



Pronounced on 04/05/2023

1. All the instant special appeals arise out of a common judgment dated 20.04.2018 passed by the learned Single Judge of this Hon'ble Court in S.B. Civil Writ Petition No.13776/2017 & other connected petitions, therefore, the appeals have been heard together and are being decided by this common judgment.

1.1. For the sake of brevity and convenience, the facts, as pleaded in one of the petitions being **S.B. Civil Writ Petition No.13564/2017**, before the learned Single Judge, are being taken for the present analogous adjudication.

1.2. Since in the above-numbered **DBSAW No.911/2018**, which has been preferred against the common impugned judgment, so far it operates, in the aforementioned **S.B. Civil Writ Petition No.13564/2017**, the Dental Council of India (DCI) has been arrayed as a party respondent, therefore, though the 'DCI' also has preferred some of the above-numbered special appeals, the 'DCI' shall be referred to as 'respondent-DCI', in the present judgment.

1.3. These appeals have been preferred claiming, in sum and substance, the following reliefs:

SAW No.911/2018 (preferred by students):

"It is, therefore, humble and most respectfully prayed that your lordship may very graciously be pleased to admit and allow this Special Appeal (Writ) and:

i) Quash and set aside the impugned order dated 20.04.2018 passed by the Hon'ble Single Bench of this Hon'ble Court in S.B. Civil Writ Petition No.13564/2017 titled as Abhishek Jain and others Vs. State of Rajasthan and others.



ii) The writ petition may kindly be allowed with all its prayer and the appellants/petitioners may be permitted to continue with the BDS Course from their initial date of admission after declaration of result of the completed years.

iii) Any other order or direction which may be considered just and proper in the facts and circumstances of the case may be passed in favour of the appellant.

iv) cost of the special appeal may be awarded to the appellants."

SAW No.1287/2018 (preferred by DCI):

"It is, therefore, respectfully prayed that this special appeal may kindly be allowed by calling the record and examining the same. Further, the impugned order passed by learned Single Judge dated 20.04.2018 in so far as allowing the writ petition in favour of writ-petitioners whereby admissions of the students have been regularized who were granted admission by applying relaxation to the extent of 10% and additional 5% may kindly be set aside and the writ petition filed by the respondents/writ-petitioners may kindly be dismissed.

Any other order, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of appellant."

SAW No.957/2018 (preferred by College):

"It is, therefore, humbly prayed that this appeal of the appellants may kindly be allowed by allowing the prayers prayed in the original writ petition:-

"(a) By an appropriate order or direction, the writ petition preferred by the appellant may be allowed in toto.

(b) By an appropriate order or direction, the Judgment/Order dated 20.04.2018 passed by learned Single Bench to the extent of discharging students who have been admitted in BDS Course by granting relaxation



beyond 10% and additional 5% may kindly be quashed and set aside.

(c) By an appropriate order or direction, the admissions granted by the appellant institution to the students in BDS Course for academic session 2016-17 may be ordered to be regularized with all consequential benefits.

(d) That the cost of litigation may also be awarded to the appellant.

(e) Any other appropriate order, direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the appellant."

2. Brief facts of the case, as placed before this Court by Mr.R.N. Mathur, learned Senior Counsel assisted by Mr. Abhishek Pareek; Mr. Vikas Balia, learned Senior Counsel assisted by Mr. Sachin Saraswat; and other learned counsel, appearing on behalf of the appellants, are that an advertisement was issued by the Federation of Private Medical and Dental Colleges of Rajasthan (*hereinafter, also referred to as 'Federation'*) on 19.04.2016 regarding admissions in Bachelor of Medicine and Bachelor of Surgery (MBBS)/ Bachelor of Dental Surgery (BDS) Courses for the Academic Session 2016-17; whereafter, the State Government vide letter dated 27.05.2016 forwarded certain orders of the Hon'ble Apex Court, for undertaking such admission exercise as per National Eligibility-cum-Entrance Test (*in short, 'NEET'*) for the Academic Session 2016-17.

2.1. The appellants appeared in the NEET, in the year of 2016, wherein they were declared unqualified, as they could not secure the minimum percentile, as per the eligibility criteria laid down for admission in the Course in question.



2.2. The Federation conducted counselling for NEET qualified candidates, for admission in the BDS Course on 07.09.2016 and 08.09.2016; against 892 seats in 11 dental colleges in the State of Rajasthan, only 225 candidates opted for BDS Course, and the same were accordingly allotted to the said 11 dental colleges. Since a large number of seats in the MBBS/BDS Courses remained vacant, therefore, the State of Rajasthan, vide letter dated 27.09.2016 addressed to the Convenor, NEET Counselling Board-2016, RUH College of Dental Sciences, permitted all the concerned Private Medical/Dental Colleges of Rajasthan to fill the seats (which remained vacant even after the second counselling), at their own level, on the basis of merit of NEET-2016; while doing so, such Colleges were directed to ensure strict compliance of the directions issued from time to time by the Hon'ble Supreme Court, Hon'ble High Court and the Government, in that regard; it was further mentioned in the said communication that in case some students did not report in the second counselling, the seats shall be filled up at the level of Counselling Board itself.

2.1.1. Further, the respondent-State, in pursuance of the letter dated 29.09.2016 issued by the respondent-Union of India and the application of the Federation dated 30.09.2016, addressed a letter dated 30.09.2016 to the Federation, permitting the Federation to lower the percentile to the extent of 10 percentile, and that, the same was stated to be applicable for the academic year in question only.

Relevant portion of the said letter dated 30.09.2016 reads as under:

" "





With reference to the subject cited above you are hereby permitted to lower the marks to an extent of 10 percentile so that the optimal number of seats is filled through transparent and fair process without compromising merit.

Sd/-

(Dr. Prithvi)

Special Secretary to the Government"

2.1.2. Though the appellants could not qualify the NEET, but as a consequence of reduction in the percentile, they were allotted the college/institution for admission in the BDS Course for the Academic Session 2016-17, as per the marks secured by them in 10+2 examinations.

