

*Before Binod Kumar Roy, C.J., J.S. Khehar &
Ashutosh Mohunta, JJ.*

**DESH BHAGAT DENTAL COLLEGE AND
HOSPITAL AND OTHERS,—Petitioners**

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 839 of 2003

12th November, 2003

Constitution of India, 1950—Arts.226—Notification dated 10th May, 2002 issued by the Government of Punjab—Admission to first years BDS course for 2002-2003 by a private unaided professional College—State Government granting liberty to the College to make admissions out of waiting list of PMET—2002 and in absence thereof at its own level by complying with the norms laid down by the Dental Council of India—University failing to furnish waiting list—College filling up all the sanctioned seats by evolving its own method of admission—Process adopted by the College while admitting students contrary to the procedure envisaged in Notification dated 10th May, 2002 and the pre-conditions laid down in the prospectus—Whether a private unaided College is bound to regulate admission on the basis of merit list prepared by the University—Held, yes—Admissions could only be made by the College out of the students who were allotted to it by the University on the basis of their merit—Even admission to the management quota must be based on merit determined in the test—Director, Research and Medical Education, Punjab directing the College to abide by the provisions of the notification dated 10th May, 2002 and bringing to its notice legal position in Hemlata's case—College finalising the process of admission at its own level in clear violation of the terms and conditions of admission—College intentionally and deliberately not placing on record letter issued by the Director—College making contentions contrary to the impression given before the Supreme Court to delay the finalisation of the outcome of the matter arising out of the decision rendered in Hemlata's case—Misuse of process of law to defeat the ends of justice—College liable to pay exemplary costs—Petitions dismissed while imposing costs of Rs. 20 lacs against the petitioner.

Held, that there is no question of an institution like the petitioner, which does not enjoy the protection of Article 30 of the Constitution of India, to effect admissions to a professional course without references to merit determined in the combined entrance test. It is, therefore, inevitable for us to return a finding that an unaided privately managed institution like the petitioner—College does not enjoy the right of filling up seats even in the management quota, by devising its own procedure, or by ignoring the merit of candidates determined through the combined entrance test. We, therefore, find no merit in the first contention that the petitioner—College is free to make admissions by evolving its own merit criteria and/or without reference to the PMET—2002.

(Para 10)

Further held, that the letter issued by the Director, Research and Medical Education, Punjab dated 26th November, 2002 had a binding effect on the petitioner—College in violating the clear directions issued to it in the letter dated 26th November, 2002 is grave inasmuch as the same was issued to the petitioner—College well before the College admitted the first student to the first year BDS Course for the academic session 2002-2003.

(Para 14)

Further held, that the petitioner—College adopted a wholly unauthorised procedure while admitting students to the first year BDS course for the academic session 2002-2003 and that a number of candidates were admitted to the first year BDS course despite the fact that they did not fulfil the minimum prescribed eligibility conditions; even the mandate of the Government notification dated 10th May, 2002 and the procedure for admission notified in the prospectus issued by the Medical University was not followed; the petitioner—College also did not follow the procedure for admission prescribed in the Regulations issued by the Dental Council of India; the petitioner—College also completely ignored the ratio of the judgment rendered in T.M.A. Pai's case as well as Islamic Academy of Education's case. Since the petitioner—College did not abide by the aforesaid requirements while admitting students to the first year BDS for the academic session

2002-2003 it is not possible for us to approve the admissions made by it. It also deserves to be noticed that the Director, Research and Medical Education, Punjab through a communication dated 26th November, 2002 pointedly brought the aforesaid legal position to the notice of the petitioner—College. The petitioner—College, thereafter, finalised the process of admission, at its own level, in clear violation of the terms and conditions of admission brought to its notice in blatant disregard of the same.

(Para 20)

Further held, that a breach in the process of regulating admissions whereby less meritorious candidates have been allowed admissions superseding the claims of numerous candidates possessing higher marks cannot be allowed. The blatant lapses committed by the petitioner—College while admitting students to the first year BDS course for the academic session 2002-2003 have been summarised. The process of law can only come to the aid and assistance of those whose claim is founded on the basis of a legal right and not to those who are blameworthy of flagrant breach of law. Sanction or approval cannot be accorded to admissions made on account of an adversity that may be suffered by an individual, specially when, a conclusion is drawn, that the process of admission adopted by the petitioner—College was a total sham.

(Para 21)

Further held, that in view of the interim order passed by the Apex Court on 27th January, 2003, it is natural to conclude that the process initiated through the public notice dated 9th January, 2003 shall have to be discontinued, as of now, so as to abide by the final decision of the Apex Court (wherein the order passed by this Court in Hemlata's case is subject matter of challenge). It, however, deserves to be noticed that during the course of arguments learned counsel did not point out any infirmity in the decision rendered by this Court in Hemlata's case, in fact no reference to the aforesaid judgment was made except to the extent of pointing out the implication of the interim order passed by the Supreme Court on 27th January, 2003.

(Para 22)

Further held, that since there are a number of students who fulfil the minimum standards prescribed in the prospectus issued by the Medical University in the qualifying examination, as well as in the competitive examination (PMET—2002). It would be just and appropriate to allow such candidates to continue in the academic course, till the final decision of the Apex Court. However, all such candidates who do not fulfil the aforesaid two minimum conditions of eligibility cannot be permitted to continue in the first year BDS course. Accordingly, the petitioner—College shall forthwith remove all such students from its roll.

(Para 24)

Further held, that in a way the process of finalising admission to the first year BDS course for the academic session 2002-03 has been put in abeyance on account of the impression given by the petitioner—College to the Apex Court. We are, therefore, of the view that the petitioner College has misused the process of law to defeat the ends of justice. Such an attitude which is aimed at frustrating the cause of justice, cannot be permitted to go by without being appropriately dealt with. We are of the opinion that this is a fit case in which appropriate costs should be imposed on the petitioner—College. We have, therefore, chosen to impose exemplary costs on the petitioner—College.

(Para 25)

H.S. Mattewal, Senior, Advocate with G.S. Ghuman,
Advocates, *for the Petitioners*.

Charu Tuli, Senior Deputy Advocate General, Punjab.

Rajiv Atma Ram, Senior Advocate with Kanwaljit Bajwa,
Advocate.

Anupam Gupta, Advocate with Atul Nehra, Advocate.

M.S. Guglani, Additional Central Government Standing
Counsel for the Union of India.

Sukhdeep Singh Brar, Advocate, *for the respondents*.

JUDGMENT

J.S. Khehar, J.

(1) The instant writ petition was originally filed by three colleges, namely, the Desh Bhagat Dental College and Hospital, Muktsar, the National Dental College, Dera Bassi and the Guru Nanak Dev Dental College and Research Institute, Sunam. At the time of final hearing, learned counsel for the petitioners made a statement that petitioner Nos. 2 and 3, namely, the National Dental College, Dera Bassi and the Guru Nanak Dental College and Research Institute, Sunam, were no longer interested to press the claim raised by them in the instant writ petition. In view of the statement made by learned counsel representing the petitioners, the instant writ petition, so far as it relates to petitioners Nos. 2 and 3, is dismissed as not pressed. The only surviving petitioner, therefore, is the Desh Bhagat Dental College and Hospital, Muktsar (hereinafter referred to as the petitioner—college).

(2) The averments made in the writ petition reveal that the petitioner— College made admissions on its own to the first year Bachelor of Dental Surgery (BDS) Course (from 9th December, 2002 to 26th December, 2002), for the academic session 2002-03, whereby it filled up all the sanctioned seats allotted to it. The Baba Farid University of Health Sciences (hereinafter referred to as the Medical University) issued a public notice in the Tribune dated 9th January, 2003 informing all concerned parties (institutions and candidates) that counselling for admission to the first year BDS course, for the academic session 2002-03, would be conducted from 22nd January, 2003 to 24th January, 2003 in terms of the directions issued by this Court in Civil Writ Petition No. 14832 of 2002, decided on 13th December, 2002 (*Hemlata and others versus State of Punjab and others*). In the aforesaid public notice, the Medical University clarified that the fresh process of counselling for admission to the BDS Course would also be in respect of admissions to the petitioner—college. Since the petitioner-college had finalised the process of admission against all the sanctioned seats in December, 2002 i.e. well before the issuance of the public notice dated 9th January, 2003, the action of the Medical University in convening a fresh process of counselling for the seats already filled up by the petitioner—college, was not acceptable to it. The petitioner college has, therefore, impugned the public notice issued in the Tribune dated 9th January, 2003 by filing the instant writ petition.

