RAJAN PUROHIT & ORS. A

v.

RAJASTHAN UNIVERSITY OF HEALTH SCIENCE & ORS.

(Civil Appeal No. 8142 of 2011 Etc.)

AUGUST 30, 2012 B

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Education/Educational Institutions:

*Admission – In Private unaided Medical College – State Government decision to fill 85% of the MBBS seats through State Pre-Medical Test 2008 (RPMT-2008) – No agreement with the College to give admission on the basis of RPMT-2008 – College filling 117 of 150 seats [i.e. 16 seats through PCPMT (exam conducted by Private Medical and Dental colleges of the State) and 101 seats on the basis of 10+2 exam] – The admission challenged by RPMT-2008 wait list candidates claiming admission against 85% seats – Single Judge of the High Court setting aside the admission directing the college to fill up the seats by candidates in the RPMT-2008 – Division Bench of the High Court upholding the order of Single Judge – On appeal, held: There was no agreement by the college to admit on the basis of RPMT-2008 – The college could not have been directed to fill up its seats through RPMT-2008 – But the admission of 117 students was contrary to clause (2) of Regulation 5 of MCI Regulations – It was also not within the right of the College, under Article 19(1)(g) of Constitution as explained in *TMA Pai and **P. A. Inamdar cases – Since the candidates admitted by the college were not at fault, in exercise of power u/Art. 142 of Constitution, direction not to disturb their admission – Direction is subject to the condition that the candidate would pay a sum of Rs. 3 lakhs – Penalty imposed on the College to surrender its 107 seats to State Government phase-wise not more than 10 seats in any academic year – Regulations* C D E F G

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on Graduate Medical Education, 1997 – Regulation 5(2) – Constitution of India, 1950 – Articles 19(1)(g) and 142.

Admission – In Medical College – College entering into consensual arrangement with State Government to fill 85% of MBBS seats by the students allocated by competent authority – Filling the 85% seats in two rounds of counselling from allocated students – Residual 21 seats filled by college on its own (15 through Pre-Medical Test and 6 on the basis of 10+2 examination) – In another case Pre-Medical Test Candidates in waiting list challenging filling up of the above-mentioned 6 seats wherein High Court did not disturb the admission of the 6 students and also directed admission to the petitioners therein – 21 students not allowed to appear in exam – Present writ petition by the 21 students – Single Judge of the High Court allowing petition of 15 students who were admitted through Pre-Medical Test – But dismissing the petition of 6 students in view of order of Medical Council of India discharging the 6 students from the course – Order confirmed by Division Bench of High Court – On appeal, held: The Admission of the 6 students were in violation of Regulation 5(2) of MCI Regulations – Regulation 5(1) is not applicable to State of Rajasthan because this State has many Boards/Universities/Examining Body – The present petition was also not barred by principle of res-judicata as the issue in the present petition was not the issue in the previous petition – However, invoking powers under Article 142 of the Constitution, admission to 6 students not disturbed subject to the condition that they would pay Rs. 3 lakhs – Penalty imposed on the college to surrender the 6 seats to the State Government – Regulations on Graduate Medical Education, 1997 – Regulations 5(1) and (2) – Code of Civil Procedure, 1908 – s. 11 – Principle of Res Judicata – Constitution of India, 1950 – Article 142.

Civil Appeal Nos. 8142, 8143 and 8144 of 2011:

The medical college in question was a private

unaided non-minority college. It was yet to receive its permission from the Government of India and affiliation from the Rajasthan University of Medical Sciences. Pursuant to a meeting regarding conducting of common entrance test for admission to Medical and Dental Colleges in the State of Rajasthan for the academic year 2008-2009, the college Chairman and Managing Trustee gave a written undertaking that the college would admit the students to the MBBS course only after getting permission from the authorities concerned. The college did not participate in another meeting wherein it was decided that 85% seats of the medical colleges in the State would be filled through Rajasthan Pre-Medical Test-2008 (RPMT-2008) and 15% seats would constitute NRI quota. Permission letter was granted to the college on 16-09-2008 for establishment of the college with an annual intake capacity of 150 students. The letter further stipulated that the admission process was to be completed within time schedule indicated in the Regulations on Graduate Medical Education, 1997.

The college issued advertisement inviting application for admission to MBBS course on the basis of PC-PMT conducted by Federation of Private Medical and Dental Colleges of Rajasthan and 10+2 examination. Last date of receipt of application was stipulated to be 28-09-2008. The college, out of 150 seats, filled 16 seats through PC-PMT and 101 seats were filled on the basis of 10+2 examination. The 23 seats of NRI quota were also filled up by the college.

Some of the candidates, selected through RPMT-2008 and were placed in waiting list, filed writ petition, seeking their consideration for admission against the 85% seats of the 150 seats in the college, on the basis of their merit in RPMT-2008. Single Judge of High Court, by interim order, reserved 10 seats for the writ petitioners

A and by final order allowed the writ petition and directed to hold counseling from the waiting list of students of RPMT-2008.

The college as well as the students who were given admission by the college, filed appeals challenging the B order of the Single Judge. Division Bench of High Court dismissed the appeals. Hence the present appeals.

Civil Appeal Nos. 6210 and 6211 of 2012:

C Pursuant to a consensual arrangement between the State Government and the college in question, to fill 85% of the MBBS seats by allocation of students by the competent authority, the college filled up the seats in two rounds of counseling from the candidates allocated by D the competent authority. The college issued an office order that residual seats which remained vacant even after the second round of counseling to be filled up by an admission process, whereby preference would be given to RPMT-2008 candidates and if the seats were still vacant, the same to be filled up on the basis of marks E obtained in 10+2 examination. Pursuant to the office order, out of the 21 unfilled seats, 15 seats were filled by the candidates selected in RPMT-2008 and 6 seats were filled on the basis of 10 +2 examination.

F When the 21 students were not allowed to take the examination for the MBBS course by the authorities, they filed writ petitions. Single Judge of High Court allowed the writ petitions by the 15 students whose admission was on the basis of RPMT-2008 but dismissed the petition G of the 6 students whose admission was on the basis of 10+2 examination, in view of the order dated 04-02-2010 passed by Medical Council of India directing to discharge the 6 students on the ground that they were not candidates of RPMT-2008. The appeal of the college and

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the 6 students was dismissed by Division Bench of the High Court. A

In appeal to this court, the appellants *interalia* contended that as the admission of the 6 candidates was earlier challenged in writ petitions by candidates who had qualified in RPMT-2008 and the same was not disturbed by the High Court and that order since obtained finality, the Medical Council of India could not have passed order discharging the 6 students from MBBS course. B

Partly allowing the appeals, the Court C

HELD:

Civil Appeal Nos. 8142, 8143 and 8144 of 2011:

1. There was no agreement between the College and the State Government to admit students into its MBBS course on the basis of RPMT-2008 and the finding of the High Court in this regard is erroneous and the High Court could not have directed the College to fill up its seats on the basis of merit of students as determined in RPMT-2008 as per the law laid down in **T.M.A. Pai Foundation* as explained in ***P.A. Inamdar.* Hence, the direction of the High Court to fill up the seats by students selected or wait listed in the RPMT-2008 is set aside. [Para 30] [343-B-D] D E F

2. The admissions of 117 students to the MBBS course for the academic year 2008-2009 in the College were contrary to clause (2) of Regulation 5 of the MCI Regulations.The College was bound to follow the MCI Regulations while making the admissions to the MBBS seats. Even if the College was required to complete the admission process by a particular date, it could not violate the MCI Regulations on the ground that it had to complete the admission process by that date. It is clear from the provisions of Regulation 5 that the selection of students G H

A to medical college is to be based solely on merit of the candidate and for determination of the merit, the criteria laid down in Clauses (1), (2), (3) and (4) will apply. Clause (2) of Regulation 5 on which the MCI relied upon clearly states that in States having more than one University/ B Board/Examining Body conducting the qualifying examination a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies. The merit of the students C who had applied pursuant to the advertisement of the College had to be uniformly evaluated by a competitive entrance examination, but no such competitive entrance examination had been held by the College between all the candidates who had applied pursuant to the D advertisement. Therefore, there was a clear violation of Clause (2) of Regulation 5 of the MCI Regulations in admitting the 101 students to the MBBS Course for the academic year 2008-2009 by the College. [Paras 23, 24 and 30] [335-E-G; 336-E-G; 337-A-D; 343-B-D]

E *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.* (1999) 7 SCC 120: 1999 (1) Suppl. SCR 249; *State of M.P. and Ors. v. Gopal D. Tirthani and Ors.* (2003) 7 SCC 83: 2003 (1) Suppl. SCR 797; *Harish Verma and Ors. v. Ajay Srivastava and Anr.* (2003) 8 SCC 69: 2003 (3) Suppl. F SCR 833 – referred to.

3.1. The admissions were not within the right of the College under Article 19(1)(g) of the Constitution as explained by this Court in **T.M.A. Pai Foundation* and ***P.A. Inamdar.* In **T.M.A. Pai Foundation*, this Court, while G holding that a private unaided non-minority institution has the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution also held that such right will include the right to admit students into the institution. The observations in para 58 of the H

judgment of Kirpal, CJ. make it clear that students seeking admission to a professional institution were required to be treated fairly and preferences were not to be shown to less meritorious but more influential students and greater emphasis was required to be laid on the merit of the students seeking admission. In para 59, it has been further made clear that merit is to be determined for admission to professional colleges, by either the marks that the student obtains at the qualifying examination, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies. The judgment in **T.M.A. Pai Foundation* has been further explained by this Court in ***P.A. Inamdar* and it has been held therein that that non-minority unaided institutions, like the minority unaided institutions, have also the unfettered fundamental right to choose the students to be allowed admission and the procedure therefore, but the admission procedure so chosen by the institution must be fair, transparent and non-exploitative. This Court has taken the further view that all institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the triple tests of the admission procedure being fair, transparent and non-exploitative. [Paras 19 and 20] [331-E-G; 332-E-H; 333-A-B-G-H]

3.2. The College admitted 16 students from the list of candidates selected in the PC-PMT 2008 conducted by the Federation of Private Medical and Dental Colleges of Rajasthan. The PC-PMT 2008 did not call for any applications from candidates for admission to the MBBS course, but only for the BDS course. Moreover, the College had not been included in the brochure published for PC-PMT 2008. Consequently, students, who may be interested not in the BDS course but in the MBBS course, could not have applied to take the PC-PMT 2008. As a result, many meritorious students desirous of taking

A admission in the MBBS course in the College could not get an opportunity to participate in the PC-PMT 2008. The admission procedure adopted by the College was thus not fair and transparent and fell short of the triple tests laid down in **P.A. Inamdar* and such admission B procedure was not within the fundamental right of the College to admit students of its choice under Article 19(1)(g) of the Constitution as explained in **T.M.A. Pai Foundation.* [Para 21] [334-A-F]

3.3. The candidates, who had applied in response to C the advertisement, had not passed the 10+2 examination from the same Board or University but from different Boards and Universities. If that be so, the merit of the candidates who had applied in response to the advertisement could not be evaluated by a uniform D standard and could only be evaluated by a competitive entrance examination of all these students who had applied pursuant to the advertisement of the College. It is not the case of the College that any competitive entrance examination of all the students, who had applied E pursuant to the advertisement, was held by the College to determine their comparative merit. Hence, the principle of merit as the basis for selection for admission in the professional courses laid down by this Court in **T.M.A. Pai Foundation* and as explained in ***P.A. Inamdar* has not F been followed. Thus, even as per the law laid down by this Court in **T.M.A. Pai Foundation* and ***P.A. Inamdar,* the College has not been able to establish that the admissions of 117 students to its MBBS course for the academic year 2008-2009 were within its right under G Article 19(1)(g) of the Constitution. [Para 22] [335-A-E]

T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. (2002) 8 SCC 481: 2002 (3) Suppl. SCR 587; *P.A. Inamdar and Ors. v. State of Maharashtra and Ors.* (2005) 6 SCC 537: 2005 (2) Suppl. SCR 603 – followed.

