
by Hon'ble the Supreme Court to a case of promotion by holding that promotion cannot be deferred to an employee on the basis of mere pendency of departmental proceedings unless a charge sheet has been issued. It is only after the issuance of charge sheet that disciplinary proceedings could be deemed to be pending. Accordingly, the issuance of charge sheet dated 30th October, 2003 (Annexure P-1) and the appointment of Enquiry Officer on 9th November, 2004 (Annexure P-4) are liable to be quashed.

(9) In view of the above, the writ petition is allowed. Order dated 30th October, 2003 (Annexure P-1) issuing charge sheet to the petitioner and the order dated 9th November, 2004 (Annexure P-4) appointing Enquiry Officer for holding a regular departmental enquiry against the petitioner alongwith consequent proceedings of the enquiry officer are hereby quashed.

R.N.R.

Before Viney Mittal and H.S. Bhalla, JJ.

AMARDEEP AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. NO. 9731 OF 2006

8th August, 2006

Constitution of India, 1950—Art. 226—Admission to MBBS/ BDS courses in private unaided Medical Colleges—Separate entrance test and initiation of independent process of admission for private self financed unaided institutions—Challenge thereto—Provisions of prospectus stipulate that seats in privately managed unaided institutes would be filled up through a separate test conducted by Association of Colleges—State Admission Committee permitting Association of private colleges to conduct their separate entrance test and hold independent counselling—State Government observers duly supervised entrance test and counselling held by Association—Action of respondents does not suffer from any infirmity and illegality—Petition dismissed.

Held, that the prospectus had itself provided for holding of a separate entrance test by the Association of privately unaided Medical/Dental Institution in the State of Haryana. In these circumstances, no question of any acquiescence arises on behalf of such institutions or the Association.

(Para 15)

Further held, that private unaided non-minority institutions have a liberty to evolve their own procedure and in a case where there are more than one institutions imparting same education in similar disciplines, then all the aforesaid institutions situated in one State may join together and hold a common entrance test. In these circumstances, it is clear that the State would substitute its own procedure only if the procedure so adopted by an institution or group of institutions is found to be unfair and non-transparent and defeating merit.

(Para 24)

Further held, that the State Admission Committee had permitted the association of the private unaided medical/dental colleges in the State of Haryana to conduct their separate entrance test and hold an independent counselling, subject to the same being monitored/supervised by the Government observers. The State Government observers duly supervised the entrance test held by the Association. The counselling was also done in the presence of Government observers. Admission slips were also signed by the aforesaid Government observers. We do not find that the action of the respondents suffers from any infirmity or can be held to be contrary to the law laid down by the Apex Court.

(Para 25)

Constitution of India, 1950—Art.226—Notification dated 22nd December, 2005 issued by State of Haryana—Admission to MDS course in private unaided Medical College—College inviting applications for entrance test—Challenge thereto—Whether process initiated by College contrary to notification dated 22nd December, 2005—Held, no—State Admission Committee granting approval to College for holding an independent and separate entrance test—Petitioners failing to challenge grant of permission to College—Challenge merely to holding of test, although consequential to permission granted to College, is not maintainable—Petition dismissed.

Held, that the petitioners have not challenged the grant of permission to respondent No. 4 by the State Admission Committee, whereby the respondent College had been permitted to hold an independent and separate admission test. Consequently, we find that the challenge made by the petitioners, merely to the holding of the test although consequential to the permission granted to it, is not maintainable. Once the permission granted to the college has not been challenged, the petitioners cannot be heard to claim that the separate entrance test held by the College was without any authority.

(Para 33)

R.S. Mittal, Senior Advocate with Tara Chand Dhanwal, and Atul Gaur, Advocate for the petitioners in C.W.P. No. 9731 of 2006.

Ms. Alka Chatrath, Advocate for the petitioners in C.W.P. No. 9514 of 2006.

Ashok Jindal, Additional Advocate General, Haryana for the respondent-State.

Rajiv Atma Ram, Senior Advocate with Ajay Jain, Advocate, for respondents No. 4 and 5.

R.S. Tacoria, Advocate, for respondent-University.

JUDGEMENT

VINAY MITTAL, J.

(1) This judgment shall dispose of two petitions being Civil Writ Petitions No. 9731 and 9514 of 2006. The facts are separately noticed in the two cases.

