

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 21703 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 22287 of 2022****=====**
ALL GUJARAT SELF-FINANCE PARAMEDICAL CONSORTIUM AND
ASSOCIATION**Versus****NATIONAL COMMISSION FOR INDIAN SYSTEM OF MEDICINE (NCISM)**
=====**Appearance:**

MR DHAVAL DAVE, SENIOR ADVOCATE with MR UDIT N VYAS(9255) for the Petitioners

MRS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER for the Respondent(s) No. 2

MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1

MR. KM ANTANI(6547) for the Respondent(s) No. 3
=====**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE**
ARAVIND KUMAR**and****HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI****Date : 08/12/2022****COMMON CAV JUDGMENT****(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)**

1. These petitions have been filed by All India Self-finance Paramedical Consortium and Association and Swanirbhar Homeopathic Medical College Sanchalak Mahamandal respectively challenging the validity of amendment of National Commission for Indian System of Medicines (Minimum Standards of Under-graduate Ayurveda Education) Regulations 2022 as well as the comprehensive guidelines dated 18.10.2022 issued by the respondent authority.

2. At the request of learned Senior Advocate Mr. Dhaval Dave appearing for petitioner, we have taken up both the matters and he has specifically referred to the pleadings and annexures in Special Civil Application No.22287 of 2022 and we would be referring to the pleadings accordingly.

3. During the course of hearing, petitioners have sought for an amendment in the pleadings and relief, which came to be allowed by order dated 7.11.2022 and as such entire relief clause mentioned in the lead petition is reproduced hereunder:-

“[a] That this Hon'ble Court may be pleased to declare Comprehensive Guidelines for Counselling and Admission in Undergraduate (UG- BAMS/BSMS/BUMS/BHMS) & Postgraduate (PG- MD/MS) Courses of Ayurveda, Siddha, Unani & Homoeopathy (ASU&H) for Academic Session 2022-23 as ultra vires of the Constitution of India as well as Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and thereupon be pleased to hold that private unaided homoeopathy medical colleges in the State of Gujarat are entitled to admit students on Management seats through Petitioner as their consortium.

[aa] That this Hon'ble Court be pleased to declare Gujarat Professional Medical Educational Courses [Regulation of Admission in Undergraduate Courses) (Second Amendment) Rules, 2022 and the resulting amendment to Rule 3 and Rule 7 of Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017, as ultra vires of the Constitution of India and Gujarat Professional Medical Educational Colleges Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and thereupon. be pleased to hold that private unaided

homoeopathy medical colleges in the State of Gujarat are entitled to admit students on Management seats through the Petitioner as their consortium.

- [ab] Pending admission, hearing, and final disposal of the present petition, this Hon'ble Court may be pleased to stay the operation and implementation of the Gujarat Professional Medical Educational Courses Regulation of Admission in Undergraduate Courses] (Second Amendment) Rules, 2022 and thereupon, be pleased to permit private unaided homoeopathy medical colleges in the State of Gujarat to admit students on Management seats through the Petitioner as their consortium on such terms and conditions that this Hon'ble Court may deem fit and proper.
- [b] Pending admission, hearing, and final disposal of the present petition, this Hon'ble Court may be pleased to stay the operation and implementation of the Comprehensive Guidelines for Counselling and Admission in Undergraduate (UG- BAMS/BSMS/BUMS/BHMS) & Postgraduate (PG-MD/MS) Courses of Ayurveda, Siddha, Unani & Homoeopathy (ASU&H) for Academic Session 2022- 23 and thereupon, be pleased to permit private unaided homoeopathy medical colleges in the State of Gujarat to admit students on Management seats on such terms and conditions that this Hon'ble Court may deem fit and proper.
- [c] This Hon'ble Court may be pleased to grant any other or further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

4. Petitioner Swanirbhar Homeopathic Medical College Sanchalak Mahamandal has stated that petitioner is a Trust registered under the provisions of the Gujarat Public Trusts Act, 1950 and is an Association of Self-finance Homeopathic Colleges in the State of Gujarat imparting education in the discipline of Homeopathy at the level of graduation and post-graduation leading to the educational qualification of BHMS and MD

(Hom.). Petitioner is a recognized Consortium of self-finance Homeopathic Colleges in the State of Gujarat for regulating admission in respect of Management seats and Non Resident Indian seats (NRI).

5. The Admission Committee of Gujarat Professional Undergraduate Medical Educational Courses (hereinafter to be referred as 'Admission Committee') is a statutory committee formed under Section 4 of the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007.

6. The case of petitioner is that in view of the proposition of law laid down by Hon'ble Apex Court in respect of *TMA Pai Foundation Vs. State of Karnataka* reported in (2002) 8 SCC 481, which has recognized the fundamental rights of unaided private colleges with respect to right to admit students, right to fix a reasonable fee structure, right to constitute a governing body, right to appoint staff including teaching and non-teaching and further right to take action, if there is any dereliction of duty on the part of employees and these issues are recognized

as fundamental rights of management of private unaided Homeopathy Medical Colleges in the State of Gujarat to admit students is now taken away by virtue of impugned amendment.

7. It has further been asserted that subsequently, when an issue arose with regard to sharing of seats between State Government and private unaided Institutions, the Hon'ble Supreme Court in case of *P.A. Inamdar Vs. State of Maharashtra* reported in (2005) 6 SCC 537 has propounded that private unaided institutions cannot be forced to submit to the seats sharing policy of the State, however such seat sharing ratio to be arrived at through consensual arrangement and pursuant to that, Gujarat State Legislature has enacted Professional Medical Education Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and consensual agreement as to seat sharing ratio was recorded, which is mentioned under Section 6 of the Act of 2007. According to the petitioner, conjoint reading of the provisions, namely Section 6 read with Section 2(g) and 2(h) of the Act of 2007, 75% of the approved seats in professional medical college would be earmarked as Government seats to be filled in by

Admission Committee of respondent No.2, whereas 25% of approved seats in a professional medical college would be earmarked as Management seats (including 15% of approved seats reserved for NRI quota) to be filled in by the respective Professional Medical Colleges. In order to provide Single Window System to the aspiring candidates, in view of the direction, admission process for management seat is to be conducted by the petitioner as a consortium of private unaided professional medical colleges imparting education in the discipline of Ayurveda and Homeopathy in the State of Gujarat and said process has been recognized under the relevant rules governing the conduct of admission process.