(3) Before advertng to the controversy in hand, it would be necessary to briefly delineate the reasons which compelled the Medical University to issue the impugned public notice dated 9th January, 2003. Admissions to courses conducted by Medical/Dental Colleges, located in the State of Punjab, are regulated by the Medical University. For finalising admissions to the academic session 2002-03, the Medical University issued a prospectus, expressing the terms and conditions for admission to the Bachelor of Medicine and Bachelor of Surgery (MBBS), Bachelor of Dental Surgery (BDS), Bachelor of Ayurvedic System of Medicine and Surgery (BAMS) and Bachelor of Homoeopathic System of Medicine and Surgery (BHMS) courses. A perusal of the prospectus reveals that admissions, under reference, were to be made by the Medical University, in terms of the Government of Punjab, Department of Medical Education and Reserach (Health-III Branch) notification dated 10th May, 2002, on the basis of the marks obtained by candidates in the Punjab Medical Entrance Test—2002 (hereinafter referred to as the PMET—2002). The prospectus stipulates that the Medical University would prepare a list of successful candidates in order of merit, for allotment to different courses/institutions. In obedience to the aforesaid prescribed conditions, the Medical University prepared a merit list of candidates based on the PMET—2002 and commenced the process of counselling for allocating students on the basis of their merit for admission to recognised dental institutions in the state. While finalising admission, the Medical University excluded from the zone of consideration, some candidates who ranked higher in the merit but had not indicated BDS as one of their preferences while filling up Item No. 15 of the application form while it granted admission to candidates though lower in the merit list who had indicated BDS as one of their preferences. Item No. 15 of the application form is being extracted hereunder :—

“15. Preference of Courses/Institutions

Course Name (MBBS/BAMS/BHMS)	Institute Name
1	
2	
3	

Some of the students, who were denied admission on account of the fact that they had not mentioned BDS as one of their preferences while filling up Item No. 15 of the application form despite their higher merit position, approached this Court by filing Civil Writ Petition No. 14832 of 2002 (Hemlata and others *versus* State of Punjab and others). While interpreting Item No. 15 of the application form, this Court arrived at the conclusion that candidates were merely required to disclose their superior choice/their priority/their preference, for one or more courses/institutions, out of the choices available, and by doing so, they did not express an option so as to make a choice in favour of one to the exclusion of the other/others. A Division Bench of this Court in Hemlata's case (*supra*) arrived at the conclusion that the action of the Medical University in excluding from consideration such of the candidates, who had not expressed a preference in favour of the BDS Course while filling up Item No. 15 of the application form, was not justified. Accordingly, the Medical University was directed to reconvene the process of counselling so as to consider the claim of the petitioners therein, and others to the BDS course afresh on the basis of their ranking/marks in the PMET—2002. The impugned public notice was, therefore, issued in the Tribune dated 9th January, 2003 by the Medical University so as to comply with the directions issued by this Court in Hemlata's case (*supra*).

(4) In order to appreciate the submissions advanced on behalf of the petitioner, it is necessary to notice a few facts in addition to the facts leading to the issuance of the impugned public notice, referred to above. The petitioner—college got its third year renewal for conducting the BDS Course from the Government of India, Ministry of Health and Family Welfare, after the Dental Council of India made a recommendation in favour of the petitioner on 1st October, 2002. On the grant of the aforesaid renewal, the petitioner—college addressed a communication dated 8th October, 2002 to the Registrar of the Medical University requesting him to include the petitioner—college in the process of counselling/admission to the first year BDS course. Through another communication dated 18th October, 2002, the petitioner—college requested the Registrar of the Medical University to allocate first year BDS students to it out of the waiting list or in the alternative, to grant permission to the petitioner—College to admit students at its own level, on merits. Through yet another communication dated 25th October, 2002, the petitioner—college sought permission from the State Government to admit students to the first year BDS course.

(5) In response to the request made by the petitioner—college to the State Government, the Department of Medical Education and Research (Health-III Branch), Punjab addressed a communication to the Registrar of the Medical University dated 14th November, 2002, wherein it conveyed to the Medical University the decision of the Government to grant permission to the petitioner— college to admit students to the first year BDS course, as per norms and regulations laid down by the Dental Council of India (a copy of the aforesaid communication was also endorsed to the petitioner—college). In supersession of the communication dated 14th November, 2002, the Department of Medical Education and Research (Health-III Branch), Punjab issued a letter dated 20th November, 2002, wherein it was clarified that the petitioner—college should undertake the exercise of admitting students to the first year BDS course out of the candidates available in the waiting list of the PMET—2002. Liberty was, however, granted to the petitioner - college to make admissions as per the norms laid down by the Dental Council of India, in case candidates from the waiting list of the PMET-2002 were not available. The approval granted by the government through its aforesaid communication dated 20th November, 2002 allowed the petitioner -college to finalise the process of admission and to submit the list of admitted candidates to the Medical University within one month. On another request made by the petitioner - college, the Department of Medical Education and Research (Health-III), Punjab extended the time granted to the petitioner - college (to make admissions) by a further period of one week. It is the case of the petitioner - college that in compliance with the liberty granted by the letters issued by the Department of Medical Education and Research (Health-III), Punjab, dated 20th November, 2002 and 17th December, 2002, the petitioner - college filled up all the sanctioned seats to the first year B.D.S. Course, for the academic session 2002-2003, from 9th December, 2002 to 26th December, 2002, and forwarded the details thereof to the Medical University on 26th December, 2002.

(6) In response to the request made by the petitioner - college, for including it in the process of counselling/admission to the first year B.D.S. course, for the academic session 2002-2003, the Registrar of the Medical University issued a communication dated 28th October, 2002 to the Principal of the petitioner- college declining its request to include the petitioner - college for counselling/admission to first year

B.D.S. course on account of the fact that the petitioner - college did not fulfil the conditions contained in the Department of Medical Education and Research (Health-III Branch Punjab notification dated 10th May, 2002. In response to the request made by the petitioner - college to the Medical University to supply the waiting list of candidates from the PMET-2002, the Medical University through its letter dated 30th December, 2002 informed the petitioner - college that this Court had passed an order dated 10th October, 2002 in Hemlata's case (*supra*) where in the operation of the waiting list of the PMET-2002 had been stayed. Through the aforesaid communication, the Medical University also informed the petitioner that this Court had ordered fresh counselling for admission to the first year B.D.S. course in Hemlata's case (*supra*), and that in furtherance of the directions issued by the government on 20th December, 2002, the petitioner - college was assured that it would be included in the fresh process of counselling/admission to the first year B.D.S. course. In compliance with the aforesaid assurance, the Medical University issued the impugned public notice dated 9th January, 2003, for fresh counselling/admission to the first year B.D.S. course in various dental colleges including the petitioner-college.

(7) In order to assail the validity of the impugned public notice dated 9th January, 2003, learned counsel for the petitioner, has advanced the following submissions :

Firstly, it is contended that the petitioner college is not bound to regulate admissions to the first year B.D.S. course on the basis of the merit list prepared by the Medical University in view of the decision rendered by the Apex Court in "**T.M.A. Pai Foundation and Others versus State of Karnataka and others**" (1).

Secondly, admissions were made by the petitioner—college on the basis of the liberty granted to the petitioner — college by the State Government through its letters dated 14th November, 2002, 20th November, 2002 and 17th December, 2002 (reference to which has been made in the foregoing paragraphs). It is, therefore, asserted that the petitioner - college having not violated the conditions of making admissions expressed in the

communications addressed by the Government; admissions made by the petitioner - college must be deemed to be valid for all intents and purposes. And further that, it was not open to the Medical University to interfere in the admissions finalised by the petitioner—college on the basis of the aforesaid letters.

Thirdly, the petitioner - college cannot be now required to make admissions in terms of the PMET-2002 on account of the fact that admissions had been made by the petitioner - college in the absence of an existing PMET-2002 waiting list, by strictly following the standard prescribed by the Dental Council of India.