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4. Since the College violated clause (2) of Regulation 5 of the MCI Regulations in making the admissions of 117 students to the MBBS course for the academic year 2008-2009 and the admissions were not within the right of the College under Article 19(1)(g) of the Constitution as explained in *T.M.A. Pai Foundation and **P.A. Inamdar, the College must, therefore, suffer some penalty as a deterrent measure so that it does not repeat such violation of the MCI Regulations in future. Moreover, if no punitive order is passed, other colleges may be encouraged to violate the MCI Regulations with impunity. In the present case, there were as many as 117 admissions contrary to the provisions of clause (2) of Regulation 5 of the MCI Regulations. The Single Judge of the High Court had directed ten seats to be kept vacant for the academic year 2008-2009 and those ten seats kept vacant have not been filled up and the College has not received any fees for the ten seats. Excluding these ten seats, the College will have to surrender 107 seats in a phased manner, not more than ten seats in each academic year beginning from the academic year 2012-2013. These 107 seats will be surrendered to the State Government and the State Government will fill up these 107 seats on the basis of merit as determined in the RPMT or any other common entrance test conducted by the State Government or its agency for admissions to Government Medical Colleges and the fees of the candidates who are admitted to the 107 seats will be the same as fixed for the Government Medical Colleges. [Para 28] [341-D-H; 342-A-C]

Deepa Thomas and Ors. v. *Medical Council of India and Ors.* **(2012) 3 SCC 430 – relied on.**

5. As the 117 students who had been admitted to the MBBS course in the College were not to be blamed for the lapses on the part of the College, their admission

A **should not be disturbed. But since they are beneficiaries of violation of clause (2) of Regulation 5 of the MCI Regulations by the College, and have got admission into the College without any proper evaluation of their merit vis-a-vis the other students who had applied but had not** B **been admitted in a competitive entrance examination, they must pay some amount for development of infrastructure in the medical college of the Government as a condition for allowing them to continue their MBBS studies by orders under Article 142 of the Constitution.** C **Therefore, they will each pay a sum of Rs.3 lacs within a period of three months from the date of this judgment to the State Government and in the event of default, the students will not be permitted to take the final year examination and the admission of the defaulting students shall stand cancelled and the College will have no liability** D **to repay the admission fee already paid. The amount so paid to the State Government shall be spent by the State Government for improvement of infrastructure and laboratories of the Government medical college of the State and for no other purpose. [Paras 27, 29 and 30] [341-** E **C-D; 342-D-G; 343-F-H; 344-A-B]**

Chowdhury Navin Hemabhai and Ors. v. State of Gujarat and Ors.(2011) 3 SCC 617: 2011 (2) SCR 1071 ; *Deepa Thomas and Ors. v. Medical Council of India and Ors.* (2012) F **3 SCC 430;** *Priya Gupta v. State of Chhattisgarh and Ors.* **2012 (5) SCALE 328 – relied on.**

A.P. Christians Medical Educational Society v. Government ofAndhra Pradesh and Anr. ***(1986) 2 SCC 667*****: 1986 (2) SCR 749** ;*Regional Officer, CBSE v. Ku. Sheena* G *Peethambaran and Ors.* **(2003) 7 SCC 719: 2003 (3) Suppl. SCR 275;** *Visveswaraiah Technological University and Anr. v. Krishnendu Halder and Ors.* **(2011) 4 SCC 606: 2011 (2) SCR 1007 – distinguished.**

H *A.B. Bhaskara Rao v. Inspector of Police, CBI*

Vishakapatnam (2011) 10 SCC 259: 2011 (12) SCR 718 – referred to. A

Civil Appeal No. 6210 and 6211 of 2012

1. It cannot be held that the MCI could not have issued the order dated 04.02.2010 discharging the six students from the MBBS Course on the ground that they had not been selected in the RPMT-2008 and that their admissions were in breach of the provisions of clause (2) of Regulation 5 of the MCI Regulations, in view of the of the order dated 26.05.2009 passed by the Single Judge of the High Court in three Writ Petitions which had attained finality. The question as to whether the admission of the six students was in breach of clause (2) of Regulation 5 of the MCI Regulations was not in issue in the aforesaid three writ petitions. The High Court disposed of the three writ petitions on the basis of a compromise between the writ petitioners on the one hand. As the College has not produced the pleadings before this Court in the three writ petitions to show that an issue was raised before the High Court in the aforesaid three writ petitions by the MCI that the admission of the 6 students was in breach of clause (2) of Regulation 5 of the MCI Regulations, the principles laid down in Section 11 CPC relating to *res judicata* will not apply. As a matter of fact, when the order dated 26.05.2009 was passed the MCI had no information that the six students had not been selected in the RPMT-2008 and it was only in August, 2009, and thereafter that the MCI came to learn about the breach of the provisions of Regulation 5 and accordingly MCI issued orders to immediately discharge six students. [Para 9] [350-F-H; 351-A-B; 351-D-G] B C D E F G

2. It is also not correct to say that the College could admit students on the basis of marks obtained by them in the qualifying examinations under Clause (1) of H

A Regulation 5 of the MCI Regulations. Regulation 5(1) of the MCI Regulations applies only in a State where one University or Board or Examining Body conducts the qualifying examination, in which case, the marks obtained at such qualifying examination may be taken into B consideration. As the State of Rajasthan has more than one University/Board/Examining Body conducting qualifying examinations, clause (2) of Regulation 5 of the MCI Regulations will apply which provides that a competitive entrance examination will have to be held so C as to achieve a uniform evaluation. The College, therefore, was bound to hold a competitive entrance examination in accordance with clause (2) of Regulation 5 of the MCI Regulations or enter into a consensual arrangement with the State Government to admit students on the basis of D the Competitive Entrance Examination conducted by the State Government. The College entered into a consensual arrangement with the State Government to admit students on the basis of merit as determined in the RPMT-2008. Therefore, the clarification of the Secretary E of the MCI that for the purpose of admissions within the time schedule fixed by this Court, admission can also be made on the basis of marks secured in the 10+2 Examination as provided in Regulation 5(1) of the MCI Regulations is not in accord with the fact situation in the State of Rajasthan. The admission of the six students by F the College to its MBBS Course was, therefore, in breach of clause (2) of Regulation 5 of the MCI Regulations. [Para 10] [351-G-H; 352-B-E-F-H; 353-A]

Mirdul Dhar and Anr. vs. Union of India and Ors. (2005) G 2 SCC 65 – referred to.

3. The Court, invoking its powers under Article 142 of the Constitution directs that the admission of the 6 students in the MBBS Course will not be disturbed subject to the condition that each of the 6 students pay H

to the State Government Rs.3 lacs for development of infrastructure of Government medical colleges within a period of three months from the date of the judgment failing which they will not be allowed to take the final MBBS examinations and their admission will be cancelled. [Para 12] [353-E-F]

Rajendra Prasad Mathur v. Karnataka University and Anr. **1986Supp. SCC 740;** *A. Sudha v. University of Mysore and Anr.* **(1987) 4 SCC 537; 1988 (1) SCR 368;** *Association of Management ofUnaided Private Medical and Dental College v. Pravesh Niyantran Samiti and Ors.* **(2005) 13 SCC 704;** *Monika Ranka and Ors. v. Medical Council of India and Ors.* **(2010) 10 SCC 233 – referred to.**

4. Considering the fact that the College has violated the provisions of clause (2) of Regulation 5 of the MCI Regulations, as a deterrent measure to prevent similar breach of the MCI Regulations in future, it is directed that the College will surrender six seats in the MBBS course for the academic year 2012-2013 to the State Government to be filled up on the basis of the RPMT or any other common entrance test conducted by the State Government of Rajasthan or its agency for admission to the MBBS Course and the fee that will be payable by the students admitted to the six seats will be the same as are payable by the students admitted on the basis of RPMT or another common entrance test conducted by the State Government or its agency. [Para 12] [353-F-H; 354-A-B]

Priya Gupta v. State of Chhattisgarh and Ors. **2012 (5) SCALE 328 – relied on.**

Case Law Reference:

In Civil Appeal Nos. 8142, 8143 and 8144 of 2011:

1999(1) Suppl. SCR 249	**Referred to**	**Para 11**

A	2003 (1) Suppl. SCR 797	Referred to	Para 11
	2003 (3) Suppl. SCR 833	Referred to	Para 11
	2011 (123) SCR 718	Referred to	Para 12
B	2002 (3) Suppl. SCR 587	Followed	Paras 20 and 30
	2005 (2) Suppl. SCR 603	Followed	Paras 20 and 30
C	2011 (2) SCR 1071	Relied on	Para 27
	1986 (2) SCR 749	Distinghished	Para 24
	2003 (3) Suppl. SCR 275	Distinguished	Para 25
D	2011 (2) SCR 1007	Distinguished	Para 25
	(2012) 3 SCC 430	Relied on	Paras 27 and 28
	2012 (5) SCALE 328	Relied on	Para 29
E	In Civil Appeal No. 6210 and 6211 of 2012		
	2005 (1) SCR 380	Referred to	Para 6
	(2005) 2 SCC 65	Referred to	Para 6
F	1986 Supp. SCC 740	Referred to	Para 7
	1988 (1) SCR 368	Referred to	Para 7
	(2005) 13 SCC 704	Referred to	Para 7
G	(2010) 10 SCC 233	Referred to	Para 7
	(2012) 5 SCALE 328	Relied on	Para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8142 of 2011.

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From the Judgment and Order dated 03.09.2009 of the High Court of Judicature for Rajasthan at Jaipur in Special Appeal No. 241 of 2009 in Civil Writ Petition No. 10858 of 2008.

