

Before S.S. Saron & Gurmit Ram, JJ.

**THE PUNJAB PRIVATE SELF FINANCED DENTAL AND
MEDICAL COLLEGES ASSOCIATION—Appellant**

versus

STATE OF PUNJAB AND OTHERS—Respondents

LPA No. 1698 of 2015

April 07, 2016

Letters Patent – Clause X – MDS Course Regulations, 2007 – Admissions – Government letter highlighting provisions of the MDS Course Regulations, 2007 qua ‘Selection of Postgraduate Students’ ignoring provisions qua ‘Eligibility’, which students studying in the colleges of the appellant-Association fulfill – Issuance of impugned notifications when students were being admitted – Held, improper and contrary to MDS Course Regulations, 2007 – Impugned letters issued by the DRME – Unsustainable in law thus quashed – Mere letter cannot supersede the State Government notifications.

Held, that the notification dated 25.02.2015 (Annexure P1) issued by the Government of Punjab provides that in case of MDS, after considering all the eligible candidates from the AIPGDEE- 2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of the individual cumulative performance at the first, second, third and final B.D.S. examination passed from Baba Farid University (respondent No. 3). This was reiterated in the notification dated 25.03.2015 (Annexure P-2) issued by the Government of Punjab, Department of Medical Education and Research. The said position then somewhat changed at the level of DRME (respondent No. 2) vide letter dated 29.05.2015 (Annexure P3). As already noticed, the letter issued at the level of DRME (respondent No. 2) is not to supersede the State Government notifications. Besides, the State Government itself issued a corrigendum dated 01.06.2016 (Annexure P-4) which provided that after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of the individual cumulative performance at the first, second, third and final B.D.S. examinations passed from all other recognized/reputed Universities of the country. This was in addition to what was provided in the notification dated 25.02.2015 and 25.03.2015 (Annexures P-1 and P-2) which restricted the remaining vacant seats to be filled on

merit on the basis of individual cumulative performance at the first, second, third and final B.D.S. examinations passed only from the Baba Farid University (respondent No.3). In view of the corrigendum dated 01.06.2015 (Annexure P-4) issued by the Government of Punjab, the DRME (respondent No. 2) letter dated 29.05.2015 (Annexure P-3) is of no consequence. Therefore, the ratio of the judgment in Aditi Sharma's case (supra) is not applicable to the facts of present case.

(Para 49)

Further held, that the DRME (respondent No. 2) issued the impugned letters dated 08.06.2015 (Annexures P-5 and P-6) at a much later stage and only on the basis of a letter dated 07.05.2015 (Annexure R4/1) and contrary to the Government notifications dated 25.02.2015 and 25.03.2015 (Annexures P-1 and P-2). The effect of the letter dated 07.05.2015 (Annexure R-4/1) has been considered above inasmuch as it highlighted the provisions of the MDS Course Regulations, 2007 in respect of 'Selection of Postgraduate Students' while ignoring those relating to 'Eligibility', which the students studying in the colleges of the appellant-Association fulfill. This has been considered and delineated upon at considerable length above. Therefore, the issuance of impugned notifications dated 08.06.2015 (Annexures P-5 and P-6) at the time when the students were being admitted was improper and contrary to the MDS Course Regulations, 2007. It is to be also noticed that the students have been continuing with their MDS Course on the basis of interim order passed by the learned Single Judge and by interim order dated 28.11.2015 passed by this Court in the present appeal. In the circumstances, the impugned letters dated 08.06.2015 (Annexures P5 and P6) issued by the DRME (respondent No. 2) are unsustainable in law and are liable to be quashed.

(Para 50)

Manish Kumar Singla, Advocate, *for the appellant*.
P.P.S. Thethi, Additional Advocate General, Punjab,
for respondents No. 1 and 2.

Manish Dadwal, Advocate, for respondent No. 3.

Shivangi Sharma, Advocate, for respondent No. 4.

S.S. SARON, J.

(1) This appeal has been filed by the Punjab Private Self Financed Dental and Medical Colleges Association ('Association' – for

short) against the judgment and order dated 14.10.2015 passed by the learned Single Judge in CWP No. 12341 of 2015 titled 'The Punjab Private Self Financed Dental and Medical Colleges Association versus State of Punjab and others'.

(2) The appellant-Association filed a petition in this Court seeking quashing of the letters dated 08.06.2015 (Annexures P5 and P6) issued by the Director, Research and Medical Education, Punjab (respondent No. 2). ('DRME' - for short). In terms of letter (Annexure P5) addressed by the DRME (respondent No. 2) to the Vice Chancellor, Baba Farid University of Health Sciences, Faridkot (respondent No. 3) ('University' - for short) in connection with Master of Dental Surgery (MDS) Course 2015 informed that for admissions to the said MDS Course the candidates who did not appear in the All India Post Graduate Dental Entrance Examination - 2015 ('AIPGDEE' - for short) shall not be considered. Besides, the DRME vide letter (Annexure P6) addressed to fifteen Principals of Dental Institutions informed that whatever admissions are to be made in BDS/MDS Course - 2015 that is to be done only on the basis of counseling of the University (respondent No.3) and no college would make admission at its own level. A further prayer was made by the appellant for directing the respondents to ensure that 100% seats of the private institutions would be filled by themselves and in case any seat/seats remains vacant, in any private institution, then in that eventuality, the respondents would pay the full fee for the vacant seat (s) for the full course to the respective institution; besides, the appellant be allowed to admit the students on the basis of cumulative performance of the candidates in the Bachelor of Dental Surgery (BDS) Course for the left over seats irrespective of the fact whether the candidates had appeared in the AIPGDEE-2015.

(3) The appellant, it is stated, is an Association that imparts education in the State of Punjab through various medical and dental colleges that have been set up. The writ petition filed by it in this Court seeking quashing of the aforesaid letters (Annexures P5 and P6), has been dismissed by the learned Single Judge by its impugned judgment and order.

(4) The State of Punjab through the Secretary, Department of Medical Education and Research, Punjab (respondent No. 1) issued a notification dated 25.02.2015 (Annexure P1) regarding admissions to the Post Graduate Degree Courses in Health Sciences Educational Institutions (Medical/Dental) and six months' training in

Ultrasonography in the State of Punjab for the session 2015. This was followed by another notification dated 25.03.2015 (Annexure P2) for admissions to the Post Graduate Degree Courses in the Health Sciences Educational Institutions (Medical/ Dental) and six months' training in Ultrasonography in the State of Punjab. In para No. 5 of the said notifications (Annexures P1 and P2), it is mentioned in terms of the proviso that in case of MDS Course, after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats would be filled on merit on the basis of the individual cumulative performance in the first, second, third and final Bachelor of Dental Surgery (BDS) examination passed from the University (respondent No. 3). Besides, in para No. 28 of the said notifications, it has been mentioned that in private institutions 50% seats are of government quota and 50% seats are of the management/ minority quota which would include 15% quota for Non-Resident Indians (NRIs).