Fourthly, it is submitted that the judgement rendered by this Court in Hemlata's case (*supra*), which is the basis for issuance of the impugned public notice dated 9th January, 2003 has been stayed by the Apex Court by its order dated 27th January, 2003, and that it is no longer open to the Medical University to conduct a fresh process of counselling/admission in terms of the decision rendered by this Court in Hemlata's case (*supra*).

In so far as the **first contention** of the learned counsel for the petitioner is concerned, it was contended that no restrictions can be imposed on an unaided, privately managed, professional institution, like the petitioner - college, requiring it to follow a prescribed mode for admitting students in view of the legal position expressed by the Apex Court in "T.M.A. Pai's case (*supra*). However, before this Court could have the occasion to examine the substance of the aforesaid contention, it was pointed out by counsel representing the parties that the judgement rendered by the Constitution Bench of eleven Hon'ble Judges of the Apex Court in T.M.A. Pai's case (*supra*) on 31st October, 2002 was pending consideration for clarification before a Constitution Bench of five Hon'ble Judges of the Supreme Court. It was, therefore suggested, that in order to be able to effectively adjudicate upon the controversy in hand, it would be appropriate to wait for the clarificatory

order. The Bench constituted for clarification of doubts/anomalies in “T.M.A. Pai’s case (*supra*), pronounced its order on 14th August, 2003. The clarification rendered by the Apex Court is reported as **“Islamic Academy of Education and others versus State of Karnataka and others” (2)** The clarificatory judgement was placed on the record of this case through C.M. No. 19274 of 2003. Immediately thereafter, the main case has been taken up for hearing.

(8) While addressing submissions on the basis of the decision rendered by the Apex Court in T.M.A. Pai’s case (*supra*), learned counsel for the petitioner invited our attention to the conclusion drawn in paragraph 45 of the judgement wherein the Apex Court recorded, that its earlier decision in **“Unni Krishnan, J.P. versus State of Andhra Pradesh and others” (3)** in so far as it framed a scheme regulating admissions to professional courses conducted by private educational institutions, and in so far as it provided for a fee structure for the same, was not correct, therefore, to the aforesaid extent the decision rendered in **Unni Krishnan’s case (*supra*)** was over-ruled. Learned counsel for the petitioner also invited our attention to the judgements rendered by the Apex Court in **St. Stephen’s College versus University of Delhi (4)** **R. Cheterlekha versus State of Mysore and others (5)**, **Minor P. Rajendran versus State of Madras and others, (6)**, and **Kumari Chitra Ghosh versus Union of India and others, (7)** (which were also noticed in paragraphs 41, 42, 43 and 44 of the judgement rendered in T.M.A. Pai’s case) on the basis of which, the Apex Court in T.M.A. Pai’s case (*supra*) arrived at the conclusion that the scheme regulating admissions and fixing fee thereof, was not correct. On the basis of the aforesaid background it was sought to be concluded that all the fetters placed on private unaided educational institutions by the decision rendered by the Apex Court in Unni Krishnan’s case (*supra*), has been annulled, leaving it open to the private academic institutions like the petitioner—college to freely administer themselves and in doing so, to

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- (2) JT 2003 (7) S.C. 1
(3) JT 1993 (1) S.C. 474
(4) JT 1991 (4) S.C. 548
(5) (1964) 6, S.C.R. 368
(6) (1968) 2 S.C.R. 786
(7) (1969) 2 S.C.C. 228

admit students at their own level. So far as the issue of administration of private institutions is concerned, learned counsel for the petitioner invited our attention to paragraph 50 of the judgement in T.M.A. Pai's case (*supra*), which reads as under :-

“The right to establish and administer broadly comprises the following rights :-

- (a) to admit students;
- (b) to set up a reasonable fee structure ;
- (c) to constitute a governing body ;
- (d) to appoint staff (teaching and non-teaching) and
- (e) to take action if there is dereliction of duty on the part of any employees.”

On the basis of the interpretation of the term administration (as defined in paragraph 50, extracted above) which includes the right/responsibility to admit students; learned counsel for the petitioner - college contended that it was open to an unaided, privately managed, professional college to finalise admissions at its own level. In this behalf, reading extensively from the observations made by the Apex Court in paragraphs 52 to 57 in T.M.A. Pai's case (*supra*), learned counsel for the petitioner emphasised that in terms of the provisions of Articles 19 and 26(a) of the Constitution of India, it must be held that the right of the State while regulating admissions to academic institutions is limited to prescribing qualifications necessary for admission, and no more. It was emphasised that a privately managed, unaided institution, such as the petitioner - college had the right to admit students of its choice, subject to the requirement of following an objective and rational procedure of selection. It was also emphasised that the Constitution of India recognises the right of an individual, a religious denomination, as well as a religious/linguistic minority, to establish an educational institution. It was, therefore, submitted that there necessarily has to be a difference in the administration of privately managed, unaided institutions like, the petitioner - college and institutions run on Government finances. In this behalf, it was contended that Government institution and/or Government aided institutions can be administered by rules and regulations formulated

by the Government including the manner of making admissions and the determination of the fee structure. However, in private unaided institutions like the petitioner - college, the administration whereof is vested in the institution itself, no one could impose terms and conditions for making admissions. It was pointed out that there can be no Governmental interference in the administration of private unaided institutions. It was repeatedly reiterated that the process of admitting students in a part of the administrative functioning of an institution, and therefore, cannot be subjected to fetters and restraints at the hands of the Government or any other body, except to the extent of ensuring maintenance of proper academic standards, atmosphere, infrastructure (including qualified staff), and the prevention of mal-administration by those incharge of management. It was, however, conceded by the learned counsel for the petitioner that admissions to private institutions could not be made on pick and choose basis and must necessarily to be made on the basis of merit determined by the unaided privately managed college itself. In this behalf, learned counsel invited our attention to paragraph 58 of the judgement in T.M.A. Pai's case (*supra*) wherein, the Apex Court made the following observations :—

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

Learned counsel for the petitioner pointed out that the petitioner—college had invited applications from candidates for admission to the first year B.D.S. course by issuing advertisements

in various newspapers and out of those who responded, the most meritorious candidates were accepted. In this behalf, it is also pointed out that admissions made by the petitioner - college had not been challenged by anyone in any Court, thus leading to the inference that no one was/is aggrieved by the admission process adopted by the petitioner - college. It is, therefore, vehemently contended that the petitioner - college having made admissions by keeping in mind the norms formulated by the Dental Council of India, and on the basis of merit of the applicants who responded to the admission notice issued by the petitioner - college, no occasion, whatsoever, arises for negating admissions made by the petitioner - college to the first year B. D.S. course for the academic session 2002-2003.

(9) Interestingly, learned counsel for the petitioner has not referred to the conclusions drawn by the Apex Court on the issue of admissions to privately managed, unaided professional colleges like the petitioner - college, which were dealt with and adjudicated upon separately in paragraphs 67 to 70 of the judgement. Paragraph 68 of the judgement rendered in T.M.A. Pai's case (*supra*) is extremely relevant for the adjudication of the present controversy and is, therefore, being extracted hereunder :—

“68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/University and have

applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of the percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes.”

It is clear from the aforesaid observations that private unaided professional colleges have a right to regulate admissions, but in doing so, it is not open to such institutions to discard the principle of merit. In order to ensure that admissions are based on merit, the institutions are bound to accept the merit of candidates assessed on the basis of a common entrance test conducted collectively by an agency nominated by the Government, or by themselves. The observations of the Apex Courts extracted above allow a certain percentage of seats, described as the management quota, in every unaided, privately managed, professional institution, for which the institute can charge higher fee. These seats are to be filled up by the management at its own level. The percentage of seats to be filled up by the management has to be determined by the Government on the basis of local needs. The aforesaid observations made in T.M.A. Pai's case (*Supra*) have been further clarified in Islamic Academy of Education's case (*Supra*). The issue whether private unaided professional colleges like the petitioner - college, are entitled to fill up 100% of their seats by themselves as has been suggested by the learned counsel for the petitioner, and/or whether they are entitled to admit students by evolving their own method of admission, as is also the case set up on behalf of the petitioner — college, is not a virgin issue. Both the aforesaid issues were collectively dealt with in Islamic Academy of Education's case (*Supra*) in paragraphs 8 to 17 of the judgement. In fact, while adjudicating upon the controversy relating to the aforesaid issue, the Apex Court in Islamic Academy of Education's case (*Supra*), dealt with

the legal position emerging out of paragraph 68 of the judgement rendered by the Apex Court in T.M.A. Pai's case (*Supra*) (also extracted hereinabove), and clarified all doubts/anomalies connected thereto. The Apex Court concluded by holding :—

“ A reading of paragraphs 59 and 68 shows that in non- minority professional colleges admission of students, other than the percentage given to the management, can only be on the basis of merit as per the common entrance test conducted by Government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter.” (extract from paragraph 11).

