the appellate authority dated 21/5/2019. It has been stated that the counselling conducted by the Director, Medical Education was over on

31/5/2016 at 05:30 pm., at College level and the admissions were done at the College itself without concurrence or approval from the State Government (The Director, Medical Education) and as the petitioner and other petitioners did not participate in the counselling conducted by the Director, Medical Education, as per the Rules, their admissions are illegal.

10. Heard learned counsel for the parties at length and perused the record. The matter is being disposed of at the admission stage itself with the consent of the parties.

11. The undisputed facts of the case reveal that in the State of Madhya Pradesh the State Government has framed Rules in exercise of the powers conferred under the provisions of Madhya Pradesh Niji Vyavsayik Shikshan Sansthan (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 (No. 21 of 2007) and in exercise of powers conferred under the Act of 21 of 2007, Rules known as “Madhya Pradesh Private Medical and Dental Post Graduate Course Admission Rules, 2016”. The Rules which are having statutory force provides for admission only by

way of counselling to be conducted by the State Government. Rule 11, 14 and 15 reads as under :

11. EXAMINATION

Qualifying marks obtained in AIPGMEE 2016 conducted by National Board of Examination, New Delhi. AIPGDEE-2016 organised by AIIMS New Delhi shall be the basis for admission in 85% seats of Private Medical/ Dental Colleges of the State of M.P., in compliance of Hon'ble Supreme Court vide order dated 17.03.2016 in I.A.83/2015 and in Civil Appeal No. 4060/2009 order dated 27.5.2009.

14. COUNSELLING:

The Counselling schedule of M.,P. Pre P.G. – 2016 will be published separately based on the schedule of All India Pre P.G. Counselling 2016 and according to orders issued by the Hon'ble Supreme Court.

Process of Counselling will be as follows:-

- (1) First round of Counselling will be online. Second round of counselling and the allotment of seats for left out seats if any will be offline.
- (2) Detailed information regarding counselling will be displayed on Directorate's website www.medicaleducation.mp.gov.in and M.P. online website www.mponline.gov.in candidates are advised to remain in touch with the websites.
- (3) Candidates will have to register himself/herself online with M.P. online compulsorily on the schedule dates before the first round of counselling. Only online registered candidates with M.P. online will be eligible to take part in the state counselling process.
- (4) The Registration facility shall be available only on scheduled dates before the first round of counselling. After the commencement of the first round of the counselling, registration process will not be reopened in any subsequent round. Therefore, all those candidates who want to participate in the counselling are advised to get themselves registered online with the M.P. online on the scheduled dates before the first round of

the counselling. If a candidate does not register online with the M.P.online on the scheduled dates then he/she will not be eligible to take part in any round of counselling and for the allotment of the left out seats.

- (5) Candidates can give option at the of Registration/ seat allotment for admission in either Govt. Autonomous Medical/ Dental on Private medical/ dental college as per his eligibility.

The option may be given as below

- (a) Govt. Autonomous Medical / Dental College.
 - (b) Private Medical/ Dental College.
 - (c) Both of them as above.
- (6) Candidate has to pay registration fee of Rs. 500, portal fee Rs. 30 and Rs. 100 at the time of choice locking. This amount may be deposited by the candidate in the authorised Kiosk of M.P. online or can be paid through:-

- (a) Internet Banking
- (b) ATM cum Debit Card
- (c) Credit Card

Note- The candidate has to deposit Rs. 530 at the time of registration and Rs. 100 at the time of choice locking. (In total Rs. 630) compulsorily, failing which the choice filling by the candidate will be not considered.

- (7) There will be one registration only for both the government autonomous and private medical and Dental College.
- (8) After the registration the candidate will exercise choice filling and choice locking as per his/ her eligibility. Candidates are advised to take a print out of their choice locking. No change shall be allowed after the choice locking. Print out has to be produced at the time of scrutiny and admission.
- (9) Such candidates who do not want to fill their choices for the available subjects/ colleges, for them the option of 'Opt of waiting' will be available.