8. It has been further asserted by the petitioner that since the year 2017-18, the Central Government has introduced All India quota in courses of AYUSH System of medicines, by virtue of which 15% of Government seats of concerned college is earmarked towards All India quota. A comprehensive guidelines for counseling and admission in Undergraduate (UG-BAMS/ BSMS/ BUMS/ BHMS) and Postgraduate (PG-MD/MS) courses of Ayurveda Siddha, Unani and Homeopathy (ASU&H) for the

academic year 2022-23 framed on 18.10.2022 and particularly clause (3) of the said circulars, respondent No.1 Commission has mandated that admissions to all seats of Homeopathy medical college irrespective of quota are required to be granted through respondent No.2 Admission Committee only and admission granted by any other means shall be considered as invalid. Said comprehensive guidelines have been notified on 18.10.2022. It is the case of the petitioner that in response to this circular, respondent No.2 - Admission Committee also published a notification on its official website <http://www.medadmmgujarat.org/ug/Home.aspx> notifying that admission to all colleges including management seats shall be granted only through respondent No.2 Admission Committee. Screenshot of the said notification was published by Admission Committee on its official website. It is on account of this, petitioner apprehended and voiced out a grievance that virtually management seats quota has been abolished from all private unaided Homeopathy Medical Colleges in the State of Gujarat and converted all management seats of these colleges into Government seats for the purpose of regulation, and as such

this is completely taking away the fundamental right of private unaided Homeopathy Medical colleges in State of Gujarat to admit students and this is quite in conflict with the law laid down by the Hon'ble Apex Court in the case of P.A. Inamdar (supra). Hence, petitioners have approached this Court by filing these two petitions.

9. When the petition came up for consideration, initially the State Government notified the Gujarat Professional Educational Courses (Regulation of Admission in Undergraduate Courses) (Second Amendment) Rules 2022 (hereinafter to be referred as 'Impugned Amendment Rules'), which has amended Rule 3 and Rule 7 of the Gujarat Professional Medical Education Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017. By giving a tabular chart, effect of such amendment is brought to the notice of the Court in the body of petition and a grievance is raised that right of management to fill up management quota is taken away completely and as such feeling aggrieved by and dissatisfied with the comprehensive guidelines for counseling and admission in Undergraduate (UG-BAMS/ BSMS/ BUMS/ BHMS) and Postgraduate (PG-MD/MS)

courses of Ayurveda Siddha, Unani and Homeopathy for academic year 2022-23 dated 18.10.2022 to the extent which has practically abolished the management seats by depriving the private unaided homeopathy medical colleges from admitting students on their management quota, petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by raising multiple contentions and prayed for the reliefs as indicated above.

10. In Special Civil Application No.21703 of 2022 almost similar grievance is raised with regard to such amendment and petition is filed by All India Self-finance Paramedical Consortium and Association exactly on a similar base as that of the lead matter. Hence in essence, Ayurveda and Homeopathy colleges of the State of Gujarat which are unaided private self-finance colleges have assailed the amendment as indicated above and to be precise, this petition is filed for the purpose of seeking reliefs as mentioned in paragraph 20 which is reproduced hereunder:-

“[a] That this Hon'ble Court may be pleased to declare Regulation 5 and Regulation 7 of the National Commission for Indian System of Medicine (Minimum Standards of Undergraduate Ayurveda Education) Regulations-2022 as ultra vires of the Constitution of India as well as Gujarat Professional Medical

Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and thereupon be pleased to hold that private unaided ayurveda medical colleges in the State of Gujarat are entitled to admit students on Management seats through Petitioner as their consortium.

- [b] That this Hon'ble Court be pleased to declare Clause 2 of the Gujarat Professional Medical Educational Courses [Regulation of Admission in Undergraduate Courses here specify the Sr. No. of amendment if it is not first for the year, 2022 (Amendment)] Rules 2022 and the resulting amended first proviso to Rule 3(1)(B)(i) of Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017, as ultra vires of the Constitution of India and Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and thereupon be pleased to hold that private unaided ayurveda medical colleges in the State of Gujarat are entitled to admit students on Management seats.
- [c] Pending admission, hearing, and final disposal of the present petition, this Hon'ble Court may be pleased to stay the operation and implementation of the Regulation 5 and Regulation 7 of the National Commission for Indian System of Medicine (Minimum Standards of Undergraduate Ayurveda Education) Regulations-2022 and Clause 2 of the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses here specify the Sr. No. of amendment if it is not first for the year, 2022 (Amendment)] Rules 2022 and the resulting amended first proviso to Rule 3(1)(B)(i) of Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 and thereupon, be pleased to permit private unaided ayurveda medical colleges in the State of Gujarat to admit students on Management seats on such terms and conditions that this Hon'ble Court may deem fit and proper.
- [d] This Hon'ble Court may be pleased to grant any other or further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

11. Since in both these petitions, basic grievance is almost similar, upon request of learned advocates appearing for the

respective sides and in view of the order passed by the Hon'ble Apex Court on 11.11.2022, we took up hearing of both these petitions conjointly for its early disposal keeping in mind the urgency of the situation.

12. Learned senior advocate Mr. Dhaval Dave appearing with Mr. U.N. Vyas for the petitioners has vehemently contended that the impugned action on the part of the respondent authority is not only unjust and arbitrary but is infringing the fundamental rights of the petitioners. It has been contended that Central Guidelines which are sought to be emphasized do not contain any mandate that all admissions on all seats (including management seats) are required to be given only through the Admission Committee. Central Guidelines merely state that counseling must be conducted by designated counseling authority in view of the Rules and Regulations of the State and as such stand of the State is based on misconstruction of the guidelines.

