

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/LETTERS PATENT APPEAL NO. 743 of 2021
In
R/SPECIAL CIVIL APPLICATION NO. 23196 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 743 of 2021
With
R/LETTERS PATENT APPEAL NO. 234 of 2021
In
SPECIAL CIVIL APPLICATION NO. 20841 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 234 of 2021
In
SPECIAL CIVIL APPLICATION NO. 20841 of 2019
With
R/LETTERS PATENT APPEAL NO. 222 of 2021
In
SPECIAL CIVIL APPLICATION NO. 21105 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 222 of 2021
In
SPECIAL CIVIL APPLICATION NO. 21105 of 2019
With
R/LETTERS PATENT APPEAL NO. 228 of 2021
In
SPECIAL CIVIL APPLICATION NO. 20824 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 228 of 2021
In
SPECIAL CIVIL APPLICATION NO. 20824 of 2019
With
R/LETTERS PATENT APPEAL NO. 233 of 2021
In
SPECIAL CIVIL APPLICATION NO. 23241 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 233 of 2021**



In
SPECIAL CIVIL APPLICATION NO. 23241 of 2019
With
R/LETTERS PATENT APPEAL NO. 221 of 2021
In
SPECIAL CIVIL APPLICATION NO. 21102 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 221 of 2021
In
SPECIAL CIVIL APPLICATION NO. 21102 of 2019
With
R/LETTERS PATENT APPEAL NO. 235 of 2021
In
SPECIAL CIVIL APPLICATION NO. 431 of 2021
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 235 of 2021
In
SPECIAL CIVIL APPLICATION NO. 431 of 2021
With
R/LETTERS PATENT APPEAL NO. 230 of 2021
In
SPECIAL CIVIL APPLICATION NO. 11779 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 230 of 2021
In
SPECIAL CIVIL APPLICATION NO. 11779 of 2020
With
R/LETTERS PATENT APPEAL NO. 231 of 2021
In
SPECIAL CIVIL APPLICATION NO. 23189 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 231 of 2021
In
SPECIAL CIVIL APPLICATION NO. 23189 of 2019
With
R/LETTERS PATENT APPEAL NO. 232 of 2021
In
SPECIAL CIVIL APPLICATION NO. 23196 of 2019
With



CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/FIRST APPEAL NO. 232 of 2023
With
R/LETTERS PATENT APPEAL NO. 229 of 2021
In
SPECIAL CIVIL APPLICATION NO. 9994 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 229 of 2021
In
SPECIAL CIVIL APPLICATION NO. 9994 of 2020
With
R/LETTERS PATENT APPEAL NO. 298 of 2021
In
SPECIAL CIVIL APPLICATION NO. 23241 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/LETTERS PATENT APPEAL NO. 298 of 2021
In
SPECIAL CIVIL APPLICATION NO. 23241 of 2019

FOR APPROVAL AND SIGNATURE:

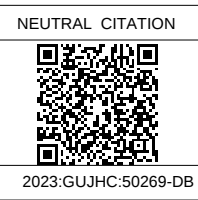
HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI **Sd/-**
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI **Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

PRAYAGI MUKUNDRAI PATHAK
Versus
UNION OF INDIA

Appearance:

MR MR SHALIN MEHTA, SENIOR ADVOCATE with MR HEMANG M



SHAH(5399) for the Appellant(s) No. 1
MR SIDDHARTH DAVE, for RESPONDENT NO.1
MR JIGAR M PATEL(3841) for the Respondent(s) No. 5
MR PREMAL R JOSHI(1327) for the Respondent(s) No. 8
MR. KM ANTANI(6547) for the Respondent(s) No. 3
NOTICE SERVED for the Respondent(s) No.
1,10,11,12,13,16,17,18,19,2,20,21,22,23,24,25,27,28,30,31,32,34,35,4,6,7,9
NOTICE UNSERVED for the Respondent(s) No. 14,15,26,29,33
MR DHAVAL C DAVE, SENIOR ADVOCATE with MR UDIT N VYAS(9255)
for the Respondent(s) No. 5
MS ROSHNI PATEL & MR HK PATEL, AGP for Respondent-STATE

MR AR THACKER with MR SHIVANG A THACKER for Respondent No.5 in
LPA No.222 of 2021

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CORAM:**HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI**
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 29/09/2023

COMMON CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI)

1. This group of appeals has arisen out of common CAV judgment delivered in a group of Special Civil Applications and as such these Letters Patent Appeals are requested to be heard and decided conjointly by common order since substantially main controversy involved is almost identical and as such with request of learned advocates appearing in the present proceedings, we deal with present Letters Patent Appeals conjointly and further for sake of convenience, we treat Letters Patent Appeal No.743 of 2021 as a lead matter.

2. Lead matter, i.e. Letters Patent Appeal No.743 of 2021, is arising out of Special Civil Application No.23196 of 2019, wherein case of original petitioners was that original respondent No.4 issued an advertisement on 13.10.2019 in newspaper stating that admission rounds held by respondent No.3 had been completed and it had permitted respondent No.4 to fill up vacant seats as existing in respective colleges. Petitioners of said petition are students of various colleges as indicated in paragraph-5 who had cleared HSC examination, are inclined to pursue the course of Bachelor of Ayurveda Medicine & Surgery, which is a 5.5. years course. According to original petitioners, they appeared in NEET-UG-2019 in competitive examination and have submitted that since sufficient number of students were not available in Dental course (BDS course), Ministry of Health & Family Welfare (Dental Education Center) on 6.9.2019 issued a communication to the National Testing Agency informing that percentile for admission to BDS course for NEET-UG-2019, result had been lowered and therefore revised result with lower percentile be declared immediately and accordingly, in respect of BDS course, qualifying



percentage were prescribed as indicated in paragraph-8. Then, by narrating few decisions, it has been mentioned that on 13.10.2019, pursuant to advertisement which was issued by respondent No.4, admission rounds which were held by respondent No.3 were completed and stated that it be permitted to respondent No.4 to fill up vacant seats as existing in the college as mentioned in paragraph-11. In view of the said advertisement, petitioners of this petition have been granted conditional admission and according to petitioners, while issuing conditional admission order, it was stated therein that admission is granted on condition that if department of Ayush reduces the cut-off marks for academic year 2019-2020 as was done in the preceding year, same would carry further and thereafter again by narrating development which took place in Karnataka High Court as well as in Mumbai High Court in respect of Homeopathy Medical College and proceedings filed by Central Council of Indian Medicine as a Special Leave Petition in Hon'ble Supreme Court, it has been asserted in paragraph-15 that last date for admission of BAMS was 30.11.2019 for the academic year 2019-20. It has further been



asserted in the petition that upon coming to know of the development which took place in the Hon'ble Apex Court, petitioners of this petition have approached respondent Nos.4 to 7 respective colleges to seek clarification of status of their admission and petitioners were apprised of the facts and were informed that Association of Self-Finance Colleges would be taking step to request respondent Nos.1 and 2 to reduce the qualifying percentile in NEET-2019 BAMS course.

3. It is the case of the original petitioners that on 7.11.2019, Association of Self-finance Ayurved Colleges of Gujarat State addressed a representation to respondent No.1 apprising about the order dated 5.11.2019 and simultaneously made a request to lower down the qualifying marks in NEET-2019 for admission to BAMS degree course program and also in AIAPGET-2019 for admission to MS/MD (Ayu) in view of the vacancies existing in Government and Management quota. It was also brought to the notice of respondent No.1 that similar steps were taken by Medical Council of India to lower down the qualifying marks in NEET-2019 and NEET-PG-2019 to admission in BDS and MDS courses respectively.



