HIGH COURT OF MADHYA PRADESH AT JABALPUR

WRIT PETITION NO.14826/2017

PETITIONER: SHIVANI SINGH

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.21787/2017

PETITIONER: SOUMYA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.21856/2017

PETITIONER: PRANJAL BHATIA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.21916/2017

PETITIONER: ADITI SAXENA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23185/2017

PETITIONER: ARUSHI SHRIVASTAVA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23301/2017

PETITIONER: YASHWIN BHAGCHANDANI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23397/2017

PETITIONER: MANSI SHRIVASTAVA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23418/2017

PETITIONER: AMBIKA THAKUR

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23426/2017

PETITIONER: ESHAAN MEHTA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23429/2017

PETITIONER: AYUSHI BHAGWAT

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23431/2017

PETITIONER: MANEET SINGH GAMBHIR

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23433/2017

PETITIONER: MAHIMA VERMA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23435/2017

PETITIONER: VIJENDRA MEHRAWAT

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23437/2017

PETITIONER: MOHAMMED AMMAN KHAN

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23438/2017

PETITIONER: LAKSJHYA JINDAL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23444/2017

PETITIONER: SUMAIYA KHAN

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23445/2017

PETITIONER: MRINALIKA SINGH GEHLOT

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23446/2017

PETITIONER: HARDIK NIGODIA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23448/2017

PETITIONER: SHUBHANKAR PATHAK

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.23449/2017

PETITIONER: AISHWARYA SHAH

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.324/2018

PETITIONER: PRERNA GARG

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.803/2018

PETITIONER: CHIRAYU MEDICAL COLLEGE AND HOSPITAL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.980/2018

PETITIONER: AAKANSHA GOYAL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.990/2018

PETITIONER: LAE STANLY LALL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.995/2018

PETITIONER: SOORYA JS NAIR

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1008/2018

PETITIONER: ASHWINI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1011/2018

PETITIONER: SHATAKSHI DUBEY

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1017/2018

PETITIONER: SUSHMITA SAHANI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1019/2018

PETITIONER: YASH JATHWANI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1141/2018

PETITIONER: ANURAG JANGIR

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1142/2018

PETITIONER: NEEL PATEL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1144/2018

PETITIONER: RAGHVENDRA PRATAP SINGH

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1184/2018

PETITIONER: PREET KANWAL SINGH

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1186/2018

PETITIONER: PRIYANKA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1194/2018

PETITIONER: ABHI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1715/2018

PETITIONER: NOOR NESA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1983/2018

PETITIONER: MUSKAAN GUPTA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.1988/2018

PETITIONER: YASH KETAN THAKER

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.2146/2018

PETITIONER: MOHAMAD ABRAZ HUSSAIN

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.4615/2018

PETITIONER: RIDHA NUR E ISMAT RAZA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5165/2018

PETITIONER: DANIYA ALI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5166/2018

PETITIONER: SEJAJ BIRANI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5167/2018

PETITIONER: UNNATI JAISWAL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5168/2018

PETITIONER: ISHITA THAKUR

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5170/2018

PETITIONER: GARV JAIN

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5171/2018

PETITIONER: NISHITA THAKUR

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5172/2018

PETITIONER: SHOBHIT PATIL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5173/2018

PETITIONER: SAMYA SHRIVASTAVA

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5181/2018

PETITIONER: SIDDHARTH SURUYAVANSHI

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

WRIT PETITION NO.5351/2018

PETITIONER : TRASHI AGRAWAL

Vs.

RESPONDENTS : THE STATE OF M.P. AND OTHERS

Present : Hon'ble Shri Justice R.S. Jha,
Hon'ble Shri Justice Rajeev Kumar Dubey.

For the petitioners : Shri Anil Khare, Senior Counsel with Shri H. S. Chhabra, Shri Amitabh Gupta, Shri Sidharth Gupta and Shri Nilesh Kotecha, Shri Shashank Shekhar, Shri Himanshu Mishra, Shri Abhishek Singh & Shri Rudra Dev Singh, Advocates.

For respondent/State : Shri Deepak Awasthi, Dy.Advocate General and Shri Piyush Dharmadhikari, Govt. Advocate.

For the respondent MCI : Smt. Indira Nair, Senior Counsel with Shri Anoop Nair, Advocate.

For the respondent Peoples College : Shri A.P. Shroti, Advocate.

For the respondent Shri Aribando Colleges : Shri Shashank Verma & Shri Gulab Singh, Advocate.

For the respondent Chirayu Medical Colleges : Shri Ajay Gupta, Advocate.

For the respondent R.D.Gardi College : Shri Mohan Sausarkar, Advocate.

For the respondent Amaltas Institute, L. N. Medical College, Index Medical College. : Shri Anuj Agrawal, Advocate.

For the Caveator : Shri Aditya Sanghi, Advocate.

Whether approved for reporting: **Yes**

Law laid down :

Significant paragraph numbers :

O R D E R
(18/05/2018)

Per R. S. Jha, J.

All these petitions have been filed by the petitioners challenging order dated 28.11.2017 passed by the Director, Medical Education, M.P and involve a common questions and issues and are, therefore, heard and decided concomitantly by this common order.

2. All these petitions assail the validity of order dated 28.11.2017 by which it is alleged that the Director, Medical Education has cancelled the admissions of as many as 107 candidates who were granted admission in the 2017 MBBS/BDS Courses in the NRI quota, on the ground that they do not belong to the NRI category or do not satisfy the necessary requirements for fulfilling the criteria of falling in the NRI category. In addition to the common grounds raised in the petitions, the petitioners in W.P No.4615/2018, 1715/2018, 1983/2018 and 1988/2018 have also challenged the constitutional validity of section 3 (J) of the The Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007(hereinafter referred to as 'the Act of 2007') and Regulation 2(Tha) and 6(2) of the Madhya Pradesh Main Sahayata Na Paanae Waalae Niji Chikitsa Mahavidhyalaya Evam Dant Chikitsa Mahavidyalaya Main MBBS Tatha BDS Pathyakramo Main Pravesh Ki Paatrata, Pravesh Ki Reeti Evam Sthano Kea Aarakshan (Aniwasi Bharti Ki Liyea Sthano Ka Aarakshan Sammillit Hai) Kea Viniyam 2017

(hereinafter referred to as the Regulation of 2017) relating to Private Colleges.