C.W.P. No. 9731 of 2006

(2) The petitioners before this court have made a grievance against the selection process initiated by the Association of Self Financing Medical Colleges of Haryana (respondent No. 4) and the Convenor of the MBBS and BDS Admission, M.M. College of Dental Sciences and Resarches, Mullana, respondent No. 5 for filling up the seats of MBBS/BDS Courses in the private unaided Medical Colleges in the State of Haryana. Primarily the aforesaid grievance has been made on the ground that respondent No. 4 and 5 were not filling up

the seats of MBBS/BDS Courses in the private unaided colleges in the State of Haryana through the common entrance test which was held by the State of Haryana and Maharishi Dayanand University for filling up the seats in the Government Medical Colleges in the State. The petitioners have claimed that the seats of MBBS/BDS in private unaided colleges, in the State of Haryana were also liable to be filled up from the candidates and as per the merit list prepared as a consequence of the joint entrance test conducted for the purposes of Government Medical Colleges. According to the petitioners, the selection process adopted by respondent No. 4 and 5 is contrary to the law laid down by the Supreme Court of India in **T.M.A. Pai Foundation's** case as explained in the case of **Islamic Academy of Education** and further explained in **P.A. Inamdar's** case. Directions have been sought against respondent No. 1 to 3 i.e. State of Haryana and Maharishi Dayanand University to fill up the seats of Medical and Dental Colleges/Institutions in the State of Haryana as per the merit list prepared and published by the Maharishi Dayanand University.

(3) On 14th March, 2006, the State of Haryana, Department of Health and Medical Education, issued a notification to declared Maharishi Dayanand University, Rohtak as the competent authority to conduct the entrance examination and declaration of on result for admission in MBBS/BDS/BAMS/BHMS Courses in Medical and Dental Colleges in the State of Haryana, for the year 2006. Additionally, Director, Pt. B.D. Sharma, PGIMS Rohtak was declared as the competent authority to conduct counselling and finalising admission in the aforesaid courses for the 2006. Consequently, the prospectus was issued by Maharishi Dayanand University, Rohtak (hereinafter after referred to as "the University) for admissions to Medical/Dental/ Ayurvedic/Homeopathic Colleges/Institutions in Haryana for the year 2006 and for holding a common entrance examination. The said prospectus also contained the following information :

"Prospectus for Admission to MBBS/BDS/BAMS and BHMS :

The Health & Medical Education Department, Haryana has assigned the task of conducting Entrance Examination for Admission to MBBS/BDS/BAMS and BHMS courses for the year 2006 to M.D. University, Rohtak. The information given in the prospectus and guidelines regarding conduct of test are as provided by the Health and Medical Education Department of the Haryana Govt.

The Hon'ble Supreme Court of India has given directions in certain cases before them that admission procedure, fee structure etc. shall be as per the guidelines laid down by the Hon'ble Supreme Court and Punjab and Haryana High Court while making admissions. Out of the total seats indicated in the prospectus for each college/institution upto 15% seats may be reserved for NRIs. In privately managed unaided Medical/Dental/Ayurvedic/Homeopathic Institutions, the seats will be filled up through a separate test which will be conducted by the Association of same type of colleges (college if it happens to be a single college in that case by that college) or as per directions of the State Admission Committee/State Government."

(4) The schedule of entrance examination to be conducted for admission was also indicated. The last date of receipt of application forms was given as 15th May, 2006. The entrance examination was to be held on 4th June, 2006. The result of the aforesaid examination was to be declared on 8th June, 2006. It was also indicated that the admission process shall be completed by 30th September, 2006. It also appears that a list of affiliated Medical/Dental Colleges in Haryana was also included in the prospectus. It was mentioned in the prospectus that "at present the following Medical/Dental Colleges are affiliated to various Universities in Haryana. The number of tentative seats in each College have been indicated in Chapter-IV of the prospectus. The number of Colleges and seats are subject to verification and this shall be announced through newspapers before counselling." It appears that names of unaided private institutions were also included in the list.

(5) Chapter-II of the prospectus provided for eligibility conditions. Clause A of the eligibility conditions reads as under :

"A. In pursuance of memo No. 16/24/2005-3HB-IV dated 23rd February, 2006 issued by the department of health and medical education, Haryana, the eligibility criteria has been expanded/revised for following candidates from States/UTs other than Haryana also to appear in the entrance examination for MBBS/BDS/BAMS/BHMS courses for drawing a separate list for privately managed unaided Institutions."