- (10) After declaration of the result of allotment, candidate can obtain a print out of his/her provisional allotment letter by using the password provided to him /her by M.P. online at the time of the registration.
- (11) For the candidates who have been allotted the seats provisionally, it will be compulsory for the candidates to get his/ her original documents and the applicable appendix 1-4 and proforma 1-9 attached along with the rules of year 2016 filled in all respect, scrutinised at the time of taking admission on the allotted seat by the scrutiny committee/ counselling committee at Gandhi Medical College, Bhopal to ascertain his/her final eligibility/ non- eligibility for the admission. The allotment of candidates who are declared not eligible by the scrutiny committee/ counselling committee at the Gandhi Medical College Bhopal will be considered as cancelled and the vacant seat so created will be shown in the next round of counselling. The decision by the scrutiny committee./ counselling committee will be final.
- (12) Candidate has to be physically present, and also must submit all necessary original documents at the time of counselling/admission.
- (13) Those eligible candidates who have already taken admission in All India or any other state Medical / Dental College will have to produce at the time of scrutiny a certificate issued by the Dean/ Institute head in which it should be mentioned what all documents have been deposited with them. The certificate should not be more than be 3 months old. Such candidates after allotment will have to deposit the original documents compulsorily within the stipulated time limit at the time of admission, otherwise the allotment will be treated as cancelled and the vacant seat will be shown in the next round of counselling and also such candidate on the allotted seat will not be eligible for the next rounds of the counselling and also for allotment of the left out seats.
- (14) After choice locking it is compulsory for the candidate to take admission on the allotted seat else the candidate will not be eligible for the

subsequent rounds of counselling and allotment of the left out seats if any. **It is expected from the candidates to fill their choices carefully.**

- (15) Following candidates will be eligible for subsequent round of counselling after the first round of counselling:-
- (a) Such online registered admitted candidates on the allotted seats of the earlier rounds of counselling.
 - (b) Such online registered candidates who have not been allotted any seat in the earlier rounds of counselling.
 - (c) Such online registered candidates who are given “Opt for waiting” option in the earlier rounds of counselling.
 - (d) Such online registered candidates who did not do choice filling in the earlier rounds.
- (16) If, a candidate after taking admission on the allotted seat resigns due to any reason then he/she will be considered not eligible for the subsequent round of counselling and for allotment of the left out seats for government Medical/Dental Colleges and Private Medical/ Dental Colleges.
- (17) Candidates who have taken admission on allotted seat in the first round of counselling and are satisfied with the admitted seat and do not want to take part in subsequent round of counselling, such candidates will have to click “satisfied option” at the time of admission.
- (18) Institute head will issue a certificate to the candidate regarding the number of original documents deposited by the candidates.
- (19) At the time of allotment of the left out seats in the government autonomous/ Private Colleges the candidate will have to deposit full annual fee and all original documents at the site of the counselling compulsorily otherwise they will not be allotted seat.
- (20)
- (i) Vacant physically handicapped seats will be filled up by the open candidate of same category.

- (ii) Reserved category candidates will have to submit income certificates of 2015-2016 at the time of scrutiny as per M.P government G.A.D. Department letter number C/3-7/2013-3- one Bhopal dated 25-9-2014, the self-signed self- attested income certificate in prescribed income declaration proforma (annexure 3) submitted by the candidate will be considered valid. In case of non-presentation of income certificate the candidate will have to deposit a security deposit of Rs. 10,000/ - (Rupees Ten Thousand only). Dean/ Principal of the concerned institution will get the self attested, self signed declaration furnished by such admitted candidates verify by the concerned competent authority. If, it is proved after verification that the candidate has taken admission on the basis of false document then such certificate will be cancelled and legal action will be taken as per the prevailing rules. Admission of the candidate will be cancelled and such candidate will have to deposit Rs. 5,00,000 (Rupees Five lakhs) only, to the Director Medical Education in case of state quota seats as penalty and then only original documents of the candidates will be returned.
- (iii) Any candidate who has been allotted a seat and college once will be eligible for re-allotment on the basis of his/her merit, such candidates will have to complete the admission process within the stipulated date and by depositing the full fee of the concerned college to the Director Medical Education M.P. at centralised counselling centre, Gandhi Medical College Bhopal.

