



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 6207/2020

1. Madhu Saini D/o B.S. Saini, aged 33 years, R/o 6-G10 Mahaveer Nagar Extension, Kota.
2. Kavad Ishwar S/o Jashu Bhai, aged 27 Years, R/o A-25 Ganesh Nagar Society Amroli, Surat, Gujarat.
3. Vinod Kumar Pal S/o Raj Narayan Pal, aged 31 years, R/o M-19 Plot No. 304, Global City, Palghar, Maharashtra.
4. Richa Tripathi D/o Rejeshwar Tripathi, aged 41 years, R/o 365, Civil Lines, Narayan Nagar, Etah, UP.
5. Taak Amrit Kaur S/o Manjit Singh Taak, aged 27 years, R/o 4, Mahesh Naresh Cooperative Society, Ghodasar, Ahemedabad, Gujarat.
6. Rahul Vaid S/o Surinder Kumar Vaid, aged 41 years, R/o B-61A, Defence Colony, Meerut, UP.
7. Umang Kanwar D/o Kuldeep Singh, aged 37 years, R/o 72, Sector No. 1, Trikola Nagar, J and K.
8. Chowdhary Humatalat D/o Munir Azhar, aged 28 years, R/o Near Old Tidke, Nagpur.
9. Rahul Mehta S/o Amrik Singh Mehta, aged 22 years, R/o Duplex Banglow, Bhopal M.P.
10. Raj Kamal Grewal S/o Randhir Singh Grewal, aged 32 years, R/o 260/11, Shastri Nagar, Ambala City, Haryana.
11. G. Dessai Sidhee Ramesh D/o Ramesh Gauns Dessai, aged about 34 years, R/o Flat-Fo/1, A Building, Kurtakar Excellency, Gogal Margo, Goa.
12. Rajat Kumar S/o Chandra Bhan, aged 41 years, R/o 1/101 Ashok Vihar, Phase-I, Delhi.
13. Kunal Vuthoo S/o R.K. Vuthoo, R/o 675/A, Sector-3, Bhagwati Nagar, Canal Road, Jammu J and K.
14. Chauhan Bhunit Kumar S/o Iswar Lal, aged 28 years, R/o Jalaram Society, Taluka Gandevi, Navsari, Gujarat.
15. Vishal Vuthoo S/o R.K. Vuthoo, aged 37 years, R/o 675/A, Sector-3, Bhagwati Nagar, Canal Road, Jammu, J and K.
16. Lalit Chopra S/o Shanti Swaroop Chopra, aged 28 years,



Housing Colony, Nai Abadi, Gali No. 1, Bhind, M.P.

-----Petitioners

Versus

1. Rajasthan University of Health Sciences, through its Registrar, Sector- 18, Kumbha Marg, Pratap Nagar, Jaipur.
2. Daswani Dental College, Kota, through its Principal ITB-19, RIICO Industrial Area, Ranpur, Kota.
3. Dental Council of India, through its Secretary, Awan- E-Galib Marg, Kotla Road, New Delhi-110002.
4. P.G. Medical/Dental Admission Board 2017, through its Chairman, Admission Board and Principal and Controller, SMS Medical College, Jaipur.

-----Respondents

CONNECTED WITH

S.B. Civil Writ Petition No. 6233/2021

1. Madhu Saini D/o B.S. Saini, aged 33 years, R/o 6-G10 Mahaveer Nagar Extension, Kota.
2. Kavad Ishwar S/o Jashu Bhai, aged 27 Years, R/o A-25 Ganesh Nagar Society Amroli, Surat, Gujarat.
3. Vinod Kumar Pal S/o Raj Narayan Pal, aged 31 years, R/o M-19 Plot No. 304, Global City, Palghar, Maharashtra.
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-----Petitioners

Versus

1. Dental Council of India, through its Secretary, Awan- E-Galib Marg, Kotla Road, New Delhi-110002.
2. The National Board of Examination, Medicare Enclave, Ansari Nagar Ring Road, New Delhi - 110029.
3. Rajasthan University of Health Sciences, through its Registrar, Sector- 18, Kumbha Marg, Pratap Nagar, Jaipur.
4. Daswani Dental College, Kota, through its Principal ITB-19, RIICO Industrial Area, Ranpur, Kota.
5. P.G. Medical/Dental Admission Board 2017, through its Chairman, Admission Board and Principal and Controller, SMS Medical College, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr.Ravindra Shrivastava, Sr.Adv. (through VC) assisted by Mr.S.S.Hora, Adv., Mr.Arpit Sharma, Adv. and Mr.Kartikey Kumar, Adv.
For Respondent(s)	:	Mr.Ajay Shukla Adv., Mr.Ravi Chirania,



Adv., Mr.Harshal Tholia, Adv. on behalf of Dr.V.B.Sharma, AAG., Mr.Angad Mirdha, Adv. & Mr.Abhinav Sharma, Adv.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

JUDGMENT

Judgment reserved on : 4th July, 2022

REPORTABLE

Date of Judgment : 3rd August, 2022

By the Court:

As the issues involved in both the present two writ petitions are common, therefore, these writ petitions are decided by this common judgment.

2. **S.B.Civil Writ Petition No.6207/2020** has been filed by the petitioners, who are students of Master in Dental Surgery (in short "MDS"), seeking direction against the respondent-Rajasthan University of Health Sciences (in short "the respondent-University") to permit the petitioners to fill online examination forms and to undertake & participate in MDS Final Year (Main) Examination to be held in June, 2020.

3. **S.B.Civil Writ Petition No.6233/2021** has been filed by the same petitioners seeking declaration of prospective application of the notifications dated 01.09.2017 & 05.11.2017. The petitioners have also prayed that their admission has been made in a valid manner in MDS course in the year 2017 without requirement of being taken through NEET PG. The petitioners have further prayed to quash and set aside the impugned orders/letters dated 12.09.2018 & 08.02.2019 with the declaration that the petitioners were validly admitted by Daswani Dental College, Kota



(in short "the respondent-College") and the petitioners are not liable to be discharged from the MDS course.

S.B.Civil Writ Petition No.6207/2020:

4. The facts, in nutshell, as pleaded by the petitioners in the writ petition are that the petitioners were admitted in MDS Course by the respondent-college in May, 2017 and the petitioners completed the said course in the respondent-College in the year 2020. The examination of MDS course has to take place after completion of the course and the same was required to be conducted by the respondent-University in the year 2020, after completion of three years from the date of admission.

5. The petitioners have pleaded that they were required to submit their dissertation in the branch/specialty in the MDS course and as such all the petitioners submitted their dissertation before the respondent-University in the month of January, 2020. The dissertation, so prepared by the petitioners, was sent by the respondent-College to the respondent-University. The respondent-University issued a notice dated 05.06.2020 for conducting MDS Final Year (Main) Examination to be held in the month of June, 2020 for MDS Batch of 2017 and applications were to be submitted online from 09.06.2020 to 15.06.2020 and the examination was to start from 25.06.2020.

6. The petitioners have further pleaded that in the batch of MDS for the year 2017, which had a strength of 20 students, only four students were given enrollment numbers and the petitioners, who were 16 in number, were not provided with enrollment



numbers and as such, in absence of enrollment number, the petitioners could not fill in their online application forms.

7. The petitioners have pleaded that when they enquired as why enrolment numbers were not issued to them, they were verbally informed by the authorities of respondent-University that since they had not been admitted in MDS course through counseling held in the year 2017, they were not issued enrolment numbers.

8. The petitioners have further pleaded that the respondent-College had been undertaking and teaching MDS course since the year 2014 and for the batches of the years 2014, 2015 & 2016, every private dental college could directly admit students in PG-MDS course without any examination and without any counseling, on the basis of passing out BDS course and such students had already appeared in the examinations for the years 2017, 2018 & 2019, conducted by the respondent-University.

9. The petitioners have pleaded that in the year 2017, admissions were to be made through NEET PG, however, due to cut-off prescribed by NEET of 50 percentile, the seats in various dental colleges remained vacant in the counseling and such seats were filled up by all the private colleges.

10. The petitioners have also pleaded that full disclosure of the students admitted in MDS course in the year 2017 was made by the respondent-College and on submission of enrollment forms on 28.12.2017, the respondent-University had not raised any objection and even provisional enrollment numbers were given to the petitioners by the respondent-University.



11. The petitioners have pleaded that in spite of completing three year course of their study, the denial of the respondent-University to issue enrollment number and preventing the petitioners to participate in the examination was an arbitrary act and as such, the petitioners filed the writ petition praying for direction to allow them to fill online examination forms and to participate in MDS Final Year (Main) Examination to be held in June, 2020.

12. The coordinate Bench of this Court, at the time of admission of the writ petition on 15.06.2020, passed an order that the petitioners be permitted to provisionally fill in the examination forms to participate in the Master of Dental Surgery Final Year (Main) Examination (for Batch 2017) June 2020.

13. This Court on 06.09.2021 allowed impleadment application filed by the Dental Council of India (in short "the DCI"). The petitioners, after passing of the interim order dated 15.06.2020 by the coordinate Bench of this Court, filed an application for impleadment of NEET PG Medical/Dental Admission Board-2017 as party respondent in the writ petition and this Court on 14.09.2021 allowed the said application of impleadment.