2.3 The respondent-State lowered down the percentile to the extent of 10 percentile, with an additional reduction by 5 percentile in Special exigency, to fill the large number of seats that were lying vacant in the BDS Course. The respondent-Union of India however, vide communication dated 06.10.2016 requested the respondent-State to withdraw and cancel the orders pertaining to reduction in the percentile for admission in the BDS Course. Furthermore, vide order dated 07.10.2016, the respondent-Union of India has declined the request made by the respondent-Dental Council of India (DCI) in regard to lowering down of the percentile.

2.4. Subsequently, the respondent-DCI vide order dated 09.05.2017, issued a direction for discharge of those students from the Course, who though did not qualify the NEET, but were admitted on the basis of lowering down of the percentile. Further, the respondent-DCI vide communication dated 28.08.2017



addressed to the Principal Secretary, Department of Health & Family Welfare, Government of Rajasthan, informing, amongst others, that the request made by the State Government for *post facto* approval of lowering the percentile for BDS Course was not accepted by the respondent-DCI; relevant portion of the said communication dated 28.07.2017 reads as under:



"

The Executive Committee after discussion & deliberation decided as under:

The request of State Govt. of Rajasthan to grant ex-post factor approval for lowering down the percentile for BDS admission for the academic session 2016-17 in the State of Rajasthan is not accepted since the State Govt. of Rajasthan themselves had opted for NEET 2016 for admission in BDS Course where they had an opportunity to opt out the conduct of NEET in their State for the academic session 2016-17 as per Dentists (Amendment) Act 2016."

2.5. Thereafter, the respondent-Rajasthan University of Health Sciences passed an order dated 10.10.2017, whereby the appellants and other similar situated students were declared ineligible for the BDS Course, as per the eligibility criteria prescribed by the respondent-DCI; where against, the appellants filed writ petitions before the learned Single Bench of this Hon'ble Court, bearing S.B Civil Writ Petition No.13776/2017 and other connected matters. The learned Single Bench vide the common impugned judgment dated 20.04.2018, partly allowed the said petitions, with the following directions -:



"In view of the above discussion and taking into account the facts and circumstances of the case, all the writ petitions are partly allowed as under:-

(i) The students who have been granted admission by applying the relaxation to the extent of 10th percentile and 5th percentile shall not be disturbed and their admission stands regularized. The result of these students be declared forthwith.

(ii) All students who have been admitted after giving relaxation beyond 10% and additional 5% shall stand discharged from the BDS course with immediate effect

(iii) The above arrangement shall be applicable only to the academic year 2016-2017 and will not be used as precedent for the following and further academic years

(iv) The Central Government is directed for the future to take decision in view of proviso (ii) of Regulation 6 of the 5th Amendment of Regulations, 2007 well on time to avoid harassment and confusion".

2.6. Thus, being aggrieved by the aforementioned common impugned judgment dated 20.04.2018 passed by the learned Single Bench, the present appeals have been preferred, claiming, in sum and substance, the afore-quoted reliefs.

3. Learned Senior Counsel for the appellants submitted that due to large number of seats remained vacant, the Federation approached the Hon'ble Apex Court by preferring a writ petition bearing Writ Petition (C) No. 747/2016; however, vide order dated 23.09.2016, the same was dismissed as withdrawn, with liberty to file a representation for seeking the same relief; the necessary representation was accordingly, moved by the Federation on 23.09.2016 itself before the Central Board of Secondary Education (CBSE), while endorsing a copy thereof to the respondent-Union of India, the respondent-DCI and the Medical Council of India.



3.1 It was further submitted that in pursuance of the aforementioned representation dated 23.09.2016, the respondent-Rajasthan Dental College & Hospital addressed a letter dated 26.09.2016 to the respondent-Union of India, on the ground that there is urgency in the matter as the deadline of 30.09.2016 was approaching, and therefore, the minimum qualifying marks in NEET 2016 ought to be reduced appropriately.

3.2. It was also submitted that the respondent-Union of India vide letter dated 29.09.2016 forwarded the representation of the Federation to the respondent-State, for taking the necessary action, as deemed fit; the effect whereof was that the respondent-Union of India delegated its powers of taking decision in the matter regarding relaxation in percentile to the respondent-State, as the representation of the Federation was relating to relaxation in percentile for the purpose of admissions in the BDS Course.

3.3 It was further submitted that the respondent-State, while acting in pursuance of the said letter of the respondent-Union of India, reduced the minimum NEET percentile by 10 percentile in order to fill the vacant seats in the BDS Course in the Dental Colleges of Rajasthan, vide letter dated 30.09.2016 addressed to the Federation; therefore, it is clear that the decision taken by the respondent-State, upon being delegated the necessary powers by the respondent-Union of India in that regard, does not suffer from any infirmity or ambiguity.

3.4. It was also submitted that the respondent-DCI after acknowledging the aforesaid factual matrix, sent a recommendation vide letter dated 03.10.2016 to the respondent-



Union of India, for reducing the minimum NEET percentile by 10 percentile.

3.5. It was further submitted that the respondent-State, looking into the large number of vacant seats in the BDS Course in Dental Colleges of Rajasthan, had taken a decision on 04.10.2016, of lowering down the minimum percentile by 10 percentile, with an additional reduction by 5 percentile in special exigency cases, and simultaneously, addressed a letter on the same date i.e. 04.10.2016 to the respondent-Union of India, seeking its *post facto* approval in regard thereto.

3.6. It was also submitted that the respondent-DCI however, vide letter dated 05.10.2016 requested the respondent-Union of India that the aforementioned relaxation in percentile for admission in the Course in question, as granted, may be declared as *void ab initio*; whereafter, the respondent-Union of India, vide order dated 06.10.2016, requested the respondent-State to withdraw and cancel the order, which were passed, pertaining to the grant of relaxation in question.

3.6.1. Furthermore, as submitted on behalf of the appellants, the respondent-Union of India, vide order dated 07.10.2016, declined the recommendation of the respondent-DCI, as made vide letter dated 03.10.2016, regarding lowering down of the percentile, in view of the vacant seats in the Course in question. As per learned Senior Counsel, such action on the part of the respondent-Union of India is clearly unsustainable, as in regard to the same, the Union of India itself has made due delegation of power in favour of the respondent-State, to enable it to grant the relaxation in



question; and thus, the Union of India now cannot be permitted to make a U-turn, so as to take away the relaxation, as granted by the State.