(6) On the basis of the notification dated 14th March, 2006 issued by the State Government and on the basis of the mentioning of the names of the various unaided Medical/Dental Colleges in the State of Haryana in the prospectus, the petitioners have maintained that the entrance examination which was held on 4th June, 2006 was a common entrance test for admissions to all the Medical/Dental Colleges in the State of Haryana, including the private unaided Institutions. It may also be noticed that petitioners claim to have appeared in the aforesaid entrance test and on the basis of the merit positions obtained by them in the said test, claim eligibility/admission to MBBS/BDS Courses in all the medical/dental colleges in the State of Haryana, including the private unaided and self financing institutions.

(7) It may also be noticed that the Association-respondent No. 4 issued an advertisement on 12th June, 2006, whereby it was notified that the Association, comprising of self financing Medical College of Haryana would be conducting an All India MBBS/BDS common entrance test for admission to MBBS/BDS in all self financing/unaided Medical/Dental Colleges in the State of Haryana. It was also notified that the aforesaid entrance examination had been duly approved by the State Admission Committee constituted by the Government of Haryana. A copy of the aforesaid advertisement has been appended as annexure P/3 with the present petition. A perusal of the aforesaid advertisement shows that a schedule for entrance test was indicated. The prospectus were to be available for such admissions with effect from 15th June, 2006 and the last date for receiving the application forms was indicated as 26th June, 2006. The entrance test was to be held on 9th July, 2006. A list of participating institutions was also indicated in the said advertisement. All the aforesaid participating institutions are private unaided/self financing medical colleges in the State of Haryana.

(8) The present petition was filed on 3rd July, 2006 challenging the holding of the separate entrance test and initiation of independent process of admission for the aforesaid private self financed unaided institutions.

(9) The claim of the petitioners has been contested by the respondents. Two separate written statements have been filed. In the short reply filed by respondent No. 1 to 3, it has been maintained

that as per the law laid down by the Apex Court in P.A. Inamdar's case, minority or non-minority unaided institutions are free to admit students of their own choice and the State Government could not enforce any quota or percentage of admission in such institutions. The aforesaid official respondents have also maintained that such institutions situated in one State could join together and hold a common entrance test. It has been maintained that in view of the law laid down by the Apex Court, the State Admission Committee chaired by a retired Judge of the High Court had allowed such institutions to conduct a separate entrance test for admissions in MBBS/BDS Courses. A copy of the communication addressed by the Financial Commissioner and Principal Secretary to Government of Haryana, Health and Medical Education Department, Member Secretary, State Admission Committee addressed to the President of the Association of self financing medical colleges in Haryana (respondent No.4), granting permission for conducting the common entrance test for admission to MBBS/BDS Courses in private unaided colleges in Haryana for the year 2006, has been appended as Annexure R/1 with the short reply.

(10) In the separate written statement filed by respondent, No. 4 and 5, a similar plea has been taken. It has been maintained by the said respondents that there are eight private self financing Medical/Dental Colleges in the State of Haryana and admission to MBBS/BDS Courses in each of the aforesaid colleges is to be made on the basis of the test conducted by the Association of self financing medical colleges in the State of Haryana. The said respondents have also maintained that the Association had represented to the Haryana State Admission Committee for grant of permission to conduct a common entrance test on all India basis for the purpose of admissions to the said colleges. The requisite permission was granted by the State Admission Committee, — vide its communication dated 7th June, 2006. The said admission committee had also approved the draft of the prospectus submitted by the Association. A copy of the aforesaid communication has been appended as Annexure R/4 with the written statement of the said respondents. (We may notice that this communication is the same communication which has been appended as Annexure R/1 with the short reply of respondents No. 1 to 3.) The said common entrance test was conducted on 9th July, 2006. The said common entrance examination was supervised by the Secretary,

