A R.D. GARDI MEDICAL COLLEGE AND ANR. ETC.

v.

STATE OF M.P. AND ORS.

(Civil Appeal Nos.8429-8430 of 2010)

SEPTEMBER 30, 2010

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[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

Admissions – Medical admissions – Academic session 2010-11 – Allocation of seats between the management and C *the State – Appeals against order passed by the High Court in Writ Petitions whereby a total of 15 seats in the 1st year MBBS course were directed to be reduced from out of the management quota of the appellant-college for the academic session 2010-2011 – Held: The appeals are an abuse of the* D *process of law, for two reasons; a) consent of appellant-institution to reduction of seats from management quota as recorded in the impugned order of the High Court and b) earlier order passed by Supreme Court and order passed by High Court in a connected matter – Reduction of seats had* E *to be only from the management quota, for it was the management who had committed an irregularity which it was directed to correct by surrendering an equal number of seats to the State – High Court rightly held that unfilled NRI seats were to be shared equally between the college and the* F *management and as appellant-college had utilized the unfilled NRI seats all by itself it had committed clear irregularity justifying reduction of the excess seats during the session 2010-2011 – Judicial process – Abuse.*

G **For the academic session 2006-2007, the appellant-medical college admitted to the first year of MBBS course 19 students who had not secured 50% marks in the entrance examination. The legality of the said admissions**

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came up for scrutiny before the High Court which declared the same to be illegal and, as such, liable to be cancelled. The Supreme Court by order dated 4th September, 2008 while holding that the college was not justified in giving admission to ineligible students, permitted the students to continue their studies, but directed that an equal number of seats (i.e. 19 seats) shall be reduced from the management quota of the college for the academic session 2009-2010. Subsequently, the High Court by order dated 22nd April, 2009, on the analogy of the aforesaid order of the Supreme Court, directed 2 more seats, against which ineligible students were admitted, to be reduced from management quota of the appellant-college for the academic session 2009-2010 thereby taking the total number of seats to be reduced from the quota of the management to 21.

Meanwhile the private educational institutions filed writ petition challenging the constitutional validity of the "M.P. Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007" which was disposed of by the High Court, aggrieved whereof the private educational institutions filed appeal in the Supreme Court. The Supreme Court held that the impugned enactment in so far as the same handedover the entire selection process to the State Government or the agencies appointed by it for under-graduate, graduate and post-graduate medical/dental colleges and fee fixation, was contrary to the observations made by the 11-Judge Bench of this Court in T.M.A. Pai's case; and that a literal interpretation of the Act would render the same unconstitutional. An interim arrangement was accordingly made under which 15% seats were to be first excluded towards NRI quota to be filled up by the private institutions. Out of remaining 85% seats available for admission to the under-graduate and post-graduate

courses, 50% were to be given to the State Government while the remaining 50% were to be filled up on the basis of a selection process to be conducted by separate entrance examination for the purpose.

A writ petition was filed before the High Court, alleging that the allocation of seats between the management and the State was not proper nor was the reduction of 21 seats from the management quota given effect to, as directed by the Court. The High Court held that 21 seats permitted to be reduced from the management quota had been erroneously reduced from the total of 100 seats available in the college and directed 10 seats to be reduced from out of the management quota for the academic session 2010-11. As regards the NRI seats for the session 2009-10, the High Court held that unfilled NRI seats had to be shared between the State and the appellant-college in equal proportion, and directed 5 seats which were wrongly filled up by the management of the college for the session 2009-10 to be reduced from out of the management quota taking the total number of seats to be reduced for the session 2010-2011 to 15.