WITH

Civil Appeal Nos. 6210, 6211 of 2012, 8143, 8144 & 8999 of 2011.

Ravinder Shrivastav, Pallav Shishodia, P.S. Narsimha, K.K. Venugopal, Maninder Singh, Amrendra Sharan, Jasbir Singh Malik, S. Udaya Kumar Sagar, Bina Madhavan, Vinita Sasidharan (For Lawyer's Knit & Co.), J.S. Bhasin, T. Mahipal, A. Venayagam Balan, Rashmi Priya, Gaurav Sharma, Shivaji M. Jadhav, Amit Kumar, Atul Kumar, Rekha Bakshi, Somendra Chandra Jha, Manju Jana, Milind Kumar, Naveen Kr. Chauhan, Rahul Singh Chauhan, Mandar K. Narwane, Praveen Swarup, Rajendra Soni, Anuradha Soni, Abhinav Mukerji, P.K. Jain, Gaurav Agrawal for the Appearing Parties.

The Judgment of the Court was delivered by

A.K. PATNAIK, J.

CIVIL APPEAL NO. 8142 OF 2011, CIVIL APPEAL NO.8143 OF 2011 AND CIVIL APPEAL NO.8144 OF 2011:

1. These are appeals by way of special leave under Article 136 of the Constitution of India against the common order and judgment dated 03.09.2009 of the Division Bench of the Rajasthan High Court, Jaipur Bench, in Special Appeal Nos.241 of 2009 and 386 of 2009.

FACTS

2. The facts very briefly are that the Secretary, Medical Education, Government of Rajasthan, held a meeting on 04.12.2007 for the purpose of conducting a common entrance

A test for admission to the Medical and Dental Colleges in the State of Rajasthan for the academic year 2008-2009. Besides the Secretary, Medical Education, Government of Rajasthan, the Registrar, Rajasthan Medical University of Health Sciences, Jaipur, Professor Anatomy of Medical College, Jaipur, Special B Officer, Technical Education Department, Government of Rajasthan, representative from the Federation of Private Medical and Dental Colleges of Rajasthan, Jaipur, Managing Director, Geetanjali Medical College, Udaipur, Managing Director, National Institute of Medical Sciences, Jaipur, were C also present in the meeting. Geetanjali Medical College and Hospital (for short 'the College') was yet to receive its permission from the Government of India and affiliation from the Rajasthan University of Medical Sciences and on 12.12.2007, the Chairman and Managing Trustee of the Geetanjali D Foundation Shri Jagdish Prasad Agarwal gave a written undertaking that the College will admit the students to the MBBS course only after getting permission from the Government of India and after getting affiliation from the Rajasthan University of Medical Sciences. Another meeting for the aforesaid purpose was held under the Chairmanship of the Secretary, E Medical Education on 15.12.2007 and at this meeting it was decided that students will be made available for 85% of the seats in the medical colleges in the State of Rajasthan through the Rajasthan Pre-Medical Test 2008 (for short the 'RPMT-2008), and the remaining 15% seats of the colleges will F constitute NRI quota which will be filled by the colleges. The representative of the College did not participate in the meeting on the ground that inspection of the College by the Medical Council of India (for short 'MCI') was going on. The Director of the College in his letter dated 18.12.2007 to the Secretary, G Medical Education, Government of Rajasthan, while expressing his inability to attend the meeting on 15.12.2007, explained that the College cannot participate in the admission procedure and cannot give consent for taking the students from the RPMT-2008 till the College received the clearances from the MCI.

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Thereafter, the inspection report in respect of the College was considered by the Executive Committee of the MCI on 12.05.2008 and the MCI decided to recommend to the Government of India to issue the permission letter for establishment of the College with an annual intake of 150 students for the academic year 2008-2009. The Government of India, Ministry of Health and Family Welfare, however, took a decision not to grant permission for establishment of the College for the academic year 2008-2009 and communicated this decision in its letter dated 04.08.2008 to the Chairman and Managing Trustee of the Geetanjali Foundation.

3. Aggrieved, the College filed Writ Petition (C) No.357 of 2008 before this Court under Article 32 of the Constitution of India and on 03.09.2008 this Court disposed of the writ petition after recording the statement of the learned Additional Solicitor General that the revised orders will be passed by the Government of India within a week in respect of the College. In the order dated 03.09.2008 disposing of the writ petition of the College, this Court further observed that the College may complete the admissions by 30.09.2008 in accordance with the rules and procedure laid down for the purpose of admissions. The Government of India, Ministry of Health and Family Welfare, then issued a permission letter dated 16.09.2008 for establishment of the College with an annual intake capacity of 150 students with prospective effect from the academic year 2008-2009 under Section 10A of the Indian Medical Council Act, 1956. In this permission letter dated 16.09.2008, it was inter alia stipulated that the admission process for the academic year 2008-2009 has to be completed by the College within the time schedule indicated in the Regulations on Graduate Medical Education, 1997 made by the MCI.

4. The College by its letter dated 25.09.2008 requested the President, Federation of Private Medical and Dental Colleges of Rajasthan to allot students to the College by conducting counselling and the College also issued an

A advertisement on 26.09.2008 in leading newspapers inviting applications from the candidates for admission counselling to the first year MBBS course for the academic year 2008-2009 on the basis of PC-PMT/10+2 examination with minimum 50% marks in Physics, Chemistry and Biology as per regulations of B the MCI and stated in the advertisement that the last date of receipt of the applications would be 28.09.2008 and the candidates will be selected on the basis of merit. After counselling, out of the 150 seats of the College in first year MBBS course, 16 seats were filled up by students from PC- C PMT conducted by the Federation of Private Medical and Dental Colleges of Rajasthan and 101 seats were filled up from amongst candidates who had passed the 10+2 examination and 23 seats of the NRI quota were filled up by the College.

5. Some of the candidates who were selected through the D RPMT-2008 and placed in the waiting list of candidates for admission to the MBBS seats in the medical colleges in the State of Rajasthan filed eight writ petitions before the Rajasthan High Court, Jaipur Bench, contending that they were entitled to be admitted to the seats of the College in the first year MBBS E course on the basis of their merit in the RPMT-2008 and praying for a direction to the College to consider and give them admission in the MBBS course in the College against the 85% seats of the 150 seats on the basis of their merit in RPMT-2008 by holding counselling and further praying that no one should F be admitted against the 150 seats from any source other than the RPMT-2008. The learned Single Judge of the High Court, who heard the writ petitions, initially passed an interim order on 29.09.2008 directing that ten seats in the College will be reserved for the writ petitioners. The learned Single Judge of G the High Court thereafter passed the final order on 18.03.2009 holding that the RPMT-2008 was conducted in accordance with Regulation 5 of the Regulations on Graduate Medical Education, 1997 made by the MCI (for short 'the MCI Regulations') as well as in accordance with Ordinance 272 (IV)

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and the policy of the State Government and the College could not have admitted candidates to the 85% of the seats in the MBBS course as per its own choice at the cost of meritorious students placed in the waiting list of candidates found successful in the RPMT-2008. The learned Single Judge of the High Court thus allowed the writ petitions and declared that the admissions made by the College in MBBS course for the academic year 2008-2009 against 85% of the seats were illegal and directed the State to hold counselling from the waiting list of students of RPMT-2008 and further directed that the writ petitioners will be given admission as per their merit position in the waiting list and the process be completed before the commencement of the RPMT-2009. The final order dated 18.03.2009 of the learned Single Judge was challenged by the College as well as the students who were admitted by the College in Special Appeals before the Division Bench of the High Court. All these Special Appeals were heard by a Division Bench of the Rajasthan High Court, Jaipur Bench, but dismissed by a common order dated 03.09.2009. Aggrieved, the students who had been admitted into the College have filed Civil Appeal Nos.8142 of 2011 and 8143 of 2011 and the College has filed Civil Appeal No.8144 of 2011.

6. Mr. K. K. Venugopal, Mr. Dushyant Dave, Mr. Ravinder Shrivastav and Mr. Pallav Shishodia, learned senior counsel for the appellants, submitted that the college had not agreed to admit students to its MBBS seats from amongst the students selected in the RPMT-2008 in the meeting held on 15.12.2007 under the Chairmanship of the Secretary, Medical Education, Government of Rajasthan because the College did not have the permission from the Government of India to establish the College. They submitted that the first counselling for students selected in the RPMT -2008 for admission in the MBBS course was held on 17.07.2008 and second and last counselling for such students selected in the RPMT-2008 for admission in the MBBS course was over on 24.09.2008 and the College received the letter of permission from the Government of India

for establishing the College for MBBS course with an annual intake of 150 students for the academic year 2008-2009 onwards on 25.09.2008 and by this date as the second and last counselling for the candidates selected on the basis of RPMT-2008 was over, the College could not admit the students to 85% of the seats in the MBBS course on the basis of the RPMT-2008. They submitted that in these peculiar facts the College issued an advertisement in leading newspapers inviting applications from the candidates for admission in the first year MBBS course for the academic year 2008-2009 on the basis of their merit in PC-PMT or 10+2 examination. They submitted that the Principal of the R.N.T. Medical College and Controller by his letter dated 29.09.2008 also constituted a team of five officers with Professor and Head of Department of Pathology & Academic Officer of the College as the Chairman to supervise the admissions in the College. They submitted that after counselling, 16 students were admitted from the list of candidates selected on the basis of PC-PMT conducted by the Federation of the Private and Dental Colleges of Rajasthan on the basis of their merit and 101 students were admitted on the basis of their merit in 10+2 examination in the MBBS course of the College.

7. They relied upon the judgment of this Court in *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* [(2002) 8 SCC 481] in which it has been held that a private unaided non-minority institution has the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution of India and that such right includes the right to admit students into the institution. They also cited the judgment of this Court in *P.A. Inamdar & Ors. v. State of Maharashtra & Ors.* [(2005) 6 SCC 537] in which the law laid down in *T.M.A. Pai Foundation* (supra) was clarified and it was held that non-minority unaided institutions, like the minority institutions, can also legitimately claim unfettered fundamental right to choose the students to be allowed admission and the State cannot impose a quota of seat

sharing in such institutions and that this can only be done by a consensual arrangement. They submitted that in *P.A. Inamdar* (supra), this Court further held that all private institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the triple tests of the admission procedure being fair, transparent and non-exploitative. They submitted that in accordance with the aforesaid law laid down by this Court in *T.M.A. Pai Foundation* and *P.A. Inamdar* (supra), a common entrance test, namely, PC-PMT 2008, was held by the Federation of the Private and Dental Colleges of Rajasthan and on the basis of the merit as determined in PC-PMT 2008, 16 students have been admitted to the MBBS course of the College.