4. In the main petition, it has been further asserted that on 14.11.2019, respondent No.1 addressed a communication to the Principal, Atal Bihari Vajpayee Homeopathic Medical College and Hospital, wherein it had been held by respondent No.1 in substance that request for reducing percentile and extension of cut-off date for admission cannot be agreed to. Said communication dated 14.11.2019 is attached to the petition compilation at Annexure-K. It is further the case of original petitioners that on 15.11.2019, respondent No.1 addressed a communication to All State authorities in reference to admission to Post Graduate Degree in Ayurvedic and Homeopathy colleges and stated that Ministry has received various representations stating that many seats are lying vacant due to less number of qualifying students to the academic year 2019-20 and after due deliberation, last cut-off date ultimately was extended to 30.11.2019. Said communication is reflecting in paragraph-19 attached to the petition compilation at Annexure-L. In view of said communication issued by respondent No.1, State Government of Maharashtra had issued a notification by virtue of which Maharashtra Government had reduced minimum



percentile in respect of Post Graduate Ayurved/ Unani/ Homeopathic courses, but so far as State of Gujarat is concerned, according to petitioners, nothing has taken place. It is stated that perusal of website of respondent No.3 indicates that there are as many as 995 vacant seats available out of total 2202 seats in BAMS course. A statement is attached at Annexure-N to the petition compilation and it has further been stated that in past also, for academic year 2018-19, respondent No.1 had reduced qualifying percentile in Under-graduate Degree course in ASU & H course. Said communication is also attached at Annexure-O dated 1.11.2018 and as such by asserting this in the petition, basically by raising grievance against respondent Nos.1 and 2 for not lowering down the percentile in degree course in Ayurvedic courses for academic year 2019-20, which has deprived the petitioners from securing regular admission upon vacant seats, extraordinary jurisdiction of this Court is invoked by bringing the petition under Article 226 of the Constitution of India for the reliefs which are stated in paragraph-27.

5. This petition upon completion of pleadings appears to have



been argued at great length before learned Single Judge and after considering submissions of both the sides, learned Single Judge while passing impugned order has dismissed all the petitions and interim reliefs which were granted protecting the admissions came to be vacated and upon request made by learned counsel appearing for petitioners, a further order was passed to extend the interim relief for two weeks. With this background, lead matter, being Letters Patent Appeal No.743 of 2021, was placed along with other group of appeals raising identical issue and were taken up for hearing.

6. So far as cognate matters are concerned, all such appeals are arising out of common judgment and order and as such minute details of such matters are not being mentioned in the present order but the Court has taken into consideration the background of facts.

7. Letters Patent Appeal Nos.221 of 2021, 222 of 2021, 230 of 2021, 231 of 2021, 233 of 2021 and 234 of 2021 are filed by students prosecuting their studies on the basis of conditional admissions in the course of Bachelor of Homeopathy Medicine



and Surgery Course (BHMS), whereas students who have filed Letters Patent Appeal Nos.228 of 2021, 229 of 2021, 232 of 2021 and 235 of 2021 are relating to the course of Bachelor of Ayurveda Medicine and Surgery Course (BAMS) and since said students are on the basis of conditional admissions, learned Single Judge has dealt with the main issue pertaining to all such students who are on the conditional admissions and as such learned advocates have also canvassed their submissions in the lead matter. As a result of this, present set of appeals is also being governed by present order.

8. Learned Senior counsel Mr. Shalin Mehta, appearing on behalf of appellant in a lead matter has vehemently contended that order passed by learned Single Judge is not sustainable in the eye of law and learned Single Judge has erroneously held that regulations were not under challenge. In fact, there was no occasion for the appellants to challenge the regulation since it is the duty of respondent Nos.1 and 2 to decide whether NEET percentile could be reduced or not and regulation mandated the respondent Nos.1 and 2 authority to take positive action in view of the fact that several seats are vacant and according to Mr.



Mehta, respondent authorities have failed to discharge their statutory obligation. Further, it has been submitted that learned Single Judge has not appreciated crux of the matter in its true perspective and ought to have considered the judgment reported in (2020) 8 SCC 177 in its proper perspective. Punjab & Haryana High Court had permitted the colleges to fill up vacant seats where students had not appeared in NEET competitive examination or where students had not secured required NEET minimum percentile for securing admission and in that scenario, Hon'ble the Apex Court had delivered the judgment and as such, had the proper facts been analyzed, probably impugned judgment and order would not have been passed. It has further been contended that reliance of the judgment delivered by the High Court in Special Civil Application No.7216 of 2020 was misplaced since background of facts are altogether different and therefore said decision ought not to have been given undue weightage.

9. Learned senior advocate Mr. Mehta has further contended that said petition, i.e. Special Civil Application No.7216 of 2020, was filed by one Mr. Utsav Dineshbhai Patel and not by other

students and that too with no supportive document and based upon incorrect contentions and therefore reliance which has been placed is not just and proper and as such error committed by learned Single Judge deserves to be corrected. In addition to this, it has further been contended that learned Single Judge has erred in solely relying upon paragraphs 9 and 12 of the judgment rendered by the Hon'ble Apex Court, as indicated above, but failed to peruse paragraphs 10 and 11 of the judgment rendered in the case of Union of India v. Federation of Self-financed Ayurvedic Colleges, Punjab and others. So, taking into consideration the situation that existed, the Hon'ble Apex Court in that case as one time measure for academic year 2019-20 permitted the admission to be continued and appellants are forming part of the very same academic year 2019-20 and as such if the judgment of learned Single Judge is allowed to operate, then it would amount to creating a class within a class which is impermissible. Mr. Mehta has further submitted that vide notification dated 7.12.2018, Central Council of India (Medicine) constituted Regulation (2) which is dealing with eligibility for admission and proviso contained therein invests



power in the Central Government in consultation with Central Council to reduce minimum marks required for admission to Undergraduate courses for the academic year when sufficient number of candidates in the respective categories failed to secure minimum marks. If this exercise could have been undertaken, learned Single Judge had an occasion to observe that for the academic year 2019-20, sufficient number of candidates in the respective categories have failed to secure minimum marks, as a result of which approximately about 25% seats in Undergraduate courses had remained vacant across Gujarat and there were about 995 vacant seats out of 2202 seats which were to be filled up and as such, pragmatic approach ought to have been adopted by learned Single Judge. Having not done so, error crept in deserves to be corrected.

10. Learned Single Judge according to learned senior advocate Mr. Shalin Mehta, ought to have further considered that regular trend of respondent No.1 in consultation with respondent No.2 is to reduce qualifying percentile upon availability of vacant seats during the year 2018-19 as well as for the academic year 2020-21, NEET percentile had been

reduced as vacant seats were available and there was no logic behind not to reduce percentile for the academic year 2019-20 and as such this inaction on the part of respondent authorities ought to have been viewed from the principle of arbitrariness and even in one of the decisions, as indicated, the Hon'ble Supreme Court directed that even conditional admission during the academic year 2019-20 should not be disturbed. So, when this is the scenario, the order passed by learned Single Judge deserves to be corrected.

11. Learned senior advocate Mr. Mehta has further submitted that very learned Single Judge has passed an *ex-parte ad-interim* order which was confirmed in presence of respondent Nos.1 and 2 and this grant of ad-interim relief was never challenged by respondents in the higher forum nor any application for vacating stay was filed. So, instead of taking too technical view, in the larger interest and in the interest of career of students, conditional admissions which have already been granted deserve to be regularized and confirmed keeping in view the proposition of law laid down in the case of Federation of Self-finance Ayurvedic Colleges (*supra*). Learned



Single Judge according to Mr. Mehta has further erred in coming to the conclusion that order of the Hon'ble Supreme Court was one time measure and not to be treated as a precedent by the High Court since Punjab & Haryana High Court granted interim orders permitting the college to admit. This was in a given situation but same ought not to have been relied as a straitjacket formula and Mr. Mehta has further submitted that based upon the judgment rendered by the Hon'ble Apex Court in the matter of MCI v. Kalinga Institute of Medical Sciences reported in (2016) 11 SCC 530 as well as another decision in the case of MCI v. M.G.R. Education reported in (2015) 4 SCC 580, learned Single Judge has erred in disturbing the conditional admissions which have been granted. Basically when percentile has been reduced for the previous academic year and even subsequent academic year, there was no reason not to regularize conditional admissions which were granted for the academic year 2019-20 and if authorities have adopted erroneous and arbitrary approach, learned Single Judge ought to have granted the relief in favour of the students.