Dismissing the appeals, the Court

HELD:1.1. The instant appeals are an abuse of the process of law, for two precise reasons. Firstly, because the order passed by the High Court has on more than one occasions recorded the consent of the appellant-institution to the reduction of 10 seats from the management quota during the session 2010-2011. It is difficult to appreciate how the institution can question the direction issued by the High Court regarding the reduction of 10 seats after having agreed to such reduction before the High Court. That apart, a plain

reading of the earlier orders of the Supreme Court dated 4th September, 2008 and the High Court in the connected matters dated 22nd April, 2009, leave no manner of doubt that the reduction of the seats had to be from out of the management quota alone. The earlier interim order passed by the Supreme Court clearly specified that the NRI seats to the extent of 15% of the total number of seats, shall be first reduced from the total and the balance 85% shared half and half between college and the State. Instead of doing so, the govt. officials adopted a wrong method of calculating the seats by reducing 21 seats from the total number of 100 seats. The above method of calculation was not the correct method to be adopted in the matter. The direction of the Supreme Court that 15% seats towards NRI will be first reduced from the total has been ignored by the authorities. By doing so the reduction of 21 seats has taken place vis-à-vis not only the management quota but even the State quota. The Supreme Court had never directed reduction of any seat from the State quota. The reduction had to be only from the management quota, for it was the management who had committed an irregularity which it was directed to correct by surrendering an equal number of seats to the State. [Paras 11, 13, 14 and 15] [704-E; 705-F-H; 706-A-B; F-G]

1.2. So long as the order of this Court directing reduction from out of the management share of seats was capable of being implemented and enforced and so long as there were enough number of seats from out of which it could be made to surrender the requisite number of seats, it did not make any difference whether the management had 100 seats available to it or a lesser number. Inasmuch as the management failed to do so with or without the support or connivance of the State authorities who were charged with the duty of complying

A with the direction of this Court it committed a mistake which could be corrected by directing surrender of the requisite number of seats to the State for the session 2010-2011. The direction, therefore, by the High Court to that effect was perfectly justified. [Para 16] [707-B-D]

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1.3. The High Court rightly held that unfilled NRI seats were to be shared equally between the college and the management. Inasmuch as the appellant-college had utilized the unfilled NRI seats all by itself it had committed C clear irregularity justifying reduction of the excess seats during the session 2010-2011. A plain reading of Rule 8 of the Admission Rules, 2008 leaves no manner of doubt that unfilled NRI seats had to be transferred to the general pool to be filled up on the basis of the merit of the D candidates in the State level common entrance test conducted by Madhya Pradesh Vyavasyik Pariksha Mandal or by any other agency authorized by the State Government for that purpose. The unfilled seats in the NRI quota were, therefore, to be treated as a part of the E general pool and once that was done the share of the college in terms of the order passed by this Court would be 50% out of the said seats. The High Court has, in that view, rightly held that while the management was justified in filling up 5 unfilled seats in NRI quota, the remaining 5 F could not have been filled up otherwise than on the basis of the entrance test referred to in Rule 8. [Paras 17, 19] [707-F; 708-G-H; 709-A-B]

T.M.A. Pai Foundation v. State of Karnataka (2002) 8 G SCC 481; *Islamic Academy of Education v. State of Karnataka* (2003) 6 SCC 697 and *P.A. Inamdar & Ors. v. State of Maharashtra & Ors.* (2005) 6 SCC 537 – referred to.

Case Law Reference:

H (2002) 8 SCC 481 referred to Para 5

(2003) 6 SCC 697	**referred to**	**Para 5**
(2005) 6 SCC 537	**referred to**	**Para 5**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8429-30 of 2010.

From the Judgment & Order dated 30.07.2010 of the High Court of Madhya Pradesh at Jabalpur in WP No. 8979 of 2009 (PIL) & 6876 of 2009 (PIL).

With

Civil Appeal No. 7894 of 2010.

Vivek K. Tankha, ASG, P.S. Patwalia, C.A. Sundaram, Rakesh Dwivedi, R.F. Nariman, Rohit Arya, Puneet Jain, Pragati Neekhra, Suryanarayan Singh, B.S. Banthia, Rishabh Sancheti, Sumeer Sodhi, Vaibhav Srivastava, D. Kumanan, Manan Nagrath, Vikas Upadhyay, Paritosh Gupta, Babita Sant and D.B. Vohra, for the appearing parties.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

2. These appeals are directed against an order dated 30th July, 2010 passed by the High Court of Madhya Pradesh in Writ Petitions Nos. 6876 and 8979 of 2009 whereby a total of 15 seats in the 1st year MBBS course have been directed to be reduced from out of the management quota of the appellant-college for the academic session 2010-2011, with a direction to the Admission and Fee Regulator Committee to ensure that the order passed by the Court is carried out in letter and spirit. The facts giving rise to the filing of the writ petitions may be summarized as under:

3. For the academic session 2006-2007 the appellant-M/s R.D. Gardi Medical College, Ujjain, admitted to the first year

A of MBBS course as many as 19 students who had not secured 50% marks in the examination conducted by the Association of Private Medical and Dental College of M.P. The legality of the said admissions came up for scrutiny before the High Court who declared the same to be illegal hence liable to be B cancelled. Aggrieved by the said order the affected students approached this Court in Civil Appeal Nos.5518-5521 of 2008 which were disposed of by this Court by an order dated 4th September, 2008 holding that the college was not justified in giving admission to students who were not eligible in terms of C the relevant rules. This Court, however, permitted the students to continue their studies but directed that an equal number of seats shall be reduced from the management quota of the college for the academic session 2009-2010. This Court said:

D "The management of the R.D. Gardi Medical college was not justified in giving admission to these students. Certainly, they must be aware of the fact that the candidates should have secured at least 50% marks in the entrance examination but the learned senior counsel appearing for E the college says that they were not aware of the marks secured by these candidates as the entrance examination was held by a different association as the marks were not furnished to them by the association. *However, as the admission is found to be irregular, equal number of* F *students shall be reduced from the management quota for the year 2009-10.*

The appeals are disposed of accordingly. No costs."

(emphasis supplied)

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4. By an order dated 22nd April, 2009 passed by the High Court in Writ Petitions No.5592 of 2008 and 5624 of 2008, on the analogy of the order of this Court extracted above two more seats against which the said petitioners were admitted without

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satisfying the essential condition of eligibility were also directed to be reduced from management quota of the appellant-college for the academic session 2009-2010 thereby taking the total number of seats to be reduced from the quota of the management to 21.

5. On the receipt of the orders abovementioned the Medical Council of India sent a communication dated 26th May, 2009 requesting the Principal Secretary, Government of Madhya Pradesh and the Director of Medical Education, Madhya Pradesh to fill up 21 seats (19 admission as per the Order of this Court dated 4th September, 2008 and 2 admission as per the order dated 22nd April, 2009 passed by the High Court of Madhya Pradesh) through MPCET entrance test for the academic session 2009-2010. Writ Petition No.2732 of 2009 filed by the private educational institutions before the High Court of Madhya Pradesh challenging the constitutional validity of what is known as "M.P. Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007" was in the meantime disposed of by the High Court on 21st May, 2009, aggrieved whereof the private educational institutions filed Civil Appeal No.4060 of 2009 in this Court by special leave. This Court noticed that the common question of law that arose in the said batch of appeals was as to how far it was permissible under the Constitution for the State to control and regulate admissions and fee in private unaided professional educational institutions in the State of Madhya Pradesh. Relying upon the decisions rendered by this Court in *T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 481, *Islamic Academy of Education v. State of Karnataka* (2003) 6 SCC 697 and *P.A. Inamdar & Ors. v. State of Maharashtra & Ors.* (2005) 6 SCC 537 this Court prima facie came to the conclusion that the impugned enactment in so far as the same handovers the entire selection process to the State Government or the agencies appointed

A by it for under-graduate, graduate and post-graduate medical/ dental colleges and fee fixation was contrary to the observations made by the 11-Judges Bench of this Court in *T.M.A. Pai's* case (supra). This Court further observed that a literal interpretation of the Act would render the same unconstitutional.
B An interim arrangement was accordingly made under which 15% seats were to be first excluded towards NRI quota to be filled up by the private institutions as per the observations made by this Court in *Inamdar's* case (supra). Out of remaining 85% seats available for admission to the under-graduate and post-
C graduate courses 50% were to be given to the State Government while the remaining 50% were to be filled up on the basis of a selection process to be conducted by the Association of Private Medical and Dental Colleges who were to hold their own separate entrance examinations for the
D purpose. The following passage from the said order is, in this regard, relevant:

> "We, therefore, direct that the admissions in the private unaided medical/dental colleges in the State of
E Madhya Pradesh will be done by first excluding 15% N.R.I. seats (which can be filled up by the private institutions as per para 131 of Inamdar's case), and allotting half of the 85% seats for admission to the under-graduate and post-graduate courses to be filled in by an open competitive
F examination by the State Government, and the remaining half by the Association of the Private Medical and Dental Colleges. Both the State Government as well as the Association of Private Medical and Dental colleges will hold their own separate entrance examination for this
G purpose. As regards the 'NRI Seats', they will be filled as provided under the Act and the Rules, in the manner they were done earlier.
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> We make it clear that the aforesaid directions will for

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the time being only be applicable for this academic year i.e. 2009-10. We also make it clear that if there are an odd number of seats then it will be rounded off in favour of the private institutions. For example, if there are 25 seats, 12 will be filled up by the State Government and 13 will be filled up by the Association of Private Medical/Dental Colleges. In Specialities in P.G. courses also half the seats will be filled in by the State Government and half by the Association of Private Medical/Dental Colleges and any fraction will be rounded off in favour of the Association. In other words if in any discipline there are, say, 9 seats, then 5 will be filled in by the Association and remaining 4 will by the State Government. Capitation fee is prohibited, both to the State Government as well as the private institutions, vide para 140 of *Inamdar's case* (supra). Both the State Government and the Association of Private Medical/Dental Colleges will separately hold single window examinations for the whole State (vide para 136 of Inamdar's case (supra)."

6. The Government of Madhya Pradesh constituted a Counseling Committee comprising of nine bureaucrats and the Secretary of the Association. The said Committee undertook an exercise for distribution and allocation of seats in the appellant-college for the academic session 2010-11 in compliance with order dated 4th September, 2008 passed by this Court and that passed by the High Court of Madhya Pradesh on 22nd April, 2009.We shall presently deal with the allocation so made by the Committee but before we do so we need to point out that Writ Petition No.8979 was filed by Nidhi Ahankari and another in public interest, inter alia, praying for a writ of certiorari quashing the allocation and distribution of seats made by the appellant-college and a mandamus directing that 46 seats of the said college and 21 seats of management quota making a total of 67 seats be filled up by the State

A Government on the basis of the merit of the candidates in the PMT quota. The writ petition alleged that the allocation of seats between the management and the State was not proper nor was the reduction of 21 seats from the management quota given effect to as directed by this Court. The result, alleged the B petitioners, was that the meritorious candidates entitled to said quota were deprived of admission to the appellant-college.

7. By an interim order passed by the High Court on 23rd July, 2010 the appellant was directed to keep 10 seats vacant C out of the seats filled by the APDMC of the appellant-college as the High Court was prima facie of the opinion that calculation and allocation of seats required to be surrendered by the college, was wrong and that the appellant had been permitted to fill up the seats in violation of the orders passed by this Court. D That order was followed by an order dated 30th July, 2010 impugned in the present appeal allowing the writ petitions and directing 10 seats to be reduced from out of the management quota for the academic session 2010-11 in compliance with the order of this Court dated 4th September, 2008 and that E passed by the High Court of Madhya Pradesh on 22nd April, 2009. The High Court took the view that 21 seats permitted to be reduced from the management quota had been erroneously reduced from the total of 100 seats available in the college which was not correct understanding of the order passed by F this Court on 4th September, 2008 and that passed by the High Court in Writ Petition No.6876 of 2009 dated 31st August, 2009. The High Court observed:

> "What was proposed by the State Government in its G return had the effect of reducing 21 seats out of total available 100 seats which included a seat of the State quota also whereas there was clear direction of the Apex Court in its order dated 4.9.2008 and the order of this Court in Writ Petition Nos.5592/2008 & 5654/2008

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decided on 22.4.2009 to reduce the management quota seats only. The State initially wanted to benefit the management by its action and wanted to proceed on the basis of what was proposed by the College. There was no room to violate the aforesaid order also passed on 31.8.2009.