(5) The entrance test for consideration for admissions to the MDS Course was conducted and the first counseling for admissions was held on 26.05.2015. This was followed by second counseling that was conducted on 28.05.2015. The third counseling was conducted on 04.06.2015 and the third extended counseling was fixed for 10.06.2015. The DRME (respondent No. 2) after the second counseling issued a letter dated 29.05.2015 (Annexure P3) addressed to the Registrar of the University (respondent No. 3). It was directed therein that regarding admission in MDS Course with consent of the Secretary, Punjab Government, Medical Education and Research Department that (1) Qualified candidates of AIPGDEE-2015 be only admitted; (2) Candidates who had appeared in AIPGDEE-2015 but could not qualify be considered on merit on the basis of marks in the BDS Course and (3) If seats still remained vacant then while complying with the conditions, as mentioned at Serial No. (1) and (2) above, candidates from outside Punjab State be also considered. In Para 4 of the notifications (Annexures P1 and P2) it is mentioned that; however, in case of MDS Course, after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats would be filled on merit on the basis of individual cumulative performance at the first, second, third and final BDS examinations passed from the University (respondent No. 3). The State of Punjab (respondent No. 1), thereafter, issued a corrigendum dated 01.06.2015 (Annexure P4) during the period of counseling, which was

in partial modification of the notification dated 25.03.2015 (Annexure P2) by which para No. 5 of the said notification was amended as under:-

“However, after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of the individual cumulative performance at the first, second, third & final B.D.S. examinations passed from all other recognized/reputed universities of the country.” (Emphasis added).

(6) The effect of the said amendment was that initially it was enjoined that after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remained vacant, then the remaining seats would be filled on merit on the basis of individual cumulative performance at the first, second, third and final BDS examinations passed from the University (respondent No. 3), however, in view of the corrigendum, it was enjoined that the left over vacant seats would be filled on the basis of individual cumulative performance at the first, second, third and final BDS examinations passed from all other recognized/reputed Universities of the country. This was followed by the impugned letters dated 08.06.2015 (Annexures P5 and P6) issued by the DRME (respondent No. 2), which enjoined that for admissions to MDS Course 2015, the candidates who had not appeared in the AIPGDEE-2015 be not considered. Similarly, another letter dated 08.06.2015 (Annexure P6) was issued by the DRME (respondent No. 2) wherein it is mentioned that all the admissions would be made in BDS/MDS Course 2015 on the basis of counseling conducted by the University (respondent No. 3) and no college would make admission at its own level. The present case relates to admissions to the MDS Course only.

(7) According to the appellant, it was no where mentioned that in case of MDS Course, after considering all the eligible candidates from AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats would be filled only from the candidates who had appeared in AIPGDEE-2015 on the basis of their performance in BDS Course; besides, according to the provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 ('2006 Act' - for short), the management category seats could be filled by an Institution in a fair and transparent manner on the basis of *inter se* merit

determined by the entrance test or qualifying examination. The presence of the representative of the authority conducting the entrance test and the issuance of letters dated 08.06.2015 (Annexures P5 and P6) by the DRME (respondent No. 2), it is submitted, is contrary to the provisions of the 2006 Act. The letters dated 08.06.2015 (Annexures P5 and P6) issued by the DRME (respondent No. 2), it is submitted, are totally without jurisdiction, besides, being contrary to the provisions of the 2006 Act.

(8) The State of Punjab and the DRME (respondents No. 1 and 2) filed short reply by way of affidavit of Dr. Manjit Kaur Mohi, Director, Medical Education and Research, Punjab. It is submitted that the petition of the petitioner-Association (now appellant) was liable to be dismissed on the ground that the admission process to the Post Graduate seats had been completed by 10.06.2015 as per orders of the Supreme Court and the petitioner-Association (now appellant) was left with no chance to fill the vacant left over seats. The Punjab Government notified the admission policy 2015 for admission to the Post Graduate Courses i.e. vide notification dated 25.02.2015 (Annexure P1). The relevant provision in clause 5 of the said notification has been reproduced, which is to the effect that:

“In order to be eligible for admission to a Post Graduate Course it shall be necessary for a candidate to obtain minimum of 50% marks in AIPGMEE/AIPGDEE-2015. However, in respect of candidates belonging to scheduled castes, scheduled tribes and other backward classes, the minimum marks shall be at 40% or as notified by MCI/DCI.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in AIPGMEE-2015, Government in consultation with MCI, may at its discretion, lower the minimum marks required for candidates belonging to respective categories. However, in case of MDS, after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will filled on merit on the basis of the individual cumulative performance at the first, second, third and BDS examination passed from Baba Farid University of Health Sciences, Faridkot.” (Emphasis added)

(9) It is submitted by respondents No. 1 and 2 that the Dental

Council of India observed that various States having more than one dental college and one University Board/Examining body were admitting students to MDS Course on the basis of individual cumulative performance without appearing/qualifying in the competitive examinations. The Dental Council of India directed all the States not to admit students in MDS Course without appearing /qualifying in the respective competitive examinations vide its letter dated 07.05.2015 (Annexure R1). The said letter (Annexure R1) was issued by the Dental Council of India before the commencement of counselling i.e. 26.05.2015 and the appellant-Association was aware of the said letter. It is submitted that the State Government is bound to follow the guidelines/instructions/Regulations issued by the Dental Council of India regarding admissions, faculty and infrastructure. The impugned letters dated 08.06.2015 (Annexures P5 and P6) had been issued by the DRME (respondents No.2) in view of letter dated 07.05.2015 (Annexure R1) issued by the Dental Council of India. It is further submitted that in order to comply with the instructions in the letter dated 08.06.2015, the University (respondent No. 3) issued warnings to comply with the orders of the Government. All the record pertaining to this was lying in the custody of the University (respondent No. 3).

(10) It may be noticed that till this stage the Baba Farid University of Health Sciences, Faridkot was not a party. However, the University filed an application and it was impleaded as respondent No. 4. Short reply dated 02.09.2015 was also filed on behalf of the University (now respondent No. 3). It is submitted therein that the State Government issued notification dated 25.03.2015 (Annexure P2) for admissions to Post Graduate Courses in the Health Sciences Educational Institutions (Medical/Dental) and also for six months' training in Ultrasonography in the State of Punjab for the session 2015. As per clause 2 of the said notification, it was provided that the Governor of Punjab is pleased to authorize the Baba Farid University (respondent No. 3) to conduct centralized counseling for admissions on the basis of All India Post Graduate Medical/Dental Entrance Examination 2015 to be conducted by the National Board of Examination, New Delhi and All India Institute of Medical Sciences, New Delhi for 50% State quota seats and for six months' training in Ultrasonography as per the procedure laid down by MCI/DCI and notified under the 2006 Act. As per clause 5 of the said notification, it is provided that in order to be eligible for admission to a Post Graduate Course it shall be necessary for a candidate to obtain a minimum of

50% marks in AIPGMEE/AIPGDEE-2015. However, in respect of candidates belonging to scheduled castes, scheduled tribes and other backward classes, the minimum marks shall be at 40% or as notified by MCI/DCI. In terms of the proviso thereto, it is envisaged that when sufficient number of candidates in the respective categories failed to secure the minimum marks as prescribed in AIPGMEE-2015, the Government in consultation with the MCI, may at its discretion, lower the minimum marks required for candidates belonging to respective categories. However, in case of MDS, after considering all the eligible candidates from the AIPGDEE-2015 merit list if seats still remain vacant, then the remaining seats would be filled on merit on the basis of the individual cumulative performance at the first, second, third and final BDS examination passed from Baba Farid University (respondent No. 3). A reference has been made to clause 30 of the said notification dated 25.03.2015 (Annexure P2) which relates to "Procedure for all seats remaining vacant after second counseling including the NRI seats". Sub-clause (c) of said clause 30 of the said notification provides that the counseling would be held by the respective institutions in the presence of Punjab Government and University representatives after adopting due procedure and wide publicity. The date of counselling, it is mentioned, would be fixed in consultation with Baba Farid University of Health Sciences, Faridkot (respondent No. 3). Sub-clause (d) provides that the admission would be made as per AIPGMEE/AIPGDEE-2015 merit in a transparent manner.