3.7. It was also submitted that looking into the large number of unfilled seats in the BDS Course, the respondent-Union of India has already lowered down the percentile many-a-times, owing to the interests of the student community and other relevant factors; therefore, the entire action of the State in lowering down the percentile for admissions in the BDS Course was justified. Thus, as per learned Senior Counsel, the direction, as issued by respondent-DCI, to discharge those students from the Course, who were admitted after lowering the down of the percentile, cannot be sustained in eye of law.

3.8. It was also submitted that the Admission Regulatory Committee in its meeting dated 19.07.2017 asked the respondent-State to issue directions to the respondent-Rajasthan University of Health Sciences to provisionally accept the examination forms of those students, who were admitted after lowering down of the percentile.

3.9. It was further submitted that the students were admitted in the BDS Course in the year 2016, and that, most of the students have already completed their Course. It was also submitted that the methodology of lowering down of the percentile was devised in every year, until the seats are filled. In support of such submission, reliance was placed upon the judgment rendered by the Hon'ble Apex Court in the case of **Harshit Agarwal and Ors.**



Vs. Union of India (UOI) and Ors. (2021) 2 SCC 710;

relevant portion whereof, as relied upon, reads as under:

"7. It is clear from the proviso that the Central Government has the discretion to lower the minimum marks required for admission to BDS course in consultation with the Dental Council of India when sufficient number of candidates in the respective categories fail to secure minimum marks in the NEET entrance test.

8. There is no dispute that on 06-09-2019 the first Respondent lowered the qualifying cut off percentile for NEET (UG) 2019 for admission to BDS course by 10.00 percentile for each category i.e. General, SC/ST/OBC and persons with locomotor disability of lower limbs. The Dental Council of India by a letter dated 28.12.2020 proposed that the percentile for admission to BDS course in Dental colleges should be lowered by 20 percentile for each category. It was stated in the said letter that only 7,71,500 students qualified for admission to MBBS/BDS, (UG) AYUSH and other UG medical courses for the year 2020-2021. It was made clear by the second Respondent that the students qualified are not commensurate with the sanctioned admission capacity in different courses like MBBS, BDS, (UG) AYUSH and other UG medical courses. The second Respondent informed the first Respondent that there is shortage of the students for admission to BDS course and underlined the fact that vacant seats in professional courses would amount to national waste. However, the first Respondent decided not to lower the minimum marks required for admission to BDS course. In this background, the correctness of the decision of the first Respondent not to reduce the minimum marks for first year BDS course has to be examined.

12. The first Respondent reduced the minimum marks for admission into first-year BDS course for the year 2019-2020 in consultation with the second Respondent. In spite of the recommendation made by the second Respondent to reduce the minimum marks for the year 2020-2021, the first Respondent deemed it fit not to lower the minimum marks for the current year. While arriving at a decision on 30.12.2020 not





to lower the minimum marks it does not appear that the first Respondent has consulted the second Respondent in accordance with the proviso to Sub-Regulation (ii) of the Regulation II. There is no dispute that the minimum marks have been reduced by the first Respondent for the super speciality courses for the last year and AYUSH courses for the current year. If reducing minimum marks amounts to lowering the standards, the first Respondent would not do so for super speciality courses. We are in agreement with Mr. Maninder Singh, learned Senior Counsel for the Petitioners that lowering the minimum marks and reducing percentile for admission to the first-year BDS course would not amount to lowering the standards of education.

13. There are about 7,000 seats available for admission to the first-year BDS course during the year 2020-2021. We are not impressed by the argument of the learned Additional Solicitor General that there are sufficient number of Dentists in the country and, therefore, there is no harm in the seats being unfilled. However, we find force in the submission made by the learned Additional Solicitor General that the fee charged by the private dental colleges is a deterrent for the seats not being filled up. Only 265 out of 7,000 seats are vacant in government colleges. All the other unfilled seats are in private Dental colleges. The Managements of private Dental Colleges shall consider reducing the fee charged by them to encourage students to join the Colleges. Reliance was placed by the first Respondent in an order passed by this Court in *Union of India v. Federation of Self-Financed Ayurvedic Colleges, Punjab, (2020) SCC 115* to submit that non-availability of eligible candidates for admission to AYUSH (UG) courses cannot be a reason to lower the standards prescribed by the Central Council for admission. The facts of this case are entirely different as the Dental Council of India itself recommended for lowering the minimum marks and the Regulations provide for lowering the minimum marks. That apart, the first Respondent has exercised its discretion and lowered the minimum marks for admission to first-year BDS course for the year 2019-2020.

14. For the aforementioned reasons, we set aside the decision of the first Respondent dated 30.12.2020 to not reduce the minimum marks for admission to BDS course as it suffers from





the vices of illegality and irrationality. We direct that the vacant seats in first year BDS course for the year 2020-2021 shall be filled up from the candidates who have participated in the NEET (UG) courses for the year 2020-2021 after lowering the percentile mark by 10 percentile. The candidates belonging to the general category who have secured 40 percentile shall be eligible to be considered for admission in the first year BDS course for the year 2020-2021. Likewise, students belonging to the SC/ST/OBC categories shall be qualified if they have secured 30 percentile. In so far as General candidates with bench mark disabilities specified under the Rights of Persons with Disabilities Act, 2016, they would be eligible if they have secured 35 percentile. The admissions shall be made strictly in accordance with merit and the admission process shall be completed by 18.02.2021. Any other student who has qualified in NEET (UG) - 2020 even without lowering the minimum marks and is willing to participate in the admission process shall also be considered for admission to BDS course."

3.10. It was further submitted that the purpose of the NEET Examination is not to decide the respective merit of the students, and thus, once the exam was conducted and seats were still lying vacant, then lowering down of the percentile for the purpose of filling up such vacant seats was justified.