14. The respondent-University in its reply, apart from merits of the matter, also raised preliminary objection with regard to filing of the writ petition at a belated stage by the petitioners without challenging the order of discharge dated 12.09.2018 passed by the DCI. The respondent-University also raised preliminary objection about non-impleadment of necessary parties like DCI & NEET Counseling Board and passing of interim order in absence of



necessary parties without challenging the basic order of discharge issued by the DCI.

15. The respondent-University has pleaded that after receiving the letter from NEET PG Admission Board dated 06.07.2018 and letter of the Director of Medical Education, Jaipur dated 19.07.2018, the respondent-DCI directed the respondent-College to discharge 16 students and if such students were not discharged, then the respondent-DCI was to take action under Section 10B of the Dentists (Amendment) Act, 1993 and Section 16A of the Dentists Act, 1948. The respondent-University has averred that letter/order dated 12.09.2018 was neither put to challenge by the respondent-College nor by the students-petitioners.

16. The respondent-University has also taken a plea that the respondent-College has committed a fraud by admitting new students, without any authority and permission from the Counseling Board and as such eight new students were admitted by the respondent-College, as per the list enclosed by the DCI in its letter dated 12.09.2018.

17. The respondent-University has also disputed the fact of submission of thesis/dissertation by all the petitioners and in fact the University authorities found that only four students were enrolled with the respondent-University and the remaining 16 students were not verified by the Counseling Board and the respondent-College submitted more than one dissertation of few students and NIL in the case of many. The respondent-University



had given a letter dated 12.06.2020 to the respondent-College as in what manner dissertation was submitted illegally.

18. The respondent-University, on merits of the matter, has submitted that admission of all the petitioners was granted without such candidates having passed NEET qualifying examination and the respondent-College on its own could not have granted admission.

19. The Chairman, PG Medical/Dental Admission Board, 2017 – respondent No.4 (in short “the respondent-Board”) has filed reply to the writ petition and apart from raising preliminary objections, has also filed reply on merits of the writ petition. The respondent-

Board has taken a specific stand that out of 20 seats, the State NEET Medical & Dental Admission Counseling Board had allotted four seats to the candidates in the respondent-College in the mop-up round and on the remaining 16 seats of the MDS Course, the petitioners were admitted by the respondent-College at College level, after mop-up round. The eligibility of the petitioners was not verified by the State NEET PG Medical and Dental Admission Counseling Board, 2017 in terms of the NEET PG qualification and all the candidates, who were admitted at the College level, were not NEET qualified and it was necessary for the NEET PG Medical and Dental Admission Counseling Board to adhere to the qualifying percentile declared by the National Board of Examination (in short “the NBE”).

20. The respondent-Board has submitted that admission of the petitioners, after mop-up round, from the candidates who were not registered with NEET PG Medical and Dental Admission



Counseling Board was not legal in any manner and the Information Bulletin of 2017 of the NBE clearly provided that admissions were to be made only from the candidates, who were NEET qualified.

21. The petitioners also filed additional affidavit whereby certain documents were placed on record including the minutes of various meetings of PG Medical/Dental Admission Board. The respondent-University also filed counter to the additional affidavit and also placed on record certain documents relating to the correspondences entered between the respondent-DCI and other statutory bodies.

S.B.Civil Writ Petition No.6233/2021:

22. The petitioners, apart from narrating the facts relating to their admission in the respondent-College, have mentioned in the facts of their writ petition that the respondent-DCI had issued a gazette notification dated 01.09.2017 whereby Dental Council of India, Master of Dental Surgery Course Regulations, 2017 were enacted and these Regulations have only prospective application and cannot be made retrospective to the admissions made, before coming into force of the said gazette notification. The petitioners have also pleaded that the impugned orders/letters dated 12.09.2018 & 08.02.2019 are invalid, void & illegal and the petitioners cannot be discharged from the respondent-College, where they have been pursuing their studies.

23. The petitioners, in the grounds raised in the writ petition, have challenged the orders dated 12.09.2018 & 08.02.2019 as ex-facie illegal & contrary to the principles of natural justice, being



passed after 17 months or 22 months of elapsing of courses. The petitioners have challenged the notification dated 01.09.2017 to the effect that the same cannot be made applicable retrospectively, as the seats were already filled in May, 2017.

24. The petitioners have challenged that lowering of percentile in NEET MDS results itself shows the intent behind the same, as the seats were not to be left vacant in MDS Course and as such 16 seats, which were vacant after counseling, were rightly given to the petitioners.

25. The petitioners also derived the source of power to the respondent-College to grant admission on the basis of a meeting of PG Medical/Dental Admission Board, 2017 as the total seats, which were left vacant after mop-up round in different colleges, were 201 and since the respondent-Board had given a list of 36 students, as such, the respondent-College granted them admission in a proper manner.

26. The petitioners have also staked their claim on the basis of remaining vacant seats to be filled and not to waste such seats, as per the direction issued by the Apex Court from time to time.

27. The respondent-College has filed reply to the writ petition and has pleaded that no illegality and irregularity has been committed by them and there has been no profiteering in filling the vacant seats and the candidates were admitted from open quota, after the mop-up round.

28. The respondent-College has pleaded that the Regulations of 2017, which provide for NEET and eligibility regarding admission through NEET, were not in existence till the process of admission



was over on 31.05.2017, as the Regulations of 2017 were notified only on 05.11.2017.

29. The respondent-College has pleaded that the earlier Regulations of 2007 provided BDS degree as the basic criteria and all the admitted candidates were duly eligible after the mop-up round and since the seats were vacant, even after the mop-up round, the same could be filled from open quota instead of NEET.

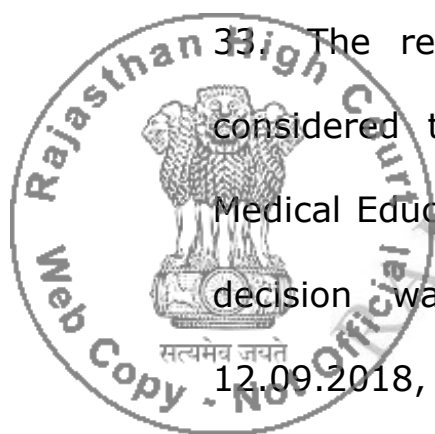
30. The respondent-DCI has filed counter affidavit and raised a preliminary submission that the admissions so made of the petitioners by the respondent-College have been treated to be void ab-initio and their admissions to MDS course cannot be termed as legal, in terms of the Regulations of DCI and the judgments passed by the Apex Court.

31. The respondent-DCI has pleaded that all the dental colleges were requested to upload the details of students admitted by them in MDS Courses for the academic session 2017-18 on DCI website by 07.06.2017 and the respondent-College uploaded the details of 20 students on DCI website on 07.06.2017 and also sent an email on 07.06.2017 and furnished the list of 20 students admitted in MDS Course.

32. The respondent-DCI vide letter dated 16.04.2018 forwarded the list of 20 students, uploaded/furnished by the respondent-College, to the respondent-University for its verification and copy was endorsed to the Director, Directorate of Medical Education, Jaipur for necessary action. The Directorate of Medical Education, vide their letter dated 19.07.2018, forwarded a copy of the letter dated 06.07.2018 of the Chairman, NEET PG (Medical/Dental)



Admission Board, 2017 and Principal & Controller, Medical College, Jaipur verifying the details of MDS students admitted in the respondent-College and informed the respondent-DCI that the students at S.No.1, 2, 4 & 13 were admitted by the Board and information of the rest of the students was not available with them.



33. The respondent-DCI in its meeting held on 23.08.2018 considered the letter dated 19.07.2018 of the Directorate of Medical Education and decided to discharge 16 students. The said decision was communicated to the respondent-College on 12.09.2018, followed by its reminders dated 31.10.2018 & 08.02.2019 whereby the Principal of the respondent-College was requested to intimate/confirm the status of discharge of 16 students admitted in MDS Course and the respondent-DCI further wrote to the Chairman, NEET PG Medical/Dental Admission Board, 2017 with regard to the status of 16 students as whether they were discharged from the respondent-College or not as repeated requests were made by the respondent-DCI to take necessary action.

34. The respondent-DCI, after various letters written to different authorities received letter dated 24.07.2019 from the Chairman, NEET PG Medical/Dental Admission Board, 2017, whereby 15 admissions were said to be made of different candidates from unregistered candidates, after the mop-up round was over and such admissions being made at the College level itself allegedly in compliance of the decision No.2 of the meeting dated 29.05.2017 of the respondent-Board.



35. The respondent-DCI has averred that the respondent-College vide their letter dated 14.06.2017 (received to them on 23.06.2020) furnished a list of 20 students admitted in MDS Course. The Executive Committee of the respondent-DCI in its meeting held on 02.09.2020 considered the letter dated 14.06.2017 of the respondent-College and issued a show cause notice to the respondent-College for taking action against them under Section 16A of the Dentists Act, 1948 and stoppage of admissions under Section 11A of the Dental Council of India (Establishment of New Dental Colleges Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 as there was gross ambiguity in the details of students uploaded on DCI website, list sent on 07.06.2017 and the list of students received in the DCI on 23.06.2020, since the respondent-College had replaced the names and details of eight students with other existing students, admitted in MDS Course and the names of such 8 students were given by the respondent-DCI in the counter affidavit.