(11) It is submitted that the Dental Council of India circulated the 'Dental Council of India Revised MDS Course Regulations, 2007' ('MDS Course Regulations, 2007' - for short) that have been issued vide notification dated 20.11.2007. An extract of the said MDS Course Regulations, 2007 was circulated by the Dental Council of India vide letter dated 07.05.2015 (Annexure R4/1 with short reply of the University). In the said letter, it is provided under the heading 'Selection of Post Graduate Students' that the students shall be selected strictly on the basis of their academic merit. For determining the academic merit, it is mentioned that the university/institution may adopt any one of the procedures as mentioned in sub clauses (i) to (iv) both for Post Graduate Diploma and MDS Degree Courses. The Government of Punjab vide letter dated 29.05.2015 (Annexure R4/2 with the short reply of the University) issued clarification to the effect that (1) only candidates who have qualified AIPGDEE-2015 shall be admitted to MDS Course 2015; (2) the candidates who could not

qualify AIPGDEE-2015 shall be considered on the basis of marks in BDS Course and (3) if the seats remain vacant then in compliance of instructions continues serial No. (1) and (2) candidates from outside Punjab could be considered for the admissions. According to Baba Farid University (respondent No. 3), only AIPGDEE-2015 qualified/ appeared candidates were to be considered for admissions to MDS Course. The corrigendum dated 01.06.2016 (Annexure R4/3) issued by the Government of Punjab for admissions to Post Graduate Courses provides that in partial modification of the notification dated 25.03.2015 (Annexure P2) the para 5 thereof was amended to the effect; "However, after considering all the eligible candidates from the AIPGDEE 2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of individual cumulative performance at the first, second, third and final BDS examinations passed from all other recognized/reputed universities of the country".

(12) The third counseling for MDS Course under 60%/40% quota was held at Guru Gobind Singh Medical College, Faridkot on 04.06.2015 under the chairmanship of Dr. Kusum Datta, Principal, Government Dental College, Amritsar. The counseling was held along with eleven members of the concerned colleges and the Baba Farid University (respondent No. 3). In the proceedings, it was noted at point No. 5 that the Government of Punjab (sic. DRME - respondent No.2) had directed vide letter dated 29.05.2015 (Annexure P3) that the AIPGDEE-2015 qualified and appeared candidates would be considered for admission to MDS Course. The Government of Punjab (sic. DRME - respondent No.2) again reiterated vide letter dated 08.06.2015 (Annexure P5) that for admission to MDS Course, the candidates who did not appear in AIPGDEE-2015 be not considered. It was further informed by the Government of Punjab (sic. DRME) vide letter dated 08.06.2015 (Annexure P6) that all the admissions to BDS/MDS Course for the session 2015 would be made on the basis of counseling conducted by the Baba Farid University (respondent No. 3) and no institution would make admission at its own level. It is further submitted that the Baba Farid University (respondent No. 3) vide letter dated 10.06.2015 (Annexure R4/6 with the short reply of the University) informed all the dental colleges that the colleges were not allowed to conduct counseling at their own level and directed all the private dental colleges not to hold college level counseling. After the process of centralized counseling was over, the Baba Farid University (respondent No. 3) vide letter dated 10.06.2015 (Annexure R4/7 with

the short reply of the University) asked the dental colleges to intimate immediately the vacancy position of the various MDS seats for further needful action, but no institution informed them. It is submitted that the petitioner-Association (now appellant) and one private dental college filed CWP No. 16236 of 2013 and CWP No. 554 of 2014 to permit the Self Financed Dental Colleges to conduct their own test and make admission to management quota seats on their own. The writ petitions were dismissed by this Court and Letters Patent Appeal No. 2154 of 2014 titled 'Punjab Private Self Financed Dental College Association versus State of Punjab and others' was also dismissed by this Court on 22.07.2015 reported in 2015 (4) SCT 124. The petitioner-Association (now appellant) preferred SLP (C) No. 23527 of 2015 in the Supreme Court of India, which has been disposed of on 24.08.2015. It is submitted that the Baba Farid University (respondent No. 3) is governed by the prospectus including notification which has the force of law. Therefore, it is prayed that the writ petition be dismissed.

(13) The appellant filed replication to the short reply of the respondents-State. It is reiterated that in terms of clause 2 of the notification dated 25.03.2015 (Annexure P2), the University can fill only 50% State quota seats and as per the MDS Course Regulations, 2007 under the heading "Selection of Post Graduate Students", in non-governmental institutions, 50% of the total seats were to be filled by the competent authority and remaining 50% by the management of the institution.

(14) The learned Single Judge considered the matter and vide impugned judgment and order dated 14.10.2015 dismissed the writ petition. Reference was made to clauses 2, 4, 5, 12, 28 and 30 of the notification dated 25.03.2015 (Annexure P2). It was held that for the Post Graduate Courses, it was necessary for a candidate to obtain minimum 50% marks in the AIPGDEE-2015 for the general category and 40% marks for the reserved categories. In the case of MDS Course, with which the present writ petition was concerned, it was held that in case there were not enough eligible candidates and the seats still remained vacant, remaining seats were to be filled on the basis of the result of the BDS examination passed from the Baba Farid University as per merit. Reference was also made to the MDS Course Regulations, 2007 and it was noticed that the same also provides that admission to the MDS Course was to be made on the basis of common entrance test conducted by the State Government or by the competent authority appointed by the State Government, the University/Group of

Universities in the same State. Secondly, it could be on the basis of merit as determined by the centralized competitive test held at the national level and thirdly on the strength of the graduation marks obtained in the BDS examinations passed from the same University. Reliance was also placed on the judgment in *Aditi Sharma and others versus State of Punjab and others* (LPA No. 919 of 2015 decided on 02.07.2015) 2015 (3) Law Herald 2356 (DB). It was, therefore, held that the admissions could not be made in respect of the students who had not appeared in the common entrance test.

(15) The appellant-Association aggrieved against the said decision has filed the present appeal.