3. The main grounds on which the petitioners have assailed the validity of the order dated 28.11.2017 are that the Director, Medical Education has no power or authority to cancel admissions which power has been exclusively conferred upon the Committee under Section 4(9) of the Act of 2007, and, therefore, the impugned order dated 28.11.2017 deserves to be quashed. The second ground raised is that the Regulations of 2017 governing admissions to private colleges were published on 7.7.2017 much after the process of admission had commenced and the result of the NEET examination was declared on 23.6.2017 whereby the rights of the petitioners had crystallized and, therefore, the admissions granted to the petitioners cannot be cancelled by taking aid of the Regulations of 2017, as that would amount to changing the provisions relating to admission during the process of admission, that is, changing the rules of the game in between which is not permissible. Shri Anil Khare, the learned Senior Counsel for the petitioner has relied upon the decision of this Court in the case of **Poonam Sharma vs. State of M.P. and Another, (W.P No.9483/2014)** decided on 2.9.2015 and a decision of the Gauhati High Court in **Dr. Prakritish Bora vs. State of Assam and others,** 2017 SCC Online 669, in support of his submission. The third ground on which the impugned order has been challenged by the petitioners is that the impugned order has been passed without giving any opportunity of hearing to the petitioners who are the effected persons

and in such circumstances the impugned order is in violation of the principles of natural justice as well as in violation of the petitioners fundamental rights under Article 14 of the Constitution of India.

4. The petitioners have also assailed the impugned order on the ground of estoppel. It is submitted that the entire admission process was undertaken by the State itself and its authorities and the admissions to the petitioners were granted in the presence of the Nodal Officers of the State and were thereafter duly approved by the DME and in such circumstances he cannot subsequently turn around and cancel the admissions.

5. The petitioners have also submitted that an enquiry into the admissions granted by private colleges in the NRI quota was undertaken by the authorities of the State pursuant to an interim order passed by this Court in W.P No. 14836/2017, however in the order passed by this Court on 10.11.2017 no directions were issued to the respondent authorities to cancel the admissions and, therefore, the act of the authorities is also not in consonance with and is against the order passed by this Court on 10.11.2017 passed in W.P No. 14836/2017.

6. It is submitted by the learned counsel appearing for the petitioners that the act relating to private medical colleges and other technical institutions was notified by the State in the year 2007 and since 2007 upto 2016 the respondent authorities were granting admission to such candidates who were either children or were sponsored by NRIs in the NRI quota. However for the first time in the year 2017 the authorities incorporated

Regulation 6(2) of the Regulation of 2017 which restricts admissions in the NRI quota to candidates who are themselves NRIs. It is submitted that subsequently the respondent authorities have notified new rules in exercise of powers under Section 12 of the Act of 2007, and have again made provisions to grant admissions to candidates who are not just NRIs themselves but are either children of NRIs or wards of NRI's in the new Rules of 2018.

7. It is contended that the respondent authorities have not laid down any clear guidelines or criteria for determining who would be a NRI for the academic session 2017 and in such circumstances all the petitioners of the 2017 batch who fulfill the necessary criteria for obtaining admission in the NRI quota which had been prescribed in the previous years, cannot be singled out and subjected to hostile discrimination by applying a different criteria for the year 2017 alone.

8. The learned counsel appearing for the petitioners in W.P Nos.4615/2018, 1715/2018, 1983/2018 and 1988/2018 submit that the impugned provisions of the Act of 2017 and the Rules and Regulations framed thereunder defining NRI namely, section 3(J) of the Act of 2007 and Regulation 2(Tha) of the Regulations of 2017, is beyond the legislative competence of the State and is, therefore, ultra vires. It is submitted that the definition of NRI incorporated in the Act and the Rules, by taking aid of the provisions of the Income Tax Act, perse establishes the fact that the State which is not competent to legislate in the field of Income Tax has done so by borrowing the definition of NRI from the Income Tax Act.

It is further contended that the Regulations namely, Regulation 6(2) travels beyond the scope of the Act of 2007 as the Act of 2007 does not restrict the grant of admission in the NRI quotas only to those candidates who are NRIs themselves whereas the Regulation imposes such an additional restriction. It is submitted that as the Regulation prescribes an additional eligibility criteria which is not prescribed under the Act and travels beyond the scope of the Act, therefore, it deserves to be declared unconstitutional.

9. The learned counsel for the petitioners, while assailing the validity of the provisions of Regulation 6(2) of the Regulations of 2017, submits that the broader criteria of identifying NRI category candidates as laid down by the Supreme Court in the case of **P.A. Inamdar vs. State of Maharashtra,** (2005) 6 SCC 537 has been continuously followed by the State since 2007 onwards and has also been decided to be followed in future by the Rules of 2018 with the sole exception of the admissions in the NRI quota made in the year 2017. It is submitted that there is no rationale imperical data or any reasonable explanation for this single one time deviation made by the State for the year 2017 by notifying Regulation 6(2) of the Regulations of 2017. It is submitted that the State has not placed anything on record to indicate or justify as to why this deviation was necessary or required in the year 2017 alone or what special circumstances or reasons prevailed with the State for deviating from the reasonable and acceptable criteria for identifying NRI candidates that was laid down by the Supreme Court in para-131 in the case of **P.A. Inamdar** (supra).

10. The learned counsel for the petitioners submit that the broader criteria for granting admissions in the NRI category is being implemented by the State not just for the MBBS Course but also for the other professional courses, like Engineering, etc. which are covered by the Act of 2007, whereas the MBBS Course of the year 2017 alone has been singled out for this kind of discrimination by notifying Regulations 6(2) of the Regulations of 2017. The learned counsel for the petitioners submit that in such circumstances Regulation 6(2) of the Regulations of 2017, is unreasonable, arbitrary, discriminatory and also suffers from the vice of under-classification in view of the restrictive criteria for NRI's prescribed therein. The learned counsel for the petitioners has relied upon the decision of the Supreme Court rendered in the cases of **E.V. Chinnaiah vs. State of Andhra Pradesh**, (2005) 1 SCC 394 and **Kailash Chand Sharma vs. State of Rajasthan and others**, (2002) 6 SCC 562, in support of his submission.