12. By referring to the decision delivered by the Hon'ble Apex



Court reported in 2020 (8) SCALE 177, which is applied with with full force insofar as State of Gujarat is concerned, precisely for the academic year 2019-20, simply because the Hon'ble Apex Court has added one line not to treat as a precedent would not mean that issue cannot be examined in the subsequent year as well. There, learned Single Judge has committed serious error in not appreciating the judgment in right perspective and since several States have granted reliefs in favour of students, there was no earthly reason not to exercise discretion in favour of students of Gujarat for the academic year in question. Based upon the decision of the Hon'ble Apex Court, as indicated above, High Court of Uttarakhand, High Court of Punjab & Haryana and High Court of Karnataka have considered the cases and granted reliefs in favour of students. Whereas, here in the case on hand, there are as many as 995 seats vacant and there is power of relaxation with respondent authorities to reduce the percentile, learned Single Judge ought to have examined the issue keeping in view the interest of students at large particularly when majority of students are girl students and looking to the object of the Government to uplift girls'



education, learned Single Judge ought to have considered the case from this angle as well. Here, almost appellants have completed about 3 years in the study and there is no logic behind depriving the students for the academic year 2019-20 and as such by setting aside the order of learned Single Judge, relief as prayed for be granted in favour of the students for regularizing their admissions which were conditionally granted. At this stage, one another decision delivered by Rajasthan High Court in Civil Appeal No.5564 of 2022 decided on 2.3.2023 is also referred to and it has been submitted that the case deserves to be considered for grant of the relief in favour of the appellants.

13. Following judgments are pressed into service by learned senior counsel Mr. Shalin Mehta to support his submissions:

- (1) In the case of Union of India v. Federation of Self-Financed Ayurvedic Colleges of Punjab and reported reported in 2020 (8) SCALE 177;
- (2) In the case of Pharmacy Council of India v. Dr. S.K. Toshnival Educational Trusts Vidarbha Institute of Pharmacy and others reported in 2020 (5) SCALE 439;
- (3) Order dated 8.2.2021 passed by the Hon'ble Supreme Court in the case of Harshit Agarwal and others v. Union of India in Writ Petition (C) 54 of 2021;



- (4) Order dated 1.2.2019 passed by Hon'ble Supreme Court of India in the case of Association of Managements of Homeopathic Medical Colleges of Maharashtra v. Union of India and others in Civil Appeal No.1393 of 2019;

14. In support of submission of learned senior advocate Mr. Shalin Mehta, learned senior advocate Mr. Dhaval C. Dave, who is no-doubt appearing in cognate Letters Patent Appeal No.222 of 2021 with regard to discipline of Homeopathy, has also submitted that in a situation like this where students are already prosecuting their studies, view taken by learned Single Judge would be seriously prejudicial. It has been submitted that after closure of the process of admission by Admission Committee, when NEET qualified candidates exhausted, students, i.e. appellants approached the colleges requesting to be admitted them in the courses and at that time, colleges already conveyed that issue with regard to reduction of eligibility criteria is pending and as such with open eyes, conditional admissions have been accepted by appellant-students and therefore, colleges have granted admissions with specific conditions. It has been submitted that prior to extended date of 15.10.2019, other States have already granted admissions and in majority States, like Punjab and Haryana,



Karnataka, Allahabad where various orders were passed granting interim protection to the students and matter from Punjab & Haryana High Court, which granted interim relief on 6.9.2019, was carried before the Hon'ble Apex Court and as such these aspects ought to have been noticed by learned Single Judge before concluding. At this stage, learned senior advocate Mr. Dave has also placed reliance upon the decision delivered by the Hon'ble Apex Court in the case Union of India v. Federation of Self-Financed Ayurvedic Colleges, Punjab reported in (2020) 12 SCC 115 and thereby supported the stand taken by the appellants.

15. Learned senior advocate Mr. Dhaval Dave by drawing attention of the Court to the relevant pages from the compilation, has vehemently contended that case of Parul University is altogether on different footing and there is no similarity which can attach to the present case on hand and here, the colleges have not sacrificed the merit and as such, when such bona-fide admissions have taken place on conditional basis, question is only with respect to academic year 2019-20, admission deserves regularization. It has been submitted that



large number of seats, as rightly indicated by learned senior counsel Mr. Shalin Mehta, are lying vacant and as such, no serious prejudice will be caused to any side if these conditional admissions to be regularized and as such the relief prayed for deserves to be granted.

16. At this stage, learned senior advocate Mr. Dhaval Dave has reiterated that colleges have not violated any norms nor have prejudicially acted with students in any form and whatever has been granted is on the basis of request of students and with open eyes, conditional admissions have been accepted by the appellant students and therefore no fault can be found of the colleges in grant of admission.

17. Learned senior advocate Mr. Dhaval Dave has reiterated that for the academic year 2019-20, NEET examinations were held, results were declared, counseling rounds got over and then, when vacant seats were available, upon request of students, colleges have granted admissions and that too conditionally and it has been submitted that it was already projected by colleges that pendency of representation dated



7.11.2019 was also very much a circumstance for the colleges to take care of the interest of students and appellants as well as the colleges were under impression that when eligibility criteria with regard to Post-Graduation courses was reduced, most probably, representation which was made on 7.11.2019 would also be considered and as such specific conditions were imposed while granting admissions.

18. Learned senior advocate Mr. Dhaval Dave has also relied upon series of decisions and tried to substantiate his case and ultimately has submitted that powers of High Court are not that much limited which cannot take care of students' interest who are prosecuting their studies and as such, placing reliance upon some of the decisions of the Hon'ble Apex Court, as indicated hereinafter, Mr. Dhaval Dave has requested that order passed by learned Single Judge deserves to be quashed and set aside and consequently, the relief prayed for deserves to be granted which would meet the ends of justice. Learned senior advocate Mr. Dhaval Dave in support of his submissions has placed reliance on following decisions:-

- (1) In the case of Union of India v. Federation of Self-



Financed Ayurvedic Colleges, Punjab reported in (2020) 12 SCC 115;

- (2) In the case of Saraswati Educational Charitable Trust v. Union of India reported in 2021 SCC OnLine 137;
- (3) Judgment dated 27.11.2019 passed in Letters Patent Appeal No.1817 of 2019 in the case of Parul University and Another v. The Admission Committee for Progressional Undergraduate Medical Education Courses and Another;
- (4) In the case of Swanirbhar Homeopathic Medical College Sanchalak Mahamandal v. State of Gujarat reported in 2019 (0) AIJEL-HC 241706;
- (5) Judgment of Karnataka High Court dated 31.8.2021 in the case of Karnataka Private Homeopathic Medical Colleges Management Association and others v. Union of India in Writ Petition No.100650 of 2021 (Edn-Med) with Writ Petition No.100652 of 2021 (Edn-Med)
- (6) Judgment of Madras High Court dated 3.8.2016 in the case of Dr. T. Rajakumari & Ors. v. The Government of Tamil Nadu and others in W.P. No.39022 and 36735 of 2015;
- (7) In the case of State of H.P. and others v. Himachal Institute of Engg. And others reported in (1998) 8 SCC 501;
- (8) In the case of State of H.P. and others v. Himachal Institute of Engg. And Technology, Kasumpti, Shimla reported in (1998) 8 SCC 504;
- (9) In the case of Parul Arogya Seva Mandal v. State of Gujarat reported in 2013 SCC OnLine Guj 5789;