13. It has further been contended that insofar as State Government is concerned, by virtue of Section 6 of the Gujarat

Act of 2007, two counseling authorities are designated; one Admission Committee for 75% Government seats and petitioner Consortium for 25% management seats and as such in the absence of any amendment to the parent Act, it is not open for the authority to even frame Rules contrary to the basic provision and as such also it is not open for the State authority to insist for counseling through designated authority of State.

14. Learned senior advocate Mr. Dave has submitted that Central guidelines and Gujarat Amendment Rules of 2022 are *ultra-vires* mainly on two counts; that Central guidelines and Gujarat Amendment Rules 2022 are running contrary to the verdict of Hon'ble the Apex Court in case of P.A. Inamdar (supra) and; secondly, it is beyond the main provision, as indicated above. Private Unaided institutions as such cannot be forced to submit to the seat sharing policy of the State but when the Act of 2007 has already prescribed seat sharing ratio, by virtue of amendment, said basic structure cannot be dismantled and as such also, reliefs prayed for deserve to be considered.

15. It has been further contended that virtual effect is that

unilaterally, an attempt is made by bringing the amendment in 2022 to alter the consensual arrangement which has already been arrived at. This right which has been crystallized in favour of unaided institutions to admit students under management quota cannot be adversely affected in any manner and as such action on the part of authority is unjust, arbitrary and is violative of fundamental rights.

16. It has further been submitted that counseling is nothing but a part of process of admitting students and if this be interfered with, it has effect on exercising the right of admission by unaided private colleges insofar as management seats are concerned. This issue according to Mr. Dave has been dealt with by previous Division Bench of this Court in an identical situation in the case of Association of self-finance Ayurveda College of Gujarat Vs. State of Gujarat being Special Civil Application No.12829 of 2017 and by referring to paragraphs 11, 11.3, 11.4, 16, 17, 23 and 24, a contention is raised to the effect, this issue is already dealt with by the Coordinate Bench of this Court and as such he would contend that stand of the authority even in respect of common

counseling is impermissible and it has also been pointed out, that view taken by the Coordinate Bench of this Court in the aforesaid situation was subject matter of special leave petition being S.L.P. (C) No.20377-20380 of 2017, which ultimately was withdrawn by the State authority and thereby State has accepted the said proposition laid down by the Coordinate Bench, and it is not open for the authority to reinforce such stand which has already been discarded.

17. Learned senior counsel Mr. Dave has further submitted that reliance which has been placed by the respondent on Section 14 of the National Commission for Homeopathy Act 2020 empowering the National Commission to specify manner of counseling by framing appropriate regulations and as such Central Guidelines framed by the National Commission would have to be applied and as such, the authority has tried to justify the impugned Rules 2022. But this contention, according to Mr. Dave, is thoroughly misconceived, impermissible and running contrary to the law laid down by the Hon'ble Apex Court as stated herein-above. He would submit on the contrary, impugned Central Guidelines which are sought to be pressed

into service are practically in the nature of executive instructions and not in the nature of subordinate legislation and according to Mr. Dave, Section 14 of the Act would not be attracted at all.

18. In any case, learned senior advocate Mr. Dave has submitted that in the background of fact situation which is prevailing, and when Coordinate Bench has already taken a particular view, the stand of the authority does not deserve to be entertained. Further, by placing reliance on a decision reported in 2021 SCC OnLine SC- 627 in case of Abdul Ahad and others Vs. Union of India and others, it has been submitted that background of facts obtained in said case are altogether different and as such, ratio laid therein is not to be applied particularly, when facts on hand are different and insistence of counseling to be conducted by State authority is impermissible as held by the Coordinate Bench of this Court. Hence, Mr. Dave, submits that other view could be taken.

19. It has further been submitted that reliance which has been placed on a decision in the case of Modern Dental College &

Research Centre Vs. State of Madhya Pradesh and others reported (2016) 7 SCC 353, said decision has already been examined by earlier Coordinate Bench. Hence, in the absence of any distinguishable circumstance, the stand of authority is impermissible. Accordingly, reliefs prayed for deserve to be granted in the interest of justice.

20. He would submit that if the insistence of the authority of common counseling is allowed to be operated, same will have an adverse impact on the admission process to be conducted by unaided colleges, i.e. petitioner Consortium which is in no way permissible as has been long back held. That being so, reliefs prayed for deserve to be granted in the interest of justice. No other submissions have been made.

21. As against this, Mrs. Manisha Lavkumar Shah, learned Government Pleader, appearing on behalf of respondent No.2 authority has vehemently opposed the petitions and has contended that contentions raised by petitioners are misconceived and in no way right to admission of petitioners is taken away by respondent No.2 authority in any form and

conducting of counseling by said authority in no way would affect the right of management to admit students.

22. Learned Government Pleader has further contended that Section 6 of the Act of 2007 does not designate the management as a competent authority for regulating admission process to professional medical educational institutions. Section 20 of the Act of 2007 invests rule making power with the State and accordingly State has enacted Gujarat Professional Medical Education Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017. These Rules of 2017 are framed in exercise of such power which define counseling to be of all admissions to professional courses in medical educational institutions either of the State or private institutions. Prescription of intent by the Medical Council of India was followed in Rules 2017 through Rule 7(1) when respondent No.4 was vested with power to hold a common counseling for Government seats, management seats and NRI seats of all professional medical educational courses as stipulated by MCI. Hence, challenge was before this Court by Association of Self-finance Ayurveda Colleges, as indicated above, but subsequent