“It must be clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the *inter se* merit of those students cannot be ignored. In other words whilst admitting/selecting students of their own community/language they cannot ignore the *inter se* merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in the case of their own students it has to be merit *inter se* those students only. Further if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.” (extract from paragraph 13).

“ Paragraph 68 provides that admission by the management can be by a common entrance test held by “itself or by State/University”. The words “common entrance test” clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance tests conducted by the State

or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of result the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of *inter se* merit amongst those student

“ If it is found that any student has been admitted de-hors merit penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.” (extracts from paragraph 14).

“Lastly, it must be mentioned that is was urged by learned counsel for the appellants that paragraph 68 of the majority judgment only permits university/State to provide for merit based selection at the time of granting recognition/affiliation. It was also submitted that once recognition/affiliation is granted to unaided professional colleges, such a stipulation cannot be provided subsequently. We are unable to accept this submission. Such a provision can be made at the time of granting recognition/affiliation as well as subsequently after the grant of such recognition/affiliation.” (extract from para No. 16).

“ It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee” (extract from para No. 17).

It is apparent from the conclusions drawn by the Apex Court that in an unaided, privately managed, professional colleges, admissions to students (for seats other than the seats reserved for the management quota) can only be on the basis of merit determined in a common entrance test conducted collectively for all such colleges either by themselves or by an agency nominated by the Government. Under the notification issued by the Government of Punjab, Department of Medical Education and Research (Health-III Branch) dated 10th May, 2002, admissions to the first year B.D.S. course for the academic session 2002-2003 have to be made on the basis of marks obtained in the PMET-2002 conducted by the Medical University. The notification dated 10th May, 2002, vests eligibility for taking the common entrance test only in such candidates who fulfil the minimum standards prescribed by the Dental Council of India. No combined test was held by the institutions collectively at their own level, for the academic session 2002-2003, there is, as such, no escape from the merit list prepared on the basis of the PMET-2002. In the background of the aforesaid factual position, admissions (to seats other than those allotted to the management quota) could only have been made by the petitioner - college out of students who were allotted to it by the Medical University on the basis of their merit in the PMET-2002.

(10) In so far as the management quota is concerned, the question that arises for consideration in this case is whether the admissions made by the petitioner - college at its own level with reference to the combined entrance test, can be accepted for the management quota ? The answer to the aforesaid question has been rendered indirectly by the Apex Court in Islamic Academy of Education's case (*supra*) in paragraph 13 of its judgement (already extracted above). Observations were made by the Apex Court in respect of admissions in the management quota for institutions enjoying privileges

under Article 30 of the Constitution of India i.e. in respect of minority (religious or linguistic) institutions. Even for such institutions, it has been held that admissions to the management quota must be based on merit determined in the combined entrance test. A minority institute can fill up the management quota seats by confining the students admitted against the said quota to students belonging to the particular minority (religious or linguistic) which manages the institute. Even in doing so it is required to make its choice from the merit list prepared on the basis of the combined entrance test, by picking out a candidate higher in the merit list in preference to a candidate lower down in merit. In other words, even a minority institution has not been permitted to admit students by adopting an admission procedure of its own choice. There is, therefore, no question of an institution like the petitioner, which does not enjoy the protection of Article 30 of the Constitution of India, to effect admissions to a professional course without reference to merit determined in the combined entrance test. It is, therefore, inevitable for us to return a finding that an unaided privately managed institution like the petitioner-college does not enjoy the right of filling up seats even in the management quota, by devising its own procedure, or by ignoring the merit of candidates determined through the combined entrance test. We, therefore, find no merit in the first contention of the learned counsel for the petitioner-college that the petitioner-college is free to make admissions by evolving its own merit criteria and/or without reference to the PMET-2002.

(11) The second contention of the learned counsel for the petitioner-college is based on the communications dated 14th November, 2002, 20th November, 2002 and 17th December, 2002 addressed by the State Government to the petitioner-college, allegedly giving it liberty to make admissions at its own level. It is submitted that through the first of the aforesaid communications dated 14th November, 2002, the government conveyed its decision to the Medical University to permit the petitioner-college to admit students to the first year BDS course. Relevant extract from the letter dated 14th November, 2002 is being reproduced hereunder :—

“ The Government has decided to give permission to Desh Bhagat Dental College and Hospital, Muktsar to admit the candidates to B.D.S. Course in Third Batch under the norms and regulation laid down by the Dental Council of India.”

A perusal of the aforesaid communication reveals that the petitioner—college was permitted to make admissions by complying with the norms laid down by the Dental Council of India. So as to obviate any inference that may have been drawn therefrom (to the effect, whether or not, the petitioner-college was bound by the conditions regulating admissions, prescribed by the Government of Punjab, Department of Medical Education and Research (Health-III Branch) through its notification dated 9th May, 2002) the State Government issued a letter dated 20th November, 2002 to the Chairman of the petitioner-college. Reference is essential to the following observations made in the said letter :—

“The Government of Punjab in supersession to its letter Memo No. 5/41/02-5SS3/5202, dated 14th November, 2002, has decided to accord sanction to Desh Bhagat Dental College and Hospital, Muktsar for admission in First Year B.D.S. Course, Third Batch, out of the candidates, available in the P.M.E.T.-2002. The government has decided that in case, no candidate is available from P.M.E.T., then the admissions can be made by the said college on the basis of eligibility criteria laid down by the Dental Council of India. This approval is subject to the conditions/eligibility as laid down by the Dental Council of India.”

A perusal of the aforesaid extract reveals that the petitioner was allowed to make admissions, in the first instance, out of the waiting list of the P.M.E.T.-2002. Learned counsel for the petitioner-college acknowledges the fact that reference to the P.M.E.T.-2002 in the extracted portion of the communication dated 20th November, 2002, is based on the notification of the Government of Punjab, Department of Medical Education and Research (Health-III Branch) dated 10th May, 2002, and the prospectus issued by the Medical University, for regulating admissions *inter alia* to the first year B.D.S. course for the academic sessions 2002-03. The communication dated 20th November, 2002 permitted the petitioner-college to admit candidates within one month (i.e., by 19th December, 2002). The aforesaid communication, at the request of the petitioner-college, was modified by a memorandum dated 17th December, 2002, extending the period for finalisation of admissions by a further period of one

weak (i.e., by 26th December, 2002). It is the case of the petitioner-college, that the petitioner-college repeatedly addressed letters of request to the Medical University requiring it to furnish the waiting list of the P.M.E.T-2002, in order to be able to comply with the directions contained in the aforementioned communications dated 20th November, 2002 and 17th December, 2002. In response to the request made by the petitioner-college to the Medical University to supply the waiting list of candidates from the P.M.E.T.-2002; the Medical University through its letter dated 30th December, 2002 informed the petitioner-college that this Court by its order dated 10th October, 2002, passed in Hemlata's case (*Supra*), had stayed the operation of the waiting list. Through the aforesaid communication, the Medical University also informed the petitioner-college that this Court in Hemlata's case (*Supra*) had ordered fresh counselling for admission to the first year B.D.S. course for the academic session 2002-03, and that in furtherance of the directions issued by the government on 20th December, 2002, the petitioner-college would also be included in the fresh process of counselling/admission to the first year B.D.S. course.