19. As against this, learned advocate Mr. Siddharth Dave appearing on behalf of Union of India has vehemently opposed



the stand of the appellants and has submitted that learned Single Judge has rightly passed the judgment well supported by cogent reasons and after extending more than adequate opportunity to all the parties concerned and as such, such a detailed judgment and order passed by learned Single Judge may not be interfered with, more particularly when there appears to be no material irregularity or perversity. It has been contended by learned advocate Mr. Siddharth Dave that judgments which have been relied upon by both learned senior counsel Mr. Shalin Mehta as well as Mr. Dhaval Dave, are in different set of circumstance, peculiar in nature and same cannot be applied as a straitjacket formula and these judgments were prior in point of time when Rule applied mandatorily. It has been contended that original petitioners, i.e. appellants herein, have never challenged the amended Rule or assailed any stipulations prescribing minimum specific qualification, and when that be so, now it is not open for the appellants at the appellate stage to contend and agitate against the said amendment. Mr. Dave has submitted that when a particular thing to be done in a particular manner and when a specific



procedure is stipulated, same cannot be bypassed as has been done by the colleges in present group while dealing with the students. Specific Regulations which have force of law if to be looked into, same would not permit any of the appellants to be introduced in the courses and as such no equity be shown simply because the appellants have prosecuted their studies for some time. It has been submitted that a close perusal of events which took place indicates that a case was tried to be put up as if representation dated 7.11.2019 was not decided and as such conditional admissions were given. But, in fact, all stakeholders were aware about the fact that decision to reject such request of reduction of minimum qualifying eligibility is turned down on 14.10.2019 and petition has been filed only after that, i.e. on 25.11.2019. It has been submitted that on very next day, amendment was sought on 26.11.2019 and on very same day, ad-interim relief was passed on the basis of such amendment. But, in fact, had the proper facts been brought to the notice of learned Single Judge, even such ad-interim relief would not have been granted. However, be that as it may, a fact that eligibility criteria has not been reduced was known to everybody and



when that be so, such cannot be given a go-bye either by colleges or by students. A very fact that amendment has been brought on record would indicate that students were aware about such amendment and as such there is hardly any reason to raise any grievance. It has been pointed out that an attempt has also been made to show that almost in a similar situation, eligibility criteria was reduced, but that was reduced by an expert body in different set of circumstance and that too at Post-graduate stage, where yardstick would be different for consideration. Perusal of the relevant decisions if to be made, it appears that none of the decisions would come to the rescue of the appellants. Learned advocate Mr. Siddharth Dave has also placed reliance upon few decisions which are quoted hereunder:-

- (1) Judgment dated 24.2.2021 delivered by Hon'ble the Apex Court in the case of Saraswati Educational Charitable Trust and Another v. Union of India and others in Writ Petition (C) No.40 of 2018;
- (2) Judgment dated 27.11.2019 delivered by this Hon'ble High Court in Letters Patent Appeal No.1817 of 2019 and other connected matters;
- (3) In the case of Sneha Saha v. State of West Bengal and others reported in 2019 SCC OnLine CAL 12119;



- (4) In the case of Federation of Self-Financed Ayurvedic Colleges of Punjab & Others v. Union of India, reported in 2019 SCC OnLine (P&H) 2881;
- (5) In the case of Karnataka State Ayush Medical Colleges Federation v. Union of India reported in 2019 SCC OnLine Kar 2906;
- (6) In the case of Asimusshan Khan v. Union of India reported in 2019 SCC OnLine All 5768;
- (7) In the case of Association of Muslim Minorities Medical Educational Institution v. Union of India reported in 2019 SCC OnLine Bom 8201;
- (8) Federation of Self-Financed Ayurvedic Colleges of Punjab & others v. Union of India reported in 2019 SCC OnLine P &H 2876;
- (9) Order dated 17.8.2021 passed by the Hon'ble Supreme Court in the case of Abdul Ahad and others v. Union of India and Others in Review Petition (Civil) No.1835-1836 of 2020;
- (10) Order dated 3.3.2021 passed by this Court in Letters Patent Appeal No.190 of 2021 in the case of Patel Utsav Dineshbhai V. The Gujarat Ayurved University;
- (11) Order dated 13.10.2020 passed in Special Civil Application No.10913 of 2020;
- (12) Order dated 19.1.2021 passed by learned Single Judge of this Court in Special Civil Application No.7216 of 2020 in the case of Patel Utsav Dineshbhai V. The Gujarat Ayurved University;
- (13) In the case of Mahatma Gandhi University and Another v. GIS Jose and others reported in (2018) 17 SCC 611;



20. By reiterating the submissions that fixation of eligibility criteria is an domain of the expert body, which is also monitoring to maintain level of education and when a specific eligibility criteria is prescribed, there is hardly any reason to deviate from the same and as such even conditional admissions ought not to have been granted by colleges when colleges were not having on hand the decision of reduction of eligibility criteria, they could have clearly mentioned before the students and ought not to have granted admissions *de-hors* the regulations and as such when such a scenario has already been examined by learned Single Judge at great length, on the basis of the very same circumstance, view taken by learned Single Judge which is a possible view may not be substituted.

21. In *chorus*, learned advocate Mr. Premal Joshi appearing on behalf of the relevant University has submitted that fixation of eligibility criteria in the matter of admission is being monitored and observed by AYUSH and it is only the authority for Central Government which has already projected the request. Learned advocate Mr. Joshi in addition to what has been submitted before us has also pointed out that even Ordinance 57(2) has



also not been observed here in the present case. Learned advocate Mr. Joshi has also strenuously relied upon the dates that last cut-off date was 15.10.2019, representation was made on 7.11.2019 and on 14.11.2019, Government of India already took decision and despite such situation, conditional admissions were already given. During the extended period, even no representation was submitted by the colleges in any form which fact is not in dispute and as such when large scale irregularity has taken place in respect of admission, no equity be shown simply because some of the appellants are students. By referring to page 30 onwards from compilation of Letters Patent Appeal No.743 of 2021, it has been submitted that these students who have been granted conditional admissions are not meritorious in any form, on the contrary by granting such conditional admissions, several meritorious students have been deprived of, hence no lenient view may be taken more particularly when learned Single Judge has considered after hearing all the parties and after examining every details. Mr. Joshi, in support of his submissions, has relied upon the following decisions:



- (1) Decision dated 20.2.2020 passed by the Hon'ble Supreme Court in the case of Union of India v. Federation of Self-Financed Ayurvedic Colleges Punjab and others in Civil Appeal No.603 of 2020;
- (2) In the case of Abdul Ahad and others v. Union of India reported in 2021 SCC OnLine 627;

22. In rejoinder to this, learned senior advocates Mr. Shalin Mehta and Mr. Dhaval Dave have pointed out that here is a case where the authority has taken a too technical view for the academic year 2019-20 and learned Single Judge ought to have considered sympathetically more particularly when law permits to exercise discretion by virtue of proposition of law as laid down by catena of decisions and further more when in other States, views have been taken in favour of students and as such requested to grant the reliefs as prayed for.

23. Having heard learned advocates appearing for the parties and having gone through the material on record, for considering the submissions of learned advocates appearing on behalf of respective sides, first of all brief proposition of law laid down by the Hon'ble Apex Court in series of decision deserves consideration before coming to an ultimate conclusion. It has been propounded by several decisions that as far as policy

matters are concerned, normally the Courts should loath in interfering and scope of judicial review would be very much limited. Relevant observations contained in following decisions, Court would deem it proper to quote hereunder:-

- (1) Para 60.2 and 63 of the decision in the case of Small Scale Industrial Manufactures Association (Registered) v. Union of India and others reported in (2021) 8 SCC 511 read as under:

“60.2. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review.

63. In the case of BALCO Employees’ Union (Regd.) (supra), this Court has observed that Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. It is further observed that in the case of a policy decision on economic matters, the courts should be very circumspect in conducting an enquiry or investigation and must be more reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself.”

- (2) Paragraphs 19 and 20 of the decision in the case of Federation Haj PTOs of India v. Union of India reported in (2020) 18 SCC 527 read as under:-

“19. The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be

against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide, the On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth⁴:

"16... The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."

20. We may also usefully refer to the judgment in State of Madhya Pradesh v. Nandlan Jaiswal⁵. In this judgment, licence to run a liquor shop granted in favour of A was challenged as arbitrary and unreasonable. The Supreme Court held that there was no fundamental right in a citizen to carry on trade or business in liquor. However, the State was bound to act in accordance with law and not according to its sweet will or in an arbitrary manner and it could not escape the rigour of Article 14. Therefore, the contention that Article 14 would have no application in a case 4 (1984) 4 SCC 27 5 (1986) 4 SCC 566 where the licence to manufacture or sell liquor was to be granted by the State Government was negated by the Supreme Court. The Court, however, observed:

"34. "But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State

Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or mala fide."

- (3) Paragraph-18 of the decision in the case of State of Uttar Pradesh State of Uttar Pradesh and others v. Subhash Chandra Jaiswal and others reads as under:

"18. In this regard, another aspect needs to be noted. We have already stated that some of the directions are in the nature of legislation or policy. In Union of India and another v. Deoki Nandan Aggarwal a three-Judge Bench has observed that the power to legislate has not been conferred on the courts and, therefore, the court cannot add words to a statute or read words into it which are not there."