(16) Mr. Manish Kumar Singla, Advocate, appearing for the appellant-Association submits that the learned Single Judge has not taken into consideration the effect of the MDS Course Regulations, 2007 inasmuch as the provisions relating to 'Eligibility' for admission to MDS Course in the MDS Course Regulations, 2007 have not been considered and these are distinct and separate from the procedure relating to selection of post graduate students course as provided in the said Regulations. It is submitted that private dental colleges have right to set up and establish dental colleges for imparting dental education and they have right to admit students and set up original fee structure; besides, constitution, governing body and appoint staff (teaching and non-teaching). It is submitted that this has been made mandatory by the Supreme Court of India in *TMA Pai Foundation and others versus State of Karnataka*¹. It is also submitted that the learned Single Judge has not taken into consideration the provisions of Section 3, 4 and 5 (4) of the 2006 Act. Therefore, the learned Single Judge in its impugned judgment and order dated 14.10.2015 erred in not noticing the provisions of the MDS Course Regulations, 2007 in its entirety inasmuch as it has been held that the MDS Course Regulations, 2007 provide that admission to MDS Course is to be made on the basis of common entrance test conducted by the State Government or by the competent authority appointed by the State Government, the University/Group of Universities in the same State; secondly, it could be on the basis of merit as determined by the centralized competitive test held at the national level; and thirdly, on the strength of the graduation marks obtained in the BDS examinations passed from the same University. Therefore, the admissions could be made on the basis

¹ (2002) 8 SCC 481

of individual cumulative performance at the first, second, third and final BDS examinations if the same examinations had been passed by the students or the candidates or by combination of first and third. Besides, in terms of second proviso of the MDS Course Regulations, 2007, under the heading 'Selection of Postgraduate Students', it has been envisaged that in non- governmental institutions, 50% of the total seats shall be filled by the competent authority and the remaining 50%, by the management of the institution on the basis of merit. It is also submitted that the respondents have been repeatedly changing their stand to the detriment of the private Dental Colleges and the students studying in the same inasmuch as in the notification dated 25.03.2015 (Annexure P2) it is mentioned in the proviso to para 5 thereof that after considering all the eligible candidates from the AIPGDEE-2015 merit list if seats still remain vacant, then the remaining seats would be filled on merit on the basis of individual cumulative performance in the first, second, third and final BDS examinations passed from the University. In para 28 of the said notification it is mentioned that in private institutions 50% seats are of government quota and 50% are of management/minority quota which include 15% for NRIs. This was later changed by notification dated 29.05.2015 (Annexure P3) issued by the DRME (respondent No. 2) by which it was provided that (1) qualified candidates of AIPGDEE-2015 be only admitted, (2) candidates who had appeared in AIPGDEE-2015 but could not qualify be considered on merit on the basis of marks in BDS Course and (3) if seats still remained vacant then while complying with the conditions as mentioned at serial No. (1) and (2) candidates from outside Punjab State be also considered. Thereafter, corrigendum dated 01.06.2015 (Annexure P4) was issued amending para 5 of the notification dated 25.03.2015 (Annexure P2), which provided that after considering all the eligible candidates from the AIPGDEE-2015 merit list if still seats remained vacant, then the remaining seats be filled on merit on the basis of individual cumulative performance at the first, second, third and final BDS examinations passed from all other recognized/reputed Universities of the country. This is then followed by the impugned letters dated 08.06.2016 (Annexures P5 and P6) by which it was informed by the DRME (respondent No. 2) that for admissions to MDS Course 2015, not appeared AIPGDEE-2015 be not considered and admissions to be made in BDS/MDS Course 2015 be done only on the basis of counseling of the University (respondent No. 3) and no college would make admissions at its own level. This is based on the letter

dated 07.05.2015 (Annexure R4/1) issued by the Dental Council of India (respondent No. 4). Therefore, according to learned counsel there has been inconsistency on the part of the respondents only to run down the institutions of the appellant-Association and makes students available for institutions across the country.

(17) Mr. P.P.S. Thethi, learned Additional Advocate General, Punjab, appearing for the State of Punjab-respondents No. 1 and 2 and Mr. Manish Dadwal, Advocate, appearing for respondent No. 3 – Baba Farid University have opposed the prayer of the appellant-Association. They have submitted that the State Government and the University authorities are bound by the Regulations issued by the Dental Council of India and it is the Dental Council of India, which had issued letter dated 07.05.2015 (Annexure R4/1), which directed the attention of the respondent-State and all the dental colleges in the State to the revised BDS and MDS Course Regulations, 2007 and insofar as the MDS Course was concerned, the procedure for selection of Post Graduate students was mentioned.

(18) Ms. Shivangi Sharma, Advocate, appearing for Dental Council of India (respondent No. 4) submits that the MDS Course Regulations, 2007 are mandatory in nature and these supersede the provisions of the 2006 Act. It is submitted that the Dental Council by letter dated 07.05.2015 (Annexure R4/1) only reiterated the MDS Course Regulations, 2007 with regard to selection of postgraduate students so that there is no violation of the said Regulations by respondents No. 1 to 3.

(19) It is to be noticed that the Dental Council of India (respondent No. 4) did not file any reply during pendency of the writ petition before the learned Single Judge; however, a counter affidavit has now been filed in the appeal by Shri M.L. Meena, Secretary In-charge, Dental Council of India. In the counter affidavit filed in the appeal, it is *inter alia* stated that the provisions of MDS Course Regulations, 2007 make it clear that admission on the basis of individual cumulative performance at the first, second, third and final BDS examinations could be made only if such examinations had been passed from the same University. The reason could be attributed to the fact that the marking scheme in the BDS examinations is not uniform throughout the country and differs in the Universities. Therefore, it is submitted that the admission made on the basis of BDS Course examinations in respect of the candidates who had appeared from other than the Baba Farid University (respondent No. 3) is clearly

impermissible.

(20) We have given our thoughtful consideration to the contentions of learned counsel for the parties and with their assistance gone through the records of the case.

(21) The provisions of the 2006 Act framed by the State of Punjab insofar as they are relevant for the present appeal may be noticed. Sections 3, 4 and 5 (4) of the said Act read as follows:

“Section 3 (1) The State Government shall regulate admission, fix fee and make reservation for different categories in admissions to private health sciences educational institutions.

(2) For the purpose of determining the fee, the State Government may require any private health sciences educational institution to furnish such information, as it may deem appropriate.

(3) The State Government shall ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of the inter-se merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure, notified by the State Government in the Official Gazette.

Provided that the State Government may by notification in the Official Gazette, exclude the diploma or certificate courses, offered by the private health sciences educational institutions from the purview of the provisions of this sub-section.

(4) Notwithstanding anything contained in sub-section (3), the State Government may, exempt minority institutions from the purview of that sub-section.

(5) Consequent upon the exemption granted under sub-section (4) a common authority of the respective minority institution, shall conduct a separate test in a fair, transparent and non-exploitive manner for admission of students in minority institutions in accordance with the merit, determined by the said authority.

(6) In case, it is found that the aforesaid test has not been conducted in a fair, transparent and non-exploitive manner, the State Government shall have the power to cancel the same and direct the concerned authority to re-conduct the test.

Section 4 (1) The eligibility criteria for admission to a private health sciences educational institution shall be such, as may be determined and notified by the State Government from time to time.

(2) The State Government or any other authority, authorised by it, shall conduct the Common Entrance Test for making admissions to all private health sciences educational institutions in the State of Punjab, except for those, which are specifically exempted from such test.

(3) Admission in all private health sciences educational institutions, except in those, which are specifically exempted under this Act, and in the case of Foreign Indian Students, shall be made on the basis of the inter se merit of the candidates, determined in accordance with the Common Entrance Test.

Section 5 (1) to (3) xxxx

(4) An unaided private health sciences educational institution, other than a minority institution, may reserve up to fifty per cent seats of the total sanctioned intake as a management category quota of seats.”