Department of Health and Medical Education and his team of 28 officers. After the result on the said common entrance test was declared on 11th July, 2006 on the website, notices were also issued in different newspapers. The respondents have detailed that 2367 students participated in the entrance examination and 812 students qualified the said entrance test by obtaining 50% or above marks and 524 of them have been admitted as per merit determined in the entrance examination. 113 seats were still lying vacant on the date of the filing of the written statement on 25th July, 2006 and the respondents have stated that the aforesaid seats would be filled up by way of second counselling scheduled to be held in the first week of August, 2006. The aforesaid respondents have also detailed that the counselling was done in the presence of Government appointed observers *viz.* Shri Rahul Jain from National Informatic Centre and Dr. R.S. Dahiya, Professor of Surgery, P.G.I.M.S. Rohtak. All the admissions slips have been signed by the aforesaid Government observers. By way of a preliminary objection, the said respondents have also maintained that out of total 31 petitioners, 20 petitioners had applied for appearing in the entrance examination conducted by respondents No. 4 and 17 petitioners had, in fact, appeared in the said test on 9th July, 2006 and as a matter of fact 11 petitioners, *viz.* Petitioners No. 6, 8, 9, 11, 12, 13, 16, 18, 19, 22 and 27 have been admitted as a result of their merit position and counselling.

(11) We have heard Shri R.S. Mittal, learned senior counsel appearing for the petitioners and Ms. Alka Chatrath, Advocate, appearing for the petitioners in the connected petition, Shri Ashok Jindal, learned Additional Advocate General, Haryana for respondents No. 1 to 3 and Shri Rajiv Atma Ram, learned senior counsel appearing for respondents No. 4 and 5 and with their assistance have also gone through the record of the case.

(12) Shri R.S. Mittal, learned senior counsel has vehemently argued that the separate and independent admissions process initiated by respondent No. 4, *qua* the admission in private unaided/self financed Medical/Dental Institutions in the State of Haryana was legally not sustainable inasmuch as, neither the said separate process was permitted in law, as laid down by the Apex Court nor the same was factually justified because the prospectus had been issued by M.D. University, which had been appointed as the competent authority to

conduct the entrance examination for admission to the Medical and Dental Colleges in the State of Haryana through a notification dated 14th March, 2006. On the strength of the aforesaid fact, learned senior counsel has argued that at no point of time any one of the private Medical/Dental Institutions in the State of Haryana had ever raised any protest nor had at any point of time issued any clarification, therefore, the said instructions having acquiesced in the process of common admission initiated by the University, it was not open to such institutions to later on withdraw from the common process. The learned counsel has also placed strong reliance upon some of the observations made by the Apex Court in P.A. Inamdar's case to contend that it was not impermissible for the State Government to hold an entrance test even for admissions to institutions which were private self financed/unaided institutions and once the State Government/University had initiated such a process, then later on such private institutions could not claim any independent right to hold a separate test and initiate independent proceedings for admission.

(13) On the other hand Shri Rajiv Atma Ram, learned senior counsel appearing for respondents No. 4 and 5 has contended that the grievance made by the petitioners was entirely based upon a misconception of the factual position and was also without any basis in law. Shri Atma Ram has pointed out to the specific insertion in the prospectus (extracted in the above portion of the judgment) wherein it was specifically stipulated that the seats in privately managed unaided Medical/Dental/Ayurvedic/Homeopathic institutes would be filled up through a separate test which would be conducted by the Association of same type of colleges. It is, thus, argued by the learned counsel that once there was a specific exclusion of the seats of the privately managed unaided institutions in the State of Haryana, even in the prospectus, then there was no question of any protest which was required to be raised by such institutions and, therefore, there could be no question of any acquiescence by such institutions in the admission process initiated by the State Government/University with regard to the admission in the Government institutions.

(14) We have duly considered the rival contentions raised by the learned counsel appearing for the parties and have also gone through the various pleas raised by the parties in their respective pleadings.