- (4) Paragraphs 16 and 18 of the decision in the case of Satya Dev Bhagaur and others v. The State of Rajasthan and others reported in 2022 LiveLaw (SC) 177 read as under:-

16. It is trite that the Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that such intelligible differentia has a nexus with the object sought to be achieved.

18. A three Judge bench of this Court in Sher Singh and Others vs. Union of India and Others has observed thus:

"As a matter of fact the courts would be slow in interfering with matters of government policy except where it is shown that the decision is unfair, mala fide or contrary to any statutory directions."

24. It has further been propounded that normally Court should

not sit over the decision of experts and Court also cannot relax the eligibility criteria already prescribed. Relevant observations contained in paragraph-8 of the decision in the case of Vidhi Himmat Katariya and others v. State of Gujarat and others reported in (2019) 10 SCC 20, the Court would deem it proper to quote hereunder:-

"8. Now so far as the submission on behalf of the petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix 'H' - 'Both hands intact, with intact sensation, sufficient strength and range of motion'. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts - in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides."

25. In addition to it, whenever there is a public interest vis-a-vis private interest conflict, what should be the approach of the Court is already propounded by the Hon'ble Apex Court in the case of Sayyed Ratanbhai Sayeed (Dead) Through Legal representatives and others v. Shirdi Nagar Panchayat and

Another reported in (2016) 4 SCC 631, paragraphs 58 and 59 of which the Court deem it proper to quote hereunder:

“58. The emerging situation is one where private interest is pitted against public interest. The notion of public interest synonymises collective welfare of the people and public institutions and is generally informed with the dictates of public trust doctrine – res communis i.e. by everyone in common. Perceptually health, law and order, peace, security and a clean environment are some of the areas of public and collective good where private rights being in conflict therewith has to take a back seat. In the words of Cicero “the good of the people in the chief law”.

59. The latin maxim “Salus Populi Est Suprema Lex” connotes that health, safety and welfare of the public is the supreme in law. Herbert Broom, in his celebrated publication, “A Selection of Legal Maxims” has elaborated the essence thereof as hereunder:

“This phrase is based on the implied agreement of every member of the society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good.”

The demand of public interest, in the facts of the instant case, thus deserve precedence.”

26. In the light of the aforesaid proposition, a perusal of the conclusion which has been arrived at by learned Single Judge whether it conflicts with aforesaid proposition and background of facts will have to be examined and for that purpose, we deem it proper to first of all quote the conclusion arrived at by learned Single Judge in paragraphs 7 to 9, which reads as under:-

“7 Considering the submissions made by the learned counsels appearing for the petitioners, it will be necessary to appreciate

the following contours of the controversy to come to a particular decision.

- (A) The relevant regulations which have been amended in the year 2018 categorically provide that in order to secure admission to the BAMS / BHMS courses, a minimum cut off percentile in the case of unreserved category concerned i.e. 50th percentile would be necessary to secure admission to the colleges.
- (B) The present petitioners have not challenged the amendment to the rules or assailed the stipulation prescribing a minimum qualification.
- (C) Letters of Admission by the respective colleges are on record. For the purposes of brevity, one of the sample letters of admission would need to be referred to. Reading the letter of admission would indicate that the admission is provisional for the year 2019-20 and this is a conditional admission on the last date of the cut off dates and it is clearly informed that this is subject to the Ministry of AYUSH's approval of reduction in cut off marks. This is in the case of homeopathy colleges. Same is the position in the case of admission letters of ayurvedic colleges, where the admission letters clearly state that the admission to the college is based on a presumption that since in the last three years the Department of AYUSH has brought down the cut off marks for NEET, we assume that the same shall be adopted this year also. The college further goes on to write in the admission letter that the college is therefore conditionally admitting the students. The letter further stipulates that in case the cut off marks did not come down, then the admission shall be cancelled.
- (D) Perusal of the records of the petitions would indicate that though the proviso to the rule does stipulate a discretion with the Council in consultation with the Central Government to reduce the cut off percentile in case the seats are remaining vacant, the discretion would automatically not give the students seeking admission as a matter of right to command such lowering of the percentile of marks.
- (E) Since both the learned counsels for the respective parties have relied on the decision in the case of **Federation of Self Financed Ayurved Colleges (supra)**, inasmuch as, Mr. Shalin Mehta, learned Senior Advocate, would submit that the case would squarely govern the petitioners and the petitions be allowed, whereas the respondents have in fact, sought support from the decision, it will be necessary to extensively refer to the

decision therein. Before the Supreme Court, the validity of the notifications issued by the Central Council of Indian Medicine and Central Council of Homeopathy and minimum qualifying marks was a subject matter of challenge. Amended regulations then came into force in the year 2018 prescribing a uniform entrance examination for all medical institutions. It appears that one Guru Ravidas University issued a prospectus to admissions for BAMS and BHMS course and the criteria for admission to under graduates courses. When a petition was filed by the management of the colleges, the High Court of Punjab & Haryana passed an interim order on 06.09.2019, permitting admissions of students to under graduate courses without insisting on the students on getting minimum requisite percentile in NEET. The High Court of Punjab then finally dismissed the petitions by judgment and order dated 18.12.2019. Special Leave Petitions were filed by the students as well as the colleges against the said judgment. Admissions were granted to the students on the basis of interim order of the High Court. The question that arose before the Supreme Court for its consideration was whether the students seeking admissions to under graduate courses can be denied admission on the ground that they did not take NEET or that they did not get the minimum percentile prescribed under the regulations. Perusal of the judgment of the Supreme Court would indicate that in the petitions, the 2018 regulations were under challenge and the prayer was to declare them as ultra vires the provisions of Section 36 of the Central Council Act. It was in this context that we need to read the judgment of the Supreme Court. Para 9 of the judgment when read would indicate that the Supreme Court opined that there was an authority for the respondent Ministry to frame regulations. What was found before the Supreme Court that a large number of seats in the institutions in Punjab were vacant and it was under these circumstances on the basis of interim orders, the institutions granted admissions. These interim orders continued and it was under these circumstances that the Supreme Court as a one time measure permitted the institution under peculiar circumstance not to disturb the admissions so granted. When para 12 is read, it is therefore clear that the order was so passed as a one time exercise in peculiar circumstances and not to be treated as precedent. The Supreme Court observed that prescribing a minimum percentile for admission to under graduate courses for the year 2019-2020 was appropriate. It observed that doctors who are qualified in Ayurveda, Unani and Homeopathy streams also treat patients and the lack of minimum standards of education would result in half baked doctors being turned out of professional colleges. It was clearly observed in para 12 of the decision that non

availability of eligible candidates for admissions to AYUSH under graduate courses cannot be a reason to lower the standards prescribed by the Central Council for Admission.

- (F) The similarity drawn by Mr. Shalin Mehta, learned Senior Advocate, by submitting that since interim orders have been passed in these petitions protecting the petitioners, the decision of the Supreme Court would squarely govern, cannot be taken into consideration. In context of the prayers made in the petition what was protected by this Court pending hearing of the petitions was that the conditional admission granted to the petitioners would not be disturbed. The orders categorically said so.
- (G) Merely because interim orders have been passed which were ad-interim ex-parte orders without the benefit of the arguments of the other side on the basis of the replies filed and the pleadings, such interim ex-parte orders cannot be said to be binding when the court takes up the matter for final hearing. This is particularly so when it is taken and appreciated in the facts of the case.
- (H) The colleges in which the petitioners secured admission had issued letters unequivocally stating that the admissions were conditional and on an assumption that the Ministry would lower the percentile for the academic year 2019-20. The letters further went on to state that in case the lowering of percentile is not done, the admission of the students will stand cancelled. The students accepted their admission with open eyes on the basis of these conditional letters. Interim application granting them the protection of not disturbing their admission subject to further hearing would not give them a vested right in terms of the order of the Supreme Court in the case of **Federation of Self Financed Ayurved Colleges (supra)**.
- (I) The other distinction that needs to be drawn between the petitioners and the case on hand before the Supreme Court is that the notification of the regulations were challenged, which is not the case on hand in the present petitions. The petitioners, therefore, knowing fully well and having accepted the minimum stipulation of qualifications cannot now turn around and say that let these minimum qualifications not bind them in light of the order of the Supreme Court. The order of the Supreme Court was a one time measure not to be treated as a precedent as the High Court of Punjab & Haryana had granted interim orders permitting the colleges to admit. A thin line of distinction therefore needs to be drawn here. The conditional admissions

already granted by the colleges were protected. These admissions were granted when the colleges and the students/petitioners were fully aware of the potholes that could follow in case the Ministry did not lower the standards of qualifications. It is in light of these circumstances that the relevant paragraph of the decision in the case of **M.C.I vs. Kalinga Institute of Medical Sciences (supra)**, which have been quoted by this Court in Special Civil Application No. 7216 of 2020 needs to be considered. For the purposes of benefit of this Court, para 12 of the decision in the case of **Union of India vs. Self Financed College (supra)**, is relied upon by this Court in para 14 of the decision in SCA No. 7216 of 2020 which reads as under:

“14 XXX XXX XXX XXX

12. *Prescribing a minimum percentile for admission to the Under Graduate Courses for the year 2019-2020 was vehemently defended by the Central Council and the Union of India by submitting that the minimum standards cannot be lowered even for the AYUSH Courses. We agree. Doctors who are qualified in Ayurvedic, Unani and Homeopathy streams also treat patients and the lack of minimum standards of education would result in half baked doctors being turned out of professional colleges. Non availability of eligible candidates for admission to AYUSH Under Graduate Courses cannot be reason to lower the standards prescribed by the Central Council for admission. However, in view of the admission of a large number of students to the AYUSH under graduate courses for the year 2019-2020 on the strength of interim orders passed by the High Courts, we direct that the students may be permitted to continue provided that they were admitted prior to the last date of admission i.e. 15th October, 2019. The said direction is also applicable to students admitted to Post-Graduate Courses before 31st October, 2019. This is one-time exercise which is permitted in view of the peculiar circumstances. Therefore, this order shall not be treated as a precedent.”*

- (J) Even in the case of **M.C.I vs. Kalinga Institute of Medical Sciences (supra)**, and the relevant paras 30, 31,31.1 and 31.2 read as under:

30. Learned counsel for KIMS and the students contended that unless this appeal is dismissed it will result in the students suffering a loss of two years of their studies. This may be so – but if such a situation has come to pass, KIMS is entirely to be blamed. KIMS was specifically told not to admit students by the Central Government in its letter dated 15th June, 2015. Despite this KIMS persisted in litigation to somehow or the other accommodate 50 additional students. This was certainly not with a charitable motive. As an institution that should have some responsibility towards the welfare of the students, it would have been far more appropriate for KIMS to have refrained from giving admission to 50 additional students rather than being instrumental in jeopardizing their career.

31. However, for the fault of KIMS, the students should not suffer nor should KIMS get away scot free. KIMS must pay for its inability to introspect and venture into adventurist litigation. Accordingly, we direct as follows:

31.1 The admission granted to the 50 students pursuant to the order of the High Court dated 25th September, 2015 and the provisional permission granted by the Central Government only on 28th September, 2015 shall not be disturbed. How the students will complete their course of studies without putting undue pressure on them is entirely for the MCI and KIMS and other concerned authorities to decide.

31.2 Costs of Rs. 5 crores are imposed on KIMS for playing with the future of its students and the mess that it has created for them. The amount will be deposited by KIMS in the Registry of this Court within six weeks from today. The amount of Rs. 5 crores so deposited towards costs shall not be recovered in any manner from any student or adjusted against the fees or provision of facilities for students of any present or subsequent batches.”

(K) In the decision of **Self Financed Colleges (supra)**, the Supreme Court was also conscious of the fact that there should not be half baked doctors.

8. All these parameters lead one to believe that merely because interim orders were passed by this Court in these petitions would not itself give a right to the petitioners to continue to pursue their studies in the respective BAMS & BHMS courses in light of a specific conditional admission granted to them making them aware that in case the percentile is not lowered their admission shall stand cancelled. In

absence of a challenge to the regulations stipulating a minimum qualification, no writ in the nature as prayed for, for commanding the respondents to lower the qualifying percentile in NEET 2019 - 2020 examinations can be granted.

- 8.1 There is a fine distinction between the petitioners before the Supreme Court. Perusal of the facts of the case before the Supreme Court would indicate that admissions were granted by institutions. This has been extensively discussed in the earlier part of the decision. In the facts of the present case, what is evident is that the institutions have taken the liberty to admit the students with a specific condition that "they assume that the Ministry shall lower the percentile as was done in the past". On the basis of such assumptions not only were the institution and the students not entitled to claim equity on the ground of warranting a discretion being exercised in their favour. Merely because such an exemption was given in the preceding year i.e. 2018-19 and is so given in 2020-21 would not give the institutions and the students a licence to claim benefit of an assumption on the part of the institutions contrary to the rule position sacrificing merit. Therefore, even if the benefit was to be extended in terms of the interim orders and permit the students to pursue the course as they have already undertaken a year of study would tantamount to giving premium to an admission secured contrary to the rule position. Thus, the discretion so exercised by the Supreme Court as a one time measure cannot be permitted to be perpetrated in case such institutions continue to assume and usurp the powers of the admission committee in securing admissions to courses such as medical courses in light of the primacy of merit that is required. The admissions therefore granted to the students needs to be cancelled as the same is contrary to the eligibility criteria prescribed for the concerned year. Granting indulgence only on the pretext of a one time measure or not treating the present case as a precedent would prompt and embolden educational institutions to forego merit in admissions to such courses as medical stream. The respective respondent colleges have not appeared to contest the petitions, except in one petition represented by Mr. B.T. Rao, learned advocate and least it be said that the apprehension expressed by the University that these are collusive petitions at the hands of colleges with the students, may not be a submission which can entirely be discounted.
9. Article 14 of the Constitution of India cannot be pleaded as is so pleaded by the petitioners as compared to the students of the dental colleges as it has been specifically pointed out in the

affidavit-in-reply that the vacancies in the dental colleges are far higher than those in the ayurveda and the homeopathy stream. Even otherwise, if the authorities have sought to exercise discretion to lower the percentile for the year 2018-19 and for the years 2020-21 and not for the academic year 2019-20, the fact that the petitioners ventured to secure conditional admission in the colleges and the action of the colleges in granting such admission on the face of they knowing that the students were ineligible would not give the petitioners a vested right to continue their studies and pursue their course when admittedly in accordance with the rules stipulating a minimum qualification the petitioners were not eligible to have secured admission to such colleges."

27. From the aforesaid conclusion, learned Single Judge has in categorical terms observed that relevant Regulations which have been amended in the year 2018 providing minimum cut-off percentile in case of unreserved category concerned, would be necessary to secure admission to the colleges and at the same time, this amendment has not been challenged by any of the petitioners nor stipulation contained in the regulation is agitated at any point of time which is prescribing minimum qualification.

28. In addition to, learned Single Judge has also clearly observed that though proviso to Rule does stipulate a discretion with counseling in consultation with Central Government to reduce cut-off percentile in case of seats which remained

vacant, such discretion would not automatically give right to the students to seek admission as a matter of right as if giving directly effect of lowering percentile of marks and here, as we have stated above, representation for reduction dated 7.11.2019 would indicate that till grant of admission, said minimum qualifying marks were not lowered down by an authority. On the contrary, the record indicates that similar such request was turned down on 14.11.2019, i.e. prior to filing of petition.

29. Further, while coming to the conclusion, learned Single Judge has also extensively examined the relevant decisions which have been brought to the notice and has come to a conclusion that Article 14 of the Constitution of India cannot be pleaded as is tried to be pleaded by comparing the students of Dental Colleges and ultimately, lowering down of percentile is an domain of the authority and college cannot assume that authority will reduce the minimum eligibility and thereby granting conditional admission and as such on consideration of overall material, learned Single Judge has specifically come to the conclusion and thereby dismissed all the petitions.



30. At this stage, we may remind ourselves to one of the propositions laid down by the Hon'ble Apex Court, wherein it has been observed that if after considering overall material on record, a particular possible view is taken by learned Single Judge, then in absence of any distinguishable material, such view taken in exercise of discretion may not be substituted. We deem it proper to quote relevant observation at this state to further examine the contents of appellants, i.e. paragraph 5 of the decision in the case of *Management of Narendra & Company Private Limited v. Workmen of Narendra & Company* reported in (2016) 3 SCC 340:-

"5. Once the learned Single Judge having seen the records had come to the conclusion that the industry was not functioning after January 1995, there is no justification in entering a different finding without any further material before the Division Bench. The Appellate Bench ought to have noticed that the statement of MW 3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief."