3.10.1. It was also submitted that only 225 seats were filled, out of total 892 seats, in 11 Dental Colleges in the State of Rajasthan, and thus, a large number of seats in the Colleges remained vacant in the BDS Course for the Academic Session 2016-17; therefore, the decision of the respondent-State to lower down the percentile and permitting admissions of the students on the basis thereof, was perfectly justified; however, the learned Single Bench, while passing the impugned judgment, has not duly considered, among other things, the said vital aspect of the matter.





3.11. It was also submitted that the decision of lowering down of the percentile for admission in the BDS course has also not resulted into reduction in the standards of the education in any manner whatsoever, and thus, the decision of granting the relaxation in question cannot be done away with in the manner, as done. In support of such submission, reliance was placed upon the judgment rendered by the Hon'ble Apex Court in the case of **Rajiv Gandhi University of Health Sciences Vs. Bapuji Dental College And Hospital & Ors. (Special Leave Petition Nos. 2597-2610/2015)**, decided on 28.08.2018;

Relevant portion of the said judgment as relied by learned Senior Counsel, reads as under:

"5. Admission of students in contravention of Rules and of judgments and orders of this Court cannot be countenanced. The Dental College ought not to have admitted the students without conducting an entrance examination.

6. However, unfortunately a lot of water has flown after the admissions were made. Pursuant to the impugned order, students who otherwise had the requisite educational qualifications for admission, but had not appeared for any competitive admission/entrance test, had been continued.

6. On 02.02.2015 this Court directed issuance of notice. There was no interim stay of the impugned order of the High Court. Hence, students have continued to obtain education. The Special Leave Petition has been pending in this Court for about four years. The respondent Nos. 2 to 14 have almost completed their courses. Once education has been obtained, it should be utilized for public good.

9. This case, however, is not of cheating, but a case of contravention of rules and the students, as observed above, have already been admitted, have pursued their





studies and almost completed their courses. The students have not committed any criminal offence. These students, should not be denied the benefit of taking the examination and obtaining a degree.

10. In the circumstances, we are not inclined to interfere in the admissions so made. However, we direct that this order as well as the impugned order are not to be treated as precedent in any other case.

11. The special leave petitions and all pending applications stand disposed of accordingly."

3.12. It was further submitted that the decision of lowering down the percentile and permitting admissions of the students without qualifying the NEET examination is valid and justified in the eye of law. In support of such submission, learned Senior Counsel relied upon the judgment rendered by Hon'ble High Court of Madras in the case of ***V.S. Subeeksha Vs Dental Counsel of India (W.P. Nos. 14342 to 14349 of 2018, decided on 17.07.2018)***; the said judgment upon being challenged before the Hon'ble Apex Court in case of ***Dental Council of India Vs V.S. Subeeksha (Special Leave Petition (Civil) Dairy No. 16390/2019, decided on 03.07.2019)*** was not interfered with, and thus, the same was upheld.

Relevant portion of the judgment rendered in ***V.S. Subeeksha (Supra)*** as relied by learned Senior Counsel, reads as under:

"14. It is to be noted that the Supreme Court has held that NEET is mandatory to all seeking admission to M.B.B.S./B.D.S. Course and it is applicable to those seeking admission under Government Quota, Management Quota and NRI Quota and that exemption was given in the academic year 2016- 17 only for admissions under Government Quota and not with regard to





admissions under Management Quota. Even though, it has been contended that there are seats still vacant under Management Quota and that some of the students have been asked to join the Course, this Court is of the view that the 5th Respondent/College has played fraud on the Petitioners and their parents.

15. In view of the amended provision viz. Section 10D of the Dentists (Amendment) Act, 2016 and that one seeking admission for MBBS/BDS Course from the academic year 2016-17 has to qualify NEET, even with regard to NRI Quota, the decision taken by the 1st Respondent/Dental Council of India, vide the order impugned dated 04.06.2018, declining the request of the Petitioners for migration to any College affiliated with the 3rd Respondent/University, is perfectly in order”.

Relevant portion of the judgment rendered in **Dental Council of India Vs V.S. Subeeksha (Supra)** is also reproduced as hereunder:

“In the peculiar facts and circumstances, we are not interfering with the impugned order(s) as the students have now completed two years of the course.

In case the Dental Council of India was interested to deprive them from studying it ought to have come expeditiously to this Court and ought to have sought stay of the order passed by the Division Bench of the High Court.

The impugned order(s) not to be treated as a precedent for any other matter. The question of law is kept open.

The special leave petitions are, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.”

3.13. Reliance was also placed upon the judgment rendered by the Hon’ble High Court of Gujarat in the case of **Mriga Ravi Swamy Vs State of Gujarat (Special Civil Application No. 18 440 of 2016, decided on 14.12.2016)**; it was submitted that though the said judgment was challenged before the Hon’ble Apex Court in





case of **Dental Council of India Vs Mriga Ravi Swamy (Special Leave Petition (Civil) Dairy No. 18289/2017, decided on 31.07.2017)**, but the said special leave petition was dismissed as withdrawn.

4. On the other hand, Mr. Virendra Lodha, learned Senior Counsel assisted by Mr. Abhinav Jain; Mr. Ravi Bhansali, learned Senior Counsel assisted by Mr. Vipul Dharnia; Mr. Manoj Bhandari, learned Senior Counsel assisted by Mr. Aniket Tater; Mr. Mukesh Rajpurohit, learned Deputy S.G. assisted by Mr. Dinesh Suthar; Ms. Anamika Bishnoi for Ms. Vandana Bhansali, AGC; and Mr. Lokesh Mathur, appearing on behalf of the respondents opposed the aforesaid submissions made on behalf of the appellants and submitted that the NEET examination was introduced in the country in the year 2016, with an object of enhancing the standards of education in the field of medical science.