(15) Firstly, to clear the factual position, we must take note of the fact that when the prospectus was issued by the respondent-University for holding a common entrance examination for admission to Medical/Dental/ayurvedic/Homeopathic Colleges/Institutions in the State of Haryana in the year 2006, on the basis of the notification dated 14th March, 2006 issued by the State Government, a specific insertion was made with regard to exclusion of the privately managed unaided Medical/Dental/ayurvedic/Homeopathic institutions. It was stipulated that the seats in the aforesaid colleges would be filled by through a separate test which would be conducted by the Association of same type of colleges (college if it happens to be a single college in that college) or as per directions of the State Admission Committee or the State Government. The said insertion has been extracted in verbatim (and underlined) by us in the earlier portion of the judgment and is at page 4 of the prospectus. It is, thus, clear that the prospectus had itself stipulated that the admission process with regard to the seats in privately managed unaided Medical/Dental Colleges was to be conducted through a separate test conducted by the Association or as per the directions of the State Admission Committee or the State Government. We have taken note of the communication dated 7th June, 2006 issued by the State Admission Committee to the President of the Association (Annexure R/1) whereby permission for conducting the common entrance test has been granted to the Association by the State Admission committee. Various directions have been issued to the Association by the State Admission Committee with regard to the manner in which the test was to be conducted and with regard to the procedure which was to be followed. Government observers had been appointed to supervise the holding of the test and the counselling process. The specific case of respondents No. 4 and 5 is that the test was conducted on 9th July, 2006 by the Association and was supervised by the Health Secretary and his team of 28 officers. The counselling as a result of the aforesaid entrance test was conducted in the presence of government appointed observers and the admission slips were signed by the aforesaid Government observers. In these circumstances, we are satisfied, on facts, that the prospectus had itself provided for holding of a separate entrance test by the Association of privately unaided Medical/Dental Institution in the State of Haryana. In these circumstances no question of any acquiescence arises on behalf of such Institutions or the Association.

(16) At the stage, we may also take notice of an argument raised on behalf of the learned counsel for the respondents to the effect that respondents No. 4 and 5 have been permitted by the State Admission Committee to hold a separate entrance test through a communication dated 7th June, 2006 and it was only on the basis of the said permission granted by the State Admission Committee that the said respondents had ventured into the process of holding separate entrance test and separate admission process for the private self financed/unaided colleges. An objection has been raised by the aforesaid respondents that the aforesaid permission dated 6th June, 2006 has never been challenged by the petitioners at any point of time and, as such the action of respondents No. 4 and 5, which was merely consequential of the permission dated 7th June, 2006, cannot be challenged. We find force in the aforesaid objection raised on behalf of the respondents. As noticed above, the present writ petition was filed by the petitioners on 3rd July, 2006. Advertisement dated 12th June, 2006 and the notice of the entrance test dated 25th June, 2006 have been challenged. As a matter of fact, the said advertisement had been issued and the admission process initiated by the aforesaid respondents No. 4 and 5 in furtherance to the permission granted to them by the State Admission Committee on 7th June, 2006. The communication/permission dated 7th June, 2006 has not been challenged by the petitioners at all. Thus, we find that the writ petition filed by the petitioners is liable to fail on this ground as well.

(17) Very lengthy arguments have been addressed before us on behalf of the petitioners as well as on behalf of the respondents, with regard to the legality and validity of the process of holding a separate entrance examination and initiation of separate and independent selection process by the private self financed/unaided medical colleges. Whereas, on behalf of the petitioners it has been argued that the aforesaid procedure was not sustainable, the State as well as Association of such Colleges have supported the said process. All the learned counsel have placed reliance upon the judgment of the Supreme Court of India in the case of **P.A. Inamdar and others versus State of Maharashtra and others (1)**.

(18) A Bench of 11 Judges of the Apex Court decided the case of **TMA Pai Foundation versus State of Karnataka (2)**. The law laid down in various earlier cases viz. **Unni Krishana versus State of Andhara Pradesh (3)**, **St. Stephen College versus University of Delhi (4)**, **Ahmedabad St. Xavier's College Society versus State of Gujarat (5)**, and **In Re: Kerala Education Bill, 1975 (6)** was examined. In **Pai Foundation**, 11 questions were posed for being answered. Questions 10 and 11 posed in **Pai Foundation** related to the rights of non-minorities to establish and administer educational institution under Articles 21 and 29 (1) read with Articles 14 and 19(1) of the Constitution of India and as to whether the said non-minorities had the same rights as a minority institution and further as to whether the right to establish and administer educational institutions was a right guaranteed under the Constitution. The said questions were answered by the majority by holding that the right to establish and administer education institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26 and to minorities, specifically under Article 30. It was further held that the aforesaid right to establish and administer education institutions was subject of provision of Articles 19(6) and 26(a). After the judgment in **Pai Foundation** was delivered, Union of India, various State Governments and Education Institutions understood the majority judgement in their own way. Therefore, there were some conflicting views. Consequently, the matter was taken up for consideration by the Apex Court in the case **Islamic Academy of Education and another versus State of Karnataka and others (7)**. The following four questions arose for consideration in **Islamic Academy** :