8. They submitted that the finding of the High Court that admission to the 85% of the seats in the MBBS course of the College could, as per the MCI Regulations, be made only on the basis of merit as determined in the RPMT is not correct. They submitted that Regulation 4 of the MCI Regulations lays down the "eligibility criteria" for admission to the MBBS course and it provides that a candidate should have completed the age of 17 years on or before the date mentioned therein and he should have passed the qualifying examination. They submitted that all the 117 students (16+101) admitted to the MBBS course in the College for the academic year 2008-2009 fulfilled the requirements regarding age and passing of qualifying examination as provided in Regulation 4 of the MCI Regulations. They submitted that Regulation 5 of the MCI Regulations states that the selection of students to medical college shall be based solely on the merit of the candidate and clause (1) of Regulation 5 states that for determining the merit, the marks obtained at the qualifying examination may be taken into consideration. They argued that the marks of 101 students admitted on the basis of their 10+2 qualifying examination were taken into consideration and, therefore, Regulation 5 of the MCI Regulations had not been violated. They submitted that in the facts of the present case since the seats of the MBBS course

A in the College had to be filled up for the academic year 2008-2009 on or before 30.09.2009, the College had no option but to fill up the seats on the basis of merit as determined in the 10+2 examination after publishing the advertisement in the leading newspapers.

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9. Learned senior counsel for the appellants also submitted that none of the students, who had applied pursuant to the advertisement published by the College for admission on the basis of merit as determined in the PC-PMT 2008 or the 10+2 examination, had made any grievance before any C authority that they were not given admission on the basis of merit or that students with lesser merit had been admitted in the seats for the MBBS course in the College for the academic year 2008-2009. They argued that in fact, as desired by the High Court, a report was called for on the admissions made D by the College in the MBBS course for the academic year 2008-2009 and a Committee comprising the Deputy Secretary, Medical Education, Government of Rajasthan, the Registrar, Rajasthan University of Health Sciences, Jaipur, Dean, Medical College, Jhalawar and Professor, M.M. Medical College, E Ajmer, examined all the records of admissions and conducted an enquiry and submitted a report with a finding that though the College was directed by the State Government to admit students from RPMT-2008, admissions were given by the College on the basis of PC-PMT on merit in 10+2 examinations F due to availability of short period for admissions and the Rajasthan University of Health Sciences has treated the admissions to be irregular and not illegal.

10. Learned senior counsel for the appellants cited the G judgment of this Court in *Chowdhury Navin Hemabhai & Ors. v. State of Gujarat & Ors.* [(2011) 3 SCC 617] in which this Court has held that even though under the MCI Regulations the appellants could not be admitted to the MBBS course in the academic year 2008-2009, for the purpose of doing complete justice in the matter, the admissions of the appellants therein H

to the MBBS course in the College during the academic year 2008-2009 should not be disturbed. They also submitted that a similar view has been taken by this Court in *Deepa Thomas & Ors. v. Medical Council of India & Ors.* [(2012) 3 SCC 430] wherein this Court agreed with the view of the MCI and the High Court that the admissions of the appellants therein were irregular as they had not secured the minimum marks of 50% in the common entrance examination as prescribed in the MCI Regulations and yet directed, as a special case, that the appellants therein shall be allowed to continue and complete their MBBS course and should be permitted to appear in the University examinations as if they had been regularly admitted to the course. They submitted that in the event this Court is of the opinion that the MCI Regulations 1997 have been violated in admitting the 117 students in the MBBS course of the College, to do complete justice in the matters, this Court should allow these students to continue in the MBBS course in exercise of its powers under Article 142 of the Constitution of India as has been done in the aforesaid two cases.

11. Mr. Amarendra Sharan, learned senior counsel appearing for the MCI, submitted that the Division Bench of the High Court has in the impugned order held that the stand of the College that the permission letter dated 16.09.2008 of the Central Government was received by the College on 25.09.2008, i.e. after the second and last counselling of students selected in the RPMT-2008 was over, appears to be doubtful. He supported the aforesaid finding of the High Court and argued that the College avoided to participate in the counselling of students selected in the RPMT-2008 even though it was aware that the Government of India had granted the permission for establishing the College on 16.09.2008. He submitted that the MCI Regulations were made by the MCI with the previous sanction of the Central Government in exercise of power conferred under Section 33 of the Indian Medical Council Act, 1956 and was, therefore, statutory in character and are binding so far as admissions to medical colleges are

A concerned. He vehemently argued that the letter dated 16.09.2008 of the Secretary of the MCI clarifying that admissions could be made on the basis of marks in the qualifying examination to complete the admissions by 30th of September could not override the MCI Regulations. He B submitted that Regulation 4 of the MCI Regulations, which provides the minimum eligibility of students to be admitted to the MBBS course, is not the only provision which has to be followed by the Medical Colleges for admissions to the MBBS course. He submitted that Regulation 5 of the MCI Regulations C provided that selection of students to a medical college shall be based solely on merit of the candidates and clause (2) of Regulation 5 stipulated that in States, having more than one university/board/examining body conducting the qualifying examination a competitive entrance examination should be held D so as to achieve a uniform evaluation as there may be variation of standard at qualifying examination conducted by different agencies. He submitted that selection for the 85% of the seats in the College for the academic year 2008-2009 could, therefore, be only on the basis of merit as determined in a E competitive entrance examination and not on the basis of the marks obtained in qualifying examination. He submitted that there is a clear finding in the impugned order of the High Court that the College was not listed in brochure with the application form notified by the Federation of Private Medical and Dental F Colleges of Rajasthan for PC-PMT 2008 and in fact no competitive entrance examination was conducted for admission to the MBBS course of the College. He argued that the admissions of the 16 students in the MBBS course for the academic year 2008-2009 on the basis of PC-PMT 2008, thus, were not on the basis of merit as determined in a competitive G entrance examination as is sought to be made out by the appellants. He submitted that names of 101 candidates who had been admitted on the basis of their marks in the qualifying examination vis-à-vis of the candidates who had not been admitted had not been determined in a common competitive

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entrance examination. He argued that the only way the College could comply with the provisions of clause (2) of Regulation 5 of the MCI Regulations was to admit students selected in the RPMT-2008. He submitted that in *T.M.A. Pai Foundation* and *P.A. Inamdar* (supra) cited by the learned counsel for the appellants, this Court has also held that the admissions to the private unaided professional colleges have to be made by selection through a common entrance test and in the aforesaid judgments, this Court has not held that the MCI Regulations will not be followed while giving admissions to the MBBS course. He submitted that this Court, on the contrary, has held in *Dr. Preeti Srivastava & Anr. v. State of M.P. & Ors.* [(1999) 7 SCC 120], *State of M.P. & Ors. v. Gopal D. Tirthani & Ors.* [(2003) 7 SCC 83] and *Harish Verma & Ors. v. Ajay Srivastava & Anr.* [(2003) 8 SCC 69] that the Regulations of the MCI laying down the standards of education for post-graduate medical courses have to be complied with.

12. Mr. Sharan finally submitted that as the admissions to 85% of the seats in the College for the academic year 2008-2009 were in violation of clause (2) of Regulation 5 of the MCI Regulations, the High Court was right in declaring the admissions to be invalid. He submitted that if the Court, in exercise of its powers under Article 142 of the Constitution, shows any sympathy to the students admitted to the MBBS course, in breach of the MCI Regulations, there would be academic chaos. According to him, there was no equity either in favour of the College or in favour of the students who had been admitted to the College in violation of clause (2) of Regulation 5 of the MCI Regulations. He cited the decision in *A.P. Christians Medical Educational Society v. Government of Andhra Pradesh & Anr.* [(1986) 2 SCC 667] in which this Court rejected the plea that the interests of the students should not be sacrificed because of the conduct or folly of management and that they should be permitted to appear at the university examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He also

A relied on the observations of this Court in *Regional Officer, CBSE v. Ku. Sheena Peethambaran & Ors.* [(2003) 7 SCC 719] that condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, but disturbs the discipline of the system B and ultimately, adversely affects the academic standards. He submitted that in *A. B. Bhaskara Rao v. Inspector of Police, CBI Vishakapatnam* [(2011) 10 SCC 259] this Court has laid down the principles governing the exercise of power under Article 142 of the Constitution of India and one of the principles C is that the Court generally does not pass an order in contravention of or ignoring the statutory provisions nor is the power exercised merely on sympathy.

13. He also cited the observations of this Court in *Visveswaraiah Technological University & Anr. v. Krishnendu* D *Halder & Ors.* [(2011) 4 SCC 606] that no student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. He submitted that if the College was not able to fill up the seats in the MBBS E course for the academic year 2008-2009 for the reason that the second and last counselling of students selected on the basis of RPMT-2008 was over, the seats should have been kept vacant and could not have been filled up in violation of the MCI Regulations.

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14. Mr. Jasbir Singh Malik, learned counsel for the State of Rajasthan, adopted the arguments of Mr. Amarendra Sharan and further submitted that the information book on RPMT-2008 mentioned the College as one of the Colleges covered by the G RPMT-2008 and, therefore, the College cannot contend that the students who are selected in the RPMT- 2008 were not to be admitted to the MBBS seats of the College. He submitted that at the meeting of the Central Under-Graduate Admission Board on 23.09.2008, it was decided not to include the College for the counselling as there was no intimation from the College,

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but it was recorded in the proceedings of the meeting that if information is received from the College then students can be provided from the RPMT-2008 by holding counselling at the College at Udaipur at their cost. He submitted that a separate counselling could therefore be held for students who had been selected on the basis of RPMT-2008 for admission to the College if the College had intimated the Convener of the Central Under-Graduate Admission Board that it had got the permission letter dated 16.09.2008 after the second counselling of students selected in the RPMT-2008. He submitted if such separate counselling for admission to the MBBS seats in the College would have been held, it would have been the first counselling so far as this College was concerned and there was no bar as per the law laid down by this Court for holding such separate counselling for the College.

15. Mr. Naveen Kumar Chauhan, learned counsel appearing for the Rajasthan University, adopted the arguments of Mr. Amarendra Sharan, learned senior counsel appearing for the MCI, and Mr. Jasbir Singh Malik, learned counsel for the State of Rajasthan, and further submitted that the College had been included in the information brochure of the RPMT-2008 published on 26.02.2008 because it had initially agreed to participate in the RPMT-2008 at the meeting which took place in December, 2007. He referred to the findings of the Division Bench of the High Court in the impugned order that the College never raised objection about its inclusion in the brochure published by the State Government for RPMT-2008 when the process of admission was initiated by the authorities for holding the RPMT-2008. He submitted that the Division Bench of the High Court has also recorded the finding that on 16.09.2008, the College itself has sent a letter to the Vice-Chancellor of the University of Health Sciences saying that if it gets the approval from the Government of India after the second counselling of the students selected on the basis of the RPMT-2008, a request will be made by the College to suggest the way or to

A provide the merit list of RPMT-2008 students for admission in the College. He submitted that both the learned Single Judge and the Division Bench have also taken note of the Ordinance 272 of the University which provides that all private unaided professional institutions will be under an obligation to admit
B students to the MBBS or the BDS courses on the basis of the selection for admission to MBBS/BDS courses in the Government Colleges. He finally argued that Mr. Jagdish Prasad Agarwal, the Chairman and Managing Trustee of the Geetanjali Foundation, had furnished a written undertaking on 12.12.2007
C that it will admit students in MBBS degree only after getting the permission from the MCI/Government of India and after getting affiliation from the Rajasthan University of Medical Sciences, but the College had given admission to the students even before getting affiliation from the University.