There was absolutely no room to entertain any doubt whatsoever as the orders passed by the Supreme Court and this Court clearly indicate that the seats were to be reduced out of the management quota. But seats were reduced from State quota also resulting in filling of 10 seats than permissible by D. MAT by College."

8. In so far as NRI seats for the session 2009-10 were concerned, the High Court noticed that 10 seats had remained vacant in the State quota as only 5 of such seats were filled up. Unfilled NRI seats had, therefore, to be shared between the State and the appellant-college in equal proportion. The High Court rejected the contention that the said seats had to be filled up entirely by the management of the college. It observed:

"It is submitted by Shri Rajendra Tiwari senior counsel appearing on behalf of the Management that the Supreme Court has mentioned that the seats of NRI quota have to be filled in as used to be done earlier. Thus, the Supreme Court meant the seats were to be filled in by APDMC.

The aforesaid submissions cannot be accepted in view of the order passed by the Supreme Court. There was no direction issued by the Supreme Court that the unfilled NRI seats are to be filled in by the students on the basis of the DMAT examination conducted by APDMC. The intention of the order is clear that out of the available seats, 50% are to be filled in by the State quota and 50%

A by DMAT examination."

9. The High Court accordingly directed 5 seats which were wrongly filled up by the management of the college for the session 2009-10 to be reduced from out of the management B quota taking the total number of seats to be reduced for the session 2010-2011 to 15. The Court observed:

> "Thus, we direct 5 seats in addition to the 10 seats which have been agreed to be reduced in the aforesaid C part of the order total 15 seats be surrendered by the Institution to the State quota for the year 2010-2011. The management quota shall stand reduced by further 15 seats for the year 2010-2011."

10. The present appeals, as noticed earlier assail the D correctness of the above directions.

11. We have heard learned counsel for the parties at considerable length and gone through the record including the orders passed by this Court and those passed by the High E Court of Madhya Pradesh. These appeals, in our opinion, are an abuse of the process of law. We say so for two precise reasons. Firstly, because the order passed by the High Court has on more than one occasions recorded the consent of the appellant-institution to the reduction of 10 seats from the F management quota during the session 2010-2011. The High Court has in para 12 observed:

> "In writ petition No.6876/2009, relief has been prayed with respect to the ten seats which were filled in by the G College out of APDMC. *The College has agreed to surrender 10 seats which were illegally filled by it in 2009-2010 out of available seats for the academic* sessions 2010-2011 out of the management quota seats."

H (emphasis supplied)

12. Again in para 25 of the order, the High Court has recorded the agreement of the institution to the reduction of 10 seats from its quota for the academic session 2010-2011 so that the directions issued by this Court on 4th September, 2008 and those issued by the High Court of Madhya Pradesh on 22nd April, 2009 were complied with. The High Court has observed:

> *"Accordingly, the Writ Petition is allowed. We direct 10 seats as agreed by the – College to be reduced of the management quota for the academic session 2010-2011 in order to comply with the order passed by the Supreme Court on 4.9.2008 in SLP (Civil) Nos.17990-17991/2008 and the order dated 22.4.2009 passed by this Court in Writ Petition Nos.5592/2008 & 5654/2008 which has been agreed to the Institution.* In addition, we direct 5 more seats are to be reduced out of the management quota for 2010-2011 as 5 excess seats which remained vacant out of NRI quota were filled by the management of 2009-2010 though they were required to be filled in by the State quota on the basis of PMT. Thus, further 5 seats of the management quota shall stand reduced on this count for the academic sessions 2010-2011."
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> (emphasis ours)

13. We find it difficult to appreciate how the institution can question the direction issued by the High Court regarding the reduction of 10 seats after having agreed to such reduction before the High Court.