11. The petitioner in W.P No.980/2018 has filed a rejoinder and has also placed on record an order passed by this Court in the case of **Isha Jain vs. State of M.P. and others,** (WP No.10340/2008) decided on 5.11.2008, wherein the State had undertaken to follow the guidelines and criteria affirmed by this Court for determining the status of the NRI in the case of **Anshul Tomar vs. State of M.P. and others,** 2008 (2) MPLJ 450. It is submitted that as the State has already undertaken to apply the criteria laid down by this Court

in the case of **Anshul Tomar** (supra), therefore, the present petitions be allowed with a direction to the State to adjudge the eligibility of the petitioners on the basis of the criteria laid down by this Court in the case of **Anshul Tomar** (supra).

12. The learned counsel appearing for the private colleges submit that the Supreme Court in Civil Appeal No.4424/2018, **Kashmi Bhagtani vs. State of M.P. and others,** decided on 25.4.2018, relating to admissions made in the mop up round wherein this Court had cancelled the admissions granted in the mop up round on the ground that they were made in violation of the statutory provisions, has held that the effected students have to be made a party and granted opportunity of hearing. It is submitted that in view of the aforesaid order of the Supreme Court arising from the same process of admission of 2017, the present bunch of petitions also deserve to be allowed as the petitioners have not been granted any opportunity of hearing. The private colleges have supported the stand of the petitioners on all issues.

13. In addition to the aforesaid grounds the learned counsel appearing for the private colleges have submitted that the entire process of admission of students in private medical colleges has been taken over by the State and the challenge to the Act of 2007 framed by the State by the private colleges has been rejected by upholding the validity of the Act in the case of **Modern Dental College and Research Centre and others vs. State of M.P. and others,** 2016 (7) SCC 353. It is stated that the selection of candidates, deciding their

eligibility and granting admission, etc. has all been undertaken by the authorities of the State itself. It is submitted that under the Regulations of 2017 the only role assigned to the private colleges was to verify the correctness of the documents submitted by the candidate and nothing more and the entire admissions were made by the State itself, therefore, the State is now estopped from turning back and cancelling the admissions granted by it after proper scrutiny and adjudication in respect of eligibility of the candidate.

14. The learned counsel appearing for the private colleges submits that the impugned order has been passed by the State and the private colleges have no role to play.

15. The learned counsel for the petitioners as well as the learned counsel appearing for the private colleges submit that in view of the provisions of section 4 of the Act of 2007 and the provisions of the Rules of 2008, the competent authority to cancel admissions granted by private colleges is the Admission and Fee Regulatory Committee constituted under the Act. It is submitted that the State should have infact forwarded and submitted its enquiry report to the committee which would thereafter have given an opportunity of hearing to the petitioners and taken a decision thereafter. It is stated that the Director, Medical Education has no power under the Act or the Rules to cancel admissions.

16. The learned counsel appearing for the MCI, relying on the decision of the Supreme Court rendered in Civil Appeal No.8381/2017, Manipal University and another

Vs. Union of India and another, decided on 3.7.2017, submits that in view of the aforesaid decision of the Supreme Court, the MCI has no role to play in respect of granting or regulating admissions in the NRI quota.

17. The learned Dy. Advocate General appearing for the State, at the very outset, submits that the very basis and foundation of the petitions filed by the petitioners is misconceived inasmuch as these petitions have been filed on account of a total misinterpretation and misunderstanding of the order dated 28.11.2017 passed by the Director, Medical Education. The learned Dy. Advocate General appearing for the State submits that this Court on 10.11.2017 passed an order in the case of **Prithvi Nayak vs. State of MP, (W.P No.14836/2017)** directing the authorities to seize the documents relating to admissions granted in the mop up round as well as in the NRI quota and scrutinize the same. It is submitted that pursuant to the aforesaid orders, the documents relating to admissions made in the NRI quota were seized and an enquiry in respect of the admissions granted by each of the colleges was conducted by constituting separate committees for each college.

18. It is submitted that on scrutiny of the admissions granted by the private colleges, it was found that they had granted admissions dehors the provisions of Regulation 6(2) of the Regulations of 2017 as well as the provisions relating to NRI quota. It is submitted that the respondent colleges, by manipulating the provisions of law, have granted admissions to such students who are

not NRI's themselves and have also not filed the necessary documents regarding sponsorship, etc., therefore, the Director, Medical Education, by the impugned order dated 28.11.2017 has not approved the admissions granted by the colleges and has infact directed the college itself to immediately cancel the admissions granted to the petitioners and return the fees extracted from them. It is submitted that this aspect is apparent from a bare perusal of the impugned order dated 28.11.2017 and, therefore, the contention of the petitioners that the Director, Medical Education has directly cancelled the admissions granted to the petitioners without giving any opportunity of hearing by conducting an enquiry behind their back, is factually and patently incorrect and specifically denied.

19. The learned Dy. Advocate General, by taking this Court extensively through the Act, Rules and the Regulations, and the counselling scheme, submits that the actual determination of eligibility of the candidate and scrutiny of the documents was required to be conducted by the admission committee comprising of the Dean and other faculty members of the private colleges in which the State has no role to play. It is submitted that all the petitioners were granted admission by the colleges themselves by scrutinizing the documents and holding them to be eligible. It is submitted that when the authorities of the State saw the documents and inquired into the matter, it was found that the admissions granted by the private colleges were contrary to law, hence the order dated 28.11.2017 has been issued by the DME. The learned Dy. Advocate

General specifically opposes the contention of the petitioners that the admissions were granted by the authorities of the State after determining their eligibility and not the colleges.

20. The learned Dy. Advocate General, by taking this Court, through the provisions of the Act and the Rules, submits that the Director Medical Education being the competent authority has the power to cancel admissions as well as take all necessary steps and actions to see that the provisions of the Act and the Rules are strictly followed.

21. The learned Dy. Advocate General submits that as far as the question of constitutional validity of the Regulations is concerned, the constitutional validity of Regulation 6(2) of the Regulations of 2017 has already been upheld by a Division Bench of this Court in the case of **Association of Private Medical Colleges vs. The State of MP, (**W.P No. 11244/2017) decided on 31.7.2017 and, therefore, the petitions challenging the constitutional validity of the Regulations are not maintainable in view of the decision of the Supreme Court rendered in the case of **Kesho Ram & Co. and others etc. vs. Union of India and others,** 1989 (3) SCC 151.