4.1. It was further submitted that the respondent-Union of India issued a letter dated 09.08.2016 to all the States and Union Territories, regarding conducting counselling for admissions in the MBBS/BDS Courses; in pursuance whereof, the respondent-State issued a letter dated 16.08.2016 to the Convenor, UG Admission Counselling Board (NEET-2016), stating therein, amongst others, that as per the aforesaid letter dated 09.08.2016, counselling for all the Government Medical/Dental Colleges and all Private Medical Colleges (85% seats) and all Private Dental Colleges (85%) will be done through combined counselling; admissions against the rest 15% seats of (NRI/ Management quota of RUHS/ Jhalawar Medical



College/Private College/Dental Colleges) shall be done through NEET 2016.

4.2. It was further submitted that the total number of seats in BDS Course were 26,940, while as against the same, 4.5 lakhs students appeared in the examination in the year 2016-17. It was also submitted that the total number of seats in the Medical and Dental Colleges were 2650 and 1350 respectively, in the State of Rajasthan. In the State of Rajasthan, total 44142 candidates were declared qualified in the NEET-UG 2016 (in the ratio 1:11); therefore, the contention of the appellants that a large number of seats for admission in the Course in question remained vacant, does not hold good, in view of availability of sufficient number of eligible and qualified candidates for admission in the Course in question.

4.3. It was also submitted that the respondent-Union of India in its letter dated 07.10.2016 clearly stated that the recommendation of lowering down the percentile was not acceptable on the ground that there were sufficient number of candidates available to fill the vacant seats of the BDS Course. It was further submitted that the respondent-DCI issued various letters to all Dental Colleges in the State of Rajasthan to furnish the list of students for admission in the BDS Course.

4.3.1. After receiving the list of such students, the respondent-DCI found that 23 students could not qualify the NEET 2016, and accordingly, the respondent-DCI vide letter dated 20.09.2017 requested the concerned Dental Colleges to confirm/intimate the status of discharge of those students from the Course in question;



further clarification letter dated 28.07.2017 was also issued in that regard.

4.4. It was thus submitted that the decision of lowering down the percentile in NEET, so as to induct such students in the BDS Course, who even could not qualify the examination on count of their securing lower marks, is a glaring example of backdoor entry, which cannot be permissible in the field of medical education, owing to its widespread ramifications. In support of such submission, reliance was placed upon the judgment rendered by a Division Bench of this Hon'ble Court at Jaipur Bench in the case of **Madhu Saini Vs Rajasthan University of Health Sciences (D.B. Special Appeal Writ No.1046/2022 and other connected matters, decided 25.11.2022)**.

Relevant portion of the said judgment as relied by learned Senior Counsel, reads as under:

"4. In pursuance of the Regulation, 2007, the NEET PG Examination-2017 was conducted for selection and admission of the candidates in MDS Course. The appellants/petitioners No. 2, 5, 7, 12 to 15 appeared in the said NEET PG test and only appellants/petitioners No.5 and 15 qualified but did not participate in the centralized counselling and the rest did not qualify. The appellants-petitioners No.1, 3, 4, 6, 8 to 11 and 16 have not even appeared in the said test, even then all the appellants got admission in MDS Course in the respondent-College in contravention of the Regulations, 2007 after the cut off date i.e 31.05.2017.

24. We find no force in the arguments of the counsel for the appellants and the respondent-College that when sufficient number of seats remained vacant, the same were required to be filled in as per the prevailing past practice because the appellants were neither registered with the State NEET PG Dental Admission/Counselling Board, nor they qualified the NEET





examination which was mandatory to get admission in MDS Course.

25. The similar controversy came before the Hon'ble Supreme Court in the case of Abdul Ahad (supra) and the same was decided observing in para Nos.25 to 40 as under:-

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

26. It will further be pertinent to note that the Division Bench of the Allahabad High Court vide judgment dated 15.9.2016 had negated the challenge to the Notification dated 22.8.2016.

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

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

29. It will be apposite to refer to the following observations made by this Court in the case of Guru Nanak Dev University v. Parminder Kr. Bansal and others, reported in (1993) 4 SCC 401:-

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

33. In view of the discussions made here-in-above, we find that the appellants did not undergo the centralized counselling and they were well aware from the day one that their admission in the respondent-college was irregular and illegal- being in the teeth of the judgments of the Hon'ble Apex Court in the cases of Modern Dental Medical College (supra) & Jainarayan Chouksey (supra). The appellants are not entitled to get any equitable relief in view of the judgment of the Hon'ble Apex Court in the case of Abdul Ahad (supra).

35. Before parting with the judgment, we would like to observe that the time has come where such backdoor entries in educational





institutions should be stopped and discouraged. To permit any backdoor entry to any educational institution would be de hors the Rules and Regulations. The respondent-College was well aware of the fact that admissions cannot be granted to the appellants contrary to the regulations, even then, the College permitted the appellants to continue their studies in-spite of the directions by the Dental Medical Council to discharge the appellants. Such an intentional and deliberate violation of the Regulations by the respondent-College while granting admissions to the appellants in the academic year-2017 cannot be condoned. Hence, for the above unauthorized act, the respondent-College is liable to pay and deposit the costs of Rs. 25,00,000/- with the Rajasthan State Legal Services Authority (RSLSA) within a period of three months from today. RSLSA shall recover the same from the respondent-College in accordance with law.”

4.4.1. It was informed that though the judgment rendered in **Madhu Saini (supra)**, was challenged before the Hon'ble Apex Court in Special Leave to Appeal (C) Nos.23367-23368/2022, but the same was dismissed as withdrawn, vide order dated 03.01.2023.

4.5. It was further submitted that the impugned judgment passed by the learned Single Judge, in not dismissing the writ petitions, lacks due appreciation of the factual as well as legal aspects of the case, as also non-consideration of the material available on record.

4.6. It was also submitted that the impugned judgment, whereby the writ petitions were partly allowed, was rendered in contravention of Clause (ii) and (iv) of Regulation-II of the Revised BDS Course Regulations, 2007 as amended by its 5th Amendment notified on 31.05.2012.



4.7. It was further submitted that the learned Single Judge, before passing the impugned judgment, also failed to consider that the statutory provision is very clear that the power to grant relaxation in question was vested with the Central Government alone, meaning thereby, such power, in no circumstances, can be delegated by it, even to the State Government.