14. That apart, a plain reading of the order of this Court dated 4th September, 2008 and the orders passed by the High Court in the connected matters dated 22nd April, 2009, leave no manner of doubt that the reduction of the seats had to be from out of the management quota alone. The interim order

A passed by this Court in Civil Appeal No.4060 of 2009 on 27th May, 2009 clearly specified that the NRI seats to the extent of 15% of the total number of seats, shall be first reduced from the total and the balance 85% shared half and half between college and the State. Instead of doing so, the Counseling B Committee and the govt. officials adopted a wrong method of calculating the seats by reducing 21 seats from the total number of 100 seats. The above method of calculation was not the correct method to be adopted in the matter. The Committee allocated the seats in the following manner :

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Name of Institution	Total Seats	NRI	Pvt. Quota	State Quota	PH	UR	ST	SC	OBC	Total
R.D. Gardi Medical College, Ujjain	100 -21 =79	15	32	32+21 = 53	2 UR OBC	26	10	8	7	51

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15. The direction of this Court that 15% seats towards NRI will be first reduced from the total has been ignored by the authorities. By doing so the reduction of 21 seats has taken F place vis-à-vis not only the management quota but even the State quota. This Court had never directed reduction of any seat from the State quota. The reduction had to be only from the management quota, for it was the management who had committed an irregularity which it was directed to correct by G surrendering an equal number of seats to the State.

16. It was contended by learned counsel for the appellants that the direction regarding reduction of 21 seats from management quota was issued by this Court at a time when the management had 100 seats to its share which position had

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changed on account of the interim direction of this Court in Civil Appeal No.4060 of 2009. There is, in our opinion, no merit in that contention. So long as the order of this Court directing reduction from out of the management share of seats was capable of being implemented and enforced and so long as there were enough number of seats from out of which it could be made to surrender the requisite number of seats, it did not make any difference whether the management had 100 seats available to it or a lesser number. Even after the interim order passed by this Court, the management had at least 43 seats in its quota for the session 2009-2010 to comply with the direction of this Court. In as much as the management failed to do so with or without the support or connivance of the State authorities who were charged with the duty of complying with the direction of this Court it committed a mistake which could be corrected by directing surrender of the requisite number of seats to the State for the session 2010-2011. The direction, therefore, by the High Court to that effect was perfectly justified.

17. Coming then to the question whether the direction regarding surrender of 5 unfilled NRI seats for the session 2009-2010 to the State was justified we need only mention that the High Court has correctly interpreted the order of this Court and rightly held that unfilled NRI seats to be shared equally between the college and the management. Inasmuch as the appellant-college had utilized the unfilled NRI seats all by itself it had committed clear irregularity justifying reduction of the excess seats during the session 2010-2011.

18. This Court had directed the NRI seats to be filled up in accordance with the Act and the Rules. Rule 8 of Admission Rules 2008 in this regard relevant may be extracted:

> **"Rule 8:** For remaining vacant seats the sequence of admission shall be as under:

A (1) "Firstly 15% seats shall be filled by management of the respective institution by NRI candidates only they are available. If sufficient number of NRI candidates are not available remaining vacant seats shall be
B merged into general pool. Seats in general pool shall be filled on the basis of merit of state level common entrance test conducted by Madhya Pradesh Vyavasyik Pariksha Mandal or may other agency authorized by
C the state government for this purpose.

(2) Secondly remaining seats shall be filled on the basis of merit of National level test as decided by the State Government.

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(3) Thirdly remaining seats shall be filled on the basis of marks obtained in the qualifying examination.

(4) All these admissions shall be done through
E centralized counseling conducted by counseling authority declared by the State Government Committee for this purpose. The detailed procedure for the counseling shall be notified by the counseling authority
F from time to time."

19. A plain reading of the above leaves no manner of doubt that unfilled NRI seats had to be transferred to the general pool to be filled up on the basis of the merit of the candidates
G in the State level common entrance test conducted by Madhya Pradesh Vyavasyik Pariksha Mandal or by any other agency authorized by the State Government for that purpose. The unfilled seats in the NRI quota were, therefore, to be treated as a part of the general pool and once that was done the share
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of the college in terms of the order passed by this Court would be 50% out of the said seats. The High Court has, in that view, rightly held that while the management was justified in filling up 5 unfilled seats in NRI quota, the remaining 5 could not have been filled up otherwise than on the basis of the entrance test referred to in Rule 8 (supra). A B

20. In the result there is no merit in these appeals which fail and are hereby dismissed with costs assessed at Rs.50,000/-. The costs shall be paid to the writ petitioners in equal proportion. C

B.B.B. Appeals dismissed.