22. The learned Dy. Advocate General further submits that the definition of NRI under the Act has been borrowed from the Income Tax Act. However mere incorporation of the said definition does not mean and cannot be construed to mean that the State is legislating in respect of Income Tax. It is submitted that the

definition has been borrowed from the Income Tax Act and has been incorporated in the State Act only for the purposes of defining NRIs and the validity as well as the legislative competence of the State to enact the Act of 2007 as well as the Rules framed thereunder has already been affirmed and upheld by the Supreme Court in the case of **Modern Dental College** (supra) and in such circumstances the petitions filed by the petitioners deserve to be dismissed.

23. We have heard the learned counsel for the parties at length.

24. At the very outset we are of the considered opinion that the first issue raised by the petitioners regarding power and authority of the Director Medical Education to issue the impugned order dated 28.11.2017 cancelling the admissions granted under the NRI category is misconceived in view of the specific and clear submission of the learned Dy. Advocate General appearing for the State to the effect that the Director Medical Education has not cancelled the admissions by the impugned order dated 28.11.2017 but has infact directed the colleges themselves to cancel the same and refund the fees. This fact is also evident from a perusal of the order dated 28.11.2017. In such circumstances as the stand of the State itself is that the DME has not cancelled the admissions, we do not find any merit in the submissions made by the learned counsel for the petitioners in this regard.

25. In view of the aforesaid facts, the issue raised by the petitioners regarding absence of show cause notice

and denial of opportunity of hearing is also meritless as the DME has not cancelled the admissions of the petitioners but has only disapproved the same and has directed the college concerned to take up further steps for cancellation of admissions.

26. As the learned counsel for the petitioners have also assailed the power and authority of the Director Medical Education to issue directions to the college to cancel admissions, we think it necessary to take into consideration and analyze the provisions of the Act of 2007 and the Rules of 2008 framed thereunder. Section 6 of the Act of 2007, provides that admissions to the sanctioned intake of Unaided Professional Educational Institutions shall be made on the basis of a Common Entrance Test to be conducted in such manner as may be prescribed by the State Government. This Section gives power to the State Government to control the manner of granting admissions. Section 7 mandates that every admission to private unaided professional educational institutions shall be made in accordance with the provisions of the Act and the Rules and every admission made in contravention thereof shall be void. It is worth noting that Section 7 mandates and declares that all admissions made in contravention of the Act and the Rules would be void and not voidable or cancellable. The validity of these provisions as well as the Act of 2007, by which the State has taken over the supervision and control of the entire process of admission and counselling, has already been upheld by the Supreme Court in the case of **Modern Dental College** (supra).

27. Section 4 of the Act, provides for constitution of an Admission and Fee Regulatory Committee and Section 4(9) gives power to the committee to conduct an enquiry either suo moto or on receipt of a complaint, into complaints regarding admissions made in contravention of the provisions of the Act or the Rules or collection of fees in excess of the fee determined under the Act and to cancel admissions and impose penalty in case of violation. Section 4(9) and rules framed for that purpose lay down the procedure to be followed by the Admission and Fee Regulatory Committee while exercising powers under Section 4(9).

28. The provisions of Rule 2(g) of the Rules of 2008, defines Competent Authority to mean an authority authorized by the State Government in this behalf. Rule 4 gives power to the State Government to control, decide and supervise the manner of admissions to be made in private educational institutions. Rule 6 deals with the constitution and function of the competent authority and the counselling committee. The role that is required to be played by the competent authority, so constituted, in the process of admission and counselling, is also enumerated in Rule 6 giving power to the competent authority to prescribe the counselling schedule, venue, timing and all necessary details for the purposes of conducting counselling. The competent authority is also empowered to prepare the final list of candidates, admitted course-wise, institution-wise and to fix the dates for each stage of counselling. The competent authority is also mandated with the responsibility of ensuring that the counselling is completed before the

last date of admission. Rule 8 again empowers the competent authority to control and supervise the admissions to be made on NRI seats and provides that the same shall be in accordance with the procedure and schedule notified by the competent authority. Rule 9 gives power to the competent authority as well as to the Principal of the institution to cancel any admission granted to a candidate at any stage, if it is found that the candidate has got admission in any institution on the basis of false or incorrect information or by hiding relevant facts or if at any time after admission, it is found that the admission was given to the candidate due to some mistake or oversight.

29. Though it is submitted by the learned counsel for the petitioners that the State Government has not separately authorized and notified a competent authority under Rule 2(g) of the Rules of 2008, and therefore, the DME is not the competent authority, however, on analysis of the aforesaid provisions of the Act and the Rules, it is apparent that the functions entrusted to the competent authority under the Act and the Rules like prescribing the schedule, fixing venues and dates, conducting counselling, supervising the procedure of counselling, etc. enumerated in Rules 6 & 8, have all been done by the Director Medical Education in the present case and, therefore, it is apparent that the competent authority under the Rules is the Director Medical Education who is also empowered to cancel admissions under Rule 9 of the Rules of 2008.

30. It is appropriate to take note of the fact that while Section 7 of the Act of 2007, declares all admissions

made de-hors the law as void, Rule 9 of the Rules of 2008, gives power to the competent authority as well as the Principal of the institution to cancel admission and Section 4(9) of the Act of 2007, gives power to the Admission and Fee Regulatory Committee to cancel admissions on complaints. In such circumstances, a bare perusal of the Act and the Rules, makes it clear that admissions granted to candidates can be cancelled by the Principal of the institution or the competent authority as well as the Admission and Fee Regulatory Committee. While Section 4(9) of the Act of 2007 and the Rules of procedure of the Committee prescribe and provide the procedure to be followed by the Admission and Fee Regulatory Committee for the purposes of looking into complaints or enquiry reports regarding illegal admissions, the aforesaid procedural requirements including the issuance of notice and hearing is expressly and statutorily excluded by Rule 9 of the Rules of 2008, which empowers the Principal of the institution or the competent authority to cancel admissions forthwith without any notice at any time during the course of study of the candidate apparently because of the declaration contained in Section 7 of the Act of 2007, as well as the stipulations in the counselling scheme and the declaration and undertaking given by the candidate in Praroop-I of the Regulations of 2017.

31. In view of the aforesaid provisions of law, we are of the considered opinion that the Director Medical Education is not denuded of powers or authority as contended by the learned counsel for the petitioners. On the contrary, the Director Medical Education is

empowered not just to cancel admissions but also to issue directions as have been issued by him in the impugned order dated 28.11.2017 directing the institution concerned to take action in respect of illegal admissions and in case the institution fails to comply with any direction issued by the Director Medical Education to take all possible and necessary steps under law against the institution. The contention to the contrary made by the learned counsel for the petitioners are hereby rejected.