36. The respondent-DCI has pleaded that the respondent-College had sent a letter and gave explanation about ambiguity in respect of the details of the students admitted in MDS Course and informed the respondent-DCI that the College authorities uploaded the list of students on DCI web portal but eight students had not joined/not reported but their details were uploaded before completion of admission process by mistake. The respondent-College took a plea that they admitted new students to fill up the vacant seats on the basis of minutes of the meeting of the



Chairman, NEET PG Medical/Dental Admission Board dated 29.05.2017 and the respondent-College could not make changes on DCI web portal because the respondent-DCI had locked the web portal to make any changes.

37. The respondent-DCI has pleaded that the Directorate of Medical Education, Jaipur and the respondent-University were also asked to confirm as whether these students were admitted or not in MDS Course for the academic session 2017-18 and the respondent-University clarified and stated that out of 20 MDS students, list sent by the respondent-College for enrolment for the academic session 2017-18, only four students were found in the list received from the Controller, NEET PG Medical/Dental Admission Board, 2017 and the remaining 16 students were not found and five students were not qualified in NEET MDS Course, as per NEET scorecard.

38. The respondent-DCI has further submitted that selection procedure for admission to Post Graduate Dental Course is envisaged in the Revised DCI MDS Course Regulations, 2007 and further an Ordinance was promulgated by the Central Government on 24.05.2016 providing mode and manner for conducting NEET and the same was repealed by the Dentist (Amendment) Act, 2016, which provides for uniform entrance examination.

39. The respondent-DCI has submitted that the Ordinance as well as Dentist (Amendment) Act, 2016 clearly mandated that uniform entrance examination, to all the dental educational institutions, at the undergraduate level and post-graduate level, was to be conducted.



40. The respondent-DCI has also taken a plea that the Revised MDS Course Regulations, 2017 were also framed in exercise of the power conferred by Section 20 of the Dentists Act, 1948 with the previous approval of the Central Government for maintaining uniform standard of dental education and admission procedure in all the dental colleges in the country including private colleges.

41. The respondent-PG Medical/Dental Admission Board, 2017 has filed reply to the writ petition and has in fact reiterated the same facts, as pleaded in the reply filed in S.B.Civil Writ Petition No.6207/2020. The stand of the respondent-Board has been very specific that the State NEET PG Medical & Dental Admission Counseling Board, 2017 had allotted four seats to the candidates in the respondent-College in the mop-up round and the petitioners were admitted by the respondent-College at the college level after mop-up round was conducted by the respondent-Board from unregistered candidates i.e. the candidates who were not registered with the State NEET PG Medical and Dental Admission Counseling Board, 2017 and eligibility of the petitioners was not verified by the State NEET PG Medical and Dental Admission Counseling Board, 2017 and the onus was on the respondent-College to admit only NEET PG qualified candidates.

42. The respondent-Board has also filed additional affidavit to clarify the stand of the Board in relation to the decision taken on 29.05.2017. It has been pleaded in the additional affidavit that National Eligibility-cum-Entrance Test (NEET) has been prescribed as the single window eligibility-cum-entrance examination for PG Courses (Medical & Dental) in Government as well as in Private



Dental Colleges and the NEET Examination is conducted by the National Board of Examinations (NBE), which is followed by multiple rounds of counseling conducted by the State Counseling Boards on the basis of marks secured in the NEET Examination.

43. It is further pleaded by the respondent-Board that the NEET-MDS Information Booklet for admission to MDS 2017 Session was issued by the NBE in September, 2016, wherein detailed provisions and directions regarding examination including the eligibility criteria, scheme of examination & counseling, instructions, etc. were given to the different candidates. The said information booklet clearly mentioned that no other entrance examination, either at the State or Institution Level, shall be valid for the MDS course, as per the Dentists Act, 1948 and the said information booklet specifically mentioned under Clause 3.2 that appearance in the NEET MDS, 2017 would not confer any automatic rights to secure a PG MDS Seat and the selection and admission was subject to fulfilling the admission criteria.

44. The said affidavit further states that the eligibility criteria for the NEET-MDS Entrance Examination has been provided under Clause 4 of the Information Booklet and a candidate was to obtain the minimum qualifying score, as prescribed, in the NEET Entrance Examination. The said affidavit further clarifies that the seats are to be allotted on the basis of merit list prepared in accordance with the marks secured in the NEET Examination and it should not be inferred as a direction to the Colleges to give admission by overlooking the basic essential eligibility criteria, prescribed by the Government of India.



45. The respondent-College has filed a counter affidavit to the affidavit filed by the respondent-Board and it has been reiterated that prior to 2017, only eligibility for admission to MDS Course was as per the earlier DCI Regulations of 2017 and in the year 2017, no NEET qualified candidates were made available to the College, as per the decision of the respondent-Board and vacuum was left by the Authorities in regulating examination and they failed to provide candidates and as such the respondent-College has already paid Rs.10 lakhs, as penalty imposed by the respondent-University for clerical mistakes committed by the Staff.

46. The respondent-Board by the additional affidavit filed on 06.04.2022 has placed on record the copy of NEET-MDS 2017 Advertisement, NEET-MDS 2017 Information Bulletin issued by the NBE, NEET-MDS 2017 Instruction Booklet for State Dental PG seats issued by Chairman, NEET PG Admission/Counseling Board 2021 and minutes of the meeting of PG Medical & Dental Admission Board, 2017 held in the chamber of Chairman, Admission Board and Principal & Controller, SMS Medical College, Jaipur on various dates starting from February, 2017 to May, 2017.

47. Reply to the writ petition has been filed on behalf of respondent-University and they have raised preliminary objection of filing present writ petitions by the students/petitioners for getting the admission legalized. The respondent-University stated that the respondent-College, by not challenging the orders dated 12.09.2018 & 08.02.2019 passed by the respondent-DCI, has accepted the admission to be illegal. The writ petition is



alleged to be suffering from delay and laches as the orders were issued on 12.09.2018 & 08.02.2019 giving directions to discharge the students but the respondent-College allowed the students/petitioners to complete the course and did not challenge the orders issued by the respondent-DCI.

48. The respondent-University has taken a plea that the petitioners have filed the writ petition in a collusive manner as the documents annexed with the S.B. Civil Writ Petition No.6207/2020 were provided by the respondent-College and when objections regarding concealment and not filing the orders of discharge were raised in the reply to the writ petition, then the same documents were provided by the respondent-College to the petitioners, who now have challenged the same orders in the present writ petition and as such fraud has been played upon the Court by the respondent-College and the petitioners. The respondent-University had demanded the information regarding NEET scores of the petitioners from the respondent-College vide letter dated 02.08.2018 and when the respondent-College did not provide the NEET scores, then the information was sought from the NEET PG Counseling Board, 2017 and as such the respondent-University had acted swiftly in the matter.

49. The respondent-University has taken a plea that NEET PG Counseling Board, 2017 in response to the request made, by the respondent-University, provided the score cards of seven students out of 16 students, in which it was found that out of seven students only two were NEET qualified and the remaining five students did not have the minimum percentile to qualify the NEET



Examination and even the remaining nine students did not appear in the NEET PG Examination, 2017 and as far as seven students are concerned, only two students are NEET qualified.

50. The respondent-University has submitted that fake NEET scores were mentioned by the petitioners whereas they did not appear in the NEET-2017 Examination and as such the comparative chart has been reproduced by the respondent-University in the reply to the writ petition where fake information was furnished by the petitioners.

51. The respondent-University has found that out of 16 students, they received NEET scores of petitioner No.2, 5, 7 and 12 to 15 from the NEET Counseling Board and details which were provided by the NEET Counseling Board of the marks of the petitioners, was at variance, as per the list provided along with the affidavit as well as the enrollment form filed by the petitioners with the writ petition.

52. The respondent-University has taken a plea that the Information Bulletin, issued by the NEET Counselling Board, 2017, had provided the qualifying criteria under condition No.13.1, and the general instructions, terms and conditions under condition No.3.2 provided the eligibility and as per the said eligibility, the petitioners were not qualified to pursue the MDS Course.

53. The respondent-University has pleaded that the respondent-College has created two letters of the same date i.e. 07.06.2017 and by the first letter, a list was uploaded on DCI Online Portal and by the second letter, different list was submitted to the DCI and thereafter by letter dated 14.06.2017 (received on 23.06.2020)



another list was submitted to the DCI in which 8 students were replaced. The respondent-University has given the list of the students whose names were replaced and as such, it is stated that the respondent-College has committed a forgery.

54. The respondent-University has also pleaded that while filling the enrollment form, the students are required to sign the declaration that if any information is found false or incorrect, then such student can be disqualified by the respondent-University and the petitioners have provided false information to the respondent-University that they have appeared in the NEET Examination and as such the petitioners due to their act and conduct do not deserve any indulgence under Article 226 of the Constitution of India.