to said decision, Government of India has enacted the National Commission for Indian System of Medicines Act, 2020 on 20.9.2020 and vide notification dated 8.10.2020, consortium was acknowledged to fill seats on management quote of BAMS and BHMS courses imparted at self-finance institutions based upon merit list drawn by respondent No.4. But then, by virtue of notification dated 16.2.2022, Government of India has enacted Regulations 2022 and by virtue of Rule 5(i)(ii) read with 7(i) together stipulated a common counseling of seats in medical institutions imparting BAMS courses irrespective of the category (Central quota, State quota or Management quota etc.) of seats to be undertaken by the designated authority of a State/ Union Territory and as such, in view of this situation of Amendment Rules 2022, vide notification dated 30.9.2022 with amended Rules in force, prescription of notification dated 8.10.2020 was suitably amended whereby the process of counseling has been to some extent altered and such stipulation stood amended vide Amended Rules 2022 (notification dated 30.9.2022) wherein the discretion of consortium for the purpose of filling the management seats has been altered in respect of

counseling process only. According to learned Government Pleader, National Commission for Indian System of Medicine, Ministry of AYUSH, Government of India on 18.10.2022 issued a Comprehensive Guidelines for admission in Undergraduate (UG-BAMS/ BSMS/ BUMS/ BHMS) and Postgraduate (PG-MD/MS) courses of Ayurveda Siddha, Unani and Homeopathy (AYUSH) for the academic year 2022-23, where-under a process is mentioned for filling up management quota seats through counseling.

23. Learned Government Pleader has submitted that a consideration of the aforesaid chronology of events governing admissions to BAMS/ BHMS courses would lead to the following inviolable inferences:

- (1) In terms of the Act, 2020, Regulations 2022, Amendment Rules, 2022 and the Composite Guidelines, 2022 the indisputable mandate of law is that admissions to Professional Medical Institutions and Colleges and particularly imparting education of BAMS and BHMS courses shall be granted through common counselling to be held by admission authority designated by the State. Further the rule mandates that admissions granted in any other way than that prescribed shall be invalid.

- (2) The aforesaid mandate of the legislations of the Centre and the State in any case does not violate the rights of the self-financed institutions. By holding common entrance test and screening meritorious candidates through counselling no loss can be said to be caused to private educational institutions. There would neither be restriction on entry of the students in the sanctioned intake of institutions nor on their right to collect fees. The freedom of private educational institutions inter-alia to impart education, admit students and participating fixation of fees is in no way abridged and the same remains intact.
- (3) The above position of law is also reiterated in **Abdul Ahad (supra)**.
- (4) The Act of 2017 through Rule 6(2) grants the right to fill management seats by the management. This right remains unabridged by the mandate of the Rules, 2022, which empowers the Admission Committee, as the designated authority for conducting admissions, to conduct common counselling for BAMS and BHMS Course as mandated by **Modern Dental (Supra.)** as reiterated in **Abdul Ahad (supra)**.
- (5) Reliance placed by the petitioner on **Association of Self-Finance Ayurveda Colleges (supra.)** is misplaced for the reason that Hon'ble Division Bench at the time did not have the benefit of the Act, 2020 or the

Regulations 2022 which substantially change the legal regulatory regime governing admissions to BAMS as also the Comprehensive Guidelines, 2022 regulating the legal regime governing admissions to BHMS.

- (6) Alternatively, and from a different stand point, the view taken by the Hon'ble Division Bench remains *sub-silentio* to the interpretation of the Hon'ble Apex Court, rendered in ***Modern Dental (Supra.)*** with respect to common counseling to be undertaken by the designated authority of the State alone in the context of whether it becoming a mandate of law would violate freedom of private educational institutions. Even while considering ***Association of Self-Finance Ayurveda Colleges (supra.)*** what deserves to be considered is that the core issue involved would be whether common counselling for BAMS and BHMS to be undertaken by the Respondent No. 4 abridges the fundamental right to admit students of a self-financial institution as recognized in ***P.A. Inamdar Versus State of Maharashtra*** reported as ***2005 (6) SCC 537***. The Hon'ble Apex Court in ***Modern Dental (Supra.)*** has held that common counselling to be undertaken by the State (or in the instant case authority designated by the State i.e. Respondent No. 4) in no way abridges the freedom of a self-finance institution and with such an exercise undertaken by the State, the freedom of the self-finance institution remains intact. This core issue has not received appropriate appreciation in ***Association of Self-Finance Ayurveda Colleges***

(supra.) let alone the said view of the Division Bench of this Hon'ble Court being distinguishable on the count of the regulatory regime then prevalent and the extant regulatory regime governed by the Act, 2020 namely, the Regulations, 2022, the Composite Guidelines, 2022 and the Amendment Rules, 2022.

Thus, in light of the National Commission for Indian System of Medicine Act, 2020 the right to hold common counseling is crystallized in the designated authority of the State i.e. Respondent no. 4 alone. Such crystallization as is noticed in the impugned Regulation-2022, Amendment Rule, 2022 and comprehensive guidelines of AYUSH being consistent with the dictum of the Hon'ble Apex Court rendered in **P.A Inamdar (Supra.)** read with **Modern Dental (Supra.)**, **Jainarayan Chouksey (Supra.)** as also **Abdul Ahad (supra)**, becomes the law of the land and it cannot be contended that the power to hold 'counseling' by Respondent No.2, in actuality abridges any fundamental right of a self-financed institution much less the petitioner.

24. Learned Government Pleader has submitted that on appreciation the above-said inferences and in the light of the legal position set forth by the Hon'ble Apex Court would

warrant this Hon'ble Court to hold the challenge made in the present petition as having failed.

25. Having heard learned advocates appearing for the respective sides and having gone through the material placed before us, following few circumstances are material to be considered which have been brought to our notice:

(1) The Indian Medicine Central Council Act, 1970 passed by the Parliament provided for minimum standards of for admission, duration of courses of training, details of curriculum and syllabus of studies and the title of the degree or diploma, etc. In exercise of power conferred by sub-section (3) of Section 1 of the National Commission for Indian System of Medicine Act, 2020, the Central Government notified that all provisions of the said Act would come into force with effect from 11.6.2021 and further in pursuance of the provisions of sub-section (1) of Section 58 of the said Act, the Indian Medicine Central Council Act, 1970 was repealed with effect from 11.6.2021 and the Central Council of Indian Medicine (CCIM) constituted under sub-section (1) of Section 3 of the Indian Medicine Central

Council Act, 1970 was dissolved. The National Commission for Indian System of Medicine Act, 2020 has been enforced to achieve the object of medical education system which improves quality and affordable medical education and also ensures availability of adequate and high quality medical professional of Indian Medical System in all over the country.