4.7.1. In support of such submission, reliance was placed upon the judgment rendered by the Hon'ble Apex Court in the case of **State of Madhya Pradesh & Ors. Vs. Gopal D. Tirthani & Ors., (2003) 7 SCC 83**, relevant portion whereof reads as under:

"23. That minimum qualifying marks cannot be done away with is also the view taken by this Court in Dr. Sadhna Devi and Ors. v. State of U.P. and Ors., [1997] 2 SCR 186 . In Pre-PG Medical Sangharsh Committee and Anr. v. Dr. Bajrang Soni and Ors. AIR 2001 SC 2743 , classification of in-service candidates as a distinct class by themselves was upheld. Relaxation of minimum qualifying marks for them to 33% as against 50% for others was upheld because at that period of time there was no stipulation to the contrary made by Medical Council of India. Dr. Bajrang Soni's case was decided on August 14, 2001 (though reported later); the same Bench of two learned Judges delivered the judgment in State of Punjab v. Dayanand Medical College & Hospital and Ors., AIR 2001 SC 3006, on October 11, 2001. By this time the Medical Council of India had framed the Regulations and Regulation 9 reproduced in the earlier part of this judgment was noticed by the Court. Preeti Srivastava's case (supra) too was considered. Then the court held:-

".....it is not open to the university or the Government to dilute that standard by fixing marks lower than what is set out by the Medical Council of India If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State



Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly stated by this Court to be the repository of the power to prescribe standards in postgraduate studies subject, of course, to the control of the Central Government as envisaged in the Act constituting the Council."

The Court struck down the selection of students who had secured marks less than the minimum prescribed by the MCI Regulations. The prescription made by the State reducing the minimum marks in the entrance examination for considering the eligibility of the candidates for admission to post graduate medical courses below the minimum prescribed by the Regulations framed by the Medical Council of India was directed to be ignored.

24. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute post-graduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

25. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance





only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or Medical Council of India and make out a case of justification consistently with the fore-quoted observation of this Court in Dayanand Medical College and Hospital's case (supra)."



4.8. While referring to the judgment rendered by the Hon'ble Apex Court in the case of **Neppali Sai Vikash & Ors. Vs. Union of India & Ors. (Misc. Application No.735/2022 in WP (Civil) No.124/2022**, decided on 02.05.2022), wherein the judgment rendered in **Harshit Agarwal (supra)** was referred, it was submitted that it would not be justified, in the exercise of power of judicial review, to direct a further reduction of 5 percentile, as, if it is so done, the same would be trenching upon the academic/policy domain; relevant portion of the said judgment reads as under:

"The proviso to Regulation 9(3) of the Post-Graduate Medical Education Regulations 2000 stipulates that the Central Government has the power to lower the minimum marks for admission to PG courses in consultation with the National Medical Commission when a sufficient number of candidates fail to secure minimum marks. On 12 March 2020, the Central Government in exercise of this power reduced the minimum marks in consultation with the National Medical Commission. After the stray rounds were conducted on the reduction in the percentile, only 282 seats are left vacant. The Union of India has taken a considered decision to not reduce the minimum marks further. As submitted by the respondent, the vacancy in the seats does not arise from non-fulfillment of minimum marks but also from course preferences and college preferences of the students. This



Court would not be inclined to interfere unless there is a manifest arbitrariness in the decision making process or in the decision. There is no arbitrariness here. Responding to the vacancies, the Union Government took a decision after due consideration, of reducing the percentile by 15. This Court would not be justified in the exercise of the power of judicial review to direct a further reduction of 5 percentile since that would be trenching upon the academic/policy domain. The need for filling up vacant seats, which undoubtedly is a matter of public interest has to be balanced with other considerations such as ensuring that the batch of admitted students commences the course, the standards of medical education are not diluted and uncertainty is not created by ad-hoc reductions in the norms of eligibility. Hence, we find no merit in the Miscellaneous Application. The Miscellaneous Application is dismissed."

4.9. While referring to an E-mail communication received from the Secretary of the respondent-DCI, it was submitted that the respondent-DCI has directed the concerned Dental Colleges to discharge those students from the Course in question, who could not qualify the NEET (UG)-2016, while endorsing a copy of the same, to the Government of India, the Principal Health Secretary, Rajasthan, the DME Rajasthan and the concerned Universities, for information and necessary action in the matter.

4.10. Reliance has been placed on the following judgments also:

"(1) Visveswaraiah Technological University & Anr. Vs. Krishnendu Halder & Ors., (2011) 4 SCC 606;

(2) Priya Gupta Vs. State of Chhatisgarh & Ors., (2012) 7 SCC 433;

(3) A.P. Christians Medical Educations Society Vs Government of Andhara Pradesh & Anr (1986) 2 SCC 667;





(4) *Regional Officer, CBSE Vs. Ku. Sheena Peethambaran & ors.*
(2003) 7 SCC 719;

(5) *Mahatma Gandhi university & Anr. Vs GIS Jose & Ors.* (2008)
17 SCC 611;

(6) *Maharishi Dyanand University Vs. Surjeet Kaur* (2010) 11 SCC
159;

(7) *Guru Nanak Dev University Vs Parminder Kr. Bansal & Anr.*
(1993) 4 SCC 401;

(8) *Harish Verma & Ors. Vs. Ajay Srivastava & Anr.* (2003) 8 SCC
69;

(9) *State of Madhya Pradesh & Ors. Vs Gopal D. Tirthani & Ors.*
(2003) 7 SCC 83;

(10) *National Council for Teachers Education & Anr. Vs Venus
Public Education Society & Ors.* (2013) 1 SCC 223;

(11) *Barium Chemicals Ltd. & Anr. Vs. Company Law Board &
Ors., AIR 1967 SC 295;*

(12) *Christian Medical College Vellore & ors. Vs Union of India &
Ors., (2014) 2 SCC 305;*

(13) *Shreya Basnet Vs Union of India & Ors. (S.B.C.W.P. No.
102/2018 decided on 05.02.2018); and*

(14) *Rishabh Choudhary Vs Union of India* (2017) 3 SCC 652.

5. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgments cited at the Bar.