32. As far as the issue raised by the petitioners regarding non-applicability of the Regulations of 2017 is concerned, it is pertinent to note that the notice published by the CBSE inviting applications for participating in the NEET examination was issued on 30.1.2017 and the last date for filling up the forms was upto 1.3.2017. The NEET examination was held on 7.5.2017 and the result thereof was declared on 23.6.2017. The Regulation of 2017 were notified by the State on 7.7.2017 and the Registration of candidates for admission and counselling in the State of M.P. as required by the Regulations commenced from 13.7.2017 onwards.

33. The bulletin published by the CBSE in respect of the NEET examination which has been produced before this Court by the learned counsel for the petitioners indicates that classification of seats has been made by the CBSE in Chapter-1 and NRI seats have been classified in category-3. Clause-4 of Chapter-II of the bulletin provides for separate centres for NRI candidates for

appearing in the examination. Chapter-III of the bulletin dealing with eligibility, provides that the eligibility of NRI candidates would be in accordance with the Rules of the relevant State. Chapter-IV of the CBSE bulletin requires a candidate appearing as a NRI candidate to furnish his passport number.

34. In the present case it is an admitted and undisputed fact that except for one NRI candidate Prateek Chaudha, none of the petitioners either applied or appeared in the NEET Examination conducted by the CBSE as a NRI candidate nor did any of them furnish their passport number. It is also an admitted and undisputed fact that the petitioners for the first time put forth their claim to admission as an NRI and got themselves registered as NRI candidates during the process of registration that commenced from 13.7.2017 onwards after the publication and notification of the Regulations of 2017on 7.7.2017 and while appearing before the College level admission committee, the petitioners have given a declaration in the prescribed format (Praroop-1) appended to the Regulations of 2017, wherein they have clearly declared that they have read and understood the Regulations of 2017 and are submitting their candidature in accordance with the Regulations of 2017, with a further declaration that in case any information furnished by them is found to be false, incorrect or in case there is any suppression of information on their part, their admissions can be cancelled by the authority concerned without any notice to the petitioners. Such an undertaking and declaration has been submitted by each and every candidate who has participated in the

admission and counselling process including the petitioners.

35. In view of the aforesaid undisputed facts that are placed before this Court by the petitioners as well as by the respondents, we are of the considered opinion that the Regulations of 2017, apply to the process of admission undertaken by the respondent authorities and the contention to the contrary raised by the petitioners being meritless, deserves to be rejected. It is also clear that in view of the aforesaid facts, the decision in the case of **Poonam Sharma** (supra) and **Dr. Prakritish Bora** (supra) have no applicability to the present case.

36. As far as the issue raised by the petitioners regarding the constitutional validity of the definition of NRI prescribed in the Act of 2007, the Rules framed thereunder and the Regulations of 2017 is concerned, before adverting to the same it is proper to keep in mind the grounds and the scope of judicial review by Courts while deciding constitutional validity of the statutory provisions that have been enumerated by the Supreme Court in the case of **State of A.P and others vs. Mcdowell & Co. and others,** (1996) 3 SCC 709, wherein the Supreme Court in para-43 has enumerated the basic proposition for judging the constitutional validity of the provision in the following terms:-

> "**43.** ......In India, the position is similar to the United States of America. The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of

legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness — concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (*a*) to (*g*) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary [An expression used widely and rather indiscriminately — an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in *Hattie Mae Tiller* v. *Atlantic*

> *Coast Line Railroad Co.*, 87 L Ed 610 : 318 US 54 (1943). "The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas", said the learned Judge.] or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. ...."

The same view has been reiterated by the Supreme Court in the case of **State of M.P. Vs. Rakesh Kohli and another**, (2012) 6 SCC 312.

37. When the validity of the Act of 2007 is adjudged on the aforesaid parameters it is worth noting that the Supreme Court in the case of Modern Dental College (supra) has already upheld the validity of the Act of 2007 and the Rules of 2008 and has held that the State has the legislative competence to enact the aforesaid provisions. The definition of NRI has been borrowed by the State legislature from the provisions of the Income Tax Act and no fault can be found with the same as legislation by incorporation is a legally accepted method of legislation. In addition, the constitutional validity of Regulation 6(2) of the Regulations of 2017, has also been upheld by this Court in the case of **Association of Private Medical Colleges** (supra) decided on

31.7.2017 after duly taking into consideration and rejecting the submission of the petitioners therein that the Regulation was unreasonable and contrary to and beyond the scope of the Act of 2007, and rejecting the same.

38. While we unhesitatingly agree with the legal preposition of the learned counsel for the petitioners to the effect that the legislative competence to incorporate the definition of the term 'NRI' in Section 3(j) of the Act of 2007, with reference to the definition as prescribed under Section 115(c) of the Income Tax Act, has to be construed and adjudged on the basis of the legislative competence of the State Legislature we, however, are unable to accept the submissions to the effect that the definition incorporated by the State Legislature is beyond its legislative competence as incorporation of the definition of NRI from the Income Tax Act, amounts to legislation on the subject of Tax by the State which is in fact a central subject. In fact the legislative competence of the State has to be adjudged on the basis of an enquiry as to the legislative competence of the State to define the term NRI in the Act of 2007. Apparently, the term NRI has been defined by the State Legislature, not for the purposes of levying tax but for the purposes of granting admissions in unaided professional private colleges in the quota fixed or prescribed for NRI’s. The object and purpose of defining the term “NRI” is not to impose a Tax but to define and identify NRI’s.

39. As the Supreme Court in the case of **Modern Dental College** (supra) has already held that the State Legislature has the legislative competence to enact the

2007 Act and the Rules framed thereunder and Regulation 6(2) has been held to be valid by this Court in the case of **Association of Private Medical Colleges** (supra) with which we are in respectful agreement and as we are of the considered opinion that the State has the legislative competence to define the term NRI by borrowing and incorporating the definition of that term from the Income Tax Act for the purposes of making admissions in private unaided professional institutions, therefore, we do not find any merit in the contention of the learned counsel for the petitioners as far as the challenge to the constitutional validity of the provisions of the Act of 2007, the Rules of 2008 and Regulation 6(2) of the Regulations of 2017 is concerned.