(12) The submissions noticed above were the spearhead of the arguments advanced in Court in so far as the second contention is concerned. However, after the conclusion of arguments, when the judgment was under circulation, Civil Misc Application No. 21633 of 2003 was filed by the petitioner-college in order to place on the record of this case additional facts and documents. It is necessary to record that no arguments whatsoever were advanced on the basis of the factual position depicted in the aforesaid application or the documents appended thereto. Presumably, we were required to go through the same and record our findings. Through the documents placed on record through the aforesaid civil mis application, the petitioner-college wishes to emphasise that the Medical University while finalising admission to the B.D.S. Course in the preceding academic sessions had approved admission of candidates who obtained less than 40% marks in the P.M.E.T. In so far as the aforesaid contention is concerned, the same is sought to be substantiated by placing on record Annexure P-21. In our view, the aforesaid contention is clearly misconceived and deserves to be rejected. So far as the present controversy is concerned, it relates to admission to the first year B.D.S. course for the academic session 2002-03; the same has to be in conformity with the notification

issued by the Department of Medical Education and Research (Health-III Branch), Punjab dated 10th May, 2002, as well as the prospectus issued by the Medical University. Therefore, the controversy in hand is to be determined on the basis of the terms and conditions specified in the aforesaid notification and prospectus; deliberations conducted in the preceding academic session are clearly irrelevant in so far as the present controversy is concerned since the same were not regulated by the norms laid down for admission to the academic session in the present case. For the same reason, we are satisfied that the averments made in paragraph 7 of the civil misc application (which relate to admissions for a preceding academic session) are irrelevant. Likewise, reference to the letter dated 13th October, 1998 in paragraph 9 of the civil misc application, relating to admission to the Guru Nanak Dev Dental College and Research Institute, Sunam, cannot be considered relevant. The petitioner-college has placed on record a memorandum dated 20th December, 2002 addressed by the Principal Secretary to Government of Punjab, Department of Medical Education and Research (Health-III Branch), Punjab to the Vice Chancellor of the Medical University, with certain directions about filling up vacant seats. A perusal of the aforesaid communication reveals that the aforesaid directions were issued in furtherance of orders passed by this Court while deciding a number of writ petitions. Implementation of directions issued by this Court, or for the matter any other Court, cannot ipso facto create a vested right in the petitioner-college, unless it is shown that a similar direction was issued in respect of the petitioner-college or that the petitioner-college could also avail the benefit of the directions issued by this Court. It is not the case of the petitioner-college that it falls in either of the aforesaid categories. On the evaluation of the submissions noticed above, it is clear that the averments made in the aforesaid civil misc application and the documents appended thereto do not further the claim of the petitioner-college so far as the prayers made by it in this case are concerned.

(13) According to the learned counsel for the petitioner-college, the functioning of the Medical University in so far as it relates to admissions, is regulated by the Government. The Government had granted liberty to the petitioner-college to make admissions out of the waiting list of P.M.E.T.-2002, and in the absence thereof at its own level, on or before 26th December, 2002, by complying with the norms laid down by the Dental Council of India. It is, therefore, contended

that the petitioner-college was well within its rights to made admissions, to the first year B.D.S. course, for the academic session 2002-03, at its own level. However, despite the best efforts of the petitioner-college the Medical University failed to furnish it with the waiting list of the P.M.E.T.-2002. In the predicament in which the petitioner-college found itself, on account of not having been supplied the waiting list of the P.M.E.T.-2002, it issued advertisements in various newspapers and admitted the most meritorious candidates who responded to the same. Learned counsel representing respondents No. 1 and 2 produced before us files of the State Government containing cuttings of the advertisements issued by the petitioner-college inviting applications for admission to the first year B.D.S. course for the academic sessions 2002-03. Since all the advertisements issued by the petitioner-college are identical, an extract from one of the advertisements is being reproduced hereunder :—

**“DESH BHAGAT DENTAL COLLEGE AND HOSPITAL
KOTKAPURA ROAD MUKTSAR (Pb.)**

Approved by Dental Council of India, Ministry of Health &
FW, Government of India,—*vide* letter No. V12017/17/
99 P.M.S. dated 8th October, 2002 Affiliated to Baba
Farid University of Health Sciences Faridkot (Pb.).

ELIGIBILITY :

10+2 (P.C.B.E.) with 50% marks Min. age 17 years before
31st December, 2002 preference will be given to those
who have secured not less than 50% marks in P.M.E.T.-
2002 Admission on purely merit basis.

Applications for provisional admission in B.D.S.-1 are invited
by 30th November, 2002 along with demand draft of
Rs. 500 payable in favour of Desh Bhagat Dental
College and Hospital, Muktsar through registered Post.
Application form can be had from college campus or
H.O. of Desh Bhagat Group of Institution on payment
of Rs. 500.”

On the basis of the factual position noticed above learned counsel for the petitioner-college contends that the admissions were made by the petitioner-college to the first year B.D.S. Course in consonance with

the directions issued by respondents No. 1 and 2 themselves, cannot be subject of interference at the hands of the Medical University. It is on the aforesaid premises that the petitioner-college impugns the action of the Medical University in issuing the impugned public notice dated 9th January, 2003, and thereby inviting applications for admissions *inter alia* to the first year B.D.S. Course in the petitioner-college, for the academic session 2002-03.

(14) In order to controvert the claim of the petitioner-college based on the aforesaid communication, learned counsel for respondents No. 1 and 2 has pointedly invited our attention to a letter dated 26th November, 2002 issued by the Director, Research and Medical Education, Punjab to the Principal of the petitioner-college. It is vehemently contended, at the hands of the official respondents, that the instant writ petition is liable to be dismissed on account of the fact that the petitioner-college to whom the aforesaid communication was addressed is guilty of withholding the same. Learned counsel vehemently contended that the petitioner-college is clearly blameworthy for withholding material relevant for the adjudication of the present controversy, despite having verified the contents of the writ petition by a positive assertion that nothing relevant has been concealed. On account of having approached this Court unfairly, the instant petition, according to learned counsel for the respondents, deserves to be dismissed summarily, and with exemplary costs. Since the official respondents have heavily relied on the letter dated 26th November, 2002, it is in the fitness of the matter to reproduce a relevant extract thereof, which is as under :—

“In this regard you are informed that the Government has granted permission for admission to the colleges for the year 2002 in the Ist year B.D.S. Course but it has not empowered you to violate the terms and conditions of eligibility and admission as laid down in the Punjab Government Notification No. 5/1/2002/5HBIII/2246, dated 10th May, 2002. The admission has to be in conformity with the various provisions of the notification regarding eligibility and admission procedure.

Your notice in the press is violative of the eligibility conditions as well as the admission procedure laid down in the notification.

In addition the Hon'ble High Court of Punjab and Haryana has stayed admission for M.B.B.S./B.D.S. In the light of the above you are instructed to abide by all of the above issues."

On the basis of the communication dated 26th November, 2002, addressed by the Director, Research and Medical Education, Punjab to the Principal of the petitioner-college, well before the petitioner—college admitted the first student to the first year BDS course for the academic session 2002-03, it is contended that the action of the petitioner—college in admitting students is clear violation of the government notification dated 10th May, 2002, as well as the regulations of the Dental Council of India, is unsustainable in law and is liable to be set aside. It would be unfair on our part, not to notice the contention advanced by the learned counsel for the petitioner—college, so as to refute the contention of the learned counsel for the respondents based on the letter written by the Director, Research and Medical Education, Punjab to the Principal of the petitioner—college, dated 26th November, 2002. Learned counsel for the petitioner—college submitted that the Director, Research and Medical Education, Punjab had no authority whatsoever to over-ride the rights vested in the petitioner—college through the aforesaid letters dated 14th November, 2002, 20th November, 2002 and 17th December, 2002, which had been issued by the Department of Medical Education and Research, Punjab. We have perused the three letters relied upon by the petitioner—college. They have been signed by the Superintendent of the Department of Medical Education and Research (Health-III Branch), Punjab. In view of the aforesaid contention, it is important to determine the significance required to be attached to letter issued by the Director, Research and Medical Education Punjab dated 26th November, 2002. The government notification dated 10th May, 2002 while laying down the general conditions for admissions, envisages governmental representation in the process of admissions through the Director, Research and Medical Education, Punjab. Reference in this behalf may be made to paragraph 9(s) of the aforesaid notification, the same is being extracted hereunder :—

"9(s) University shall remain in constant touch with Director, Research and Medical Education and shall work out a schedule of examination and interview with him. It will also send copies of all notices, prospectus to the DRME immediately after issue."