(22) In terms of Section 3 (3) of the 2006 Act, the State Government is to ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of the inter-se merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure, notified by the State Government in the Official Gazette. A perusal of Section 5 (4) of the 2006 Act shows that in unaided private health sciences educational institutions, other than a minority institution, may reserve up to 50% of the total sanctioned intake as management category quota of seats. The provisions of the MDS Course Regulations, 2007 on which reliance is placed by the respondents do not show anything to the contrary provided in the 2006 Act.

(23) The MDS Course Regulations, 2007 *inter alia* relate to ‘Eligibility’ and ‘Selection of Postgraduate Students’. The same read as follows:

“ELIGIBILITY:

A candidate for admission to the MDS Course (Master of Dental Surgery) must have a recognized degree of BDS (Bachelor of Dental Surgery) awarded by an Indian University in respect of recognized Dental College under Section 10 (2) of the Dentists Act, 1948 or an equivalent qualification recognized by the Dental Council of India and should have obtained permanent registration with the State Dental Council. Candidates not possessing a recognized Dental qualification for the above purpose should secure the prior approval of his qualifications by the Dental Council of India before he can be admitted to the MDS Course of any University in India.

Candidates who possess PG Diploma recognized by the DCI with the duration of 2 years (proposed) in particular specialty is eligible for admission in MDS in the same specialty and the duration will be 2 years. The syllabus of two years programme will be as per the concerned university guidelines.

Provided that in the case of a foreign national, the Dental Council of India may, on payment of the prescribed fee for registration, grant temporary registration for the duration of the postgraduate training restricted to the dental college/ institution to which he is admitted for the time being exclusively for postgraduate studies;

Provided that further temporary registration to such foreign national shall be subject to the condition that such person is duly registered as dental practitioner in his own country from which he has obtained his basic dental qualification and that his degree is recognized by the corresponding dental council or concerned authority.

SELECTION OF POSTGRADUATE STUDENTS:

(1) Students for postgraduate dental courses (MDS) shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the university /institution may adopt any one of the following procedures both for P.G. Diploma and MDS degree courses:

(i) On the basis of merit as determined by a 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 a 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 examinations, if such examinations have been passed from the same university; or

(iv) Combination of (i) and (iii);

Provided that wherever entrance test for Postgraduate admissions is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to post graduate Dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes.

Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent, by the management of the institution on the basis of merit.”

(24) The above MDS Course Regulations, 2007 show that there is a separate provision for ‘Eligibility’ for MDS Course and separate provision for ‘Selection of Postgraduate Students’. According to the ‘Eligibility’ requirement, a candidate for admission to the MDS Course must have a recognized degree of BDS awarded by an Indian University in respect of recognized Dental College under Section 10 (2) of the Dentists Act, 1948 or an equivalent qualification recognized by the Dental Council of India and should have obtained permanent registration with the State Dental Council. Candidate not possessing a recognized dental qualification for the above purpose is to secure the prior approval of his qualifications by the Dental Council of India before he can be admitted to the MDS Course of any University in India. The ‘Selection of Postgraduate Students’ is different and distinct

from the criteria of 'Eligibility' and it envisages that students for post graduate dental courses (MDS) are to be selected strictly on the basis of their academic merit; besides, for determining the academic merit, the university/institution may adopt any one of the procedures both for post graduate diploma and MDS degree courses, which has been provided in clause (2) under the heading 'Selection of Postgraduate Students' of the MDS Course Regulations, 2007, i.e. (i) on the basis of merit as determined by a 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 a 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 examinations, if such examinations have been passed from the same university; or combination of (i) and (iii). In terms of the proviso thereto, it has been provided that wherever entrance test for post graduate admissions is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to post graduate dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes. It is further provided that in non-Governmental institutions 50% of the total seats shall be filled by the competent authority and the remaining 50% by the management of the institution on the basis of merit.

(25) It is to be noticed that the objection to the manner in which the appellant-Association has admitted students is based on the letter dated 07.05.2015 (Annexure R4/1) issued by the Dental Council of India (respondent No. 4). A reading of the said letter (Annexure R4/1) shows that insofar as the MDS Course Regulations, 2007 are concerned that it makes a mention for 'Selection of Students for Postgraduate Course'. The said letter does not even remotely make a reference to the 'Eligibility' of the students for the MDS Course. For admission to the MDS Course the first and foremost aspect which is to be taken into consideration is eligibility. It is only when a student or a candidate is eligible for admission that the procedure of selection is to be followed so that uniformity is maintained on the basis of merit while selecting students for the Post Graduate Course.

(26) It is not in dispute that the students who have been admitted by the appellant-Association are all eligible for admissions in terms of necessary eligibility prescribed by the MDS Course Regulations, 2007.

(27) Mr. Manish Kumar Singla, learned counsel for the appellant- Association has submitted that the total numbers of students admitted by the colleges that are affiliated with the appellant- Association are twenty- one (21). Out of them, twelve (12) are from Baba Farid University (respondent No. 3) while nine (9) are from others, besides, nine (9) seats are lying vacant. A list of the students who have been admitted to the MDS Course of the appellant- Association colleges is as follows:

“1. Name of Dental College: Genesis Institute of Dental Sciences and Research, Ferozepur

Sr. No.	Name of Student/ Father's Name	Specialty	Name of University from which BDS has been passed
1.	Gagandeep d/o Sat Pal Bhagat	Pedodontia	BFUHS Faridkot
2.	Kanupriya Sharma d/o Rajinder Sharma	Periodontology	BFUHS Faridkot
3.	Kanwal Mandeep Kaur d/o Akashdeep Singh	Oral Pathology	BFUHS Faridkot
4.	Rajesh Aggarwal d/o Sham Lal Aggarwal	Periodontology	GNDU Amritsar
5.	Shivani d/o Prem Chand	Periodontology	BFUHS Faridkot
6.	Supreet Kaur d/o Kanwaljit Singh	Oral Medicine and Radiology	BFUHS Faridkot

Total Seats: 16 Filled by University: 8 Filled by college: 6
Vacant: 2

Name of Dental College: Dashmesh Institute of Dental

Sciences, Faridkot

Total Seats: 18 Filled by University: 13 Filled by college: 0
Vacant: 5

Name of Dental College: Gian Sagar Dental College Ram Nagar Banur

Total Seats: 15 Filled by University: 13 Filled by college: 0 Vacant: 2

Name of Dental College: Guru Nanak Dev Dental College and Research Institute, Sunam

Sr. No.	Name of Student/ Father's Name	Specialty	Name of University from which BDS has been passed
1.	Rohit Grover s/o Raj Kumar Grover	Oral Medicine	MM College of Dental Sciences & Research, Mulana
2.	Seema Arora d/o Khazan Chand Arora	Oral Medicine	Punjab Govt. Dental College & Hospital, Amritsar
3.	Monika Rukwal d/o Y.R. Rokwal	Periodontics	Indra Gandhi Govt. Dental College, Jammu
4.	Samina Choudhari d/o Mohd. Rafiq	Periodontics	Indra Gandhi Govt. Dental College, Jammu

Total Seats: 17 Filled by University: 13 Filled by college: 4
Vacant: 0

Name of Dental College: National Dental College and Hospital Gulabgarh, Derabassi