(2) To achieve the aforesaid object, it has been prescribed under Section 14 of the said Act as under:

“14(1) There shall be a uniform National Eligibility-cum-Entrance Test for admission to the undergraduate courses in each of the disciplines of the Indian System of Medicine in all medical institutions governed under this Act:

Provided that National Eligibility-cum-Entrance Test shall be exempted for students who have taken admission in--

- (i) Pre-tib for Bachelor of Unani Medicine and Surgery; and
- (ii) Pre-Ayurveda for Bachelor of Ayurvedic Medicine and Surgery.

(2) The Commission shall conduct the National Eligibility-cum-Entrance Test in English and in such other languages, through such designated authority and in such manner, as may be specified by regulations.

(3) The Commission shall specify by regulations the manner of conducting common counselling by the designated authority for admission to all the medical institutions governed under this Act:

Provided that the common counselling shall be conducted by the designated authority of--

- (i) the Central Government, for All India seats; and

(ii) the State Government, for the remaining seats at the State level.

(4) The Commission shall specify by regulations the manner of admission of students to undergraduate courses who are exempted under sub-section (1)."

(3) In exercise of the power conferred by sub-section (2) of Section 55 of the aforesaid Act, the Commission notified the National Commission for Indian System of Medicine (Minimum Standards of Undergraduate Ayurveda Education) Regulations, 2022.

(4) As per the directions of the Hon'ble Apex Court in P.A. Inamdar's case, the State enacted the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 which prescribed the process of admitting students in Professional Medical Educational colleges and institutions, including Government Colleges. Section 6 of the said Act would indicate that all Government seats shall be filled based on merit by the Admission Committee and management seats are to be filled in by management of respective professional education colleges or institutions, but on the basis of inter-se merit and it has been

clearly indicated that no student shall be admitted against the management seat unless his/ her name appears in the merit list prepared by the Admission Committee and further it has been provided that when NRI seat remains vacant, such seat shall be filled in from management seats and if in case management seat remains vacant, same shall be filled in from Government seat.

Thus, Section 6 of the Act of 2007 reads as under:-

“6. The admission of students in the professional educational colleges or institutions shall be given in the following manner, namely,

- (i)** all the Government seats shall be filled on the basis of merit list prepared by the Admission Committee and
- (ii)** the management seats to be filled by the management of the respective professional educational college or institution shall be on the basis of inter-se merit list of the students to be admitted against the management seats:

Provided that no student shall be admitted against the management seat unless his name appears in the merit list prepared by the Admission Committee:

Provided further that where any Non-Resident Indian seat remains vacant, such seat shall be filled in from the management seats:

Provided also that where any management seat remains vacant, such seat shall be filled in from the Government seats.”

(5) Section 7 of 2007 Act has also provided that no student shall be admitted in professional course unless he /she fulfills eligibility criteria including minimum qualifying marks as may

be prescribed.

(6) Act of 2007 has further invested power to the State Government to frame rules. The said provision of reads as under:-

"20. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to the rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following

(3) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect."

(7) In furtherance of this and in exercise of power vested under Section 20(1), read Section 4, Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and in view of the Government notification dated 9.6.2017 and in supersession of all Rules, Government of Gujarat has framed Rules to regulate admission to first year of Professional Medical Education courses and same came to be published vide notification dated 23.6.2017. Preparation of merit list for admission as well as admission procedure has been prescribed in these Rules,

precisely under Rule 7, Rule 10 and Rule 11.

(8) It appears that these Rules have been the subject matter of controversy in past before this Court, wherein concerned petitioners had challenged the legality and validity of Rule 2(1) (i), Rule 7 and Rule 8 of the Gujarat Professional Medical Education Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017. Coordinate Bench dealt with the issue in Special Civil Application No.12829 of 2017, which came to be decided vide judgment and order dated 2.8.2017 and based upon the decision of Hon'ble Apex Court, more particularly in cases of P.A. Inamdar, TMA Pai Foundation, Modern Dental College (supra) and after examining the core issue involved in the said petition and after considering the decisions which have been placed as indicated in the judgment itself, the Coordinate Bench was of the view that it is not open for the State to make such rule traversing beyond the scope of substantive provisions under the Act itself namely Section 6 of the Act 2007 and further has also held that it is not open for the State to undertake counseling under the supervision and control as indicated under Section 4(3) of the Act of 2007 and on the basis

of the Act, which was prevailing at the relevant point of time and was in force, a view is taken by the Coordinate Bench whereby the impugned Rules, i.e. Rule 2(1)(i), Rule 7 and Rule 8 of the Rules 2017 qua admission to management quota seats in Bachelor of Ayurveda, Medicine and Surgery (BAMS), Bachelor of Homeopathic Medicine and Surgery (BHMS), Bachelor of Physiotherapy (BPTO) and Bachelor of Science in Nursing (B.Sc. Nursing) are quashed and set aside and permitted all management quota seats to be filled in by consortium by Single Window System on the basis of inter-se merit of students to be admitted against management seats and whose names appear in the merit list prepared by the Admission Committee and with detailed proposition contained in paragraph 24, petition came to be allowed.

(9) It has been brought to our notice that this judgment and order passed by the Coordinate Bench dated 2.8.2017 was subject matter of challenge before the Hon'ble Apex Court and S.L.P. No.20377-20380 of 2017 which came to be dismissed as withdrawn vide order dated 18.8.2017. Thus, judgment of Coordinate Bench has attained finality.

(10) The record further indicates that later on, yet another petition came to be filed by the Association of Self-finance Ayurveda Collage of Gujarat being Special Civil Application No.8669 of 2017 questioning the directions issued by the Ministry of Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Government of India dated 25.1.2017, 15.2.2017 and said petition after issuance of notice has been admitted and it appears that there was no reply affidavit, hence by issuance of Rule interim relief which had been granted was ordered to be continued and said petition is pending.