55. The respondent-University has also clarified with regard to issuance of order dated 17.06.2021 whereby the respondent-College was asked to deposit a penalty of Rs.10 lakhs for making illegal admission in the MDS Course. The respondent-University has taken a plea that the Academic Council of the respondent-University in its meeting dated 26.08.2021 has decided to withdraw the order dated 17.06.2021 to the extent of issuance of MDS degrees of the petitioners subject to final outcome of the writ petition but has maintained the penalty. However, the respondent-University, while imposing the penalty, has not legalized the admissions.

56. The respondent-University has also submitted that in view of the law laid down by the Apex Court in the case of **Abdul Ahad and Others Vs. Union of India and Others** reported in **2021**



SCC Online SC 627, the illegal admissions of the petitioners cannot be regularized and no sympathetic view may be taken and the writ petitions deserve to be dismissed.

57. Learned Senior Counsel Mr. Ravindra Shrivastava has made the following submissions on behalf of the petitioners:-

(1) The admissions of the petitioners were not illegal and no violation of any settled law relating to admission has taken place since NEET was made compulsory for admission only on 05.09.2017.

(2) There is no allegation of violation of the Regulations of 2007 qua admission of the petitioners, as neither the letter of discharge, issued by the respondent-DCI nor the counter affidavit filed by the DCI, state so.

(3) The impugned letter of discharge is not based on the ground of the petitioners not being NEET qualified or their admissions were made in any illegal or void manner and as such the reason of discharge of the petitioners, is neither relevant nor justifiable.

(4) The respondent did not issue any show cause notice or afforded any opportunity of hearing to the petitioners at any point of time, before issuing the discharge order and the same reflects arbitrariness and total non application of mind by the respondent-DCI before taking any action.

(5) The verification of admissions of the petitioners is yet to be concluded and yet the discharge order has been passed without completing the process of verification.



(6) The admissions of the petitioners are not by way of backdoor entry and the respondent-Board's decision dated 29.05.2017 permitted the consideration of non NEET registered candidates, after the mop up round and as such, the decision of the respondent-Board was acted upon by other similarly situated Colleges, whereby vacant seats were allotted after the mop up round.

(7) The petitioners have not secured admission in an illegal manner and they are not guilty of any backdoor admission by playing fraud or affecting any other candidate's right.

(8) The petitioners have completed their three years of study, submitted their dissertation and have also written their final examination, as such, time and efforts made by them should not be allowed to go waste.

58. Learned Senior Counsel for the petitioners has placed reliance on the following judgments:-

- a. **Ranjan Purohit & Ors. V. RUHS & Ors., reported in 2012 (10) SCC 770.**
- b. **Priya Gupta V. State of Chattisgarh & Ors., reported in 2012 (7) SCC 433.**
- c. **Abha George V. AIIMS, reported in 2022 SCC Online DEL 366.**
- d. **Ashok Chand Singhvi V. University of Jodhpur, reported in 1989 (1) SCC 399.**
- e. **A Sudha V. University of Mysore and Anr., reported in 1987 (4) SCC 537.**
- f. **Rajendra Prasad Mathur V. Karnataka University and Anr., reported in 1986 Supp SCC 740.**
- g. **Saraswati Educational Charitable Trust and Anr. V. Union of India and Ors., reported in 2021 SCC Online SC 137.**



h. **Union of India V. Federation of Self-financed Ayurvedic Colleges, Punjab & Ors., reported in 2020 (12) SCC 115.**

59. Learned counsel-Mr. Abhinav Sharma appearing for the respondent-College has submitted that no illegality has been committed by the respondent-College, while admitting the petitioners from open quota after mop-up round, as per the prevalent Regulations of 2007 and as per the decision of the NEET PG Dental and Medical Admissions Board, 2017. Learned counsel for the respondent-College submitted that the DCI MDS Course Regulations, 2017 provides for NEET and eligibility regarding admission through NEET was not in existence till the completion of admission process on 31.05.2017. Learned counsel for the respondent-College submitted that prior to 2016 the only eligibility to MDS Course was as per the Regulations of 2007 and the respondent-College has followed the norms for admission, which were prevalent at the time of granting admissions.

60. Learned counsel-Mr. Angad Mirdha, appearing for the respondent-DCI, has submitted that the admissions granted to the petitioners are *per se* illegal and any admission made, of any candidate who has not qualified the NEET examination, cannot be treated as a regular admission.

61. Learned counsel for the respondent-DCI further submitted that the respondent-College had not only furnished incorrect information to the respondent-DCI but had also not discharged the students in spite of decision taken by the respondent-DCI, which was duly communicated to the respondent-College. Learned counsel for the respondent-DCI submitted that in spite of letters of



discharge of students issued against the petitioners, the respondent-College is guilty of continuously violating the law and in most illegal and mischievous manner, the respondent-College had permitted the students to complete the three year course.

62. Learned counsel for the respondent-DCI argued that filing of the writ petition by the petitioners and seeking interim directions, in absence of necessary party i.e. DCI and by concealing important facts from the Court, does not entitle the petitioners to get any equitable relief under Article 226 of the Constitution of India.

63. Learned counsel for the respondent-DCI has placed reliance on the following judgments:-

- a. **Union of India Vs. M.K. Sarkar, reported in (2010) 2 SCC 59.**
- b. **Dilip Singh Vs. State of UP & Ors., reported in (2010) 2 SCC 114.**
- c. **Modern Dental College and Research Centre & Ors. Vs. State of Madhya Pradesh & Ors. reported in (2016) 7 SCC 353.**
- d. **State of Madhya Pradesh Vs. Jainarayan Chouksey & Ors. reported in (2016) 9 SCC 412.**
- e. **Order dated 28.04.2016 passed by the Apex Court in the case of Sankalp Charitable Trust & Anr. Vs. UOI & Ors. reported in AIR 2016 SC 2159.**
- f. **Deepanshu Bhadoriya & Ors. Vs. MCI & Ors. (LPA No.581/2019) decided on 09.09.2021 by the Delhi High Court.**
- g. **Abdul Ahad and Others Vs. Union of India and Others reported in 2021 SCC Online SC 627.**

64. Learned counsel-Mr. Ravi Chirania, appearing for the respondent-University, has submitted that the petitioners in collusion with the respondent-College, while concealing the order



dated 12.09.2018, got the interim order dated 15.06.2020 in their favour from this Court, which reflects serious misconduct of the petitioners/ students of the respondent-College. Learned counsel for the respondent-University argued that both the writ petitions filed by the petitioners are glaring example of concealment, misrepresentation and fraud with the Authorities as well as with this Court.

65. Learned counsel for the respondent-University further argued that the petitioners do not deserve any indulgence from this Court as forged documents have been placed on record and the respondent-College initially uploaded different list on the web portal of the DCI and then they replaced four students from the list so uploaded on the web portal of the respondent-DCI. The respondent-College before filing of the writ petitions created another letter dated 14.06.2017 enclosing the list of the students wherein again eight students were replaced from the list uploaded on the DCI web portal.

66. Learned counsel for the respondent-University submitted that the petitioners are also involved in committing fraud upon the Authorities as they submitted false information about appearing in the NEET Examination and their NEET scores in the enrollment forms.

67. Learned counsel for the respondent-University submitted that the petitioners are not NEET qualified and their admissions were made after the last cut off date i.e. 31.05.2017, without NEET PG scores and the same is an outcome of the collusion between the petitioners/students and the respondent-College.



68. Learned counsel for the respondent-University further submitted that as per the Information Booklet, National Board of Examinations (NBE) was to conduct the NEET examination and a candidate was required to have minimum of marks at 50th percentile in NEET PG MDS Examination and then only admissions were to be given as per the strict merit.

69. Learned counsel for the respondent-University has placed reliance on the following judgments:-

a. **State of Madhya Pradesh Vs. Jai Narayan Chouksey & Ors., reported in (2016) 9 SCC 421.**

b. **Saraswati Educational Charitable Trust and Anr. V. Union of India and Ors., reported in AIR 2021 SC 1160.**

70. I have heard learned counsel for the parties and perused the material available on record.

71. This Court, after considering the pleadings of the parties, finds following facts to be undisputed:-

- (a) The petitioners were admitted in MDS Course in the respondent-College in May, 2017 i.e. 31.05.2017.
- (b) Information booklet for NEET for admission to MDS Course, 2017 was issued by the National Board of Educations (NBE) in September, 2016.
- (c) The Information booklet had clearly provided that the candidate was to obtain minimum qualifying score, as provided in the NEET Entrance Examination.
- (d) The NEET MDS, 2017 advertisement was issued and the Information booklet for State Dental Post Graduate seats



was also issued by the Chairman, NEET PG Admission/Counseling Board.

(e) The petitioners filed first writ petition – S.B.Civil Writ Petition No.6207/2020 seeking direction to fill the online examination forms and to participate in the MDS Final Examination held on May, 2020.

(f) The petitioners did not implead the Dental Council of India and NEET PG Admission/Counseling Board, 2017 as party-respondent in the said writ petition.

(g) The petitioners did not make any reference of orders/letters dated 12.09.2018 and 08.02.2019 issued by the Dental Council of India.

(h) The petitioners did not secure the requisite cut-off marks in NEET PG Examination, 2017 and they were granted admission by the College after the mop-up round was over.

(i) The National Board of Examinations (NBE) issued the scorecards of the petitioners and as per the revised All India MDS Ranking, all the petitioners were not found to be qualified.