D 16. Ms. Anuradha Soni Verma, appearing for the private respondents, who had filed writ petition in the High Court submitted that none of the students who had been admitted into the College in the MBBS seats for the academic year 2008-2009 have been enrolled by the University and it is only pursuant
E to the orders of the Court that they had been permitted to take examinations of the MBBS course.

FINDINGS WITH REASONS

F 17. The College is a private unaided professional institution and it has been held by this Court in *T.M.A. Pai Foundation* (supra) that a private unaided professional institution has a fundamental right under Article 19(1)(g) of the Constitution of India to establish and administer an educational institution and such right will include the right to admit students into the
G institution. In *P.A. Inamdar* (supra), this Court has explained the judgment in *T.M.A. Pai Foundation* (supra). Paragraphs 127 and 128 of the judgment of this Court in *P.A. Inamdar* (supra), as reported in the SCC, are quoted hereinbelow:

H "127. Nowhere in *Pai Foundation*, either in the majority or

in the minority opinion, have we found any justification for imposing seat- sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

128. We make it clear that the observations in *Pai Foundation* in paragraph 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State."

Hence, in the absence of a consensual arrangement between the College and the State Government, the College was not under any legal obligation to admit students to 85% of the MBBS seats in the academic years 2008-2009. The learned Single Judge and the Division Bench of the High Court in the present batch of cases, however, appear to have recorded a finding that a consensual arrangement was there between the College and the State Government of Rajasthan that 85% of the seats in the MBBS course in the College will be filled up from amongst students selected in the RPMT-2008. Learned counsel for the appellants have disputed this finding of the High Court.

18. Hence, the first question that we have to decide in this case is whether the College had agreed to admit students placed in the merit list or waiting list of RPMT-2008 into the 85% of 150 seats of the MBBS course approved by the Central Government. We find that in the proceedings of the meeting held on 15.12.2007 under the Chairmanship of Secretary, Medical Education, for conducting a common entrance test for admissions to MBBS seats in different colleges in the State of Rajasthan, it has been recorded in Para 5:

"Students will be made available on 85 per cent seats through R.P.M.T. to National Institute of Medical Sciences,

A Jaipur and Geetanjali Medical College and Hospital Udaipur. Consent has already been given in this connection earlier by Mahatma Gandhi Medical College and Hospital, Jaipur. On the remaining 15 per cent seats (N.R.I. quota) admissions will be given by these
B institutions."

From the aforesaid proceedings, it is clear that although a decision was taken by the authorities that students will be made available on 85 per cent seats through R.P.M.T. to Geetanjali Medical College and Hospital Udaipur (the College), there is
C no mention that the College (Geetanjali Medical College) had given its consent to this arrangement although there is a mention that Mahatma Gandhi Medical College and Hospital, Jaipur, has given its consent to the aforesaid consensual arrangement earlier. In fact, there was no representation of the
D College at the meeting held on 15.12.2007 and on 18.12.2007 the Director (Foundation) of the College addressed the following letter to the Secretary to the Government Medical Education, Government of Rajasthan:

E **"GMCH**

HEALTH IS HAPPINESS

GF/GMCH/07 December 18, 2007

F Dr. Govind Sharma, IAS
Secretary to the Government
Medical Education,
Government of Rajasthan
Secretariat
G JAIPUR (RAJASTHAN)

Sub: Participation in Admission Procedure

Respected Sir,

H In the above reference we have received your letter to

attend the meeting schedule on 15th December 2007 for participation in the admission procedure for admission of students in 2008. I was not able to attend the meeting as the MCI inspection was going on at our place. Further to this we have given an undertaking to the MCI that till all the clearances received from MCI we cannot participate in the admission procedure. Therefore we cannot give consent that we will take the students from PMT or PCMT till we receive the clearances.

Kindly have a note of the same and oblige.
Thanking you,
Yours sincerely,

For GEETANJALI MEDICAL COLLEGE & HOSPITAL

Sd/-

(M.S. Bhatt)
DIRECTOR (FOUNDATION)
Encl: as above"

From the aforesaid letter also, it is clear that the College was not willing to give consent that it will take students from RPMT-2008 till it received the clearances. When the College, however, came to learn that it will be receiving its clearances from the Government of India, it wrote a letter dated 16.09.2008 to the Vice Chancellor of the Rajasthan University of Health Sciences in which it is stated as follows:

"To,

The Vice Chancellor,
Rajasthan University of Health Sciences,
Jaipur.

Sub: - Admissions in M.B.B.S. Course for Session 2008-09

Hon'ble Sir,

A In the above reference kindly note that till we have not received the approval for Govt. of India, However, if the approval comes after the second counselling that kindly suggest us the way or/Provide us the Merit List of RPMT Students for the admission in our college.

B Kindly do the needful and oblige.

Thanking you,

Sd/-
C (Nitin Sharma)
Authorised Signatory"

In reply to the aforesaid letter dated 16.09.2008, the Vice Chancellor of the Rajasthan University of Health Sciences wrote back that if the College wants to admit students for the D academic year 2008-2009 then it should confirm the number of seats for allotment so that seats may be allotted in the upcoming counselling of RPMT-2008 on 23.09.2008. The letter dated 23.09.2007 of the Vice Chancellor, Rajasthan University of Health Sciences, to the College is extracted hereinbelow:

E "RAJASTHAN UNIVERSITY OF HEALTH SCIENCES
Sector-18, Kumbha Marg,
Partap Nagar, Jaipur-302033

F Sr. No.F-11() RPMT/RUHS/2008-09
22nd September, 2008

To,

Nitin Sharma,
G Geetanjali Medical College & Hospital,
Udaipur.

Sub: Admissions in M.B.B.S. Course for Session 2008-09

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Sir,

In reply to your letter dated 16.09.2008, with regard to the above said subject, it is submitted that if you want to admit the students for the session of 2008-09 then you should confirm the number of seats for allotment so that seats may be allotted in the upcoming counseling of RPMT-2008 on 23.09.2008.

Sd/-
Vice Chancellor"

The aforesaid discussion would show that there is in fact no consensual arrangement between the College and the State or the University that the College will admit students from the merit list or wait list of RPMT-2008. The finding of the learned Single Judge and the Division Bench of the High Court that there was such a consensual arrangement between the College and the State Government to admit students from the merit list or wait list of RPMT-2008 is, therefore, erroneous. Hence, the direction of the High Court to the College to consider and admit students from the merit list or wait-list of RPMT-2008 will have to be set aside.

19. We may next consider the question whether the admissions of 117 students to the MBBS course of the College were within the fundamental right of the College as explained by this Court in *T.M.A. Pai Foundation* (supra). In *T.M.A. Pai Foundation* (supra), this Court, while holding that a private unaided non-minority institution has the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution of India also held that such right will include the right to admit students into the institution. In paragraphs 58 and 59 of the judgment, however, Kirpal, CJ speaking for the Court observed:

"58. For admission into any professional institution, merit must play an important role. While it may not be normally

A possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by B preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other C observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination D or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies."

E The observations in para 58 of the judgment of Kirpal, CJ. quoted above make it clear that students seeking admission to a professional institution were required to be treated fairly and preferences were not to be shown to less meritorious but more influential students and greater emphasis was required F to be laid on the merit of the students seeking admission. In para 59 of the judgment of Kirpal, CJ. in *T.M.A. Pai Foundation* (supra) quoted above, it has been further made clear that merit is to be determined for admission to professional colleges, by either the marks that the student obtains at the qualifying G examination, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

20. The judgment in *T.M.A. Pai Foundation* (supra) has been further explained by this Court in *P.A. Inamdar* (supra)

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and it has been held therein that that non-minority unaided institutions, like the minority unaided institutions, have also the unfettered fundamental right to choose the students to be allowed admission and the procedure therefor but the admission procedure so chosen by the institution must be fair, transparent and non-exploitative. Para 137 of the judgment of this Court in *P.A. Inamdar* (supra), which is relevant for deciding this case, is quoted hereinbelow:

> "137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly."

Thus, in para 137 of the judgment in *P.A. Inamdar* (supra) quoted above, this Court has taken the view that all institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the triple tests of the admission procedure being fair, transparent and non-exploitative.

21. Keeping in mind the aforesaid law laid down by this Court in *T.M.A. Pai Foundation* and *P.A. Inamdar* (supra), we may now examine the admission procedure adopted by the College for admitting the students to the MBBS seats for the academic year 2008-2009. The College has admitted 16 students from the list of candidates selected in the PC-PMT 2008 conducted by the Federation of Private Medical and Dental Colleges of Rajasthan. The PC-PMT 2008 conducted by the Federation of Private Medical and Dental Colleges of Rajasthan did not call for any applications from candidates for admission to the MBBS course, but only for the BDS course. Moreover, the College had not been included in the brochure published for PC-PMT 2008 conducted by the Federation of Private Medical and Dental Colleges of Rajasthan. Consequently, students, who may be interested not in the BDS course but in the MBBS course, could not have applied to take the PC-PMT 2008 conducted by the Federation of Private Medical and Dental Colleges of Rajasthan. As a result, many meritorious students desirous of taking admission in the MBBS course in the College could not get an opportunity to participate in the PC-PMT 2008 conducted by the Federation of Private Medical and Dental Colleges of Rajasthan. The admission procedure adopted by the College was thus not fair and transparent and fell short of the triple tests laid down in *P.A. Inamdar* (supra) and such admission procedure was not within the fundamental right of the College to admit students of its choice under Article 19(1)(g) of the Constitution of India as explained in *T.M.A. Pai Foundation* (supra).

22. The stand of the College, however, is that the College had published an advertisement dated 26.09.2008 inviting applications from all the eligible candidates who had passed the 10+2 examination with minimum 50% marks in Physics, Chemistry and Biology individually in all the subjects and having English as compulsory subject for admission to its MBBS course and in response to such advertisement, students had

applied and selection of students was done on the basis of their merits. It is, however, not disputed that the candidates, who had applied in response to the advertisement, had not passed the 10+2 examination from the same board or university but from different boards and universities. If that be so, the merit of the candidates who had applied in response to the advertisement could not be evaluated by a uniform standard and could only be evaluated by a competitive entrance examination of all these students who had applied pursuant to the advertisement of the College. It is not the case of the College that any competitive entrance examination of all the students, who had applied pursuant to the advertisement, was held by the College to determine their comparative merit. Hence, the principle of merit as the basis for selection for admission in the profession courses laid down by this Court in *T.M.A. Pai Foundation* (supra) and as explained in *P.A. Inamdar* (supra) has not been followed. Thus, even as per the law laid down by this Court in *T.M.A. Pai Foundation* and *P.A. Inamdar* (supra), the College has not been able to establish that the admissions of 117 students to its MBBS course for the academic year 2008-2009 were within its right under Article 19(1)(g) of the Constitution.