40. At this stage, it is clarified that we are infact not required to adjudge the validity of Regulation 6(2) of the Regulations of 2017, regarding violation of Article 14 of the Constitution of India, on the ground of discrimination and arbitrariness in the present bunch of petitions in view of the fact that the State, on its own, has given a different interpretation and has itself broadly implemented it, as we shall presently delineate in the subsequent part of this judgment.

41. We have extensively gone through the Act of 2007, the Rules of 2008, the Regulations of 2017, specifically Regulation 9, the provisions of Rule 9 of the Rules for Admissions in Government Colleges which has been referred to in Regulation 9 of the Regulation of 2017 and the scheme notified and prescribed by the respondents in respect of the procedure of counselling. From a

perusal thereof, we are of the considered opinion that in accordance with the scheme of admission after filling of the form for appearing in the NEET examination and after getting themselves registered for the purposes of admission and counselling in the State of Madhya Pradesh, the candidate is required to appear personally for the first time before the college level admission committee which has been entrusted with the task of determining the eligibility of the candidate as well as for scrutinizing and verifying their documents and it is only when the Admission Committee of the college certifies the eligibility of the candidate as well as the correctness of the documents in Proforma-I which has been appended to the Regulations of 2017, that the provisional allotment of seat made in the centralized counselling gets crystallized into admission which is also granted by the college itself with intimation and information to the State/DME.

42. Apropos the aforesaid analysis, the contention of the learned counsel for the private colleges to the effect that the private colleges were and are not required to determine the eligibility of the candidate and had no role to play in granting admission and that they were simply required to verify the documents, is hereby rejected and it is held that in accordance with the provisions of law, it is the College Level Admission Committee which has to determine the eligibility of the candidate as well as to scrutinize and verify the documents and grant admissions after provisional allotment of seats. Similarly, the contention to the effect that it is the State which predetermines the eligibility and thereafter refers the

candidate to the College Committee, only for the purposes of verification of documents and, is therefore, estopped from cancelling the admissions later, is also hereby specifically rejected.

43. For proper adjudication of the issues raised by the petitioners and appreciating the object and purpose of creating a quota for NRI candidates,the background of the same is restated at the cost of repetition. The Supreme Court in the case of **P.A Inamdar vs. State of Maharashtra,** (2005) 6 SCC 537, explaining the decision in the case of **T.M.A Pai Foundation and others vs. State of Karnataka and others,** (2002) 8 SCC 481, has held as under in paragraph 131:-

> "131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the

educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in *Islamic Academy* [(2003) 6 SCC 697] to regulate."

(underlined by us)

44. A perusal of the aforesaid decision of the Supreme Court makes it clear that while freedom was granted to the colleges to give admissions to NRIs by charging higher fees, the Supreme Court had imposed riders to the effect that the NRI quota should not be misused and that the admissions in the said quota should be granted either to the genuine NRIs or their children and wards. A perusal of para 131 in the case of **P.A Inamdar** (supra) further indicates that the State was directed to make suitable regulation to prevent misutilization of the NRI quota and any malpractice referable to NRI quota seats.

45. Subsequent to the aforesaid decision of the Supreme Court, the State of M.P. enacted the Act of 2007 and framed the Rules of 2008 thereunder. The definition of NRI incorporated in Section 3(j) of the Act of 2007, states that the meaning of NRI would be the same as given under section 115(c) of the Income Tax Act. This definition has been reiterated by the State in the Rules of 2008 and the Regulations of 2017.

46. The Act of 2007 of the State of M.P. and the Rules framed thereunder were challenged by the private medical colleges as being ultravires the legislative competence of the State as well as being contrary to the directions and orders issued by the Supreme Court in the case of **T.M.A Pai** (supra) and **P.A Inamdar (**supra). This High Court upheld the validity of the Act and the Rules being aggrieved by which the private colleges filed petitions before the Supreme Court which have also been dismissed by the Supreme Court in the case of **Modern Dental College** (supra).

47. During the pendency of the petition before the Supreme Court, the private medical colleges filed interim applications before the Supreme Court for the purposes of giving them freedom to make admissions in the NRI quota whereupon the Supreme Court by an interim order passed in Civil Appeal No.4060/2009 **Modern Dental College** (supra) reported in 2009 (7) SCC 751, permitted the private colleges to make admissions in the NRI quota in terms of paragraph 131 in the case of **P. A Inamdar** (supra). Though, initially this order and liberty granted to the private colleges was only for the year 2009-2010, the Supreme Court subsequently continued the interim arrangement and thereafter by order dated 3.4.2012 reported in **Modern Dental College and Research Centre and others vs. State of M.P. and others,** 2012(4) SCC 707, the interim arrangement made by the Supreme Court for granting admissions to NRI quota was directed to be continued till the disposal of the appeal by the Constitutional Bench which ultimately upheld the validity of the provisions by the judgment reported in **Modern Dental College** (supra) in May 2016.

48. From the aforesaid orders of the Supreme Court it is apparent that till decision in the case of **Modern Dental College** (supra) by the Constitutional Bench in May 2016, the interim arrangement made by the Supreme Court granting liberty to the Private Colleges to make admissions in the NRI quota in accordance with para 131 in the case of **P.A Inamdar** (supra) continued to remain in operation.

49. In the meanwhile, one Anshul Tomar, who had been granted admission in the NRI quota on the ground that he fulfilled the criteria of being a ward of a NRI, approached this Court by filing a petition against the order passed by the Admission and Fee Regulatory Committee objecting to his admission which was ultimately allowed by this Court by order dated 8.4.2008 (**Anshul Tomar vs. State of M.P**.) 2008(2) MPLJ 450. This Court in the aforesaid case took into consideration para 131 of the judgment in the case of **P.A Inamdar** (supra) and the order passed by the Supreme Court in the case of **Ruchin Bharat vs. Parents' Association for the M/D Students and others,** in Civil Appeal No. 4480/2006 decided on 13.11.2006 wherein certain directions were issued regarding grant of admission to students under the NRI quota. In the case of **Anshul Tomar** (supra), this court followed the criteria and guidelines laid down by the Supreme Court in the case of a **Ruchin Bharat** (supra) and also the criteria laid down by the Pravesh Niyantran Samiti, Medical Education, Mumbai pursuant to the directions issued in the case of **Ruchin Bharat** (supra). This court approved and applied the broader meaning given to a ward by the Supreme Court in the case of **Ruchin Bharat** (supra) as well as Mumbai Committee and quashed the order passed by the Admission and Fee Regulatory Committee objecting to the admission granted to **Anshul Tomar** (supra) and allowed the petition filed by him. The order passed by this Court in the case of **Anshul Tomar** (supra) has been cited with approval and directed to be followed by the Supreme

Court in the case of **Consortium of deemed Universities in Karnataka (CODEUNIK) and another vs. Union of India and others, (W.P. Civil No.689/2017,** by an interim order passed on 22.8.2017 which has however been confined to deemed Universities.