In case of re-allotment in Govt/Private Medical and Dental College 10% (Maximum Rs 10,000/-) of annual tuition fee will be deducted and remaining amount will be refunded to the candidate.

15. ADMISSION:

Director Medical Education will be the competent authority for the allotment of 85% seats in Private Medical and Dental Colleges.

The candidate who has been allotted a subject, course and college during the counselling has to report to the Dean/Principal of the College within the specified date and time.

- (1) Admission Committee constituted by the Director Medical Education Bhopal M.P., consisting of Dean/Principal, Two Professors and Two Medical Teachers of the reserved categories will verify the original documents and if found eligible then will give the admission to the candidates in the allotted subject, course and college.
- (2) Once admitted candidate has to deposit all Original documents with the concerned college, a certificate to this effect be issued to the candidate by the college authorities.
- (3) **Seat Leaving Bond**
After taking admission on the State quota allotted seat, candidate has to submit an affidavit stating that he/she will complete the course and will submit a seat leaving bond, stating that if he/ she resigns from the seat or is expelled from the course due to any reason after the last date of the round of M.P State Pre P.G. Couneslling – 2016 or thereafter and before the completion of the course he/she will have to deposit Rs. 5 lakhs to the Director Medical education in case of state quota seat, as financial penalty or else it will be recovered as land revenue arrear. Only after that original documents will be returned. In addition such admitted candidates in degree/diploma course will not be eligible for next 3 years for admission in state P.G. seats in case of degree course and next two years in case of diploma course from the date of registration/ expulsion.
- (4) Candidate will not be eligible for any change in subject, course, category and college on any ground after the seat allotment or re-allotment after the last round of counselling and/ or allotment of the left out seats.
- (5) The Candidate who fails to take admission by the

last date of admission or leave the seat before the last date after taking the admission the his/her claim will be forfeited and his/her allotment / admission will be treated as cancelled and the candidate will be declared not eligible to participate in the further rounds of counselling and allotment of the left out seats.

- (6) Complete process of scrutiny and admission will be videographed showing the details of complete of process of scrutiny and admission. 4 Copies of CD, of the videography will be prepared one each will be deposited with the Dean of the concerned college, Director Medical Education, Registrar of the Concerned University and AFRC. The videography at the time of scrutiny and admission will be responsibility of the Director Medical Education M.P.
- (7) The list of admitted candidates in Private Medical/ Dental Colleges will be provided to the Director Medical Education by the Dean / Principal of the Concerned College after every round of the counselling. This list will also be displayed on concerned College website and notice board and will also be displayed on AFRC and D.M.E. website.
- (8) A Committee will be constituted under the Chairmanship of Director Medical Education for every round of counselling to supervise the counselling process. The members of the committee will be as follows:-
 1. Director Medical Education – Chairman
 2. Chairman AFRC or his representative – Member
 3. Chairman Private University Regulatory Commission or his representative – Member
 4. Principal govt. Autonomous Dental College – Member
 5. Deans of all govt. Autonomous Medical College – Member
 6. Joint Director Medical Education – Member
 7. Deputy Director Medical Education – Member
 8. Representative of reserved category nominated by Director of Medical Education M.P. – Member
 9. Other Members Nominated by Director of

Medical Education M.P. – Member

- (9) At the time of scrutiny and admission, finger prints of all fingers of hands of candidates will be taken and Dean/ Principal of the concerned Medical/ Dental College to ensure it.
- (10) The State Government reserves right to amend any rules and procedure for admission. The information in this regard will be available on the website of Director Medical Education and it will not be published separately. Therefore it is advised to the candidate to be in continuous contact with the Director Medical Education website www.medicaleducation.mp.gov.in
- (11) Director Medical Education will be responsible for complete counselling and admission process as per rules.

12. The aforesaid Rules makes it very clear that the counselling has to be conducted by the State Government in the manner and method, as provided under the Rules. The Rules do not empower any private Dental College to invite applications directly from the students and to grant them admission.