(11) In this factual background, it can be seen that Government of India has come out with National Commission for Indian System of Medicine Act, 2020 which has received the assent of the President on 20.9.2020. This Act has been made applicable to the entire country and wisdom of the Parliament is reflected from the object of the Act which we deem it proper to incorporate hereunder:-

“An Act to provide for a medical education system that improves access to quality and affordable medical education, ensures availability of adequate and high quality medical professionals of Indian System of Medicine in all parts of the country; that promotes equitable and universal healthcare that encourages

community health perspective and makes services of such medical professionals accessible and affordable to all the citizens, that promotes national health goals; that encourages such medical professionals to adopt latest medical research in their work and to contribute to research; that has an objective periodic and transparent assessment of medical institutions and facilitates maintenance of a medical register of Indian System of Medicine for India and enforces high ethical standards in all aspects of medical services; that is flexible to adopt to the changing needs and has an effective grievance redressal mechanism and for matters connected therewith or incidental thereto.”

(12) Having realized the shortcomings of the medical education system, with a view to streamline and for improving the access to quality and affordable medical education and to promote equitable and universal Healthcare that encourages community health perspective and to enforce high ethical standards in all aspects of medical services, Act has been brought into force.

(13) Section 14 of the National Commission for Indian System of Medicine Act, 2020 prescribes that there shall be a uniform National Eligibility-cum-Entrance Test for admission to the undergraduate courses in each of the disciplines of the Indian System of Medicine in all medical institutions. Proviso to said sub-section (1) of Section 14 exempts students who have taken admission in (i) Pre-tib for Bachelor of Unani Medicine and Surgery; and (ii) Pre-Ayurveda for Bachelor of Ayurvedic

Medicine and Surgery. Sub-section (2) prescribes that the Commission should conduct the National Eligibility-cum-Entrance Test in English and in such other languages, through such designated authority and in such manner, as may be specified by regulations. Sub-section (3) prescribes that the Commission should specify by regulations the manner of conducting common counselling by the designated authority. Proviso thereto mandates that such common counselling shall be conducted by the designated authority of (i) the Central Government, for all India seats; and (ii) the State Government, for the remaining seats at the State level.

This Act as such has brought in a concept of common counselling by the designated authority.

(14) In furtherance of this, it appears that Comprehensive Guidelines in parallel has been framed for counseling and admission in Undergraduate (UG-BAMS/ BSMS/ BUMS/ BHMS) and Postgraduate (PG-MD/MS) courses of Ayurvedia Siddha, Unani and Homeopathy (ASU&H) for the academic year 2022-23. This guidelines for counseling indicates that in case of 85%

of State/ UT quota, seat matrix of Government quota, management quota, NRI quota shall be as per respective State and UT policy. However, all admissions in all quotas has been prescribed to be through counseling conducted by State/ UT counseling authority. Said clause 3 reads as under:-

“3. In case of 85% of State/UT quota, the seat matrix for Government Quota, Management Quota, NRI quota etc., shall be as per respective State and UT policy; however, all admissions in all quota shall be through counseling conducted by State/UT counseling authority.”

(15) The guidelines in the head itself has indicated that this comprehensive guidelines for counseling and admission in undergraduate courses as indicated, by treating the counseling and admission as distinct. This appears that counseling is to be undertaken by State/ UT counseling authority, whereas admission and further process thereof appears to be unaltered or rather not touched. In view of this comprehensive guidelines, on 19.10.2020 a notice appears to have been published clarifying that for academic session 2022-23, in case of 85% of seat/ UT quota, seat matrix for Government quota, management quota, NRI quota, etc. shall be as per the respective State and UT policy. However, all admissions in all quotas consisting of

Government quota, management quota, NRI quota, shall be through counseling conducted by State/ UT counseling authority. Relevant extract of the said notice reads as under:-

“As per National Commission for Indian System of Medicine, Govt of India, dated 14/10/2022 and National Commission for Homoeopathy, Govt. of India, dated 18/10/2022 Comprehensive Guidelines for Counseling and Admission In Undergraduate (UG BAMS/ BSMS/ BUMS/BHMS) & Postgraduate (PG-MD/MS) courses of Ayurveda, Siddha, Unani & Homoeopathy (ASU & H) for The Academic Session 2022-2023 "In case of 85% of State/UT quota, the seat matrix for Government (Quota, Management Quota, NRI quota etc., shall be as per respective State and UT policy; however, all admissions in all quotas (Government Quota, Management quota, NRI quota etc.) shall be through counseling conducted by State/UT counseling authority.”

(16) Subsequently, it appears that in exercise of powers conferred under Section 20 of the Act of 2007, Government of Gujarat has amended the rules, namely Rules 2017 and Rule 7 has been amended by which existing proviso under sub-rule (i) has been deleted as also existing proviso under sub-rule (iv) has been deleted by virtue of rule-making power under Section 20 of the Act.

(17) This situation, as indicated above, was clearly not appearing when the issue was examined by Coordinate Bench while adjudicating Special Civil Application No.12829 of 2017 and this issue was the subject matter of controversy and it has

been clarified by the Coordinate Bench that view which was taken was clearly keeping in view the Act which was in force as on said date (last line of paragraph 18 of said decision). It reads:

“18. Further x x x still in force. In that view of the matter, the validity of the impugned Rule is to be considered with reference to the provisions of the Act which Act is in force as of now.”

(18) It appears that by virtue of these changes from 2020 onwards, in the larger interest of improvement in medical education system, amendment has been brought in which concept of common counseling has been brought into force and petitioners aggrieved by such have approached this Court as if their right to admit students under management quota and NRI quota is taken away completely and as such by providing a comparative difference on account of such amendment, petitions have been filed.