31. In the light of the aforesaid discussion and background of facts, in substance what has been emerged from the record is that conditional admissions have been granted by colleges



without keeping in mind the minimum eligibility criteria as prescribed in the regulations which are mandatorily applicable and to be scrupulously observed, especially when same were not challenged by petitioners as narrated by learned Single Judge. It has further emerged from the record that similar request of reduction was turned down by Government of India on 14.11.2019, i.e. prior to filing of the petitions, and very fact that amendment was brought on the very next date of filing of petitions would indicate a little awareness either of students or of colleges about such rejection, still made persuasion to grant ad-interim relief. It is a settled position of law that illegality cannot be perpetuated, moment it is detected and as such learned Single Judge has rightly rejected the petitions by assigning proper reasons.

32. Further, as indicated above, the eligibility criteria whether to be reduced or enhanced is the domain of experts which are prescribed after detailed studies before bringing it and as such in our considered opinion, it is not open for us to ignore such eligibility criteria prescribed by the authority.



33. In consideration of aforesaid material, it has further been brought to our notice that majority students were not having basic eligibility qualifications but we would not like to dwell much into it since same would be in the realm of examining the disputed questions of facts. So, in substance, what has been emerged is that all these admissions have been granted by colleges even on conditional basis which is *de hors* the eligibility criteria which is mandatorily to be observed while granting admission. Hence, since such admissions are granted *de hors* the applicable criteria, no equitable consideration leans in favour of the appellants.

34. Now, in the context of aforesaid discussion, perusal of the decisions large in number pressed into service by learned counsel appearing on behalf of appellants as well as learned counsel appearing on behalf of colleges, but majority judgments are in different factual backgrounds and in exercise of jurisdiction of special power vested in the Hon'ble Apex Court. The Hon'ble Supreme Court has taken a view which in our considered opinion is not available to the High Courts and in one of the decisions delivered by the Hon'ble Apex Court, view



is taken by clearly observing that not to be treated as precedent. So, perusal of each of the decisions would indicate that when facts on hand are clearly emerging a situation where in grant of admissions, regulations are not observed, i.e. in the form of eligibility criteria, we are not inclined to extend undue sympathy. Simply because under protection of the Court, for some period, students have prosecuted their studies, that would not be a ground to perpetuate illegality which has been crept in. On the contrary, if this be allowed, several eligible and more meritorious students would be at peril if this kind of action to be condoned and ignored. Hence, we are not inclined to exercise our equitable appellate jurisdiction.

35. Before advertng to the decisions cited by learned counsel for the appellants and the colleges, a perusal of notification dated 4.5.2018 which has amended the regulation of admissions in Under-graduate courses Rules, 2017, relevant Rule pointed out by learned counsel for the colleges is the substituted Rule 16, which reads as under:-

"16. Vacant Seats. If any government and management seat remain vacant in the MBBS, BDS. BAMS, BHMS and BNAT courses after completion of admission process and exhaustion of merit list, such vacant seats shall be displayed on the official



website and on the notice board of the office of the admission committee and same shall be intimated to the colleges or institutions wherein the seats are vacant. Such seats shall be filled up by the respective institute as per the criteria laid down by the respective Council/ Central Government for respective year."

A perusal of this substituted Rule which is undisputably, applicable and to be observed indicates that if any Government or management seat remains vacant after completion of admission process and exhaustion of merit list, such vacant seats shall be displayed on the official website and on the notice board of the office of the Admission Committee and same shall be intimated to the colleges or institutions wherein the seats are vacant and then such seats shall be filled up by the respective institute as per the criteria laid down by the respective Council/ Central Government for respective year. This would not permit the colleges to give a go-bye to the criteria which has been prescribed by the Council or Central Government for the respective year and that too even conditional admissions are also to be given after full compliance of this substituted Rule-16 and as indicated by learned Single Judge, this has not been challenged by the appellants in the original petitions and hence so long as when this is in existence, it is obligatory on the part



of colleges as well as the students to be abided by. Hence, when this has been given a go-bye, there is hardly any circumstance available in favour of the appellants to extend equitable considerations, more particularly when students themselves have taken conditional admissions.

36. Much more emphasis has been placed by learned senior counsel Mr. Shalin Mehta on a decision in the case of Union of India v. Federation of Self-financed Ayurvedic Colleges, Punjab and others reported in 2020 (8) SCALE 177. A perusal of the facts if to be looked into wherein High Court of Punjab & Haryana passed an interim order on 6.9.2019 permitting the admission of student to Under-graduate courses (BAMS, BHMS, BUMS) without insisting on students getting minimum requisite percentile in NEET and while examining the said issue, after examining, the Hon'ble Apex Court on the contrary has in clear terms indicated in paragraph 12 that this order shall not be treated as a precedent and it is one time exercise which is permitted in view of the peculiar circumstances and as such when that be so, it is not open for the appellants to press the said judgment as of right. On the contrary, in paragraph 12, it



has been stated that prescribing minimum percentile for admission to under-graduate courses for the year 2019-20 was vehemently defended and the said stand of the Central Government was accepted and observed on the contrary that doctors who are qualified in Ayurvedic, Unani and Homeopathy streams also treat patients and the lack of minimum standards of education would result in half-backed doctors being turned out of professional colleges and non-availability of eligible candidates for admission to AYUSH Under Graduate courses cannot be a reason to lower the standards prescribed by the Central Council for admission and keeping this observation as one time measure in exercise of jurisdiction, the Hon'ble Apex Court in such peculiar background has exercised the powers and as such same cannot be applied as a straitjacket formula. Said observations, as it appears, have been taken care of by learned Single Judge as well. Para 12 of the said judgment reads as under:-

12. Prescribing a minimum percentile for admission to the Under Graduate courses for the year 2019-2020 was vehemently defended by the Central Council and the Union of India by submitting that the minimum standards cannot be lowered even for AYUSH courses. We agree. Doctors who are qualified in Ayurvedic, Unani and Homeopathy streams also treat patients and the lack of minimum standards of education



would result in half-baked doctors being turned out of professional colleges. Non-availability of eligible candidates for admission to AYUSH Under Graduate courses cannot be a reason to lower the standards prescribed by the Central Council for admission. However, in view of admission of a large number of students to the AYUSH Under Graduate courses for the year 2019-2020 on the strength of interim orders passed by the High Courts, we direct that the students may be permitted to continue provided that they were admitted prior to the last date of admission i.e. 15 th October, 2019. The said direction is also applicable to students admitted to Post Graduate courses before 31 st October, 2019. This is a one-time exercise which is permitted in view of the peculiar circumstances. Therefore, this order shall not be treated as a precedent.”

37. Yet, another decision which is tried to be pressed into service is the decision in the case of The Pharmacy Council of India v. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and others reported in 2020 (5) SCALE 439. But, again a perusal of the same would indicate that students were already admitted pursuant to order passed by the concerned High Courts and interim orders were already made final. Whereas here in the case on hand, admissions were from beginning conditional, clearly indicated to the students right from beginning and as such, the situation which was prevailing in the aforesaid decision of Pharmacy of Council of India is not possible to be applied here on the basis of the undisputed position prevailing in the case on hand. If this be allowed, as per

the wish of the appellants, same would not only perpetuate illegality but would encourage the colleges and students to go ahead with ineligible admissions and as such we would not like to extend our equitable jurisdiction in favour of the appellants.