6. This Court observes that the NEET has been introduced in the country in the year 2016, as an entrance examination for admission in the MBBS/BDS Courses; the whole purpose of the NEET is to enhance and maintain the high standards, in



uniformity, in the field of medical. The exercise of conducting the NEET has been upheld by the Constitutional Bench of the Hon'ble Apex Court in the case of **Modern Dental Medical College & Research Center & Ors., Vs State of Madhya Pradesh & Ors., (2016) 7 SCC 353**. The same principle has been reiterated with approval by the Hon'ble Apex Court in the case of **Abdul Ahad And Ors. Vs. Union of India (2020) 1 SCC OnLine SC 627** and also, by the Division Bench of the Hon'ble High Court of Karnataka in the case of **Karnataka State Private Homeopathic Medical College Managements Association and Ors Vs Union of India & Ors (W.P. No. 25723 of 2022 (EDN-RES), decided on 03.03.2023)**.

Relevant portion of the judgment rendered in **Karnataka State Private Homeopathic Medical College Managements Association (Supra)** is reproduced as hereunder;

"25. **In ABDUL AHAD AND ORS. Vs. UNION ON INDI(A2020) 1 SCC ONLINE SC 627**, a three Judge Bench of Supreme Court has approved the principles laid down by a Constitution Bench of the Supreme Court in **MODERN DENTAL COLLEGE AND RESEARCH CENTRE supra**, upholding the introduction of common entrance examination for the following reasons:

1. 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.
2. 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.





3. *If private unaided educational institutions are given unfettered right to devised 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 admission in such educational institutions.*

4. *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.* 5. *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.*

6. *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.*

7. *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.*

8. *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."*

7. This Court further observes, as held by the learned Single Judge in the impugned judgment, that after 5th Amendment of the Revised BDS Course Regulations, 2007, Regulation 6(ii) thereof, dealing with minimum percentile for different classes in the NEET for admission in the BDS Course, clearly reveals that the requirement of securing minimum marks is not mandatory in





nature; the Regulation itself provides that "when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to BDS Course, the Central Government in consultation with Dental Council of India may at its discretion lower the minimum marks required for admission to BDS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only."

The said Regulation 6 is reproduced as hereunder:

"6. In the existing Sub-regulation 5 of Regulation II, under the heading "Procedure for selection to BDS course" shall be as follows:-shall be deleted and substituted as under:-

(i) There shall be a single eligibility-cum-entrance examination namely "National Eligibility-cum-Entrance Test for admission to BDS course" in each academic year."

(ii) In order to be eligible for admission to BDS Course for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test to BDS course" held for the said academic years. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with locomotory disability of lower limbs terms of subregulation 4 above, after the commencement of these amendments, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in "National Eligibility-cum-Entrance Test for admission to BDS course"

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to BDS Course, the Central Government in consultation with Dental Council of India may at its discretion lower the minimum marks



required for admission to BDS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

(iii) The reservation of seats in dental colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to BDS course from the said lists only.

(iv) No Candidate who has failed to obtain the minimum eligibility marks as prescribed in Clause (ii) above shall be admitted to BDS course in the said academic year.

(v) All admissions to BDS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test.

(vi) To be eligible for admission to BDS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology/ Biotechnology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Biotechnology at the qualifying examination as mentioned in Sub Regulation 2 of Regulation I and in addition must have come in the merit list of "National Eligibility-cum-Entrance Test" for admission to BDS course in respect of 'candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes' the minimum marks obtained in Physics, Chemistry and Biology/bio-technology taken together in qualifying examination shall be 40% instead of 50% in respect of candidates with locomotory disability of lower limbs in terms of sub-regulation 4, after the commencement of these amendments, of Regulation I above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 45% instead of 50%.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally permitted to take up the National Eligibility-cum-Entrance Test and in case of selection



for admission to the BDS Course, he/she shall not be admitted to that course until he fulfills the eligibility criteria under Regulation I.

(vii) The Central Board of Secondary Education shall be the organization to conduct National Eligibility-cum-Entrance Test for admission to BDS course.

8. In the present case, as mentioned in the factual matrix, the Federation has approached the Hon'ble Apex Court by preferring a writ petition bearing Writ Petition (C) No. 747/2016, but, vide order dated 23.09.2016, the same was dismissed as withdrawn, with liberty to file a representation for seeking the same relief; the necessary representation was moved by the Federation on 23.09.2016. Thereafter, the respondent-Union of India vide letter dated 29.09.2016 forwarded the representation of the Federation to the respondent-State, and directed to take the necessary action, as deemed fit, regarding the lowering down of the percentile. The respondent-State thereafter, reduced the minimum percentile by 10 percentile, and with additional reduction in percentile by 5 percentile.

9. Subsequently, the respondent-DCI vide letter dated 05.10.2016 requested the respondent-Union of India that the aforementioned relaxation in percentile for admission in the Course in question, as granted, may be declared as *void ab initio*; whereafter, the respondent-Union of India, vide order dated 06.10.2016, requested the respondent-State to withdraw and cancel the order, which were passed, pertaining to the grant of relaxation in question and respondent-Union of India, vide order dated 07.10.2016, declined to accede to the recommendation of



the respondent-DCI, which was made vide letter dated 03.10.2016 in view of the vacant seats in the Course in question.

9.1. Therefore, the permission to take the necessary action as deemed fit was granted by the respondent-Union of India; after the said letter, the respondent-State lowered down the percentile as above.

10. This Court agrees with the observation made by the learned Single Judge in the impugned judgment that vide the letter dated 29.09.2016, the respondent-Union of India delegated the power to the respondent-State to take necessary action pertaining to the admission in BDS course. In pursuance of such delegated power, the respondent-State vide letter dated 30.09.2016 permitted all the private Dental Colleges to fill up the vacant seats by lowering down the marks to the extent of 10 percentile, followed by additional reduction by 5 percentile; the respondent-State also informed the same to the respondent-Union of India vide letter dated 04.10.2016, whereupon the respondent-Union of India declined lowering down of the percentile, while requesting the respondent-State to withdraw and cancel the orders regarding lowering down of the percentile.