23. Moreover, the College was bound to follow the MCI Regulations while making the admissions to the MBBS seats. The permission letter dated 16.09.2009 stipulated that the admission process for the academic year 2008-2009 has to be completed within the time schedule indicated in the MCI Regulations. Hence, even if the College was required to complete the admission process by 30.09.2008, it could not violate the MCI Regulations on the ground that it had to complete the admission process by 30.09.2008. Clauses (1), (2), (3) and (4) of the Regulation 5 of the MCI Regulations which deal with the principle of merit as the sole basis for selection of candidate for admission to a medical college are quoted hereinbelow:

"5. Selection of Students: The selection of students to

A medical college shall be based solely on merit of the candidate and for determination of the merit, the following criteria be adopted uniformly throughout the country:

(1) In states, having only one Medical College and one university/board/examining body conducting the qualifying B examination, the marks obtained at such qualifying examination may be taken into consideration;

(2) In states, having more than one university/ board/ examining body conducting the qualifying examination (or C where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;

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(3) Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

E (4) A competitive entrance examination is absolutely necessary in the cases of institutions of All India character;"

It will be clear from the provisions of Regulation 5 quoted above F that the selection of students to medical college is to be based solely on merit of the candidate and for determination of the merit, the criteria laid down in Clauses (1), (2), (3) and (4) will apply. Clause (2) of Regulation 5 on which the MCI relied upon clearly states that in States having more than one University/ G Board/Examining Body conducting the qualifying examination a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies. As we have noted, it is not the case of the College

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that all students who applied pursuant to the advertisement had passed 10+2 Examinations conducted by one and the same University/Board/Examining Body. Hence, the merit of the students who had applied pursuant to the advertisement of the College had to be uniformly evaluated by a competitive entrance examination, but no such competitive entrance examination had been held by the College between all the candidates who had applied pursuant to the advertisement. Therefore, there was a clear violation of Clause (2) of Regulation 5 of the MCI Regulations in admitting the 101 students to the MBBS Course for the academic year 2008-2009 by the College.

24. The contention on behalf of the respondents is that once it is held by the court that the admissions of 117 students in the MBBS course of the College was in violation of Regulation 5 of the MCI Regulations, the court will have to declare the admissions as invalid and the students admitted have to be discharged from the MBBS course. In support of this contention three decisions of this Court have been cited on behalf of the respondents. We may now examine these three decisions. In *A.P. Christians Medical Educational Society v. Government of Andhra Pradesh & Anr.* (supra), the appellant-society had admitted students to the medical college, which was a minority institution, in the 1st year MBBS course without fulfilling the conditions for running a medical college and in total disregard of the provisions of the A.P. Education Act, the Osmania University Act and the Regulations of the Osmania University. The appellant-society challenged the State Government's refusal to grant permission in a writ petition before the High Court but the writ petition was dismissed and appeal by way of special leave was filed before this Court by the appellant-society and a writ petition was also filed before this Court by the students who had been admitted to the medical college. This Court while dismissing the appeal as well as the writ petition held that the Court cannot issue directions to the university to protect the interests of the students who had

A been admitted to the medical college as that would be in clear transgression of the provisions of the University Act and the Regulations of the University. The College in this case has been granted permission letter to establish a medical college after the MCI and the Central Government found the College to have
B satisfied the required conditions. Hence, the decision of this Court in *A.P. Christians Medical Educational Society v. Government of Andhra Pradesh & Anr.* (supra) also does not apply to the facts of this case.

C 25. In *Regional Officer, CBSE v. Ku. Sheena Peethambaran & Ors.* (supra), a student had to pass Class IX Examination to be eligible to appear in Class X Examination conducted by the CBSE as per the conditions under the relevant Bye-laws of the CBSE. The respondent in that case filled up the form for High School Examination but the same was
D withheld by the school authorities on the ground that she had not cleared her Class IX Examination. She filed a writ petition in the High Court contending that she had been promoted to Class X but was later on declared failed in Class IX Examination. The High Court entertained the writ petition and
E passed an interim order permitting her to take the Class X Examination conducted by the CBSE and finally directed the CBSE to declare her result of the Class X Examination. The CBSE challenged the decision of the High Court before this Court and on these facts the Court held that the High Court could
F not have condoned the lapses or overlooked the legal requirements in consideration of mere sympathy factor as it disturbs the discipline of the system and affects the academic standards. In *Visveswaraiah Technological University & Anr. v. Krishnendu Halder & Ors.* (supra), the respondents secured
G marks which were more than the minimum marks prescribed by the AICTE norms, but less than what were prescribed by the University Regulations and they were admitted to the Bachelor of Engineering course during the academic year 2007-2008. When the list of admissions was submitted by the colleges to

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the university for approval, the university refused to approve their admissions on the ground that they had secured less than the minimum percentage required for being eligible to admissions. Two students filed writ petitions before the High Court but the learned Single Judge dismissed the writ petition. In appeal, the Division Bench of the High Court directed the university to approve the admissions of the two students as they fulfilled the eligibility criteria fixed by the AICTE. The university filed appeal before this Court and this Court held that once the power of the State and the examining body to fix higher qualifications higher than the minimum suggested by the AICTE is recognized, the rules and regulations made by the State and the university will be binding and will be applicable in respect of States, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the university and the State. This Court observed in para 17, which is quoted hereinbelow:

> "17. No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or `adversely affect' the standards if any fixed by the Central Body under a Central enactment. The order of the Division Bench is therefore unsustainable."

26. Regulation 5 of the MCI Regulations, as we have seen, deals with selection of students to medical college on the basis of merit of the candidates and does not deal with the eligibility of students for admission to MBBS course. It is Regulation 4

A which lays down the "eligibility criteria" for admission to the medical course and it provides that no candidate shall be allowed to be admitted to the MBBS course until: (i) he/she has completed the age of 17 years on or before the 31st December of the year of admission to the MBBS course and (ii) he/she B has passed the qualifying examination as stipulated therein. It is not the case of the MCI that any of the 117 students, who had been admitted to the MBBS course, do not fulfill the eligibility criteria as laid down in Regulation 4 of the MCI Regulations. The case of the MCI is that the provisions of C clause (2) of Regulation 5 relating to selection on the basis of merit, as discussed above, has been violated. There is, in our considered opinion, a difference between a candidate not fulfilling the eligibility criteria for admission to the MBBS course and a candidate who fulfils the eligibility criteria but has not D been admitted in accordance with the procedure for selection on the basis of merit. In a case where a candidate does not fulfill the eligibility criteria for admission to a course or for taking an examination, he cannot ask the Court to relax the eligibility criteria. But this is not what the appellants have asked for in this case before us. Hence, the decisions of this Court in E *Regional Officer, CBSE v. Ku. Sheena Peethambaran & Ors.* (supra) and *Visveswaraiah Technological University & Anr. v. Krishnendu Halder & Ors.* (supra) do not apply to the facts of this case.

F 27. In the facts of this case, the College was at fault in not holding a competitive entrance examination for determining the inter-se merit of the students who had applied to the College for admission into the MBBS seats of the College in accordance with clause (2) of Regulation 5 of the MCI G Regulations and in not following a transparent and fair admission procedure and the 117 students who had been admitted to the MBBS course in the College were not to be blamed for these lapses on the part of the College. In *Chowdhury Navin Hemabhai & Ors. v. State of Gujarat & Ors.* H (supra), this Court has held that where the admissions of the

students took place due to the fault of rule-making authority in not making the State Rules, 2008 in conformity of the MCI Regulations, the students if discharged from the MBBS course, will suffer grave injustice and this Court should therefore exercise its power under Article 142 of the Constitution to do complete justice between the parties and allow the students to continue to study the MBBS course. Similarly, in *Deepa Thomas & Ors. v. Medical Council of India & Ors.* (supra) this Court held that since irregular admissions were made by the colleges in violation of the MCI Regulations due to mistake or omission in the Prospectus issued by colleges, the students who have been admitted should be allowed to continue the MBBS course and passed orders accordingly in exercise of power under Article 142 of the Constitution. We are, thus, of the view that the 117 students, who have been admitted in the MBBS course by the College for the academic year 2008 in violation of clause (2) of Regulation 5 of the MCI Regulations, should not be disturbed.

28. The fact, however, remains, that the College had violated clause (2) of Regulation 5 of the MCI Regulations in making the admissions of 117 students to the MBBS course for the academic year 2008-2009 and the admissions were not within the right of the College under Article 19(1)(g) of the Constitution as explained in *T.M.A. Pai Foundation* and *P.A. Inamdar* (supra). The College must, therefore, suffer some penalty as a deterrent measure so that it does not repeat such violation of the MCI Regulations in future. Moreover, if no punitive order is passed, other colleges may be encouraged to violate the MCI Regulations with impunity. In *Deepa Thomas & Ors. v. Medical Council of India & Ors.* (supra), this Court directed the College to surrender seats equal to the number of irregular admissions in phased manner starting with the admissions of the year 2012. In the present case, there were as many as 117 admissions contrary to the provisions of clause (2) of Regulation 5 of the MCI Regulations. The learned Single Judge of the High Court had directed ten seats to be

A kept vacant for the academic year 2008-2009 and we are told that those ten seats kept vacant have not been filled up and the College has not received any fees for the ten seats. Excluding these ten seats, the College will have to surrender 107 seats in a phased manner, not more than ten seats in each B academic year beginning from the academic year 2012-2013. These 107 seats will be surrendered to the State Government and the State Government will fill up these 107 seats on the basis of merit as determined in the RPMT or any other common entrance test conducted by the State Government or its agency C for admissions to Government Medical Colleges and the fees of the candidates who are admitted to the 107 seats will be the same as fixed for the Government Medical Colleges.

29. The 117 students, who were admitted to the MBBS course, may not be at fault if the College did not hold a D competitive entrance examination for determining the inter se merit of students who had applied to the College in the MBBS seats of the College, but they are beneficiaries of violation of clause (2) of Regulation 5 of the MCI Regulations by the College. They have got admission into the College without any E proper evaluation of their merit vis-a-vis the other students who had applied but had not been admitted in a competitive entrance examination. We have held in *Priya Gupta v. State of Chhattisgarh & Ors.* [2012 (5) SCALE 328 = JT 2012 (5) SC 102] that beneficiaries of admissions made contrary to the F MCI Regulations must pay some amount for development of infrastructure in the medical college of the government as a condition for allowing them to continue their MBBS studies by our orders under Article 142 of the Constitution. We, therefore, hold that each of the 117 students who have been admitted in G the MBBS seats in the College will pay Rs.3 lacs to the State Government on account of their admission in violation of clause (2) of Regulation 5 of the MCI Regulations and the total amount received by the State Government from the 117 students will be spent for improvement of infrastructure and laboratories in

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the Government Medical Colleges of the State and for no other purpose.