50. We have also taken into consideration the decision of this Court rendered in the case of **Saurabh vs. State of M.P.,** 2010 (2) MPLJ 395, **Lalit Tongia Vs. State of M.P. and others,** 2011 (1) MPLJ 109 and **Niharika d/o Ashok Kumar Singh vs. State of M.P. and others**, 2014 (4) MPLJ 564. In all the aforesaid three decisions as well, this Court has referred to and interpreted the relevant guidelines relating to grant of admissions in NRI quotas which provided for giving admission not just to NRI candidates but also to children of NRI's and their wards. However, it is pertinent to note that the decision in the case of **Saurabh** (supra) related to a BE course which is governed by a different set of rules, whereas the decision in the case of **Lalit Tongiya** (supra) was dealing with the AICTE Regulations and the M.P. Admission (Reservation to Non-Resident Indian) Regulations of 2009, which has subsequently been repealed in the year 2011 and are no longer applicable to MBBS and BDS courses. In the case of **Niharika** (supra) this Court was dealing with admissions in Government Colleges for which different and separate Rules have been framed by the State.

51. From a perusal of the record as well as the documents filed by the petitioners and the State, it is

also apparent that the authorities of the State have also understood the concept and definition of NRI to mean children and wards of NRI's in terms of the decision of the Supreme Court, rendered in the case of **P.A. Inamdar** (supra), **TMA Pai** (supra) and **Anshul Tomar** (supra) and have been implementing and applying the same to the admission and counselling process since 2007 and have infact applied the same in 2017 as well. This fact is apparent from a perusal of the enquiry report submitted by the respondents alongwith the return in respect of each of the petitioners as well as the order passed by this Court in the case of **Isha Jain** (supra) wherein the State undertook and conceded before this Court to apply the decision in the case of **Anshul Tomar** (supra).

52. From a perusal of the enquiry report it is luminously clear that the State has found the petitioners to be ineligible for admissions against the NRI quota not on account of non-fulfillment of Regulation 6(2) of the Regulations of 2017, but in fact on the ground that the petitioners have not produced the NRI sponsorship certificate or that the petitioners are not related to the sponsorer or that the documents of sponsorship and affidavits filed by the petitioners are not in accordance with the required parameters.

53. From the documents filed by the respondents, Annexures R-4 & R-5, it is also apparent that while the State has directed the colleges to cancel admissions of as many as 107 NRI candidates out of the total of 114 candidates, including the petitioners, it has affirmed and confirmed the admission granted to 7 NRI candidates.

The candidates whose admission has been found to be valid by the authorities of the State are Nimisha Bavane, Abhay Mishra, Ashtha Bijalwan, Kuldeep Kungwani, Abdush Sami, Yashi Tanwar and one Prateek Chudha who is the only candidate who is himself an NRI.

54. A bare perusal of the report filed by the respondent/State indicates that none of the 6 candidates, apart from Prateek Chudha, are NRI themselves, which is the requirement prescribed by the State in Regulation 6(2) of the Regulations of 2017 inspite of which their admissions have been held to be valid.

55. The State has found their admissions to be valid on the ground that they have furnished the proper and necessary documents to establish that they are entitled to admission in the NRI quota. The admission granted in the NRI quota to Nimisha Bavane, Abhay Mishra and Ashtha Bijalwan in the People's College has been held to be valid in the enquiry on the strength of the fact that they are children of NRIs and have produced the necessary NRI certificate of their father. Kuldeep Kungwani, who has being granted admission in the Index Medical College, has produced the sponsorship certificate of his grandfather, which has been found to be valid by the State and his admission has not been directed to be cancelled. Abdus Sami has been granted admission in Aurobindo College on the strength of a NRI certificate and sponsorship certificate of his brother and his admission has also been approved by the authorities of the State. Yashi Tanwar has been granted admission in Amaltas Medical College on the strength of the

sponsorship and NRI certificate of her grandfather and her admission has also been found to be valid and in accordance with the provisions of the Rules and Regulations by the authorities of the State. All these facts and aspects are apparent from a bare perusal of the report, Annexures R-4 & R-5, filed by the State itself.

56. From the aforesaid facts and circumstances which are undisputed and have been placed on record by the State itself, it is apparent that even the authorities of the State while conducting an enquiry into the admissions granted by the private colleges under the NRI quota, have not just applied the provisions of Regulation 6 (2) of the Regulations of 2017 but have also adjudged the validity and correctness of the admissions granted by the private colleges on the basis of the parameters and guidelines laid down by this Court in the case of **TMA Pai** (supra), **P.A. Inamdar** (supra) and **Anshul Tomar** (supra).

57. On the basis of the aforesaid facts, it is clearly established and is apparent that the State, being fully aware of the legal history relating to NRI admissions as detailed by us in the preceding paragraphs and also being conscious of the fact that, except for the year 2017, it had continuously implemented and applied the broader criteria prescribed in the case of **P.A.Inamdar** (supra) and **Anshul Tomar** (supra) since the very beginning and was also going to do so in future by statutorily prescribing the same under the Rules of 2018, has itself deliberately and consciously applied the broader criteria for determining the NRI status of a candidate as laid down in the case of **P.A.Inamdar**

(supra) and **Anshul Tomar** (supra) in addition to and alongwith the criteria prescribed in Regulation 6(2) of the Regulations of 2017, by relaxing the same for the year 2017 as well.

58. The learned counsel for the petitioners have rightly pointed out that the criteria for granting admissions in the NRI quota in all professional courses i.e. Engineering and other courses apart from MBBS and BDS, adopted by the State Government has throughout been the broader guidelines of granting admissions in the NRI quota not just to NRI's but also to children and blood relations of NRI's and wards of NRI's subject to the fact that the candidates are genuine wards and blood relations.