From paragraph 9 (s) of the government notification dated 10th May, 2002, it is clear that the State government was represented in the matter of admissions to medical/dental institutions, by the Director, Research and Medical Education, Punjab who, had issued the letter dated 26th November, 2002, relied upon by the learned counsel for the respondents in order to plead their case. Based on the aforesaid factual position, we have no hesitation in concluding that the letter issued by the Director, Research and Medical Education, Punjab dated 26th November, 2002 had a binding effect on the petitioner-college. The lapse at the hands of the petitioner-college in violating the clear directions issued to it in the letter dated 26th November, 2002 is grave inasmuch as the same was issued to the petitioner-college well before the college admitted the first student to the first year BDS course for the academic session 2002-03.

(15) It is emphatic stand of the respondents in the written statements (separately filed by respondents No. 1 and 2 on the one hand, and respondent No. 3 on the other), that the procedure adopted by the petitioner-college to make admissions was a total sham, and as such does not deserve to be approved. For a clear understanding of the exact purport of the objections raised at the hands of the respondents, it is necessary to refer to the averments made in paragraph 10 of the written statement filed by respondent No. 3. Relevant extract of the same is being reproduced hereunder :—

“Para 10 and sub paras (a) to (f) thereof are incorrect and denied in view of the foregoing reply. The impugned advertisement dated 9th January, 2003 (Annexure P-8) issued by the respondent University in compliance with this Hon’ble Court’s judgment dated 13th December, 2002 in CWP No. 14832 of 2002 is fully constitutional, legal, fair, reasonable and valid. It would bear reiteration that petitioners No. 2 and 3 have participated in the fresh counselling held from January, 22 to 24, 2003 pursuant to the advertisement, Annexure P-8, without any protest or demur and they are, therefore clearly estopped from challenging the same. It would also bear reiteration that, insofar as Petitioner No. 1 is concerned, the said counselling held from January, 22 to 24, 2003 is the first counselling which

petitioner No. 1 was eligible to participate in, for the session 2002-2003. It is submitted further that Petitioners No. 1 to 17, 19 to 24, 28, 32, 48, 53, 55, 57, 61 and 62 in the connected writ petition viz. C.W.P. No. 878 of 2003-Anu Monga and other *versus* State of Punjab and others, participated in the fresh counselling held from January, 22 to 24, 2003 and were selected for admission to the B.D.S. Course as per their merit/rank in PMET-2002. It would also bear reiteration that Petitioner No. 1 to 17 and 19 to 24 in C.W.P. No. 878 of 2003 had also been admitted earlier in the counselling held by the respondent University from September, 10 to 12, 2002. However, the admissions of Petitioner No. 25 to 68 in CWP No. 878 of 2003 made earlier by the petitioner Desh Bhagat College, Muktsar, as per its Registration Return dated 26th December, 2002 (Annexure P-6), were/are all illegal and void as these admissions were made by Petitioner No. 1 in contravention of the eligibility conditions and admission procedure prescribed in the Punjab Government notification 10th May, 2002. Out of the 51 candidates thus admitted by Petitioner No. 1 against free and paid seats, as many as 26 are outright ineligible for admission to the BDS Course as per the Punjab Government notification dated 10th May, 2002. Of these, seven candidates did not appear at all in PMET-2002 while 19 secured less than the requisite 50% marks therein. Of these 26 candidates who are outright ineligible, as many as 20 are petitioners in CWP No. 878 of 2003. These petitioners are as under :—

- (i) **Did not appear at all in PMET-2002**
Petitioners No. 37, 60, 63 and 65
- (ii) **Secured less than 50% marks in PMET-2002**
Petitioners No. 27, 29, 30, 31, 35, 36, 38, 42, 43, 44, 46, 47, 54, 58, 59, and 64.

It would bear reiteration that even the admission of the other petitioners/candidates, admitted by Petitioner No. 1 as per its Registration Return (Annexure P-6),

is illegal and void since these petitioners/candidates were admitted in contravention of the admission procedure prescribed in the Punjab Government Notification dated 10th May, 2002.

It is also important to mention here that a large number of candidates who had qualified PMET-2002 with 50% or more marks were available out of the BDS waiting list prepared by the respondent University after the counselling held from September 10 to 12, 2002. A copy of the said waiting list would be shown to this Hon'ble Court at the time of arguments if so required.

Many such candidates with 50% or more marks in PMET-2002 would still be available.

Insofar as NRI seats in MBBS course advertised *vide* Annexure P-9 are concerned, it is submitted that while one seat was allotted to a NRI candidate who appeared in the counselling held on 15th January, 2003, the remaining 10 vacant seats in the NRI category were transferred to the general category. Of these, 5 seats were allotted to candidates in the general category as per their merit in PMET 2002 WHILE 5 seats were reserved under orders of this Hon'ble Court in different writ petitions.

The petitioners' claim in this Para that the advertisement Annexure P-8 is against the letter and spirit of the judgment of Hon'ble Supreme Court in the case of **TMA Pai Foundation versus State of Karnataka** reported as (2002) 8 SCC 481, is also incorrect and denied..."

(16) In order to demonstrate that the process adopted by the petitioner—college while admitting students to the first year BDS course for the academic session 2002-03, was contrary to the procedure envisaged by the government notification dated 10th May, 2002, and the preconditions laid down in the prospectus issued by the Medical University, learned counsel for the respondents, have invited our attention to the repeated reiteration in the prospectus depicting two

pre-conditions of eligibility for admission to the first year BDS course. Firstly, a candidate to be eligible must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology, in the qualifying examination. However, for candidates belonging to scheduled castes, scheduled tribes, or other backward classes, the minimum marks were to be 40% instead of 50%. In our considered view the petitioner—college was dearly conscious of the aforesaid two conditions. This opinion of ours is based on the advertisements issued by the petitioner—college, inviting applications for admissions to the first year BDS course wherein it referred to both requirements i.e. 50% marks in the qualifying examinations as well as 50% marks in the PMET-2002. Secondly, to be eligible for admission to the first year BDS course, a candidate must also have secured not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. However in respect of the candidates belonging to scheduled castes, scheduled tribes or other backward classes the minimum marks in the competitive examination were to be 40% instead of 50%.

(17) Our attention has been invited to the notification dated 5th January, 1995 whereby the Dental Council of India issued the Dental Council of India (norms and guidelines for fee and guidelines for admissions in dental colleges) Regulations, 1994. The admission procedure to dental courses has been laid down in Regulation 5 and the manner of allotment of seats have been prescribed in Regulation 7 under the aforesaid Regulations. Regulation 5 vests with the “competent authority” the right to prepare the merit list of students to be admitted to the first year BDS course on the basis of a common entrance test. It also mandates that admissions would be made on the basis of the criteria determined by the “competent authority”. Regulation 7 commands the “competent authority” to prepare and publish a waiting list of candidates on the basis of the common entrance test and it requires the filling up of casual vacancies or drop out vacancies out of the aforesaid waiting list. It is also relevant to mention here that the term “competent authority” has been defined in Regulation 3 (b) of the aforesaid Regulations as “a government or University or any other authority as may be designated by the Government or the University or by law to allot students for admission to various dental colleges in a State...” Our attention has also been invited to earlier

Regulations framed by the Dental Council of India and approved by the Central Government under Dentist Act, 1948, on 25th January, 1978 and 27th June, 1983. It has been stipulated in the aforesaid regulations that candidates desirous of admission to the first year BDS course should have secured not less than 50% marks in the aggregate of the qualifying examination conducted on similar lines as the qualifying examination conducted by the competitive body. For scheduled castes and scheduled tribes, the minimum marks were to be 40% instead of 50%. An extract from the compilation of the Regulations of the Dental Council of India, produced in the Court, by learned counsel representing the Dental Council of India, which affirms the aforesaid position, is being reproduced hereunder :—

“The candidate should have secured not less than 50% of marks on the aggregate of the above subjects in the qualifying or competitive examination conducted on similar lines as the qualifying examination conducted by a competitive body. For Scheduled Castes Scheduled Tribes the minimum marks required for admission shall be 40% in lieu of 50% for general candidates.”

It is, therefore, abundantly clear that the minimum eligibility conditions prescribed by the Dental Council of India are the same as have been laid down in the Department of Medical Education and Research (Health-III Branch), Punjab notification dated 10th May, 2002 read with the prospectus issued by the Medical University.