Sr. No.	Name of Student/ Father's Name	Specialty	Name of University from which BDS has been passed
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1.	Hemant Bassi s/o Ravinder Bassi	Periodontology	BFUHS Faridkot
2.	Mandeep Singh s/o J.S. Kochhar	Periodontology	HPU Shimla
3.	Neetu Bansal d/o Satpal Bansal	Periodontology	BFUHS Faridkot
4.	Vivek Bhalla s/o B.D. Bhalla	Periodontology	BFUHS Faridkot

Total Seats: 13 Filled by University: 9 Filled by college: 4

Name of Dental College: Laxmi Bai Institute of Dental Sciences and Hospital, Patiala

Sr. No.	Name of Student/ Father's Name	Specialty	Name of University from which BDS has been passed
1.	Pearal Goyal d/o Ramesh Goyal		BFUHS Faridkot
2.	Ranchna Garg d/o Sukhdev Rai		BFUHS Faridkot, admitted by University CWP No. 12282 of
			2015 pending for 07.04.2016

Total Seats: 5 Filled by University: 4 Filled by college: 1

Name of Dental College: Desh Bhagat Dental College and Hospital, Muktsar

Sr. No.	Name of Student/ Father's Name	Specialty	Name of University from which BDS has
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			been passed
1.	Shivani d/o Mukand Lal		BFUHS Faridkot
2.	Upinder Singh s/o Jagjit Singh		BFUHS Faridkot
3.	Deepak Kumar s/o Tarsem Kumar		BFUHS Faridkot
4.	Yugveer Batra s/o Surinder Kumar		Not from BFUHS Faridkot
5.	Renu Bala d/o Bhinder Pal Garg		Not from BFUHS Faridkot
6.	Arundeeep Singh Brar s/o Bura Singh		Not from BFUHS Faridkot

Total Seats: 9 Filled by University: 3 Filled by college: 6

(28) A perusal of the above shows that the students who have been admitted in Dental College of the appellant-Association are indeed having the necessary 'Eligibility' condition for being admitted to the MDS Course in accordance with the MDS Course Regulations, 2007. As per the conditions of 'Eligibility' provided for by the MDS Course Regulations, 2007 the students were not required to and may not have appeared in the AIPGDEE-2015 examination. However, the stand of the Dental Council of India (respondent No. 4) is that appearance in the AIPGDEE examination for admission to the MDS Course is mandatory. This is primarily based on the reproduction of the procedure for 'Selection of Postgraduate Students' as contained in the MDS Course Regulations, 2007 and highlighted in its letter dated 07.05.2015 (Annexure R4/1). Besides, the BDS examinations should be from the same University.

(29) It is submitted by Ms. Shivangi Sharma, learned counsel for the Dental Council of India (respondent No. 4) that the MDS Course Regulations, 2007 make it clear that the admission on the basis of individual cumulative performance at the first, second, third and final BDS examinations are liable to be made only if such examinations have been passed from the same University. It may, however, be noticed that this aspect had been amended by the State Government itself vide its notification dated 01.06.2015 (Annexure P4), which modified para No.

5 of the notification dated 23.05.2015 (Annexure P2), which amendment reads as under:

“However, after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will filled on merit on the basis of the individual cumulative performance at the first, second, third and final B.D.S. examinations passed from all other recognized/reputed universities of the country.” (Emphasis added).

(30) The BDS Degrees on the basis of which the students have been admitted to MDS Course of the appellant-Association colleges are not in dispute although they may be from a University other than the Baba Farid University (respondent No. 3) nevertheless the same are recognized Universities by the Dental Council of India. According to the ‘Eligibility’ conditions, a candidate for admission to the MDS Course is to have a recognized degree of BDS awarded by an Indian University in respect of a recognized dental college under Section 10 (2) of the Dentists Act, 1948 or an equivalent qualification recognized by the Dental Council of India; besides, he should have obtained permanent registration with the State Dental Council. Candidates not possessing a recognized dental qualification for the above purpose are to secure the prior approval of his qualifications by the Dental Council of India before he can be admitted to the MDS Course of any University of India. Therefore, in case of an ineligible candidate, he was liable to be non-suited by the Baba Farid University (respondent No. 3) itself, to which the colleges of the appellant- Association are affiliated.

(31) The procedure for ‘Selection of Postgraduate Students’ in terms of the MDS Course Regulations, 2007 is for determining their *inter se* merit. Para No. 2 of the MDS Course Regulations, 2007 under the heading ‘Selection of Postgraduate Students’ it is mentioned that the above Regulations clearly indicate that the competitive examination is mandatory for admissions to BDS and MDS Courses except for BDS Course in States having only one dental college and one University, Board/Examining Body conducting the qualifying examination. Therefore, in a State where there is only one dental college and one University, Board/Examining Body appearance in a competitive examination is not mandatory.

(32) In the case, *Simmons Debbarma and others versus State of*

*Tripura and others*² in one of the writ petitions it was stated by the petitioners therein that in the State of Tripura, the Tripura State Board was the only State Board that conducted the qualifying examination in Higher Secondary (10+2) and in such a State no Joint Entrance Examination or combined competitive examination was required to be held as Regulations 4 and 5 of the Medical Council of India if read together would clearly reveal that the basic qualification for admission to the MBBS Course was passing of Higher Secondary or equivalent examination, namely, Tripura Board of Secondary Education, Central Board of Secondary Education and Indian School Certificate Examinations with not less than 40% marks in Physics, Chemistry and Biology in the Higher Secondary (10+2) or the equivalent examinations, which were described by the Medical Council of India Regulations as the qualifying examinations. However, in the case of a State such as Tripura where there was only one State Board the conducting of qualifying examinations, namely, the Tripura Board of Secondary Education holding of Joint Entrance Examination described as competitive examination by the Medical Council of India Regulations was not at all necessary. The *inter se* merit list of candidates who obtained requisite marks in the qualifying examination, according to the petitioners therein, were to become the basis for selection for admission to MBBS Course in a State like Tripura. Therefore, according to the petitioners, there being only one Board in Tripura State that conducted qualifying examination, no Joint Entrance Examination or Combined Competitive Examination was necessary and that *inter se* merit of the eligible candidates in the qualifying examination was to be the basis for selection to MBBS Course. According to the petitioners therein, the basic eligibility for admission to the MBBS Course was that of securing 40% marks in Physics, Chemistry and Biology taken together in the qualifying examination (s), namely, Tripura Board of Secondary Education, Central Board of Secondary Education and Indian School Certificate Examinations. The insistence by the Medical Council of India Regulations that a candidate appearing in the Joint Entrance Examination or Combined Competitive Examination must obtained 40% marks in the said examinations in the aforesaid three subjects also in order to become eligible for consideration for admission to the MBBS Course was discriminatory.

(33) The Hon'ble Gauhati High Court considered Regulations 4

² 2011 (4) Gau (LT) 841 (DB) (Gauhati)

and 5 of the Medical Council of India and held that the same to be abundantly clear that if there is a State, where there is only one University/ Board/Examining Body, which conducts the qualifying examination, then the marks obtained at such qualifying examination would be the basis for selection for admission to MBBS Course subject to the condition that a candidate belonging to the reserved category in such a State ought to have obtained a minimum of 40% marks in Physics, Chemistry and Biology taken together at the qualifying examination, but where there were more than one University/Board/Examining Body which conducts the qualifying examination, there should be a combined competitive examination so as to achieve a uniform evaluation.