CONCLUSIONS

30. We accordingly hold:

(i) that there was no agreement between the College and the State Government to admit students into its MBBS course on the basis of RPMT-2008 and the finding of the High Court in this regard is erroneous and the High Court could not have directed the College to fill up its seats on the basis of merit of students as determined in RPMT-2008 as per the law laid down in *T.M.A. Pai Foundation* as explained in *P.A. Inamdar* (supra). Hence, the direction of the High Court to fill up the seats by students selected or wait listed in the RPMT-2008 is set aside.

(ii) The admissions of 117 students to the MBBS course for the academic year 2008-2009 in the College were contrary to clause (2) of Regulation 5 of the MCI Regulations and were not within the right of the College under Article 19(1)(g) of the Constitution as explained by this Court in *T.M.A. Pai Foundation* and *P.A. Inamdar* (supra).

(iii) In exercise of our power under Article 142 of the Constitution, we direct that none of the 117 students who were otherwise eligible for admission to the MBBS course will be disturbed from pursuing their MBBS course, subject to the condition that they will each pay a sum of Rs.3 lacs within a period of three months from today to the State Government and in the event of default, the students will not be permitted to take the final year examination and the admission of the defaulting students shall stand cancelled and the College will have no liability to

repay the admission fee already paid. The amount so paid to the State Government shall be spent by the State Government for improvement of infrastructure and laboratories of the Government medical college of the State and for no other purpose.

(iv) The College which was responsible for making the admissions in violation of clause (2) of Regulation 5 of the MCI Regulations will surrender 107 (117 - 10) MBBS seats to the State Government phase wise, not more than ten in any academic year beginning from the academic year 2012-2013 and these surrendered seats will be filled up by the students selected in RPMT or any other common entrance test conducted by the State Government of Rajasthan or its agency for admissions to the Government Colleges and the fees payable by the students admitted to the surrendered seats would be the same as that payable by the students of Government Colleges.

(v) The results of the students in the MBBS course held up on account of interim orders passed by the Court may now be published.

The impugned judgment of the High Court is modified accordingly and the appeals are allowed to the extent as indicated in this judgment. The pending I.A. Nos. 3 and 4 stand disposed of.

CIVIL APPEAL NO. 6210 OF 2012 (Arising out of SLP (C) No.24967 of 2011) AND CIVIL APPEAL NO. 6211 OF 2012 (Arising out of SLP (C) No.25353 of 2011):

1. Leave granted. I.A. No.2 of 2011 in Civil Appeal arising out of SLP (C) No. 24967 of 2011 for deletion of the proforma respondent Nos.5 to 19 is allowed. I.A. No. 3 of 2011 in Civil

Appeal arising out of SLP (C) No. 25353 of 2011 for deletion of the proforma respondent Nos. 4 to 18 is allowed.

2. These are appeals by way of special leave under Article 136 of the Constitution of India against the common order dated 10.08.2011 passed by the Division Bench of the Rajasthan High Court in DB Special Appeal (Writ) No.632 of 2011 and DB Special Appeal (Writ) No.407 of 2011.

FACTS

3. The facts very briefly are that by a consensual arrangement between the State Government of Rajasthan and Mahatama Gandhi Medical College and Hospital (for short 'the College') 85% of the MBBS seats in the College are filled up by the allocation of students by the Competent Authority. The Competent Authority, namely, the Convener of the Central Under-Graduate Admission Board (for short 'the Convener') by his letter dated 31.07.2008 to the Principal of the College allotted 85 students who had been selected in the Rajasthan Pre-Medical Test 2008 (for short 'the RPMT-2008') for admission to the payments seats of the College. Thereafter, by another letter 30.08.2008, the Convener sent to the College a list of re-shuffled/allotted/wait-listed students for admission in the MBBS seats in the College. In this letter dated 30.08.2008, it was stated that the last date of joining the course for the students so allotted would be 11.09.2008 and the list of vacancies which are not filled up shall be displayed on the notice board of the College on 12.09.2008 and the students from the wait-list will be admitted to the vacancies and this must be completed by 18.09.2008. On 25.09.2008, the Convener sent another letter dated 25.09.2008 to the College enclosing therewith a list of candidates who had been selected/re-shuffled for the MBBS Course for the year 2008 in the extended second round of counselling and it was stated in this letter that the last date of joining the course for these students would be 27.09.2008 and the list of vacancies shall be displayed on the

A notice board of the College on 28.09.2008 at 10.00 a.m. and the students shall be admitted from the wait-list into the vacancies and such admission process must be completed by 30.09.2008. On 29.09.2008, the Additional Principal of the College issued an office order that the residual seats which B remained vacant even after the second round of counselling will be filled up by an admission process which will start on 30.09.2008 at 6.00 p.m. in the Medical Education Unit of the College and in such admission process preference will be given to candidates who have qualified in the RPMT-2008 and C if the seats are still vacant, the same will be offered to candidates on the basis of 10+2 marks and the admission process will be completed on the same date i.e. 30.09.2008. Accordingly, on 30.09.2008, an admission notice for the year 2008-2009 was put up by the College inviting applications for D admission to the MBBS Course for the year 2008-2009 from students who have passed 10+2 examination with minimum 50% marks in Physics, Chemistry and Biology in case of general candidates and minimum of 40% marks in Physics, Chemistry and Biology for SC/ST/OBC candidates as per the guidelines of the Medical Council of India (for short 'the MCI') E and it was stated in the admission notice that RPMT-2008 candidates will be given preference. Pursuant to this admission notice, a total of 21 students were admitted to the unfilled seats in the MBBS Course for the academic year 2008-2009 in the College. Out of these 21 students, 15 students had been F selected in the RPMT-2008 and 6 students had not been selected in the RPMT-2008.

4. Thereafter, these 21 students filed S.B. Civil Writ Petition No.2946 of 2010 in the Rajasthan High Court and their case G in the writ petition was that pursuant to the admission notice dated 30.09.2008 they applied for admission to the MBBS Course in the college and they were given admission and they deposited the fees and started pursuing studies in the MBBS Course in the college, but they were not allowed to take the

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examinations by the authorities. The learned Single Judge of the High Court found that the MCI had issued an order dated 04.02.2010 directing the college to discharge the 6 students who had not been selected in the RPMT-2008 on the ground that they had been admitted to the MBBS Course in violation of Regulation 5 of the Medical Council of India Regulations 1997 (for short 'the MCI Regulations'). By order dated 18.03.2011 the learned Single Judge of the High Court allowed the writ petitions of 15 students who had qualified in the RPMT-2008 but dismissed the writ petitions of the 6 students who were discharged pursuant to the order dated 04.02.2010 of the MCI on the ground that they had not been selected in the RPMT-2008. Aggrieved, the 6 students and the College filed D.B. Special Appeal No.407 of 2011 and D.B. Special Appeal (Print) No.632 of 2011 but by the impugned order, the Division Bench of the High Court has dismissed the appeals. Aggrieved, the 6 students and the College have filed these civil appeals.

CONTENTIONS ON BEHALF OF THE APPELLANTS:

5. Mr. Maninder Singh and Mr. P.S. Narsimha, learned counsel appearing for the appellants, submitted that the admission of the 6 students in the College were earlier challenged in three writ petitions by students who had qualified in the RPMT-2008 namely, Miss Divya Gupta, Miss Heena Soni and Mr. Mohd. Zibran and in these writ petitions (S.B. Civil Writ Petition No.13419 of 2008, S.B. Civil Writ Petition No.10350 of 2008 and S.B. Civil Writ Petition No.11165 of 2008), the MCI was also a respondent and by a common order dated 26.05.2009 the learned Single Judge disposed of the three writ petitions with the direction that the three writ petitioners will be admitted in the MBBS (First Year Course) against 15% Management Quota for the academic year 2009-2010 and the writ petitioners will be charged fees which are charged to the students admitted on the basis of their merit against 85% of the seats to be filled up by the Competent Authority of the State

A Government and these admissions will be within the annual intake strength as approved by the MCI. They submitted that by the order dated 26.05.2009 passed in the earlier three writ petitions, the admission of the 6 students were not disturbed by the learned Single Judge of the High Court. They argued that
B the order dated 26.05.2009 of the learned Single Judge in the three writ petitions of 2008 has become final and the MCI therefore could not have passed the order dated 04.02.2010 discharging the 6 students from the MBBS Course on the ground that they have not been selected in the RPMT-2008.

C 6. Learned counsel for the appellants further submitted that the only reason given by the MCI in its order dated 04.02.2010 for discharging the 6 students was that they have not passed the RPMT-2008 but the Secretary of the MCI in his letter dated 16.09.2009 had clarified that for the purpose of completing the
D admissions within the time schedule fixed by this Court in the case of *Mirdul Dhar and Another vs. Union of India and Others* [(2005) 2 SCC 65], i.e. 30th September of the year, admissions could also be done on the basis of marks secured in the 10+2 examination as provided in Regulation 5(1) of the
E MCI Regulation. They submitted that since the 6 students have been given admission on the last date of the time schedule for the purpose of filling up the unfilled seats of MBBS Course, these admissions on the basis of their marks in 10+2 examination are in accord with Clause (1) of Regulation 5 of
F the MCI Regulations.

7. The learned counsel for the appellants finally submitted that it is not the case of the MCI that the 6 students did not fulfill the eligibility criteria for admission to the MBBS course as
G provided in Regulation 4 of the MCI Regulation. They submitted that all the 6 students satisfied the eligibility criteria as they were above 17 years and had also passed the qualifying examinations. They argued that the case of the MCI was that clause (2) of Regulation 5 of the MCI Regulations has been violated and for such violation, if any, the 6 students who have
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been pursuing their MBBS course since 2008 should not be disturbed. They argued that this is, therefore, a fit case in which this Court in exercise of its powers under Article 142 of the Constitution should protect the admission of the 6 students. They cited the judgment in *Rajendra Prasad Mathur v. Karnataka University and Another* (1986 Supp. SCC 740) in which this Court has held that though the appellants were not eligible for admission to the Engineering degree course and had no legitimate claim to such admission, the blame for the wrongful admission lie more upon the Engineering College and, therefore, the appellants must be allowed to continue their studies in the respective Engineering Colleges in which they were granted admission. They also relied upon the decision of this Court in *A. Sudha v. University of Mysore and Another* [(1987) 4 SCC 537], in which it was similarly held that though the appellant was not eligible for admission in the first year MBBS course of the Mysore University, the appellant was innocent and should not be penalized by not allowing her to continue her studies in the MBBS course. They also relied on the observations of this Court in *Association of Management of Unaided Private Medical and Dental College v. Pravesh Niyantran Samiti and Others* [(2005) 13 SCC 704] that in a medical college no seat should be allowed to go waste and contended that if no student of the RPMT-2008 was available for admission to the unfilled seats on the last date of admission, the College had no option but to fill up the seats by six students on the basis of their marks in the 10+2 Examination. They also referred to the order in *Monika Ranka and Others v. Medical Council of India and Others* [(2010) 10 SCC 233] in which this Court after taking note of the fact that the candidates who have secured less than 50% marks in the entrance examination had been admitted in MBBS course in the R.D. Gardi Medical College, Ujjain, M.P., directed that their admissions should not be disturbed and ordered to reduce from the management quota for the year 2009-2010 the number of seats equal to the number of irregular admissions.