(j) The enrollment forms, filled in by the petitioners in the University, reflected the marks of the petitioners and the same were at variance/different, as per the record available with the NEET PG Admission/Counseling Board.

(k) The respondent-College had uploaded the list of the students, admitted in the MDS Course on the Dental Council of India's web portal on 07.06.2017.



(l) The respondent-College vide letter dated 07.06.2017 submitted the list to the Dental Council of India, which was received on 14.06.2017 and the respondent-College had replaced four students from the list, as uploaded on the web portal of the Dental Council of India.

(m) The respondent-College sent a letter dated 14.06.2017, which was received by the Dental Council of India on 23.06.2017 whereby another list of eight students was enclosed and eight students were replaced from the list, as uploaded on the web portal of the Dental Council of India on 07.06.2017.

(n) The Executive Committee of the Dental Council of India in its meeting dated 23.08.2018 decided to discharge the students and copy of the said decision was sent to the respondent-College.

(o) On 12.09.2018, the respondent-College was directed to discharge 16 students, who were admitted illegally in the MDS Course in the year 2017.

(p) The respondent-College, in spite of receiving the letters dated 23.06.2018, 12.09.2018, 13.10.2018 & 08.02.2019 to discharge the petitioners, permitted the petitioners to undertake the course and did not challenge the said orders.

(q) The NEET PG Admission/Counseling Board on 15.07.2020 informed the respondent-University that out of 16 students-the petitioners, seven students had appeared in the NEET PG Examination, 2017 and only two students had secured the minimum percentile and the remaining seven students did



not appear in the NEET PG Examination, 2017 and out of 16 students, only two students, who secured minimum percentile, were granted admission after the cut-off date.

72. The main issue before this Court is to consider the eligibility of the petitioners to get admission in MDS Course, 2017 and whether the petitioners could continue in the said Course without being admitted in a legal and proper manner.

73. This Court finds that the National Eligibility-cum-Entrance Test (NEET) was conducted by the National Board of Examinations (NBE) for admission to the MDS Course, 2017 session and the NEET-MDS was an eligibility-cum-ranking examination, as a single window entrance examination for Dental PG Course and no other entrance examination, either conducted at the State or the institution level, was valid for entry to MDS Course, as per the Dentists Act, 1948. The National Board of Examinations (NBE) had to conduct a computer based test and the examination centres for said test were located in 41 cities of the country.

74. This Court finds that the National Board of Examinations (NBE) issued Information booklet for NEET-MDS for admission to MDS Courses, 2017 which provided a qualifying criteria in Clause No.13.1 of the Information booklet wherein it was specifically provided that as per the Dental Council of India Revised MDS Course (Second Amendment) Regulations, 2007 in order to be eligible for admission to any Post Graduate Dental Course in a particular academic year, it was necessary for a candidate to obtain minimum marks at 50th percentile in the National Eligibility-cum-Entrance Test and for the candidates of SC/ST & OBC, the



minimum marks were at 40th percentile and further if sufficient candidates did not secure the minimum marks, as prescribed in the NEET examination, the Central Government in consultation with the Dental Council of India was having discretion to lower the minimum marks.

75. This Court finds that meetings of PG Medical/Dental Admission Board, 2017 were held from time to time and the members of the Board in the meetings held from 17.05.2017 to 21.05.2017 discussed the letter of Ministry of Health & Family Welfare, Government of India dated 11.05.2017 whereby the minimum qualifying percentiles had been lowered category-wise and members of the Board concluded that at the end of the second round of counseling (offline), registration would be opened for applications to State NEET PG Dental Counseling, 2017 and fresh applications were to be invited. The Board also took decision that second round for offline MDS (Dental) Course was to be started and completed on 18.05.2017 and the seat matrix had total of 120 seats vacant for the MDS (Dental) Post Graduate Course.

76. This Court further finds that the PG Medical/Dental Admission Board, 2017, in its meeting held on 27.05.2017, discussed the letter received from the Dental Colleges regarding admission on residue vacancies in the Colleges and it was decided to fill up various categories of seats, as per the merit, with the Non-Resident Indian (NRI) Quota to be filled up first.

77. This Court further finds that PG Medical/Dental Admission Board, 2017, in its meeting held on 29.07.2017, took a decision



that the candidates, who were already registered with the State NEET PG Medical & Dental Admission & Counseling Board, 2017 and could not fill up the registration forms for mop-up round, scheduled to be held on 29th & 30th May, 2017, by the stipulated date of 27th May, 2017, could be allowed to fill in the applications and the same was to be considered for the mop-up round.

However, the applications of those candidates who were not registered with the State NEET PG Medical & Dental Admission & Counseling Board, 2017 and wished to participate in the mop-up round, were to be considered only after completion of the mop-up round.

78. This Court, on a plain reading of the said decision of the Admission Board, finds that window was open for the candidates to fill in the registration forms for mop-up round and such candidates, who were permitted to be registered, by filling in their application forms for mop-up round and other candidates, who were not registered and could not fill up their application forms and wanted to participate in the mop-up round, were to be considered only after completion of the mop-up round.

79. This Court finds that the said decision of the Admission Board nowhere had left it open for any College on their own to admit the students after the mop-up round was over.

80. The source of power to grant admission to the petitioners by the respondent-College is on the basis of own interpretation of the respondent-College by admitting the students without such students being registered with the State NEET PG Medical and Dental Admission & Counseling Board.



81. The submission of learned counsel appearing for the petitioners as well as learned counsel appearing for the respondent-College that since sufficient number of vacant seats were available, as such the respondent-College in a bonafide manner exercised its right to fill the vacant seats, this Court finds that the said submission cannot be accepted by this Court as neither the petitioners were registered with the State NEET PG Dental Admission/Counseling Board nor they were NEET qualified and the same was a mandatory requirement.

82. The submission of learned counsel for the petitioners that there was no illegality committed in granting admission to the petitioners and NEET qualification having been made compulsory for admission only w.e.f. 05.09.2017, as such the admissions of the petitioners are to be treated as legal, this Court finds that the admissions for the Academic Year 2017-18 were required to be made, as per the directions issued by the Dental Council of India through the NEET PG Examination, which was conducted by the National Board of Examinations (NBE). This Court finds that the Information Booklet, supplied to each candidate including the petitioners had made it very clear that there was a single window entrance examination for admission in the MDS Courses and a candidate was required to secure the minimum marks/percentile.

83. There is no dispute with regard to applicability of Regulations of 2017, which had been made applicable w.e.f. 01.09.2017, whereby Regulation 6 provides that there will be uniform NEET for admission to the PG Dental Course in each Academic Year, to be



conducted by the National Board of Examinations (NBE) or any other authority, appointed by the Central Government.

84. The moot question before this Court is to consider as whether prior to enactment of Regulations of 2017, the candidates were required to qualify the NEET Examination, which was admittedly conducted for admissions in Academic Session 2017-

18
85. This Court finds no substance in the submission made by learned counsel for the petitioners that without having statutory Regulations of 2017, the authorities could not have insisted upon the petitioners to qualify in the NEET Test, this Court finds that the Dental Council of India had authorized the National Board of Examinations (NBE) to conduct the qualifying examination, as per the powers conferred under the Dental Council of India Revised MDS Course (Second Amendment) Regulations, 2007.

86. The submission of learned counsel for the petitioners that there was no violation of the Regulations of 2017, qua the admissions of the petitioners, as neither letter of discharge nor the counter affidavit, filed by the Dental Council of India state so, this Court finds that the Dental Council of India is the competent authority created under the Dentists Act, 1948 to impart education in dental field and in order to see/determine the eligibility for the purpose of admission in different dental courses, it can look into the eligibility of the candidates for the purpose of admission and if the Dental Council of India had taken a decision to discharge the petitioners, the same cannot be treated as having



been passed on the allegations of violation of the Regulations of 2017.

87. This Court finds that the order dated 12.09.2018 makes a reference of the letter received from the Director, Medical Education, Jaipur (Rajasthan) and the letter dated 06.07.2018 received from the Chairman, NEET PG Admission Board, wherein the details of MDS students were verified and only four candidates were found to be admitted by the Counseling Board and information of 16 candidates was not available with the Counseling Board and as such the Dental Council of India in its meeting, held on 23.08.2018, decided to discharge 16 students, as the admission of these students was not confirmed for the Academic Session 2017-18.

88. The letter dated 12.09.2018 has taken into account that the petitioners were admitted in the respondent-College, at the College level itself, without having any registration with the Admission Board and further without qualifying in the NEET examination and as such the Dental Council of India had, rightly taken the decision to discharge these students.

89. The submission of learned counsel for the petitioners that discharge of the petitioners is not based on the ground that they were not NEET qualified or their admissions were made in any illegal manner and further reasons of discharge of petitioners were neither relevant nor justifiable, this Court finds that the petitioners not being admitted through the Counseling Board on the basis of merit and further not qualified in the NEET examination, were liable to be discharged and the Dental Council of India had



sufficient basis to reach to the conclusion, after information was furnished to them by the Admission Board, that the petitioners were admitted at the College level itself and the Admission Board was not even aware of such admissions being made.