(19) At this stage, we have the benefit of one of such situation which has been erupted in the State of Uttar Pradesh, wherein on examination of controversy what was then prevailing in such case, certain observations have been made by the Hon'ble Apex Court on the issue about counseling to be undertaken by the State Government, which is reported in **2021 SCC OnLine SC-**

627. In the said decision, vide notification dated 31.8.2016, State of Uttar Pradesh issued a direction for conducting centralized counsel for admission to MBBS/BDS in all colleges, including private colleges and the minority institutions and private colleges insisted that counseling should be done not in a centralized manner. In that context, it was observed by Hon'ble the Apex Court that it is not permissible for concerned college to have conducted a private counseling and after examining its previous decision the review petition came to be disposed of. Relevant observations as contained therein deserve to be extracted as it would be apposite to the factual situation prevalent in the instant case. It reads:

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

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

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

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

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

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

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

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

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

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

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

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

(20) Learned Government Pleader has also brought to our notice such decision after serving copy of the same to the other side, which circumstance reflects that there is a way for centralized counseling which proposition is last in line.

(21) When this be the situation, we are of the opinion that when Coordinate Bench decided the issue on controversy agitated by the original petitioners therein the situation which has been subsequently arisen has not been obviously the subject matter of examination and as such, in view of the settled position of law on the principle of precedent, we are of the view

that a different fact situation is existing than what was prevailing in 2017 when earlier Bench decided and as such even when one additional fact would make a world of difference, applying the principles of Coordinate Bench to facts on hand would not arise. Hence, we are of the view that insistence of applying the proposition of law laid down by the Coordinate Bench to the present case appears to be misplaced in view of aforesaid change of law having taken place.

(22) Salmond defines a precedent as a judicial decision which contains in itself a legal authoritative element which is described as ratio *decidendi*. In **Krishena Kumar v. Union of India** reported in **(1990) 4 SCC 207**, a Constitution Bench of Hon'ble Supreme Court defines ratio decidendi, thus:

"20. In other words as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a preexisting rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration."

(i) The ratio decidendi refers to the principle of law on which a decision is based or the reason for the decision or the point in

a case which determines what the decision should be. The legal principle which constitutes the 'ratio' of a decision is the 'precedent' for other cases.

(ii) Judicial utterances are made in the setting of the facts of the particular case and one additional or different fact may make considerable difference in the conclusion. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect.

(iii) Hon'ble Supreme Court in the case of **Dhorappa v. Bijapur Co-op. Milk Producers Societies Union Ltd.** reported in **(2007) 9 SCC 109** has held that decisions of Court have to be read with reference and in the context of the particular statutory provisions interpreted by Courts. It has been further held as under:

"19. As the Division Bench referred to them. But before doing so, we have to note that many a time, a principle laid down by this Court with reference to the provisions of a particular State Act is mechanically followed to interpret cognate enactments of other States, without first ascertaining whether the provisions of the two enactments are identical or similar. This frequently happens with reference to the laws relating to rent and accommodation control, co-operative societies and land revenue. Before applying the principles enunciated with reference to another enactment, care

should be taken to find out whether the provisions of the Act to which such principles are sought to be applied, are similar to the provisions of the Act with reference to which the principles were evolved. Failure to do so has led to a wrong interpretation of section 70 of the KCS Act, in Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation.”

(23) At this stage, we are mindful of a well-settled proposition of law laid down by the Hon’ble Apex Court on the issue of precedent and said proposition is clearly indicating that if there is some change in the facts namely even one additional fact may make a difference in applying the principle and said additional circumstance would make a difference between the conclusions that may be arrived at in two cases even when same principles are applied in each of similar facts and as such we have observed that issue before the Coordinate Bench with reference to the issue on hand was never subject matter of deliberation. Hence, we are of the opinion that ratio of Coordinate Bench straightway does not deserve to be applied when there is an altered situation.

(24) At this stage, we may notice with benefit the following observations of the Hon’ble Apex Court on the issue since we have considered the same, we deem it proper to reproduce:-

- (i) A slight change in the fact would make a world of difference in applying the principle as a precedent and that has been clearly mentioned in one of the decisions delivered by the Apex Court, in the case of ***State of Madhya Pradesh Vs. Narmada Bachao Andolan and Another*** reported in **(2011) 7 SCC 639**, Since we would like to rely upon the said decision, the relevant observations contained in para 64 are quoted hereunder:-

“64. The Court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide *MCD v. Gurnam Kaur, Govt. of Karnataka v. Gowramma* and *State of Haryana v. Dharam Singh*)”

- (ii) This very view is also followed in a recent decision delivered by Hon'ble the Apex Court in Civil Appeal No.3657 of 2022, decided on 5.5.2022 (paragraph 32).

(25) In addition to it, we are also of the opinion that in respect of education matters in particular, normally would not sit over as an expert body, since framers of the policies and guidelines are quite alive to the situation prevailing and after due deliberations, eligibility criteria and policies are framed. Hence, we are of the opinion that when amendment has taken place with thoughtful process for achieving the object of the Act 2020 which has been set out and procedure has been regulated by the guidelines, we are not inclined to exercise our extraordinary jurisdiction and we deem it proper to leave it to the wisdom of the experts to regulate the process of such admission so long as they are not infringing the rights of private unaided medical colleges in respect of their management quota and we are of further opinion that we would not like to interfere with such policy decision as it would be in the interest of medical education system.

(26) We are also mindful of the situation that fundamental rights conferred and crystallized cannot be violated by any authority. But then, it is trite law that these fundamental rights

are subject to certain reasonable restrictions.