“(1) Whether the educational institutions are entitled to fix their own fee structure ;

(2) Whether minority and non-minority educational institutions stand on the same footing and have the same rights ;

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- (2) J.T. 2002 (9) S.C. 1
 - (3) J.T. 1993 (1) S.C. 474
 - (4) 1991 (1) S.C. 548
 - (5) (1974) 1 S.C.C. 717
 - (6) (1958) S.C.R. 995
 - (7) J.T. 2003(7) S.C. 1

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- (3) whether private unaided professional colleges are entitled to fill in their seats to the extent of 100%, and if not, to what extent; and
- (4) Whether private unaided professional colleges are entitled to admit students by evolving their own method of admission;”

(19) The answers given by the majority judgment in **Islamic Academy** have been culled out by the later judgment in **P.A. Foundation's** case as follows :

- “(1) In professional institutions, as they are unaided, there will be full autonomy in their administration, but the principle of merit cannot be sacrificed, as excellence in profession is in national interest.
- (2) Without interfering with the autonomy of unaided institutions, the object of merit based admissions can be secured by insisting on it as a condition to the grant of recognition and subject to the recognition of merit, the management can be given certain discretion in admitting students.
- (3) The management can have quota for admitting students at its discretion but subject to satisfying the test of merit based admissions, which can be achieved by allowing management to pick up students of their own choice from out of those who have passed the common entrance test conducted by a centralized mechanism. Such common entrance test can be conducted by the State or by an association of similarly placed institutions in the State.
- (4) The State can provide for reservation in favour of financially or socially backward sections of the society.
- (5) The prescription for percentage of seats, that is allotment of different quotas such as management seats, State's quota, appropriated by the State for allotment to reserved categories etc., has to be done by the State in accordance with the “local needs” and the interests/needs of that minority community in the State, both deserving paramount consideration. The exact concept of “local needs”

is not clarified. The plea that each minority unaided educational institution can hold its own admission test was expressly overruled. The principal consideration which prevailed with the majority in **Islamic Academy** for holding in favour of common entrance test was to avoid great hardship and incurring of huge costs by the hapless students in appearing for individual tests of various colleges.

(20) After the **Islamic Academy's** case, the matter was again taken up for consideration by the Apex Court in the case of **P.A. Inamdar**. The law laid down in **Pai Foundation** as well as certain observations made in **Islamic Academy** were further clarified. While examining the controversy the following four questions were framed by the Court for resolving the controversy :

- (1) To what extent the State can regulate the admissions made by unaided (minority or non-minority) educational institutions ?
- (2) Whether unaided (minority or non-minority) educational institutions are free to devise their own admission procedure or whether direction made in **Islamic Academy** for compulsorily holding entrance test by the State or association of institutions and to choose there from the students entitled to admission in such institutions, can be sustained in light of the law laid down in **Pai Foundation** ?
- (3) Whether **Islamic Academy** could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions ?
- (4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by **Islamic Academy**?"

(21) With regard to the issues involved in the present case, we are primarily concerned with questions 1 and 2 only, posed in **P.A. Inamdar's** case. We shall notice the observations made by the Apex Court in **P.A. Inamdar's** case with regard to the aforesaid two questions. In **Pai Foundation**, in **Islamic Academy** as well as in **P.A. Inamdar's** case, the right to establish an educational

institution for charity or for profit has been recognised as a occupation and protected by Article 19(i)(g). As on occupation. The aforesaid right to impart education has been treated to be a fundamental right, however, subject to control by Clause 6 of Article 19 of the Constitution of India. The aforesaid right is available to all citizens, without drawing any distinction between minority and non-minority. It has, however, been held that the aforesaid right is subject to law's, imposing reasonable restriction in the interest of the general public. Some additional protection under Article 30(1) has been recognised in favour of the minorities.

(22) At this stage, we may notice in-extenso the observations made in **P.A.Inamdar's** case by the Apex Court as follows :

“128. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the State have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of sets between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for grating admission on lesser percentage of marks, i.e. on any criterion except merit.