(34) Therefore, it is to be noticed that the Hon'ble Gauhati High Court held that the common entrance test for admission to the MBBS Course was merely to bring uniformity in the evaluation so that inter se merit list of these candidates appearing from different Universities/ Boards/Examining Bodies could be prepared.

(35) The vires of the Regulation 5 (5) (ii) of the Medical Council of India Regulations was also considered and it was held that the said Regulation 5 (5) (ii) was in violation of Article 14 which guarantees equality of treatment. The Medical Council of India assailed the said decision by filing SLP (C) 20918-20919 and the Hon'ble Supreme Court on 27.07.2012 passed the following order:-

“Learned counsel appearing for the Medical Council of India (MCI) submitted that they are not disturbing the students already admitted. According to them, they are aggrieved by the general directions given by the High Court striking down Regulation 5 (5) (ii) which is violative of Article 14. That part of the judgment would stand stayed for a period of three months from today. List for hearing on non-miscellaneous day.”

(36) The interim order dated 27.07.2012 was ordered to continue till further orders vide order dated 17.04.2013.

(37) Therefore, the Hon'ble Supreme Court stayed the operation of the said judgment insofar as the vires of Regulation 5 (5) (ii) of the Medical Council of India Regulations were concerned. The fact that admissions could be made on the basis of merit determined in a qualifying examination conducted by a Board was not interfered with.

(38) In *Preeti Srivastava (Dr.) versus State of M.P.*³ a five Judges Bench of the Hon'ble Supreme Court considered the question whether apart from providing reservation for admission to postgraduate courses in Engineering and Medicines for special candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserve category. It was held by the majority that under the Indian Medical Council Act, 1956, the Indian Medical Council is empowered to prescribe, inter alia, standards of post graduate medical education. In exercise of powers under Section 20 read with Section 33 of the said Act, the Indian Medical Council framed Regulations, which govern postgraduate medical education. These Regulations are binding and the States cannot, in exercise of power under Entry 25 of List III of the Constitution, make Rules and Regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for postgraduate medical education. It was further held that a common entrance examination provides a uniform criterion for judging the merit of all candidates who come from different Universities. The purpose of common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. In the interest of selecting suitable candidates for specialized education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equity of having competent students for specialized education and the need to provide for some room for the backward even at the stage of specialized postgraduate education which is one step from the super specialties. The Supreme Court held that the submission, therefore, that there need not be any qualifying marks prescribed for the common entrance examination has to be rejected.

(39) The Dental Council of India is indeed empowered to prescribe standards of postgraduate dental education. Besides, a common entrance examination provides a uniform criterion for judging merit of all the candidates who come from different Universities and its purpose is to evaluate all candidates by a common yardstick in the interest of selecting suitable candidates for specialized education. The Regulations framed by the Dental Council are binding on the States and

³ (1999) 7 SCC 120

the States cannot make Rules and Regulations, which are in conflict with or adversely impinge the Regulations framed by the Dental Council.

(40) From this, it follows that the qualifying examination like the BDS Examination in the present case which is the condition for 'Eligibility' can be considered for making admissions to the MDS Course. The competitive examination is only for evaluation of *inter se* merit of candidates. However, if seats are lying vacant, as in the present case, the question of determining *inter se* merit does not arise. The merit determined in the competitive examination even if it be of different Universities provided that the candidates seeking admission to the MDS Course fulfills the basic eligibility criterion can be granted admission to the MDS Course. This, in fact, is also provided for by Section 3 (3) of the 2006 Act which provides the State Government is to ensure that admission in a private health sciences educational institution is made in a fair and transparent manner on the basis of the *inter se* merit, determined by the Common Entrance Test or Qualifying Examination, as the case may be, in accordance with the procedure, notified by the State Government in the Official Gazette. Therefore, admissions can be made on the basis of qualifying entrance examination under the 2006 Act and there is nothing to the contrary in the MDS Course Regulations, 2007 inasmuch as the 'Eligibility' in terms of the MDS Course Regulations, 2007 has been duly fulfilled by the students who have been admitted in the colleges of the appellant-Association. The provision for eligibility cannot be obliterated and these are the requirements for students seeking admission to the MDS Course in a Dental College. The 'Selection for Postgraduate Students' in terms of the MDS Course Regulations, 2007 is to maintain uniformity for selection of students coming from different Universities and these cannot be made the basis or in any manner determine the eligibility of the students which is separate and distinct.

(41) The difficulty has arisen in the case in view of the letter dated 07.05.2015 (Annexure R4/1) issued by the Dental Council (respondent No. 4), which makes a mention to only, 'Selection of Postgraduate Students' and makes no reference to the 'Eligibility' conditions as provided for in the MDS Course Regulations, 2007. On the strength of the said letter dated 07.05.2015 (Annexure R4/1) issued by the Dental Council of India, the Government of Punjab, the Director, Medical Education and Research, Punjab as also the Baba Farid University (respondents No. 1 to 3) had adhered to and followed

the same. In fact, the entire MDS Course Regulations, 2007 are and were liable to be read and not the extract only which is contained in the letter dated 07.05.2015 (Annexure R4/1) of the Dental Council of India (respondent No. 4). The said letter dated 07.05.2015 (Annexure R4/1) issued by the Dental Council (respondent No. 4) reproduces only an extract of the MDS Course Regulations, 2007. By reproduction of the extract only it cannot be said that the other provisions contained therein have become redundant or nugatory. It is not in dispute that the students who are studying in the Dental Institutions of the appellant-Association have the necessary eligibility for admissions to the MDS Course; besides, they have been admitted in the MDS Course as seats were lying vacant. In case merit is to be determined of the eligible candidates seeking admission to the MDS Course it is for the purpose that those lower in merit should not be able to steal a march over the students who were higher in merit. However, in case seats are lying vacant even after admitting all the students the question of merit *inter se* the students seeking admission to the MDS Course becomes inconsequential, especially when the students have necessary eligibility and the qualifications; besides, they have expressed no grievance to the same.

(42) Learned counsel appearing for the respective respondents have placed reliance on a judgment of this Court in Punjab Private Self Financed Dental College Association v. State of Punjab (*supra*). In the said case, the challenge in the writ petition was to an order whereby the representation of the appellant-Association for exempting them for the admission process by the State and to the conduct of its own entrance test was declined.

(43) In the present case, exemption has not been sought from the admission process or to conduct its own entrance examination. In fact, it is the seats that were lying vacant in the colleges of the appellant-Association that have been filled on the basis of criteria provided for by the MDS Course Regulations, 2007 and the provisions of the 2006 Act. Rather it is the respondents who have been shifting their stands and providing for inconsistent requirements for admissions to the MDS Course from time to time. Initially, in the notification dated 25.03.2015 (Annexure P2) in the proviso to para 5 thereof it is provided that after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats would be filled on merit on the basis of individual cumulative performance in the first, second, third and final BDS examinations passed from the University.