(18) Drawing our attention to the pleadings in paragraph 10 of the written statement filed by respondent No. 3, which have been reiterated in the written statement filed on behalf of respondents No. 1 and 2 (in paragraph 6 and 11 of the preliminary submissions and in paragraph 6 of the reply on merits), learned counsel for the respondents, vehemently contended that a seal of judicial approval cannot be accorded to, the action of the petitioner-college in making admissions by breaching all norms of procedure and cannons of conscious. It is the vehement contention of the learned counsel representing respondents No. 1 to 3 that all students desirous of admission to the first year BDS Course, were well aware that admissions thereto could only be made in terms of the rules and regulations formulated by the Dental Council of India and the concerned State

Government. It is further emphasised that all institutions and students are by now well aware that admissions to professional courses like the one in hand, are to be regulated by the norms laid down by the Supreme Court in various judgements including the judgment in T.M.A. Pai's case (*supra*), and in such circumstances, it is neither open to the petitioner-college, nor any student who has gained admission in violation of the prescribed norms to take up a position, that they were not aware of the procedural norms or regulations of admission to Dental Colleges through the Medical University. It is emphatically pointed out that a number of candidates admitted did not appear in the PMET-2002, whereas, a number of those who had appeared in the PMET-2002 did not fulfil the second essential requirement, inasmuch as, they did not obtain a minimum 50% marks in Physics, Chemistry and Biology taken together in the PMET-2002 (40% in case of Scheduled Caste, Scheduled Tribe and other Backward Classes).

(19) The factual position noticed in paragraph 10 of the written statement is indeed an eye opener, demonstrating the abuse of power exercised by the petitioner—college in effecting admissions to the first year BDS Course for the academic session 2002-03. There can be no doubt that there has been a blatant breach of the government notification dated 10th May, 2002, as well as the terms and conditions of admission depicted in the prospectus issued by the Medical University. There is also no doubt that the procedure for effecting admissions delineated in the two judgements of the Apex Court i.e, in T.M.A. Pai's case (*supra*) (decided on 31st October, 2002) and in Islamic Academy of Education's case (*supra*) (decided on 14th August, 2003), have been clearly violated. Although the impugned action of the Medical University in issuing the impugned public notice dated 9th January, 2003 precedes the date on which the Apex Court rendered its judgement in Islamic Academy of Education's case (*supra*), yet the same would also be relevant for adjudicating the present controversy in view of the fact that the judgement in Islamic Academy of Education's case (*supra*) is in the nature of clarification of the decision rendered by the Supreme Court in T.M.A. Pai's case (*supra*). It is well settled that an order passed in clarification of an earlier order must be deemed to relate back to the earlier order. In this behalf, reference may be made

to the decision rendered by the Apex Court in **S.S. Grewal versus State of Punjab and others (8)**. Wherein it was observed as under :—

- “9. From a perusal of the letter dated 8th April, 1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated 5th May, 1975. Since the said letter dated 8th April, 1980 is only clarification in nature, there is no question of its having an operation independent of the instructions contained in the letter dated 5th May, 1975 and the clarifications contained in the letter dated 8th April, 1980 have to be read as a part of the instructions contained in the earlier letter dated 5th May, 1975. In this context it may be stated that according to the principles of explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See : Craies on Statute Law, 7th Ed., p. 58)...”

As already noticed above it was the joint plea of counsel representing the different parties in this case, that hearing of this case should be deferred to await the clarificatory order of the Supreme Court, so that this case could be decided in the light of the clarificatory order.

(20) It deserves to be noticed that the learned counsel for the petitioner—college attempted to demonstrate that the factual position recorded in paragraph 10, of the written statement filed by respondent No. 3, and paragraphs 6 and 11 in the preliminary submissions and paragraph 6 of the reply on merits in the written statement filed by respondents No. 1 and 2, was not correct in respect of a few of the admitted candidates. We do not consider it either necessary or appropriate to dwell into the factual aspect of the matter. Even if the petitioner—college succeeds in establishing that the factual position depicted in the written statement, in respect of a few of the admitted candidates is incorrect, yet there can be no escape from conclusion that the petitioner—college adopted a wholly unauthorised procedure while admitting students to the first year BDS Course for the academic

session 2002-03 and that a number of candidates were admitted to the first year BDS Course despite the fact that they did not fulfil the minimum prescribed eligibility conditions; even the mandate of the government notification dated 10th May, 2002 and the procedure for admission notified in the prospectus issued by the Medical University was not followed ; the petitioner—college also did not follow the procedure for admission prescribed in the Regulations issued by the Dental Council of India; the petitioner-college also completely ignored the ratio of the judgement rendered in T.M.A. Pal's case (*supra*) as well as Islamic Academy of Education's case (*supra*). Since the petitioner-college did not abide by the aforesaid requirements while admitting students to the first year BDS Course for the academic session 2002-03, it is not possible for us to approve the admissions made by it. It also deserves to be noticed that the Director, Research and Medical Education, Punjab through a communication dated 26th November, 2002 pointedly brought the aforesaid legal position to the notice of the petitioner-college. The petitioner-college, thereafter, finalised the process of admission, at its own level, in clear violation of the terms and conditions of admission brought to its notice in blatant disregard of the same.

(21) The **third contention** of the learned counsel for the petitioner-college, is that it has already finalised admissions and furnished a list of the admitted candidates to the Medical University on 26th December, 2002. It is, therefore, contended that admissions made by the petitioner-college should not be annulled even if this Court arrives at a conclusion adverse to the interest of the petitioner-college and/or the students admitted by it, on the first two issues canvassed in view of the fact that admissions were made innocently by the petitioner—college, and no fault lies with the students admitted to the first year BDS Course for the academic sessions 2002-03. It is not possible for us to accept the aforesaid contention of the learned counsel for the petitioner-college on account of the reasons detailed while dealing with the second contentnion. Moreover, a breach in the process of regulating admissions whereby less meritorious candidates have been allowed admissions superseding the claims of numerous candidates possessing higher marks cannot be allowed. The blatant apses committed by the petitioner-college while admitting students to the first year BDS Course for the academic session 2002-03 have been summarised in the foregoing paragraph. The process of law can only

come to the aid and assistance of those whose claim is founded on the basis of a legal right and not to those who are blameworthy of flagrant breach of law. Sanction or approval cannot be accorded to admissions made on account of an adversity that may be suffered by an individual, specially when, a conclusion is drawn, as in the present case, that the process of admission adopted by the petitioner-college was a total sham.

(22) The **fourth contention** of the learned counsel for the petitioner-college is based on the judgement rendered by this Court in Hemlata's case (*supra*). The solitary contention of the learned counsel for the petitioner-college was that the Apex Court on 27th January, 2003 passed an order to the effect that "... there shall be interim stay of the order under challenge" of the judgement rendered by this Court in Hemlata's case (*supra*). It is, therefore, contended that it was not open to the Medical University to re-initiate a process of counselling leading to admissions to the first year BDS Course for the academic session 2002-03 on the basis of the judgement rendered by this Court in Hemlata's case (*supra*). It is strange that the petitioner-college filed the writ petition to raise this plea. The petitioner-college is duly represented before the Apex Court in the controversy arising out of the decision rendered by this Court in Hemlata's case (*supra*). On the basis of the interim order passed by the Apex Court on 27th January, 2003, it could have easily obtained necessary orders by moving an IA in the matter pending in the Supreme Court. This argument was not open to the petitioner-college at the time of filing of the instant writ petition since the Apex Court had not yet passed the aforesaid interim order dated 27th January, 2003 when the instant case came up for motion hearing before this Court on 21st January, 2003. The aforesaid argument, of course, is now available to the petitioner-college, and has merit. There can be no doubt whatsoever in the proposition canvassed by the learned counsel for the petitioner-college, in view of the order passed on 27th January, 2003 staying the order passed by this Court in Hemlata's case (*supra*), it is no longer open to the Medical University to conduct the process of fresh counselling for admission on the basis of the impugned public notice dated 9th January, 2003. In view of the interim order passed by the Apex Court on 27th January, 2003, it is natural to conclude that the process initiated through the public notice dated 9th January, 2003 shall have to be discontinued, as of now, so as to abide by the

final decision of the Apex Court (wherein the order passed by this Court in Hemlata's case (*supra*) is subject matter of challenge). It, however, deserves to be noticed that during the course of arguments, learned counsel for the petitioner, did not point out any infirmity in the decision rendered by this Court in Hemlata's case (*supra*), in fact no reference to the aforesaid judgement was made except to the extent of pointing out the implication of the interim order passed by the Supreme Court on 27th January, 2003.