129. As per our understanding, neither in the judgment of **Pai Foundation** nor in the Constitution Bench decision in **Kerala Educational Bill**, which was approved by **Pai Foundation**, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in **Pai Foundation**. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided

professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

130. The observations in paragraph 68 of the majority opinion in **Pai Foundation**, on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in **Pai Foundation**, if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in **Pai Foundation**) in our considered opinion, observations in paragraph 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give free ships and scholarships to the needy and poor students or adopt a

policy in line with the reservation policy of the State to cater to the educational needs of weaker and poorer sections of the society.

131. Nowhere in **Pai Foundation**, either in the majority or in the minority opinion, have we found any institution for imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.
132. We make it clear that the observations in **Pai Foundation** in paragraph 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.
133. In **Pai Foundation**, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.
134. For the aforesaid reasons, we cannot approve of the scheme evolved in **Islamic Academy** to the extent it allows State to fix quota for seat sharing between management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in **Islamic Academy**, in our considered opinion, does not lay down the correct law and runs counter to **Pai Foundation**.

NRI seats

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136. Our answer to the first question is that neither the policy of reservation can be enforced by the State not any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).

Q.2. Admission procedure of unaided educational institutions.

137. So far as the minority unaided institutions are concerned to admit students being one of the components of "right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

138. However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

139. **Pai Foundation** has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with

other non-minority students of that State. Such admissions will be only to a limited extent that is like a 'sprinkling' of such admissions, the term we have used earlier borrowing from **Kerala Education Bill 1957**. In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

140. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted and at different places on same or different dates and there may be clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice

can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit *inter se* of the students so chosen.

141. **Pai Foundation** has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure therefor subject to its being fair transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admissions procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.
142. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a larger extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.” (Emphasis supplied).

(23) The aforesaid observations made by the Apex Court in **P.A. Inamdar’s** case clearly spell out that if the States were allowed to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was

filling the seats available to be discretion in such private institutions, this would amount to nationalization of seats which has been specifically disapproved in **Pai Foundation**. It has also been observed that the conclusions derived by the Apex Court in **Pai Foundation** applied with equal force to unaided private educational institutions of minorities and non-minorities. In these circumstances, it has been held that such institutions are free to admit students of their free own choice up to the level of undergraduate education but with regard to graduate or post-graduate level of education and also for technical and professional educational institutions, excellence in education and maintenance of high standard being the primary consideration, the transparency and merit was required to be assured. In these circumstances, the observations made in para 140 of the judgment clearly provide that although the minority and non-minority institutions may have an independence to evolve their admission process but when there are more than one similar institutions in any State, then keeping in view the interest of the student community and with a view to avoid unnecessary and avoidable expenditure and inconvenience, an entrance test should be held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such a test. The aforesaid procedure would better ensure the object of transparency and merit. In the next following para 141, it has been observed by the court that all institutions imparting same or similar professional education can join together for holding common entrance test satisfying the abovesaid tests and the State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit based admissions and preventing mal-administration. The Apex Court has further directed that if the admission procedure so adopted by the private institutions or group of institutions fails to satisfy the test of fairness, transparency, and merit, then the process can be taken over by the State substituting its own procedure.

(24) In the backdrop of the directions issued by the Apex Court, it is apparent that private unaided non-minority institutions have a liberty to evolve their own procedure and in a case where there are more than one institutions imparting same education in similar disciplines, then all the aforesaid institutions situated in one

State may join together and hold a common entrance test. In these circumstances it is clear that the State would substitute its own procedure only if the procedure so adopted by an institution or group of institutions is found to be unfair and non-transparent and defeating merit.

(25) We have noticed above, while commenting on the factual position, that the State Admission Committee had permitted the association of the private unaided medical/dental colleges in the State of Haryana to conduct their separate entrance test and hold an independent counselling, subject to the same being monitored/supervised by the Government Observers. The State Government observers duly supervised the entrance test held by the Association. The counselling was also done in the presence of the Government observers. Admission slips were also signed by aforesaid the Government observers. Thus, the requirements laid down by the Apex Court in **P.A. Inamdar's** case stand fully satisfied by the private respondents No. 4 and 5. Consequently, we do not find that the action of the respondents suffers from any infirmity or can be held to be contrary to the law laid down by the Apex Court.

(26) In these circumstances, we do not find any merit in the challenge made by the petitioners. The writ petition is, consequently, dismissed.