13. The another important aspect of the case is that on account of various orders passed by the Hon'ble supreme Court, NEET Examination was held to be mandatory and the apex Court also has upheld the criteria of admitting students on the basis of marks obtained in NEET in the year 2016. The apex Court in Civil Appeal No.4069/09, on an

application preferred by the Modern Dental College & Research Centre, has passed the following order :

“That apart, we also find that as per the provisions of Post-Graduate Medical Education Regulations, 2000, as amended from time to time, examination for admitting students for post graduate studies should have been concluded before 15th February, 2016. It is an admitted fact that no examination had been conducted by the applicants for the said purpose till date, though the last date of examination, i.e., 15th February, 2016, lapsed much earlier. Allowing the applicants to conduct the examination at this stage will disturb the entire schedule of admission stipulated in the afoesaid Regulations.

According to the aforesaid Regulations, the first round of counseling/admission has to be concluded between 4th to 15th April, 2016, which is the next step.

We may record that a fervent plea was made by the learned senior counsel for the applicants to extend the date of conducting the examination till 31st March, 2016. However, we feel that it would not be possible for the applicants to hold the examination in a fair and transparent manner in such a short period and to start the first round of counselling/admission by 4th April, 2016 and conclude the same by 15th April, 2016.

As per the interim arrangement made under the orders dated 27th May, 2009, the medical colleges of State of Madhya Pradesh are permitted to admit 50% of the students in pursuance to the examination conducted by the applicant association whereas 50% of the students are to be given admission as per the recommendation of the State. We are informed that for the last few years, the State of M.P. is

sending the names of the candidates from the merit list prepared of those who appeared in All India Examination held for the purpose. Same procedure be adhered to for this year as well.

Insofar as the All India Examination is concerned, it has already been held as per the stipulated time schedule and the result of the said examination has already been declared. Thus, a list of successful candidates, who have passed the said examination is available at present.

In the aforesaid circumstances, we permit the applicants, to select candidates, on the basis of their inter-se merit, for admission to 2016-17 batch of post-graduate course from the aforestated list of successful candidates.

The counselling shall be done by the State and the fees which might be collected from the students by the State shall be paid by the State to the concerned medical college.

In view of the above interim order, Interlocutory Application No.83 of 2015 stands disposed of.”

14. At the relevant point of time when the order was passed by the Hon'ble Supreme Court, the All India Examinations were already conducted known as AIPGMEE and AIPGDEE and a list was required to be prepared of students only on the basis of their performance in the AIPGDEE 2016 which was Entrance Examination for MDS Course. There was no third option available to the State of Madhya Pradesh nor to the private Colleges.

15. It is pertinent to note that the last date for counselling

was 31/5/2016, meaning thereby, the counselling which was conducted by the State Government and on the basis of the list furnished by the State Government to Colleges, in presence of the representative of the counselling Committee. It has been vehemently argued that on 31/5/2016 a large number of seats were vacant and, therefore, the Colleges wrote a letter to the the Director, Medical Education to permit them to fill up the vacancies. It is pertinent to note that the last date for counselling was 31/5/2016 till 05:30 pm., on the same day letter was written to the Director, Medical Education and as informed by the learned Senior Counsel, a notice was displayed on the Notice Board of the College informing the candidates about the vacant seats and admissions were also given on the same day ie., on 31/5/2016 to the candidates. This Court really fails to understand that in case the notice was pasted on the Notice Board at 05:30 pm., or in the evening, how the candidates from the State of Madhya Pradesh and all over the country came to know about the notice and applied at the same time and got admission also on the same day. The aforesaid

process adopted by the College / Colleges, itself makes things very clear. There has been a total violation of the process of admission, as provided under the Admission Rules of 2016. No statutory provision of law permits any private Medical / Dental College to admit a student directly, as has been done in the present case. It has been vehemently argued before this Court that in the light of the Dental Council of India MDS Course Regulation 2007, the admissions granted by the College are legal. The DCI Regulations have been framed by the Central Government in exercise of the powers conferred by Sec. 20 of the Dentist Act, 1948 and Regulation 1 reads as under :

- 1. Short title and commencement** – (i) These Regulations may be called the Dental Council of India Revised MDS Course Regulations, 2007.
- (ii) They shall come into force on the date of their publication in the Official Gazette.