(23) Having dealt with the submissions advanced by the rival parties, we have arrived at the following conclusions :—

Firstly, it is not open to petitioner-college, conducting a professional course, to make admissions thereto, in a manner other than on merit determined through a common entrance test held by an agency nominated by the State government.

Secondly, admissions claimed to have been made by the petitioner-college in furtherance of communications issued by the State government dated 14th November, 2002, 20th November, 2002 and 17th December, 2002, cannot be approved.

Thirdly, a breach in the process of regulating admissions whereby less meritorious candidates have been allowed admissions superseding the claims of numerous candidates possessing higher marks cannot be approved.

Fourthly, the interim order passed by the Apex Court on 27th January, 2003 will have the effect of restraining the Medical University from conducting fresh counselling in furtherance of the public notice dated 9th January, 2003, till the decision by the Apex Court in furtherance of the judgement rendered by this Court in Hemlata's case (*supra*).

(24) In view of the peculiar facts and circumstances of this case, it is not possible for us to conclude which of the candidates who have already been admitted, will have an eventual claim for admission. As of now, by an interim order passed by the Apex Court on 27th January, 2003, the judgement rendered in Hemlata's case (*supra*) has been stayed. We have been informed that admissions made on the basis of counselling conducted by the Medical University prior to the judgement rendered by this Court in Hemlata's case (*supra*), have been given effect to. However, the process of counselling was not

conducted by the Medical University, for admissions made by the petitioner college, and as such in view of the conclusion drawn above, admissions shall have to be made to the sanctioned seats available in the petitioner-college, on the basis of the legal position expressed by the Apex Court, on finalisation of the controversy emerging out of the judgement rendered by this Court in Hemlata's case (*supra*). Since, however, there are a number of students who fulfil the minimum standards prescribed in the prospectus issued by the Medical University (delineated above) in the qualifying examination, as well as in the competitive examination (PMET-2002). It would be just and appropriate to allow such candidates to continue in the academic course, till the final decision of the Apex Court. However, all such candidates who do not fulfil the aforesaid two minimum conditions of eligibility, cannot be permitted to continue in the first year BDS course. Accordingly, the petitioner-college shall forthwith remove all such students from its roll.

(25) While deliberating upon the controversy raised in the present case, we have already recorded our conclusion that the petitioner-college had intentionally and deliberately not placed on the record of this case the letter dated 26th November, 2002 issued by the Director, Research and Medical Education, Punjab to the Principal of the petitioner-college inspite of the fact that the same has a direct bearing on the second contention advanced on behalf of the petitioner-college. Learned counsel for the respondents on account of the aforesaid fact, itself, had insisted that this petition should be dismissed summarily. However, since, the academic career of a number of students was dependent upon the controversy raised in the instant case, we chose not to accept the aforesaid prayer. Be that as it may, the aforesaid act of withholding relevant material from this court, cannot be overlooked irrespective of the conclusions recorded by us. Besides the aforesaid unacceptable action of the petitioner-college, it is obvious from the conclusions drawn by us in the last paragraph while dealing with the second contention advanced on behalf of the petitioner-college, hereinabove, that the petitioner-college had admitted students to the first year BDS course for the academic session 2002-03 in violation of all norms and conditions, and that the process of admission adopted by the petitioner-college was a total sham. The petitioner-college did not abide by the directions of the State Government, it did not fill up seats to the first year BDS course according to the government notification dated 10th May, 2002, it failed to abide by the direction of the Medical University and the standard delineated in the prospectus issued by it, it ignored the regulations for admission laid down by the

Dental Council of India, and it also failed to adhere to the norms laid down by the Apex Court in its various judgements, referred to above. In addition to the above, our attention was invited to the order passed by the Apex Court on 9th May, 2003 in petition(s) for Special Leave to Appeal (Civil) No. 1863-1870 of 2003 i.e. in the matter arising out of a decision rendered by this Court in Hemlata's case (*supra*). An extract of the aforesaid order is being reproduced hereunder :—

”We are informed at the Bar that a writ petition filed by Desh Bhagat Dental College, Muktsar, and a connected matter, both are awaiting hearing before a Full Bench of the High Court of Punjab & Haryana. It is also submitted that the decision by the Full Bench would have a bearing on the relief, if any, to be given by this Court. The parties are allowed liberty to mention before the Punjab and Haryana High Court for expediting the hearing before the full Bench since the academic career of the students is involved.”

We are informed by the learned counsel representing the respondents that the aforesaid order came to be passed at the behest of the counsel representing the Desh Bhagat Dental College and Hospital, Muktsar i.e. the petitioner-college herein. The contentions advanced on behalf of the petitioner-college before us, in this case, are clearly contrary to the impression given by the petitioner-college to the Apex Court. We wish to reiterate that no reference was made to the judgement rendered by this Court in Hemlata's case (*supra*) during the course of arguments except the effect of the interim order passed by the Supreme Court on 27th January, 2003 staying the order passed by this Court in Hemlata's case (*supra*). It seems to us that the only reason that may have prompted the petitioner-college to give such an impression to the Apex Court, is to delay the finalisation of the out-come of the matter arising out of the decision rendered by this Court in Hemlata's case (*supra*). A final decision by the Apex Court in Petition(s) for Special Leave to Appeal (Civil) No. 1863—1870 of 2003 would have rendered the fourth contention raised on behalf of the petitioner-college infructuous. In a way the process of finalising admission to the first year BDS course for the academic session 2002-03 has been put in abeyance on account of the aforesaid impression given by the petitioner-college to the Apex Court. We are, therefore, of the view that the petitioner-college has misused the process of law to defeat the ends of justice. Such an attitude, which is aimed at frustrating the cause of justice, cannot be permitted to go by without being appropriately dealt with. The judgement rendered by the Apex

Court in T.M.A. Pai's case (*supra*) records an observation of the Apex Court to the effect that "...if it is found that any student has been admitted de-hors merit, penalty can be imposed on the institute and in appropriate cases recognition/affiliation may also be withdrawn" (extract from paragraph 14 of the aforesaid judgement). We are of the opinion that this is a fit case in which appropriate costs should be imposed on the petitioner-college in view of the factual position noticed above. We have, therefore, chosen to impose exemplary costs on the petitioner-college. Ordinarily such costs should be payable to the students, who may have to be dislodged as a consequence of the order passed by us. We, however, feel that the students admitted by the petitioner-college have acted with the same malice as the petitioner-college so as to gain entry into the first year BDS course for the academic session 2002-03 by hook or by crook, by superseding the claims of candidates with higher merit. It is not believable that students in the present generation can be oblivious of the procedure for admission to professional courses. We are of the view that respondents No. 1 and 2 i.e. the State Government and respondent No. 3 i.e. the Medical University have had to suffer unnecessary litigation, wherein the sole effort of the petitioner-college has been, to brow-beat all and sundry, so as to create equitable rights in favour of students to whom it had wrongfully granted admission, after the exhaustion of the duration of the relevant academic session, Undoubtedly a well planned affair. The written statement filed on behalf of respondents No. 1 and 2 discloses that the petitioner-college is running a group of institutions wherein the total expenditure incurred is of Rs. 89 lacs against an income of Rs. 222 lacs in the three preceding years i.e. 1998-99, 1999-2000 and 2000-2001, thus earning a profit of Rs. 133 lacs which is more than 15% of the average annual expenditure. For the various acts of omission and commission at the hands of the petitioner-college, while dismissing this petition, we direct it to pay costs to respondents No. 1 and 2, which we hereby quantify as Rs. 10 lacs, and also to pay a further sum of Rs. 10 lacs as costs to respondent No. 3.

(26) Disposed of in the aforesaid terms.

BINOD KUMAR ROY, C.J.

(27) I agree.

ASHUTOSH MOHUNTA, J.

(28) I agree.

R.N.R.