C.W.P. No. 9514 of 2006

(27) The three petitioners have approached this Court challenging the advertisement dated 10th June, 2006 Annexure P/4, prospectus Annexure P/5 and the advertisement dated 14th June, 2006 whereby the M.M. College of Dental Sciences & Research, Mullana, respondent No. 4, has invited applications for the entrance test for admissions to MDS Courses in the aforesaid College. It has been claimed by the petitioners that the aforesaid process initiated by respondent No.-4 College was contrary to the notification dated 22nd December, 2005 whereby the State Government had appointed Maharishi Dayanand University, Rohtak as the sole competent authority to conduct the entrance test for admission to all the medical and dental colleges situated in the State of Haryana.

(28) The petitioners have pleaded that they have passed BDS examination from the institution recognised by the Dental Council of India and have already completed rotatory intership from the Centre recognised by the Dental Council of India prior to 20th April, 2006. Consequently they claim that they are eligible for admission in MDS Course in the State of Haryana. On 2nd December, 2005, the Government had declared Maharishi Dayanand University (hereinafter referred to as the University) as the only competent authority to conduct the entrance examination and declaration of result for admission in MD/MS/PG diploma and MDS Courses in the medical and dental colleges in the State of Haryana for the year 2006. As per the process initiated by the University, the Common Entrance Test for the aforesaid admission was to be held on 12th March, 2006 and the admission was to be made with effect from 27th March, 2006 and the last date for making the admission was notified as 31st May, 2006. The petitioners claim that they had submitted their application forms and had appeared in the test conducted by the University. Counselling was commenced with effect from 27th March, 2006 and admissions were made in various MDS Courses in Government Dental College, Rohtak and D.A.V. Dental College, Yamuna Nagar as per the merit of the students in the entrance test. The petitioners claim that on 10th June, 2006 a public notice was published in the newspaper by the Association of self financing medical Colleges of Haryana for conducting All India (PG/MDS) Common Entrance test for admission to the MDS courses for the academic year 2006-07. A separate date of the test to be held by the Association/College was notified as 18th June, 2006. Besides claiming that the holding of the separate entrance test by the said college was totally illegal and contrary to the directions issued by the Apex Court in various judgments, it has been maintained by the petitioners that the test sought to be conducted by the College on 18th June, 2006 was even beyond the cut of date i.e. 30th May, 2006 notified by the State Government. Consequently, the petitioners have approached this court.

(29) The claim of the petitioners has been contested by the respondents. A short reply has been filed on behalf of respondents No. 1 and 2. A detailed written statement has been filed on behalf of respondents No. 4 to 6. At the outset, respondents have maintained that the cut of date of 30th May, 2006 had been extended by the

Supreme Court of India *vide* order dated 17th April, 2006 in the matter of **Amit Gupta and others versus Union of India and others**. It has also been maintained that as per the law laid down by the Apex Court, the admission in private unaided/self financed institutions was not to be made by the State of Haryana but such an institution was entitled to conduct its own entrance test and carry out its independent admission process. The respondents have also maintained that the State Admission Committee had granted approval to the college *vide* order dated 7th June, 2006, and after the aforesaid permission, test was conducted by the MM College on 18th June, 2006 and the result was declared on 20th June, 2006 and the counselling of the successful candidates as per merit was done on 22nd June, 2006 and admissions were consequently made. The respondents have maintained that the entire procedure adopted by the College was in conformity with the law laid down by the Apex Court in **P.A. Inamdar's** case.

(30) We have heard the learned counsel for the parties and have gone through the record of the case.

(31) At the outset, we may notice that the petitioners have not challenged the grant of permission to respondents No. 4 by the State Admission Committee, whereby the respondent-College had been permitted to hold an independent and separate admission test. Consequently, we find that the challenge made by the petitioners, merely to the holding of the test although consequential to the permission granted to it, is not maintainable. Once the permission granted to the college has not been challenged, the petitioners cannot be heard to claim that the separate entrance test held by the College was without any authority.

(32) We have also discussed in detail the legal issues involved in the case while dealing with the Civil Writ Petition No. 9731 of 2006 in the above portion of the judgment. For the reasons recorded by us in the said judgment we do not find any merit in the claim made by the petitioners. The present writ petition is also consequently dismissed.