SECTION-I

REGULATIONS FOR THE MDS DEGREE

In view of the increase in demand for specialty training, the Dental Council of India desires that, all Dental institutions with proper infrastructural facilities, faculty and adequate clinical material shall start postgraduate courses. However, no institution shall start postgraduate courses without prior approval of Government of

India as per the provision of the Dentists (Amendment) Act, 1993 and regulations framed thereunder. Before considering the P.G. application, DCI shall conduct the Periodical Inspection of the Institution to verify the availability of infrastructural facilities up to BDS level.

ELIGIBILITY:

A candidate for admission to the MDS course (Master of Dental Surgery) must have a recognised degree of BDS (Bachelor of Dental Surgery) awarded by an Indian University in respect of recognised Dental College under Section 10(2) of the Dentists Act, 1948 or an equivalent qualification recognized by the Dental Council of India and should have obtained permanent registration with the State Dental Council. Candidates not possessing a recognized Dental qualification for the above purpose should secure the prior approval of his qualifications by the Dental Council of India before he can be admitted to the MDS Course of any University in India. Qualification for the above purpose should secure the prior approval of his qualifications by the Dental Council of India before he can be admitted to the MDS Course of any University in India.

Candidates who possess PG Diploma recognised by the DCI with the duration of 2 years (proposed) in particular specialty is eligible for admission in MDS in the same specialty and the duration will be 2 years. The syllabus of two years programme will be as per the concerned university guidelines.

Provided that in the case of a foreign national, the Dental Council of India may, on payment of

the prescribed fee for registration, grant temporary registration for the duration of the postgraduate training restricted to the dental college/institution to which he is admitted for the time being exclusively for postgraduate studies;

Provided that further temporary registration to such foreign national shall be subject to the condition that such person is duly registered as dental practitioner in his own country from which he has obtained his basic dental qualification and that his degree is recognised by the corresponding dental council or concerned authority.

SELECTION OF POSTGRADUATE STUDENTS:

(1) Students for postgraduate dental courses (MDS) shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the university/institution may adopt any one of the following procedures both for P.G. Diploma and MDS degree courses:

(i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of universities in the same state; or

(ii) On the basis of merit as determined by a centralised competitive test held at the national level; or

(iii) On the basis of the individual cumulative performance at the first, second, third & Final B.D.S. examinations, if such examinations have been passed from the same university; or

(iv) Combination of (i) and (iii);

Provided that wherever entrance test for Postgraduate admissions is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate Dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes.

Provided further that, in non-governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent, by the management of the institution on the basis of merit.

16. The stand of the petitioner is that the selection has been done on the basis of the aforesaid Regulations and the Colleges have prepared a merit list on the basis of marks obtained in BDS Examination. It has also been argued that there is no complaint from anyone that less meritorious students have been given admission ignoring the claim of the more meritorious students.

17. This Court is of the considered opinion that the aforesaid issue is not in controversy before this Court. The only controversy before this Court is whether without any counselling on the part of the State Government, as provided under the Rules of 2016, can a College admit a student

directly through backdoor, as has been done in the case of the present petitioner.

18. This Court is of the considered opinion that the various orders passed by the apex Court from time to time and the Rules on the subject framed by the State Government does not empower the Colleges to admit the students directly. The students are to be admitted on the basis of the list provided by the Director, Medical Education, that too after conducting counselling in presence of an officer of the State Government and, therefore, the DCI Regulation of 2007 do not help the petitioner at all.

19. Much has been argued by the learned senior counsel in respect of the order passed by the appellate authority dated 2/4/2019. It has been argued that the appellate authority has given a clean-chit to the students who have passed BDS from the State of Madhya Pradesh and the petitioners who have passed BDS from outside the State of Madhya Pradesh have been singled out. Facts of the case reveal that the entire process of scrutinising the admissions was initiated on account of the directions given by this Court in W.P.No.