59. We are in full agreement with the aforesaid submission of the learned counsel for the petitioners which is clearly established by the fact that the State has notified Regulations under Section 13 of the Act of 2007, for the purposes of regulating reservation to NRI's in courses approved by the All India Council for Technical Education, namely, Admission (Reservation to Non-Resident Indian in AICTE approved courses) Regulations, 2011. These regulations apply to all professional courses for which separate degrees and diplomas are awarded by recognized universities or Board or institutions like BE(Electrical), BE(Mechanical), MCA, MBA, D.Pharma etc. Regulation 5 of the aforesaid Regulations of 2011, prescribes the eligibility of candidates for obtaining admission in the NRI quota which includes candidates who are children of NRI or those who are sponsored by them.

60. The learned counsel for the petitioners submits, and their submissions are neither controverted or denied by the respondents, that except for providing for a criteria like Regulation 6(2) in respect of the MBBS admissions, that too, only for the year 2017, the State has not provided or prescribed similar criteria for the NRI quota in respect of admissions in any other professional course whether it be Engineering or any other course in the State of Madhya Pradesh.

61. Apparently, it is in the aforesaid factual background and reasons that the State has itself applied and followed the same system and guidelines as laid down in the case of **Anshul Tomar** (supra) for determining the NRI status in the year 2017 as well inspite of the fact that it had notified Regulation 6 (2) in the year 2017. The report filed by the State clearly establishes the fact that even for the year 2017, the State itself has not strictly applied or followed the provisions of Regulation 6(2) of the Regulations of 2017.

62. On the basis of the factual analysis as aforesaid, we unhesitatingly record a finding, which is also uncontroverted, that the State has notified Regulation 6(2) only for the year 2017 and inspite of having done so, has not strictly followed the same and in addition thereto, has continued to apply the guidelines notified and approved by this Court in the case of **Anshul Tomar** (supra) in terms of and in accordance with the order passed by the Supreme Court in the case of **P.A. Inamdar** (supra) and **Ruchin Bharat** (supra). A perusal of the impugned order dated 28.11.2017 as well as the

inquiry report also establishes the fact that the directions for cancelling the admissions granted to the petitioners has been issued on account of violation of the guidelines and criteria laid down in the case of **Anshul Tomar** (supra) and not because of violation of Regulation 6(2) of the Regulations of 2017. This is luminously clear and evident from the finding recorded in the report.

63. We are, therefore, of the considered opinion that the State has rightly and on its own not enforced and implemented the provisions of Regulation 6(2) strictly and has rightly adopted and applied the guidelines laid down by this Court in the case of **Anshul Tomar** (supra) in addition thereto for the year 2017 as well with a view to bring about parity and uniformity and prevent and avoid any anamoly or heart burn to the candidates of 2017.

64. We make it clear that in the present case we are only upholding the action of the State itself in applying the broader criteria of NRI alongwith Regulation 6(2) of the Regulations of 2017, and are not either interpreting or defining the scope of the same in the present case as we are not required to do so in view of the manner in which the State has itself implemented it. We are simply upholding the parameters applied by the State itself while conducting the inquiry into NRI admissions of 2017.

65. To dispell any ambiguity or misinterpretation, it is clarified that while we uphold the constitutional validity of the provision of Regulation 6(2) of the Regulations of 2017, however at the same time we do not find any illegality in the act of the State in adopting and applying

the broader and wider criteria as laid down in the case of **Anshul Tomar** (supra) in addition to the criteria prescribed in Regulation 6(2) of the Regulations of 2017, for the purpose of granting admissions in the NRI quota in the 2017 session.

66. In the instant case as it is an admitted fact that the Director Medical Education has infact not cancelled the admissions but has only conducted an enquiry into the validity and legality of the admissions made by the private colleges and after recording a finding regarding grant of admissions contrary to the criteria laid down in the case of **Anshul Tomar** (supra) has directed the colleges to themselves cancel the admissions, therefore, we are in agreement with the submissions made by the learned counsel for the petitioners to the effect that the matter should infact be sent for scrutiny and decision to the Admission and Fee Regulatory Committee constituted under the Act of 2007, to look into the facts of each individual admission as the same is not required to be adjudicated by this Court in exercise of powers under Article 226 of the Constitution of India and that it should be directed to take a decision in the matter after taking into consideration the enquiry report as well as all other factors and granting an opportunity of hearing to the petitioners.

67. In view of the aforesaid analysis and facts and without interfering in the impugned order dated 28.11.2017, we accordingly direct the DME to place the report before the Admission and Fee Regulatory Committee for further proceedings and action strictly in accordance with the provisions of the Act of 2007 and

the Rules framed thereunder. It is further directed that as the petitioners are already before this Court and the fact of referring the matter to the Admission and Fee Regulatory Committee, by this order, is within their knowledge, no further or separate notice is required to be issued to them in respect of the enquiry by the Admission and Fee Regulatory Committee and the petitioners are directed to appear before the said Committee on **31.05.2018** whereafter further proceedings shall be taken up by the Committee in accordance with law. While doing so, it is further directed that the Admission and Fee Regulatory Committee shall consider the validity of the admissions granted by the private colleges under the NRI quota seats on the same basis as has rightly been done by the State itself in its report, that is, in accordance with the guidelines laid down by this Court in the case of **Anshul Tomar** (supra) which are based on the directions issued by the Supreme Court in the case of **P.A. Inamdar** (supra) and **Ruchin Bharat** (supra). It is made clear that the directions issued by the DME to the colleges in the impugned order dated 28.11.2017 shall remain in abeyance till the matter is finally decided by the Admission and Fee Regulatory Committee and shall be subject to the final orders passed by it.

68. Before parting with the case, we think it necessary to clarify that this Court has not expressed any opinion in respect of the validity or otherwise of the admissions granted to individual petitioners or to the fact as to whether they fall within the category of NRI as prescribed in Regulation 6(2) of the Regulations of 2017

and the broader criteria prescribed and approved in the case of **Anshul Tomar** (supra), and, therefore, the Admission and Fee Regulatory Committee would be at liberty to examine each case individually in respect of the facts of each case and take an independent decision in that regard.

69. The petitions, filed by the petitioners, are allowed to the extent indicated hereinabove and stand disposed of with the aforesaid directions.

(R. S. JHA)
J U D G E

(RAJEEV KUMAR DUBEY)
J U D G E

mms/-