90. The submission of learned counsel for the petitioners that the petitioners were not issued any show-cause notice or opportunity of hearing was not given to them, this Court finds that the Dental Council of India had received information, about illegal admissions made by the respondent-College, furnished by the Chairman, NEET PG Admission Council Board and the Director, Medical Education, Jaipur and upon receiving such information, the decision was taken, by informing the College concerned, to discharge the petitioners (students), as they were not having eligibility to get admission.

91. This Court finds that the petitioners have themselves got admission without having eligibility and they did not qualify in the NEET Examination and the petitioners further supplied incorrect information to the University authorities by furnishing false information of having secured qualifying marks in the NEET examination and as such, the petitioners cannot be allowed to plead that notice or opportunity was required to be given to them. This Court finds that the petitioners got admission by wrong means knowing fully well about their eligibility and as such they cannot be permitted to claim right in their favour of offering them opportunity of hearing before discharging them from the course, in which they got admission in an illegal manner.



92. The submission of learned counsel for the petitioners that verification of admission of the petitioners is yet to be concluded and discharge order has been passed without completing the process of verification, this Court finds no substance in the said submission and it is wrong assumption on the part of the petitioners that verification of admissions of the petitioners is yet to be concluded.

93. This Court, from bare reading of the order dated 12.09.2018, finds that the Director, Medical Education, Jaipur and Chairman of the Admission Board had already communicated to the petitioners that they had not been given admission through PG Counseling Board and they were not having the requisite percentile of marks in the NEET examination.

94. The submission of learned counsel for the petitioners that they are not backdoor entries and as per the decision dated 29.05.2017, non-NEET registered candidates, after mop-up round, were permitted and the decision of the Board was acted upon by the similarly situated Colleges for filling the vacant seats, this Court is afraid to accept the submission of learned counsel for the petitioners and finds that even the decision dated 29.05.2017 did not permit any admission to be made from non-NEET registered candidates and further even after the mop-up round was over, it was incumbent upon the College authorities to seek further instructions from the PG Counseling Board as whether the vacant seats, after mop-up round, could have been filled by them at their own.



95. The submission of learned counsel for the petitioners that the petitioners have not played any fraud or affecting any other candidate's right, this Court does not find such submission to be of any merit. This Court finds that the petitioners have furnished incorrect/false information to the University authorities of having secured marks/percentile in the NEET examination, whereas some of the petitioners had not appeared at all in the NEET examination and while filling up the enrollment forms, they have deliberately misguided the University authorities and as such no protection can be given to the petitioners.

96. The submission of learned counsel for the petitioners that the petitioners have completed three year course of study and have also written their final examination and as such, efforts made by them should not go waste, this Court finds little substance in such submission and the same is noted to be rejected. This Court finds that the petitioners and the College authorities were well aware of the discharge order, passed by the Dental Council of India on 12.09.2018 and yet the petitioners in connivance with the College authorities continued with their studies in the College. The petitioners cannot be permitted to take advantage of a situation which was created to nullify or to give effect to the action taken by the Dental Council of India.

97. This Court finds that had the College authorities felt aggrieved against the action taken by the Dental Council of India, the proper action was required to be taken at their level and the College authorities did not bother to do so, in spite of the communication dated 12.09.2018. This was a dubious device



which was adopted by the respondent-College and they permitted the petitioners with the wrong admissions and when the examination was due in May, 2020, they projected the students- the petitioners, as face of the College for seeking indulgence from this Court and sought permission to write examination even without disclosing the discharge orders being passed by the Dental Council of India in the year 2018 itself.

98. The submission of learned counsel for the petitioners that the Apex Court has been consistent in holding that the seats in medical courses should not go waste and admissions given to the candidates may be regularized, this Court is afraid to accept the said submission of learned counsel for the petitioners. The question before this Court is not of considering as whether the seats would go waste or can be utilized by any person at the College level without having the minimum eligibility or qualification, which is prescribed for admission to such courses.

99. This Court finds that if the plea of the learned counsel for the petitioners is accepted, then the Colleges/admission bodies will be acting on their own to adjudge the eligibility of different persons for the professional courses and the candidates without having the requisite eligibility and merit will be able to get admission and then seal of approval will be sought from the Courts of law that such persons need to be regularized for the purpose of pursuing professional courses.

100. This Court finds substance in the submission of the learned counsel for the Dental Council of India that the College authorities as well as the petitioners were bound by the statutory



Regulations, which have been framed by the Dental Council of India and no admission in MDS Course could have been granted without having secured the qualifying marks/percentile in the examination, conducted by the National Board of Examinations (NBE) in the year 2017.

101. This Court further finds substance in the submission of learned counsel for the respondent-DCI that the Central Government had promulgated Ordinance on 24.05.2016 with regard to mode and manner for conducting NEET Examination and the said Ordinance was replaced and repealed by the Dentists (Amendment) Act, 2016, enacted on 02.06.2016 providing for uniform entrance examination to all the Dental Educational Institutions under the graduate and post graduate levels through designated authority and the designated authority was to ensure conduct of uniform entrance examination.

102. This Court finds that the Dental Council of India issued Revised MDS Course Regulation, 2017 and for the purpose of selection of post graduate students, it is provided that the students for MDS PG Course shall be selected strictly on the basis of their academic merit and for the purpose of determining the academic merit, the University/Institutions were given option to adopt procedure for post graduate diploma and MDS degree courses and the said procedure could be either (i) on the basis of merit determined by the competitive test, conducted by the State Government or by the Competent Authority, appointed by the State Government or by the University/Group of Universities in the same State, or (ii) on the basis of merit, as determined by the



Centralized competitive test held at the National level; or (iii) on the basis of the individual cumulative performance at the first, second, third and final BDS Examination, if such examination was passed from the same University; or (iv) combination of (i) & (iii).

103. This Court, on perusal of the same, finds that centralized competitive test was permissible to be conducted at the National level and for the year 2017, such centralized competitive test was held at the National level, the admissions could only be made by the said method and by no other method.

104. This Court further finds substance in the submission of learned counsel for the University that the petitioners have been guilty of furnishing wrong information to the University authorities while filling up the enrollment forms and the petitioners deliberately did not disclose complete facts about their eligibility and rather the petitioners made false claims about their eligibility.

105. Counsel for the petitioners has placed reliance on the judgment passed by the Apex Court in the case of **Rajan Purohit & Ors. Vs. RUHS & Ors.** (supra) wherein the Apex Court has made a distinction between a candidate who does not fulfill the eligibility criteria for admission to MBBS Course and a candidate who fulfills the eligibility criteria but has not been admitted in accordance with the procedure for selection on the basis of merit. The Apex Court has held that in a case where the 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. In the said case, the Apex Court held that the Medical College was at fault in not holding a competitive entrance



examination for determining *inter-se* merit of the students who had applied to the College for admission into MBBS seats of the College in accordance with clause (2) of Regulation 5 of the MCI Regulations and did not follow transparent and fair admission process.

106. The Apex Court further held that the students were the beneficiaries of violation of MCI Regulations and they got admission without proper evaluation of their merit and as such the Apex Court, exercising its power under Article 142 of the Constitution of India, directed the petitioners therein-the students to pay Rs.3,00,000/- to the State Government.

107. The judgment relied upon by the learned counsel for the petitioners does not help the case of the present petitioners as the Apex Court itself has made a distinction between a candidate who does not fulfill the eligibility criteria for admission to MBBS Course and a candidate who fulfills the eligibility criteria but has not been admitted in accordance with the procedure for selection on the basis of merit. Moreover, the Apex Court has exercised its power under Article 142 of the Constitution and as such, the said judgment is of no assistance to the petitioners.

108. Reliance is placed by the learned counsel for the petitioners on the judgment rendered by the Apex Court in the case of **Priya Gupta Vs. State of Chattisgarh & Ors.** (supra), again the Apex Court considered the peculiar facts and circumstances of that case in order to do complete justice between the parties, exercising its powers under Article 142 of the Constitution of India and permitted the appellants therein to complete their professional



course subject to condition of paying Rs.5,00,000/- to the College. The said judgment is of no assistance to the petitioners as the Apex Court has exercised its powers under Article 142 of the Constitution of India.

109. Reliance is placed by the learned counsel for the petitioners on the judgment passed by the Delhi High Court in the case of

Abha George & Ors. Vs. AIIMS & Ors. (supra), this Court finds that the Delhi High Court found that the petitioners therein had not misrepresented or concealed any information from the authorities about conducting qualifying examination and as such, the blame was more on the Institution than the petitioners therein and accordingly, the cancellation of admission was set aside. The said judgment is not applicable on the legal issue involved in the present writ petitions and as such the same is of no help to the present petitioners.

110. Reliance is placed by the learned counsel for the petitioners on the judgment rendered by the Apex Court in the case of **Ashok Chand Singhvi Vs. University of Jodhpur & Ors.** (supra), this Court finds that the Apex Court in that case came to the conclusion that it was the duty of the authority-University to see that its statutes, rules and resolutions were clear and unambiguous and did not mislead bonafide candidates. The Apex Court has held that it was the sins of management in admitting the students and as such, the appellant therein was not at fault and he was not to suffer on the basis of the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering.



This Court finds that the judgment relied upon by the learned counsel for the petitioners is of no assistance to the petitioners.