895/2018 filed by one Dr. Anand Rai. The Division Bench of this Court, presided over by Hon'ble the Chief Justice has passed the following order :

The grievance of the petitioner in the public interest writ petition is that certain students have been admitted in the Post Graduate Dental College for the session 2016-17 who are not qualified. In the return filed on behalf of the State on 27.04.2018, it has been pointed out that Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman avam Shulk ka Nirdhara) Adhiniyam 2007 (for short "the Act") provides for constitution of Admission & Fee Regulatory Committee, whereas Sub Section (9)(a) of the said Act empowers such Committee to enquire into the admissions made in contravention of the provisions contained in the Act and take corrective action in accordance with law. It is pointed out in return that the State Government has forwarded the report of the University to Admission and Fee Regulatory Committee 2 and that such committee is to take a final decision in terms of Act and regulations made thereunder. In view of the said fact, we dispose of the present petition with direction that the Admission and Fee Regulatory Committee constituted under the Act to take a final decision in respect of admission of the students in the Post Graduate Dental Course in the private medical colleges within a period of three months from today.

20. In the light of the aforesaid order passed by the Division Bench of this Court, the Admission & Fee Regulatory Committee constituted in exercise of the powers conferred under the provisions of Madhya Pradesh Niji

Vyavsayik Shikshan Sansthan (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 (No. 21 of 2007) has looked into the matter. The Admission & Fee Regulatory Committee by order dated 2/4/2019 on the basis of record submitted in respect of 80 students of MP Medical Science University and in respect of 78 candidates whose record was furnished by the unaided private Dental Colleges, has arrived at a conclusion that the admission done by the unaided private Dental Colleges, without counselling process for MDS Course in respect of the year 2016-17, are invalid. Against the order passed by the Admission & Fee Regulatory Committee, appeals were preferred before the appellate Authority and the appellate Authority has allowed the appeals in respect of the large number of students and has divided the students in two classes : (a) students who have obtained Bachelor's Degree from the State of Madhya Pradesh; and, (b) students who have obtained Bachelor's Degree from outside the State of Madhya Pradesh. The appeals in respect of the students who have obtained a degree from the State of Madhya Pradesh

have been allowed and the appeals in respect of the students who have obtained Degree (BDS) from other Universities situated out of the State of Madhya Pradesh have been dismissed, meaning thereby, their admission have been treated to be invalid. It has been vehemently argued before this Court that in case the admissions of the students who have obtained degree from the State of Madhya Pradesh, can be held to be valid, there cannot be any discrimination in respect of the students who have obtained degree from the Universities located outside the State of Madhya Pradesh keeping in view the the Dental Council of India Revised MDS Course Regulations, 2007 as it does not provide two classes of students. The contention raised by Mr. Piyush Mathur, learned senior counsel, is absolutely correct. There cannot be any discrimination, but the fact remains that there was no process of counselling in respect of the present petitioner who obtained a graduate degree from outside the State of Madhya Pradesh and on the ground of negative equality no relief can be granted to the present petitioner. This Court cannot legalise something which is *per se* illegal,

nor this Court has the power to enact a statute. The statute which governs the field is very clear, there cannot be any admission without the process of counselling and without following the M. P. Private medical and Dental Post Graduate Course Admission Rules, 2016. It is really unfortunate that inspite of repeated orders passed by the Hon'ble Supreme Court as well as by this Court, admissions are being granted through backdoor ignoring the statutory provisions, interim orders are passed permitting the students to continue, as has been done in the present case by the appellate Authority vide order dated 18/4/2019 and finally it is the student who suffers. This Court cannot legalise an invalid admission by taking a lenient view, contrary to the statutory provisions. The student shall be free to avail the remedy as may be available, for redressal of their grievance against the Institutions, if so advised. However, so far as the present petition is concerned, the question of setting aside the orders passed by the appellate Committee, in respect of the present student does not arise. It is also made clear that this Court has not given a stamp of approval in respect of

the remaining students who have passed their BDS course from the Universities / Colleges located in the State of Madhya Pradesh and it shall be open for the State Government or the Dental Council of India to take action in accordance with law.

21. With the aforesaid, the present Writ Petition stands dismissed. The other connected Writ Petition also stand dismissed.

A copy of this order be placed in the record of the connected Writ Petition.

(S. C. SHARMA)
J U D G E

(SHAIENDRA SHUKLA)
J U D G E

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