(27) This proposition is defined by the Hon'ble Apex Court in its authoritative pronouncement in the case of **Jayendra Vishnu Thakur Vs. State of Maharashtra and Another** reported in **(2009) 7 SCC 104**, in which it has been clearly held that fundamental rights are not absolute but would be subject to reasonable restrictions. Hence, when authority has not encroached to a substantial extent upon the fundamental rights of the petitioners in respect of admission, we are of the view that petitioners' projection of impugned Rule has taken away completely the fundamental right of petitioners' right is not possible to be accepted looking to the avowed object for which Act of 2020 has been brought and Centralized Guidelines and impugned amendment has merely provided a common counseling. We see no reason in the contention that petitioners' fundamental rights having been taken away in the manner in which petitioners have tried to project before us. In no way, such a right is taken away. A mere applying of common counseling with clear object of streamlining medical education system, stand of the petitioners is not possible to be accepted as

they are permitted to fill up their management seats and also permitted to admit students of their choice subject to reasonable restrictions / eligibility criteria which have been prescribed in the Rules and petitioners charging of fee is also not affected by virtue of this amendment. Hence, we see no reason to entertain the challenge laid by the petitioners. In this context, we would be of benefit to note the judgment of Hon'ble Apex Court in the case of **Jayendra Vishnu Thakur (supra)** reads as under:-

"20. In the context of our constitutional scheme; fundamental rights are not absolute being subject to reasonable restrictions. There lies a distinction between Bill of Rights contained in the Constitution of the United States and the Fundamental Rights provided for in the Indian Constitution. In *Goldberg v. John Kelly* it was inter alia held that even in a civil proceeding the Sixth Amendment is applicable, stating:-

"The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, U.S. p.394, L Ed p.1363. The hearing must be "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, U.S. p. 552, L Ed 66. In the present context, these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally."

(28) Yet, another decision reported in **2020 SCC OnLine Mad. 13605** (in the case of *S.J. Fruitcin Praisor v. District Collector*

and others) also reiterates the very same proposition, which we deem it proper to quote hereunder:-

“10. It is a well settled position of law that all fundamental rights are subject to reasonable restrictions and though it is the stand of the learned Counsel for the appellant/writ petitioner that in the light of the fundamental right being guaranteed under Article 25 of the Constitution of India, no statutory authority can interfere with the same, in the considered opinion of this Court, the said submission lacks merit for the reason that the rights are always given with reasonable restrictions and it is also laid down in catena of decisions that the fundamental rights are also subject to reasonable restrictions.”

(29) It is true that Coordinate Bench has set aside the prescription of Rules, 2017 and held that the right of counselling for management quota seats of BAMS and BHMS courses in the consortium of self-financial institutions lies with them. However, it is to be noticed that at the relevant point of time, when the said law was laid down, the Coordinate Bench did not have benefit of National Commission for Indian System of Medicine Act, 2020 which particularly through Section 14 vests power to conduct common counselling by the designated authority for admission to all medical institutions of the State Government. At this juncture, we may notice that Hon'ble Apex Court in **State of Madhya Pradesh vs. Jaynarayan Chouksey and others** reported in **(2016) 9 SCC 412** has held to the

following effect:

“5. We have heard at length. We observe that mandate of our judgment was to hold centralised entrance test followed by centralised State counselling by the State to make it a one composite process. We, therefore, direct that admission to all medical seats shall be conducted by centralised counselling only by the State Government and none else.

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

Thus, we are of the considered view that in the light of National Commission for Indian System of Medicine Act, 2020, the right to hold common counselling is crystallised designated authority of the State Government. Hence, the impugned Regulations and the Amended Rules as well as the Comprehensive Guidelines are being held to be consistent with the law laid down by the Hon'ble Apex Court and it is in consonance with the dictum of the Hon'ble Apex Court.

(30) In light of the aforesaid situation, we are of the view that Act of 2020 clearly empowers the National Commission to specify by regulations the manner of conducting common counseling, pursuant to which the National Commission having

made Regulation No.2022 and to be in tandem, State having amended the Rules would not take away in any manner the right of admission under management quota by the petitioner Consortium. Conducting of counseling by the State authority is in consonance with not only the comprehensive guidelines but is also in consonance with the object of the Act of 2020 for which it was brought in force with assent of the President. Said Act has clearly provided necessity of improvement, medical education system to improve the quality and affordable medical education which may be available in all parts of the country. It is also an Act for promoting equally and universally healthcare that encourages community health perspective and to make services of such medical professionals accessible and affordable to all citizens with an ultimate goal to promote the National Health. This common counseling or rather counseling by State would also to save high ethical standards are maintained in all aspects of medical services and would provide effective grievance redressal mechanism and as such when such being the laudable object for which concept of counseling is being introduced, we see no reason as to how and in what manner in

its entirety, right to fill up the management quota seats is taken away from the petitioner. Learned Government Pleader on instruction has stated that in no way, such right of admission is being affected except in part which relates to counseling and that too, same is with an idea to uplift and maintain merit based admissions in the medical course. Charging of fee dealing with other aspects of admission process except counseling in respect of management quota, no interference is made by bringing such amendment and as such there is neither any fundamental right nor any substantive right taken away. Hence, we are of the considered view that amendment which has been brought is neither in conflict with law laid down by the Hon'ble Apex Court in the cases referred to above nor in conflict with any fundamental rights of the petitioner's consortium, rather it is in the best interest of merit based admission process even in management quota, as such there is hardly any reason for the petitioners to raise any grievance.

(31) We also see force in the submission made by learned Government Pleader that petitioner consortium's right to fill up management seat is not infringed, at best reasonable

restrictions in respect of counseling have been introduced. Hence, there is no merit in the challenge made in these petitions.

(32) In view of the aforesaid discussion and in view of the facts situation which are prevailing, we are of the opinion that amendment has been brought to give effect to the object for which the comprehensive guidelines have been brought into action coupled with the object of Act 2020, as indicated above we find no case is made out to entertain the grievance raised in the petitions.

(33) We are also mindful of well settled proposition of law propounded by the Hon'ble Apex Court about judicial review in examining the validity of an enactment which has received the assent of President would be limited. Keeping the said proposition in mind, we are of the opinion that petitioners have not made out any case which may call for any interference in the context of the prayers which are made in the petition.

26. In view of the aforesaid discussion and in view of the facts situation prevailing on record, we are of the opinion that no interference is called for. Accordingly, petitions being meritless, stand DISMISSED. Notice is discharged. Ad-interim relief granted stands vacated forthwith.

Sd/-
(ARAVIND KUMAR,CJ)

Sd/-
(ASHUTOSH J. SHASTRI, J)

OMKAR