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A **CONTENTIONS ON BEHALF OF THE RESPONDENTS:**

8. Mr. Amarendra Sharan, learned senior counsel appearing for the MCI, on the other hand, submitted that seats which remained vacant even after the second counselling cannot be filled up in breach of the MCI Regulations. He submitted that in the present case the High Court has clearly held that the admission of the 6 students was in violation of Clause (2) of Regulation 5 of the MCI Regulations which requires that students could be admitted on the basis of their merit as determined in Competitive Entrance Examination. He vehemently argued that since the Competitive Entrance Examination, namely, RPMT-2008, was conducted by the State Government of Rajasthan, the College could admit students to the MBBS Course in the seats remaining vacant after second counselling only from amongst the RPMT-2008 selected candidates on the basis of their merit. He submitted that this Court should not therefore disturb the impugned orders of the learned Single Judge and the Division Bench of the High Court. The learned counsel for the State adopted the arguments of Mr. Sharan.

FINDINGS WITH REASONS:

9. We have considered the submissions of the learned counsel for the parties and we do think that we can hold that because of the order dated 26.05.2009 passed by the learned Single Judge of the High Court in S.B. Civil Writ Petition Nos.13419 of 2008, 10350 of 2008 and 11165 of 2008, which had attained finality, the MCI could not have issued the order dated 04.02.2010 discharging the six students from the MBBS Course on the ground that they had not been selected in the RPMT-2008 and that their admissions were in breach of the provisions of clause (2) of Regulation 5 of the MCI Regulations. We take this view because we find on a reading of the order dated 26.05.2009 of the learned Single Judge of the High Court in the aforesaid three writ petitions that the question as to

whether the admission of the six students was in breach of clause (2) of Regulation 5 of the MCI Regulations was not in issue in the aforesaid three writ petitions. The learned Single Judge of the High Court has disposed of the three writ petitions on the basis of a compromise between the writ petitioners on the one hand, and the respondent nos. 4 and 5, on the other hand, and the compromise was that the three writ petitioners would be granted admission in the MBBS Course for the academic year 2009-2010. The learned Single Judge of the High Court, however, has further directed that their admissions will be adjusted against 15% management seats which are available to the college and not against 85% seats which are to be filled strictly on the basis of the merit list sent by the Convener and that the students will be charged fee which is ordinarily to be deposited by the students who are admitted on the basis of their merit against 85% State quota seats and that the admissions will be within the annual intake strength as approved by the MCI. As the College has not produced the pleadings before this Court in the three writ petitions to show that an issue was raised before the learned Single Judge of the High Court in the aforesaid three writ petitions by the MCI that the admission of the 6 students was in breach of clause (2) of Regulation 5 of the MCI Regulations, the principles laid down in Section 11 of the Code of Civil Procedure, 1908 relating to res judicata will not apply. As a matter of fact, when the order dated 26.05.2009 was passed by the learned Single Judge of the High Court in the aforesaid three writ petitions, the MCI had no information that the six students had not been selected in the RPMT-2008 and it was only in August, 2009, and thereafter that the MCI came to learn about the breach of the provisions of Regulation 5 and accordingly MCI issued orders to immediately discharge six students.

10. We cannot also accept the contention of the appellants that the College could admit students on the basis of marks obtained by them in the qualifying examinations under Clause (1) of Regulation 5 of the MCI Regulations. The College has

A relied upon the letter dated 16.09.2009 of the Secretary of the MCI clarifying that for the purpose of completing the admissions within the time schedule fixed by the Court as in the case of *Mirdul Dhar and Another vs. Union of India and Others* (supra), i.e., 30th September of the year, the admission to the B MBBS course could be done on the basis of marks secured in 10+2 Examination, as provided in Regulation 5(1) of the MCI Regulations. But a reading of Regulation 5(1) of the MCI Regulations quoted above would show that this provision applies only in a State where one university or board or C examining body conducts the qualifying examination, in which case, the marks obtained at such qualifying examination may be taken into consideration. In the State of Rajasthan, there are more than one university/board/examining body conducting qualifying examination and therefore Regulation 5(1) of the MCI D Regulations does not apply. As the State of Rajasthan has more than one University/Board/Examining Body conducting qualifying examinations, clause (2) of Regulation 5 of the MCI Regulations, which provides that a competitive entrance examination will have to be held so as to achieve a uniform evaluation, will apply. The College, therefore, was bound to hold E a competitive entrance examination in accordance with clause (2) of Regulation 5 of the MCI Regulations or enter into a consensual arrangement with the State Government to admit students on the basis of the Competitive Entrance Examination conducted by the State Government. This is exactly what the F College has done. It had entered into a consensual arrangement with the State Government to admit students on the basis of merit as determined in the RPMT-2008. In our considered opinion therefore, the clarification in the letter dated 16.09.2009 of the Secretary of the MCI that for the purpose of G admissions within the time schedule fixed by this Court, admission can also be made on the basis of marks secured in the 10+2 Examination as provided in Regulation 5(1) of the MCI Regulations is not in accord with the fact situation in State of Rajasthan. The admission of the six students by the College

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to its MBBS Course on 30.09.2008 was, therefore, in breach of clause (2) of Regulation 5 of the MCI Regulations. A

11. We are, however, of the view that in this case also, as in the case of Geetanjali Medical College, the violation of clause (2) of Regulation 5 of the MCI Regulations is by the College. In this case also, as in the case of Geetanjali Medical College, the case of the MCI is not that the six students were not eligible for admission to the MBBS Course in accordance with the eligibility criteria laid down in Regulation 4 of the MCI Regulations, but that they have not been selected in the RPMT-2008, which was the competitive entrance examination conducted in accordance with clause (2) of Regulation 5 of the MCI Regulations. Moreover, in this case also, as in the case of Geetanjali Medical College, the six students had got admission to the MBBS course not on the basis of their merit determined in the RPMT-2008 in accordance with clause (2) of Regulation 5 of the MCI Regulations, but on the basis of their marks in the 10+2 and thus they were beneficiaries of the violation of clause (2) of Regulation 5 of the MCI Regulations. B C D

12. Hence, for the reasons stated in our judgment in the case of Geetanjali Medical College, we invoke our powers under Article 142 of the Constitution and direct that the admission of the 6 students in the MBBS Course will not be disturbed subject to the condition that each of the 6 students pay to the State Government Rs.3 lacs for development of infrastructure of government medical colleges within a period of three months from today failing which they will not be allowed to take the final MBBS examinations and their admission will be cancelled. Considering, however, the fact that the College has violated the provisions of clause (2) of Regulation 5 of the MCI Regulations, as a deterrent measure to prevent similar breach of the MCI Regulations in future, we direct that the College will surrender six seats in the MBBS course for the academic year 2012-2013 to the State Government to be filled up on the basis of the RPMT or any other common entrance E F G H

A test conducted by the State Government of Rajasthan or its agency for admission to the MBBS Course and the fee that will be payable by the students admitted to the six seats will be the same as are payable by the students admitted on the basis of RPMT or another common entrance test conducted by the State B Government or its agency. The impugned orders of the High Court are modified accordingly and the appeals are allowed to the extent as indicated in this judgment. No costs.

13. Before we part with this case, we would like to reiterate what we have held in paragraphs 30 and 31 of our judgment in C the case of *Priya Gupta v. State of Chhattisgarh & Ors.* [2012 (5) SCALE 328 = JT 2012 (5) SC 102]:

"30. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that D all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and E defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied stricto sensu and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the F above-stated principles. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the G following directions in rem for their strict compliance, without demur and default, by all concerned,.

(i) The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to

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be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

(ii) The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.

(iii) After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counselling, in accordance with the Rules.

(iv) Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year, shall not be included in the counselling to be conducted by the concerned authority and that college would have no right to make admissions in the current academic year against such seats.

(v) The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. These two are the methods of selection and grant of admission to these courses. However, where there is a single Board conducting the state examination and there is a single medical college, then in terms of clause 5.1 of the Medical Council of India Eligibility

A Certificate Regulations, 2002 the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.

(vi) All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/ BDS. Under the directions of this Court, second counselling should be the final counselling, as this Court has already held in the case of *Ms. Neelu Arora & Anr. v. UOI & Ors.* [(2003) 3 SCC 366] and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

(vii) If any seats remain vacant or are surrendered from All India Quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

(viii) No college may grant admissions without duly advertising the vacancies available and by publicizing the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has

to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex-facie arbitrary and casts the shadow of favouritism.

(ix) The admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the colleges which are anticipating grant of recognition, in compliance with the date specified in these directions.

31. All these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:-

a) Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt

proceedings before the High Court having jurisdiction over such Institution/State, etc.

b) The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

c) Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

d) There shall be due channelization of selection and admission process with full cooperation and coordination between the Government of India, State Government, Universities, Medical Council of India or Dental Council of India and the colleges concerned. They shall act in tandem and strictly as per the prescribed schedule. In other words, there should be complete harmonisation with a view to form a uniform pattern for concerted action, according to the framed scheme, schedule for admission and regulations framed in this behalf.

e) The college which grants admission for the current academic year, where its recognition/ approval is granted subsequent to 15th July of the current academic year, shall be liable for withdrawal of recognition/approval on this ground, in addition to being liable to indemnify such students who are denied

admission or who are wrongfully given admission in the college.

f) Upon the expiry of one week after holding of the second counselling, the unfilled seats from all quotas shall be deemed to have been surrendered in favour of the respective States and shall be filled thereafter strictly on the basis of merit obtained in the competitive entrance test.

g) It shall be mandatory on the part of each college and University to inform the State and the Central Government/competent authority of the seats which are lying vacant after each counselling and they shall furnish the complete details, list of seats filled and vacant in the respective states, immediately after each counselling.

h) No college shall fill up its seats in any other manner."

K.K.T. Appeals partly allowed.