38. Even in one of the decisions delivered by the Hon'ble Apex Court in the case of Association of Managements of Homeopathic Medical Colleges of Maharashtra v. Union of India and others in Civil Appeal No.1393 of 2019 dated 1.2.2019 for the relevant academic year 2018-19, the Hon'ble Apex Court while salvaging the situation since same was relating to aforementioned academic year has clearly clarified in paragraph-7 that this order which is passed in peculiar background of facts shall not be treated as precedent and no opinion is expressed on introduction of minimum percentile eligibility. Paragraphs 6 and 7 we deem it proper to quote hereunder:-

- "6. Though the last date for admission to the BHMS course was 15 th November, 2018, we are informed that the last date was extended till 20th December, 2018 by the Allahabad High Court. Though there is no agreement on the exact number of vacant seats, it is common ground that there are vacant seats for admission to the 1 st year BHMS course in the State of Maharashtra. As there is no uniformity in the matter of admission to the 1st year BHMS course for the year 2018-19, as securing minimum marks in NEET is not required in some States pursuant to orders of the High Courts, we are of the opinion that the Appellants are entitled to the relief of

admissions being made without reference to the letter dated 11th June, 2018 of Respondent No.1 and the consequential notice of Respondent No.3. In other words, the Appellant-Association should be permitted to make admissions to the 1st year BHMS course for the academic session 2018-19 on the basis of the eligibility criteria mentioned in the information brochure dated 5 th February, 2018. A candidate who has secured minimum marks in the NEET UG-2018 shall be eligible for admission to the 1 st year BHMS course for the academic year 2018-19.

7. As two months have passed after the last date of admission to the 1st year BHMS course i.e. 15th November, 2018, we direct the Appellants to complete the process of admissions strictly on the basis of the merit by 15th February, 2019. The Managements of the colleges are directed to hold extra classes for students who will be admitted pursuant to this order to comply with the requirements of minimum working days. This order which is passed in the peculiar facts of the case shall not be treated as a precedent. No opinion is expressed by us regarding the introduction of the minimum percentile as an eligibility criteria in the NEET examination.”

39. There are several other judgments pressed into service, but as stated above, background is altogether different than what is on hand and therefore, on the basis of undisputed facts, we are unable to apply the ratio laid down by all those decisions which are pressed into service. We have perused all the judgments and upon consideration of relevant facts and the ratio, we are not in a position to apply the same here in the case on hand and as such we find no lending support to the appellants.

40. In furtherance of this discussion, learned senior counsel



Mr. Dhaval C. Dave appearing on behalf of the colleges who granted conditional admissions has also placed reliance upon some of the decisions. First decision which has been pointed out is in the case of Union of India v. Federation of Self-financed Ayurvedic Colleges, Punjab and others reported in (2020) 12 SCC 115, wherein it has been observed that non-availability of eligible candidates for admission to AYUSH courses cannot be a reason to lower the standards prescribed by the Central Council for admission. But, view taken was since by interim order, High Court directed the students to continue was the circumstance taken into consideration by the Hon'ble Apex Court as one time measure in peculiar circumstance. As discussed above and pointed out earlier, this is the case cited by learned senior counsel Mr. Shalin Mehta. But, we refrain ourselves from extending any equitable consideration since background of facts is altogether different than the facts of the present case on hand. A perusal of the letter of conditional admission would clearly suggest the manner in which admissions are secured by students and when with open eyes, students have availed admissions, no undue sympathy deserves.



41. There are other few decisions pointed out but as we have clearly suggested above that we are in appellate jurisdiction and found that view taken by learned Single Judge is a possible view, when facts are different of both the cases, the cases cited before us by learned senior counsel are of no assistance to maintain and regularize the process of admission. After perusal of all those decisions which are rather placed on record in large numbers, but perusal of those decisions would be of no assistance to assail the order in our considered opinion. Hence, with a view to overburdening the present order, each and every judgment is not being narrated in detail. Hence, none of the decisions cited by learned counsel for the colleges are of any assistance.

42. At this stage, we have perused the decisions cited by learned counsel Mr. Siddharth Dave. We are of the view that same are also not to be discussed at great length to avoid overburdening of the present order, but we found that stand taken by him is to some extent gets support. In the case which has been decided by the Hon'ble Apex Court on 17.8.2021 in the



case of Abdul Ahad and others vs. Union of India and others, review petitions were filed in SLPs filed by Glocal University, Glocal Medical College Super Specialty Hospital and Research Center which were dismissed, wherein while dismissing the review petitions, it was observed that students cannot be said to be ignorant about notification issued by the State, no sympathy can be shown to such students who have entered through backdoor and here also, these students have secured their admissions with open eyes on a conditional basis with full knowledge and as such, they do not deserve any sympathy at the hands of the Court. Mr. Siddharth Dave has also cited several decisions delivered by this Court and list of judgments has been placed on record, but has emphasized much on the case of Sneha Saha and others v. The State of West Bengal and others reported in 2014 SCC OnLine (Calcutta) 12119. Said decision taken by Calcutta High Court is also after considering series of decisions delivered by the Hon'ble Apex Court and then has observed which we deem it proper to quote hereunder:-

37. In MANU/SC/0287/2003 (2003) 5 SCC 413 it has been

categorically stated that in case of conflict between law and equity, the former shall prevail.

38. Courts are bound to apply the cardinal principles of justice, equity and good conscience but without violating the law. In the instant case any application of equity will be in violation of law laid down by statute.
40. Through MANU/SC/0364/1993: 1993 (4) SCC 401 (Guru Nanak Dev University v Parminder Kr. Bansal) and MANU/SC/1047/1998: 1998 (5) SCC 377 (C.B.S.E. & Anr. v. P. Sunil Kumar & Ors.) and as rightly observed in MANU/SC/0658/2003: 2003 (7) SCC 719 (Regional Officer CBSE v. Ku. Sheena Peethambaran & Ors.)

"Condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately, adversely affects the academic standards."

41. Plea of sympathy and concessions in the light of Rules staring us in the face and against legal provisions has been deprecated and any direction to the council to issue the Provisional Registration Certificate will be in transgression of the Act and the 1983 Regulations and the Court cannot be a party to direct the Council to disobey the statute as that would be destructive of the Rule of law.
43. (2010) 10 SCC 233 and MANU/SC/0088/2012: (2012) 3 SCC 430 is of no assistance to the appellants as equity was exercised as a special case under Article 142 of the Constitution of India by the Supreme Court of India in order to do complete Justice. No such power is vested in the High Court.
45. MANU/SC/0061/1975: AIR (1976) SC 376 is also distinguishable as it was the university who had acquiesced in the infirmities by grant of admission. In the instant case the colleges were to give admission on basis of criteria. The Homeopathic Council is to issue the Registration Certificate while the admission is given by the colleges affiliated to the West Bengal University of Health Science under the 1963 Act and Regulations framed thereunder. Therefore the regulations were to be followed by the colleges at the time of

grant of admission. In not doing so the colleges have acted contrary to Statute and the Regulations.

43. In view of the aforesaid observations and discussion, we are of the clear opinion that no undue sympathy is possible to be extended to the appellants as the same would result in frustrating the very purpose of prescription of minimum eligibility criteria. Further, prescription of minimum eligibility criteria is in the overall public interest and as such we are of the opinion that if there is a conflict between private interest vis-a-vis public interest, we deem it proper to give way to the public interest, which is in favour of maintaining the standard of education in the field of medical and paramedical stream with regard to its process of admission.

44. Hence, no case is made out by the appellants to call for any interference and as such since we found no error, irregularity or perversity in any manner in an order passed by learned Single Judge, we are inclined to affirm the view adopted by learned Single Judge. Hence, we pass following order:

ORDER

- (1) Present Letters Patent Appeals stand DISMISSED and as a consequent thereof, CAV judgment delivered



by learned Single Judge dated 4.2.2021 in Special Civil Application No.20824 of 2019 and other cognate matters stands CONFIRMED. Notice discharged.

- (2) No Order as to costs.
- (3) Since main Letters Patent Appeals are dismissed, respective pending Civil Applications also do not survive and they stand disposed of. Interim relief, if any, stands vacated forthwith.

Sd/-
(ASHUTOSH SHASTRI, J)

Sd/-
(DIVYESH A. JOSHI, J)

FURTHER ORDER

After pronouncement of the judgment, learned senior advocate Mr. Shalin Mehta appearing for appellants has made a request that operation and implementation of the present order be suspended for some reasonable period of time, so as to enable the appellants to approach higher Forum. Considering this request and same has not been stoutly opposed by the counsel appearing for the authorities, we deem it proper to suspend the operation and implementation of the present order for a period of SIX WEEKS from today.

Sd/-
(ASHUTOSH SHASTRI, J)

Sd/-
(DIVYESH A. JOSHI, J)

OMKAR