Therefore, individual cumulative performance in the BDS Examination passed from the University could be the basis for filling vacant seats after considering all the eligible candidates from the AIPGDEE-2015 merit list. In para 28 of the said notification dated 25.03.2015 (Annexure P2) it is mentioned that in private institutions 50% seats are of government quota and 50% are of management/minority quota which include 15% for NRIs.

(44) This position was later changed by letter dated 29.05.2015 (Annexure P3) issued by the DRME (respondent No. 2). It was provided that (1) qualified candidates of AIPGDEE-2015 should only be admitted, (2) candidates who had appeared in AIPGDEE-2015 but could not qualify be considered on merit on the basis of marks in BDS Course and (3) if seats still remained vacant then while complying with the conditions as mentioned at serial No. (1) and (2) candidates from outside Punjab State be also considered. Appearance in AIPGDEE-2015 was, therefore, made essential even though it was not so earlier. This change was, however, at the level of DRME (respondent No. 2) vide letter dated 29.05.2015 (Annexure P3). It is to be noticed that letter issued at the level of DRME (respondent No. 2) is not to supersede the State Government notifications. Besides, the State Government itself issued a corrigendum dated 01.06.2016 (Annexure P4) which provided that after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of the individual cumulative performance at the first, second, third and final B.D.S. examinations passed from all other recognized/reputed Universities of the country. This was in addition to what was provided in the notifications dated 25.02.2015 and 25.03.2015 (Annexures P1 and P2), which restricted the remaining vacant seats to be filled on merit on the basis of individual cumulative performance at the first, second, third and final B.D.S. examinations passed only from the Baba Farid University (respondent No. 3). In view of the corrigendum dated 01.06.2015 (Annexure P4) issued by the Government of Punjab, the DRME (respondent No. 2) letter dated 29.05.2015 (Annexure P3) is of no consequence.

(45) The corrigendum dated 01.06.2015 (Annexure P4) was issued by the Government of Punjab, Department of Medical Education and Research by which para 5 of the notification dated 25.03.2015 (Annexure P2) was amended. In terms of the amended provision it was provided that after considering all the eligible candidates from the

AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of individual cumulative performance at the first, second, third and final BDS examinations passed from all other recognized/reputed Universities of the country.

(46) This evidently makes the students passing their BDS examinations from other recognized/reputed Universities of the country to be entitled for admission to the MDS Course. Therefore, the students who passed their BDS examinations from universities other than the University (respondent No. 3) as shown in the tabulated form above, would also be eligible and entitled for admissions to the MDS Course of the colleges of the appellant-Association.

(47) Thereafter, the impugned letters dated 08.06.2016 (Annexures P5 and P6) by which it was informed by the DRME (respondent No. 2) that for admissions to MDS Course 2015, 'not appeared AIPGDEE-2015 be not considered' and admissions to be made in BDS/MDS Course 2015 be done only on the basis of counselling of the University (respondent No. 3) and no college would make admissions at its own level. This is based on the letter dated 07.05.2015 (Annexure R4/1) issued by the Dental Council of India (respondent No. 4), which has been considered above. Therefore, there has indeed been inconsistency on the part of the respondents. They have been changing their stands frequently from time to time. In this process, they have been disturbing the admission process and also keeping the students in the lurch, which is not a healthy trend for higher medical and dental education.

(48) In the case of *Aditi Sharma versus State of Punjab (supra)*, referred to by the learned counsel for the respondents, the notification dated 07.03.2014 issued by the State Government provided for admission to the MBBS/BDS Courses in all categories including NRIs would be based on the marks obtained in the All India Pre-Medical Test (AIPMT). It was also provided that for admission to BDS Course that firstly, seats would be offered to AIPMT qualified candidates who were residents of Punjab and the remaining seats shall be offered to AIPMT qualified candidates of other States. In respect of private institutions, it was provided that 50% seats would be Government quota seats and the remaining 50% seats including 15% NRIs quota would be management/minority quota seats. In the said case, the students were informed by public notice not to seek admission on the

basis of marks obtained in the qualifying examination. The private institutions were informed not to make admission on the basis of marks in the qualifying examination. Besides, the University informed the private institutions not to send even registration return of the students who had not qualified the All India Common Entrance or the Special State Common Entrance Test as well. Therefore, it was held that the students could not claim any indulgence in the face of the illegalities committed by the private institutions.

(49) In the present case, however, the notification dated 25.02.2015 (Annexure P1) issued by the Government of Punjab provides that in case of MDS, after considering all the eligible candidates from the AIPGDEE- 2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of the individual cumulative performance at the first, second, third and final B.D.S. examination passed from Baba Farid University (respondent No. 3). This was reiterated in the notification dated 25.03.2015 (Annexure P2) issued by the Government of Punjab, Department of Medical Education and Research. The said position then somewhat changed at the level of DRME (respondent No. 2) vide letter dated 29.05.2015 (Annexure P3). As already noticed, the letter issued at the level of DRME (respondent No. 2) is not to supersede the State Government notifications. Besides, the State Government itself issued a corrigendum dated 01.06.2016 (Annexure P4) which provided that after considering all the eligible candidates from the AIPGDEE-2015 merit list, if seats still remain vacant, then the remaining seats will be filled on merit on the basis of the individual cumulative performance at the first, second, third and final B.D.S. examinations passed from all other recognized/reputed Universities of the country. This was in addition to what was provided in the notification dated 25.02.2015 and 25.03.2015 (Annexures P1 and P2) which restricted the remaining vacant seats to be filled on merit on the basis of individual cumulative performance at the first, second, third and final B.D.S. examinations passed only from the Baba Farid University (respondent No. 3). In view of the corrigendum dated 01.06.2015 (Annexure P4) issued by the Government of Punjab, the DRME (respondent No. 2) letter dated 29.05.2015 (Annexure P3) is of no consequence. Therefore, the ratio of the judgment in *Aditi Sharma's case (supra)* is not applicable to the facts of present case.

(50) The DRME (respondent No. 2) issued the impugned letters dated 08.06.2015 (Annexures P5 and P6) at a much later stage and only

on the basis of a letter dated 07.05.2015 (Annexure R4/1) and contrary to the Government notifications dated 25.02.2015 and 25.03.2015 (Annexures P1 and P2). The effect of the letter dated 07.05.2015 (Annexure R4/1) has been considered above inasmuch as it highlighted the provisions of the MDS Course Regulations, 2007 in respect of 'Selection of Postgraduate Students' while ignoring those relating to 'Eligibility', which the students studying in the colleges of the appellant-Association fulfill. This has been considered and delineated upon at considerable length above. Therefore, the issuance of impugned notifications dated 08.06.2015 (Annexures P5 and P6) at the time when the students were being admitted was improper and contrary to the MDS Course Regulations, 2007. It is to be also noticed that the students have been continuing with their MDS Course on the basis of interim order passed by the learned Single Judge and by interim order dated 28.11.2015 passed by this Court in the present appeal. In the circumstances, the impugned letters dated 08.06.2015 (Annexures P5 and P6) issued by the DRME (respondent No. 2) are unsustainable in law and are liable to be quashed.

(51) Accordingly, the appeal is allowed and the judgment and order dated 14.10.2015 passed by the learned Single Judge is set aside and the letters dated 08.06.2015 (Annexures P5 and P6) issued by the DRME (respondent No. 2) are quashed. There shall, however, be no order as to costs.

Shubreet Kaur