111. Reliance is placed by the learned counsel for the petitioners on the judgment passed by the Apex Court in the case of **Rajendra Prasad Mathur Vs. Karnataka University & Anr.**

(supra), this Court finds that the Apex Court has held that the blame for wrongful admission, was more upon the Engineering College which granted admission and as such, the Apex Court regularized the admission of ineligible candidates and accordingly, the candidates were allowed to pursue the course for a considerable length of time. The said case is of no assistance to the petitioners.

112. Reliance is placed by the learned counsel for the petitioners on the judgment of the Apex Court in the case of **A.Sudha Vs. University of Mysore & Anr.** (supra), this Court finds that the said judgment was based on the case of Rajendra Prasad Mathur (supra) decided by the Apex Court. The said judgment, in the humble opinion of this Court, is of no assistance to the petitioners.

113. Reliance is placed by the learned counsel for the petitioners on the judgment rendered the Apex Court in the case of **Saraswati Educational Charitable Trust & Anr. Vs. UOI & Ors.** (supra), this Court finds that the Apex Court considering the peculiar facts of that case of completing the 2nd year of MBBS Course, came to the rescue of the students by permitting them to complete the MBBS Course and the Apex Court in para-12 of the said judgment made it clear that considering the peculiar facts and circumstances of the case, the said judgment was not to be



treated as a precedent, since the said judgment is not a precedent for any other case, as such, no benefit can be derived by the petitioners by placing reliance on the same.

114. Reliance is placed by the learned counsel for the petitioners on the judgment passed by the Apex Court in the case of **UOI Vs. Federation of Self-Financed Ayurvedic Colleges, Punjab &**

Ors. (supra), the Apex Court again permitted the students therein to continue with the study, provided they were admitted prior to the last date of admission. The said order was treated as a one time exercise, considering the peculiar facts and circumstances, and the Apex Court ordered that the said judgment was not be treated as a precedent. This Court in view of the said judgment, not being a precedent, cannot take into grant the relief, as has been claimed by the petitioners.

115. This Court finds that the Apex Court in the case of **Abdul Ahad & Ors. Vs. UOI & Ors. (supra)** has laid down the law that if the admissions in the medical college are granted by conducting private counseling then such admissions are termed as *per se* illegal. The Apex Court has further held that when the admissions granted to the students through private counseling, are found to be *per se* illegal, then such admissions cannot be protected, as the said admissions were done in a patently illegal manner. The extracts of the judgment, relevant for the present purpose, are as follows:-

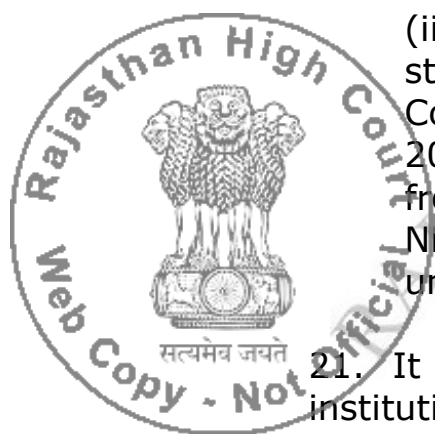
"20. The said Notification dated 22.8.2016 came to be challenged by various petitioners including Glocal University before a Division Bench of the Allahabad High Court. The Allahabad High Court by an elaborate judgment dated 15.9.2016 found no fault with the Notification issued by the State of Uttar Pradesh prescribing centralized counselling for



all institutions for admission to MBBS/BDS course in the State, based on NEET 2016. It will be relevant to refer to the following observations in the operative part of the judgment of the Allahabad High Court dated 15.9.2016, which read thus:

“(i) Subject to what has been held hereinabove, the impugned orders prescribing a Centralized Counselling for all institutions for admission to MBBS/BDS medical courses in the State based on NEET 2016, do not suffer from any error.

(ii) Minority institutions shall be allowed to admit the students of their community based on Centralized Counselling held by the State on the basis of NEET 2016, to the extent permissible, but, without deviating from the merit of such students as reflected in the NEET list 2016, so as to sub-serve their minority status under Article 30(1) of the Constitution of India.”



21. It could thus clearly be seen that though minority institutions were allowed to admit the students of their community based on Centralized Counselling held by the State on the basis of NEET 2016, the same was to be done without deviating from the merit of the said students.

22. Though Shri Neeraj Kishan Kaul, learned Senior Counsel, tried to submit that the Notification dated 22.8.2016 is only an administrative instruction and therefore not binding, we are unable to accept the same.

23. It will be relevant to refer to the following observations of this Court in the case of Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others:

“168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the legislature in its wisdom has taken the view that meritbased admissions can be ensured only through a common entrance test followed by centralised counselling either by the State or by an agency authorised by the State. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of common entrance test (CET) to secure merit-based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the “right to equality” of the students who aspire to take admissions in such educational institutions. Common entrance test by State or its



agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects:

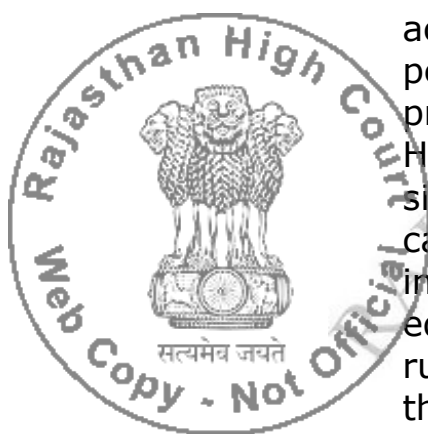
- (i) fairness and transparency, and
- (ii) merit apart from preventing maladministration.

Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb malpractices, it would be permissible for the State to regulate admissions by providing a centralised and single-window procedure. Holding such CET followed by centralised counselling or single-window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a "right of occupation" in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community.

169. By holding common entrance test and identifying meritorious candidates, the State is merely providing the merit list of the candidates prepared on the basis of a fair common entrance test. If the screening test is conducted on merit basis, no loss will be caused to the private educational institutions. There is neither restriction on the entry of the students in the sanctioned intake of the institutions nor on their right to collect fees from the students. The freedom of private educational institutions to establish and run institution, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact."

24. It will further be apposite to note that some private medical colleges had conducted their own counselling for admitting students in their respective colleges and as such, the State of Madhya Pradesh had filed a contempt petition. The said contempt petition was decided by this Court in State of Madhya Pradesh v. Jainarayan Chouksey and others². It will be relevant to refer to paragraphs 5 and 6 in Jainarayan Chouksey (supra), which read thus:

"5. We have heard the learned counsel for the parties at length. We observe that mandate of our judgment [Modern Dental College and Research Centre v. State of M.P., (2016) 7 SCC 353:7 SCEC 1] was to hold centralised entrance test followed by centralised State





counselling by the State to make it a one composite process. We, therefore, direct that admission to all medical seats shall be conducted by centralised counselling only by the State Government and none else.

6. If any counselling has been done by any college or university and any admission to any medical seat has been given so far, such admission shall stand cancelled forthwith and admission shall be given only as per centralised counselling done by the State Government."

25. It could thus clearly be seen that the private counselling by Glocal Medical College was conducted contrary to the Notification issued by the State of Uttar Pradesh, which Notification, in turn, was based on the judgment of this Court in the case of Modern Dental College and Research Centre (supra), which was decided on 2.5.2016. Not only that, but this Court by order dated 22.9.2016 had further clarified the position.

26. XX XX XX

27. In the light of this position, it was not at all permissible for the Glocal Medical College to have conducted private counselling. The admissions which were conducted through the said private counselling cannot be termed as anything else but per se illegal.

28. Though we have all the sympathies with the students, we will not be in a position to do anything to protect the admissions, which were done in a patently illegal manner.

29. It will be apposite to refer to the following observations made by this Court in the case of Guru Nanak Dev University v. Parminder Kr. Bansal and others.

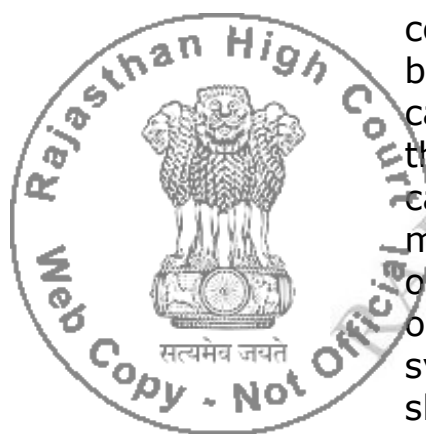
"In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

30. It will further be appropriate to refer to the following observations of this Court in the case of Gurdeep Singh v. State of J & K and others.

"12. What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts



of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly."



31. Similar observations have been made by this Court in K.S. Bhoir v. State of Maharashtra and others.

32. The facts in the present case are somewhat similar with the facts, which fell for consideration in the case of Mahatma Gandhi University and another v. GIS Jose and others.

33. In the said case, the admissions were given for M.Sc. Computer Science course in violation of admission rules. The High Court had directed to declare the withheld result of such students. Reversing the judgment of the High Court, this Court observed thus:

"10. The misplaced sympathies should not have been shown in total breach of the rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in CBSE v. Sheena Peethambaran [(2003) 7 SCC 719]. In para 6 of the judgment, this Court observed as follows: (SCC p. 724)

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules



stare straight into the face of the plea of sympathy and concessions, against the legal provisions.”

11. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal.”

34. XX XX XX

35. In the backdrop of this legal position laid down in various judgments of this Court, it will not be possible to consider the cases of the review petitioners sympathetically. The Notification issued by the State of Uttar Pradesh on the basis of the law laid down by this Court clearly provided that the admissions were to be done only through the centralized admission process. Glocal Medical College in contravention of the said Notification conducted private counselling, which was not at all permissible in law. The students cannot be said to be ignorant about the Notification issued by the State of Uttar Pradesh.

36. In such a situation, no sympathies can be shown to such students who have entered through backdoor. Apart from that, MCI vide order dated 27.1.2017 had discharged the said students, who were not admitted through centralized admission process. It is pertinent to note that 25 students admitted in the same college, who were admitted through the centralized admission process, were very much absorbed by the DGME in other colleges. As such, the contention of the review petitioners that they came to know about the discharge order dated 27.1.2017 issued by MCI only when they had filed a petition in the High Court in 2019 does not stand to reason.

37. Insofar as the contention with regard to the interim order passed by this Court dated 20.3.2017 is concerned, the same would clearly show that though the students were permitted to appear in the examination, their results were directed not to be published. There is no other order modifying the said order.

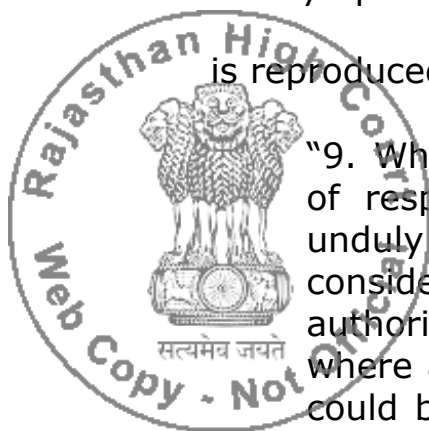
38. It is difficult to appreciate as to how the results of the students were declared for the 1st year MBBS examination, how they were admitted in the 2nd year MBBS course and how they cleared the 2nd year MBBS examination, despite the fact that MCI had discharged the students vide order dated 27.1.2017.

39. XX XX XX

40. In the result, the Review Petitions are without merit and as such dismissed. Consequently, all pending applications, including the application(s) for intervention/impleadment shall stand disposed of.”



116. This Court finds that admission of the petitioners by illegal means, cannot be retained. The Apex Court in the case of **Gurdeep Singh Vs. State of J&K & Ors.** reported in **AIR 1993 SC 2638** has considered the issue of admission by illegal means and such wrongs were not allowed to be retained by an appeal to the sympathy of the Court. The relevant portion of the judgment is reproduced hereunder:-



"9. What remains to be considered is whether the selection of respondent No. 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of respondent No. 6 in the sports category was, on the material placed before us thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion is misuse of power. While we have sympathy for the predicament of respondent No. 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent No. 6. We do so though, however, reluctantly."

117. Learned counsel for the petitioners Mr. Ravindra Srivastava submitted that the judgment passed by the Apex Court in the case of Abdul Ahad (supra) is based on its own peculiar facts and the admission of the petitioners in the present case is not *per se* illegal and there was no statutory notification issued for holding



centralized counseling/admission and as such, there is no violation of any of the statutory notification in the instant case.

118. Mr.Srivastava further submitted that the judgment of Abdul Ahad (supra) has not overruled the previous judgments of the Apex Court laying down the law that the students cannot be penalized for the acts and omissions of the College, where they are not party to the illegality.

119. This Court is afraid to accept the submission of Mr.Srivastava learned counsel for the petitioners and finds that the Apex Court has laid down the law that if the admissions are *per se* illegal, the same cannot have the seal of approval from the Courts of law.

120. This Court further finds that in the present case, the petitioners have been admitted in the MDS Course, without having the requisite merit/qualifying marks in the NEET PG Examination and further there has been concealment on the part of the petitioners to inform the University authorities about their actual score secured in the NEET PG Examination.

121. This Court has already found in earlier part of this judgment that some of the petitioners did not even appear in the NEET PG Examination, 2017 and yet while filling up the enrollment form, they all have shown themselves to have appeared in the NEET PG Examination, 2017 and some of them also gave incorrect information relating to the marks obtained by them in the NEET PG Examination.

122. Before parting with the judgment, this Court deems it proper to record certain relevant facts about the hearing of the present case.



123. Counsel for the parties were heard at length and finally they concluded their arguments on 19.04.2022 and the order was reserved by this Court. This Court, thereafter, listed the petitions on 28.06.2022 in "To Be Mentioned" category as certain clarification was required from the learned counsel for the parties.

124. On 28.06.2022, itself counsel for the petitioners informed this Court that after the judgment was reserved, further development had taken place and the respondent-University had sent the degrees of 16 students-petitioners of MDS Batch, 2017 to the respondent-College and the said degrees were distributed to the petitioners from 20.05.2022 to 30.05.2022.

125. Counsel appearing for the University Mr.Ravi Chirania on that day produced one letter dated 23.06.2022, for perusal of this Court, whereby the respondent-College was asked to return the degrees, as the degrees were mistakenly issued to them with other eligible BDS and MDS candidates, who passed out in the year 2019 & 2020 and Mr.Ravi Chirania, Advocate sought time to file proper affidavit and the matter was ordered to be listed on 04.07.2022.

126. On 04.07.2022, when the case was again listed before this Court and additional affidavit filed by the Deputy Registrar of the respondent-University was taken on record and after concluding the arguments by counsel for the parties, the judgment was again reserved.

127. This Court finds that in the additional affidavit filed by the Deputy Registrar of the respondent-University, it was mentioned that serious human error has been committed by the subordinate



staff i.e. Section Officer and Senior Assistant and the envelope containing the degrees of the petitioners was wrongly handed over along with the degrees of BDS & MDS of 2019 & 2020 to the authorized Officer of the respondent-College, who was authorized to collect the degrees of the students of all courses.

128. The Deputy Registrar of the respondent-University further sought unconditional apology for unintentional human mistake said to be committed by the subordinate staff and reiterated that the University since beginning has been objecting the admissions of 16 students in the MDS Course, as the same was illegal. Further reference is made, in the affidavit, to the fact that the Single Bench of this Court on 15.06.2020 had permitted the petitioners to appear in the examination and the order dated 15.06.2020, passed by the Single Bench, was challenged by way of D.B.Special Appeal (Writ) No.394/2020 and the Division Bench of this court without interfering with the order passed by the Single Bench passed the order dated 24.06.2020 and ordered that the result of the petitioners was not to be declared without prior permission of the Court.

129. It is further stated in the affidavit that no marksheet, no provisional certificate and no tabulation register of 16 students (the petitioners) was prepared and only degrees were issued in routine process by human error only and on noticing the said human error, email dated 23.06.2022 has been given to the respondent-College to immediately return the degrees to the respondent-University.



130. This Court finds that the University authorities who have issued the degrees to the respondent-College have acted in most irresponsible, callous and illegal manner. The fact of restraint order, being passed by the Division Bench of this Court, was very much in the knowledge of the University authorities and in spite of having the knowledge of such restraint order, if they have handed over the degrees of the petitioners to the respondent-College, they need to be dealt with by this Court in strict manner.

131. The explanation given in the additional affidavit by terming such action to be a human error and further only by giving letter of calling upon explanation from two subordinate staff i.e. Section Officer and Senior Assistant, is no solution/answer to the blunder committed by the University authorities.

132. This Court is also required to see the conduct of the respondent-Dental College as in what manner, admissions were granted by them to the petitioners and further in spite of the discharge order passed by the DCI in the year 2018, yet the petitioners were allowed to continue with their studies by permitting them to complete three year MDS Course and apparently made them eligible for claiming relief of appearing in the examination on completion of three years.

133. Though, this Court has found that the petitioners were not eligible for MDS Course and did not furnish full and correct information before the authorities, however, the fact remains that the petitioners were admitted in the Course in the year 2017 and their three years in the College is sheer wastage of energy, time and money spent on their education by their parents.



134. This Court, though cannot regularize the admissions which were granted to the petitioners, however, the petitioners need to be compensated by the respondent-College for the illegality committed by them while giving admission to the petitioners and further furnishing incorrect and false information to different authorities i.e. respondent-University and respondent-DCI.

135. Accordingly, in view of the above discussion, the writ petitions filed by the petitioners are dismissed and this Court deems it proper to issue following directions:-

1. The respondent-College shall pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to each petitioner within a period of three months, as compensation, as the petitioners have suffered on account of false promise made to them to get admission in the respondent-College for doing MDS Course.

2. The Vice Chancellor of the respondent-University shall initiate disciplinary proceedings against the erring officials who have handed over degrees of the petitioners of MDS Course Batch-2017 to the respondent-College. The said disciplinary proceedings shall be conducted & concluded in an expeditious manner but in no case later than three months from the date of passing of this order. After completion of the disciplinary proceedings, the result thereof, be immediately placed before this Court.

(ASHOK KUMAR GAUR),J.