10.1 The entire action of the respondent-State, as taken by it, upon delegation of the requisite power by the respondent-Union of India itself, is justified in the eye of law, because the respondent-Union of India itself stated that "necessary action as deemed fit".

11. This Court further observes that the judgment rendered by the Hon'ble Apex Court in the case of **Rajiv Gandhi University of Health Sciences (supra)** shall not have precedence in the



present case, as in the said judgment, the Hon'ble Apex Court categorically observed that "we are not inclined to interfere in the admissions so made. However, **we direct that this order as well as the impugned order are not to be treated as precedent in any other case**".

12. This Court also observes that the Hon'ble Madras High Court passed the order in the case of ***V.S. Subeeksha (Supra)***; the appeal challenging the same though was dismissed by the Hon'ble Apex Court vide the judgment rendered in ***Dental Counsel of India Vs V.S. Subeeksha (Supra)***; however, the Hon'ble Apex Court in the said judgment observed that, **The impugned order(s) not to be treated as a precedent for any other matter. The question of law is kept open.** Therefore, the said judgment also cannot be cited as a precedent in the present case.

13. This Court further observes that lowering down of the percentile by the respondent-State to the extent of 10 % and additionally by 5 percentile in exercise of the delegated power by the respondent-Union, as mentioned in the aforementioned factual matrix, clear reveals that beyond the same, no further relaxation can be extended to any candidate aspiring to pursue the BDS Course in the State of Rajasthan.

14. The learned Single Judge, in the impugned judgment, observed that the "An affidavit dated 21.01.2018 was filed by the Joint Secretary, Ministry of Health and Family Welfare before this Court stating therein that for the State of Rajasthan, the ratio of available seats to the number of qualified candidate was 1:11 for the academic year 2016-2017. However, on ground level, it was



found that only about 500 candidates had been admitted against 1350 seats for BDS course including Government colleges. Thus, about 850 seats were lying vacant. In the said affidavit, there is no explanation as to how the number of seats of the BDS course were lying vacant even in spite of stand that a sufficient number of candidates who had attained the minimum of percentile in the NEET were available for the academic year 2016-2017”.

14.1. At the same time, this Court observes that the Colleges in question, for the purpose of giving admissions to the candidates against the vacant seats in the BDS Course, have granted relaxation beyond the one already granted by the respondent-State, even to those students who have secured much lower marks [including zero / (-) percentile] in the NEET, which fact cannot be lost sight of by the Courts, Central Government, State Governments, Union Territories Governments and other Authorities, and thus, such relaxation as granted by the Colleges in question cannot at all be acceptable, and sustainable in the eye of law, as, if such relaxation is accepted and sustained, the same would have adverse impact upon the high and uniform standards in the field of medical education.

15. This Court further observes that the learned Single Bench mentioned in the impugned judgment, that, *“In fact, the State too while acting on the letter of the Central Government dated 29.09.2016 permitted reduction only to the extent of 10% and additional 5%. Therefore, the Institution at their own level continued to reduce till the last seat was filled without adhering to the extent of 10% and additional 5%.”* This Court views the issue



very seriously, as to how those students, having secured much lower percentile, including zero/(-) percentile, were given admission in the BDS Course by the Colleges in question, beyond the relaxation granted by the respondent-State, that too without obtaining any prior approval/sanction for doing the same.

16. This Court, at this juncture, considers it appropriate to reproduce the relevant portion of the judgment rendered by the Division Bench of this Hon'ble Court at Jaipur Bench in the case of **Madhu Saini Vs Rajasthan University of Health Sciences (Supra)**, which reads as under:

"34. Under these circumstances, we find that no ground has been made out for granting relief to the appellants. There is no merit in these appeals and the same are accordingly dismissed. **However, we make it clear that the appellants would be at liberty to proceed against the respondent-College to get the amount of compensation of Rs.10,00,000/- (each) in pursuance of the directions issued by the learned Single Judge in accordance with law.**

35. Before parting with the judgment, we would like to observe that the time has come where such backdoor entries in educational institutions should be stopped and discouraged. To permit any backdoor entry to any educational institution would be de hors the Rules and Regulations. The respondent-College was well aware of the fact that admissions cannot be granted to the appellants contrary to the regulations, even then, the College permitted the appellants to continue their studies in-spite of the directions by the Dental Medical Council to discharge the appellants. Such an intentional and deliberate violation of the Regulations by the respondent-College while granting admissions to the appellants in the academic year-2017 cannot be condoned. **Hence, for the above unauthorized act, the respondent-College is**



liable to pay and deposit the costs of Rs. 25,00,000/- with the Rajasthan State Legal Services Authority (RSLSA) within a period of three months from today. RSLSA shall recover the same from the respondent-College in accordance with law".

17. Thus, while concurring with the observations made by the learned Single Judge in the impugned judgment, finds the judgments cited on behalf of the appellants in the present appeals do not render any assistance to their case, and thus, no case is made out so as to grant any relief to any of the appellants in the present appeals.

18. Accordingly, while **dismissing** the present appeals, this Court issues the following directions:

(a) All the students, who have been admitted after giving relaxation beyond 10% and additional 5%, if not discharged, shall stand discharged from the BDS course with immediate effect; in case any of such student(s) has already been awarded the Degree of the BDS Course, beyond the relaxation granted by the respondent-State, the same, if not already procured and deposited, shall be required to be procured by the concerned College, who in turn shall deposit the same with the concerned University within a period of one month from today, failing which the concerned University would be at liberty to initiate contempt proceedings against the College, who fails to do so.

(b) Each of such College(s), who have granted relaxation, beyond the one already granted by the respondent-State, are also liable to deposit a cost of Rs.50,00,000/- with the Rajasthan High Court Legal Services Committee (RHCLSC), Jodhpur within a period of



two months from today; the RHCLSC shall recover the same from the concerned College(s), strictly in accordance with law.

(c) The said College(s) shall pay a sum of Rs.25,00,000/- to each of such student(s) within a period of three months from today, as compensation, as the student(s) have been made to suffer on count of being given admission by the College(s), while extending the relaxation beyond the one already granted by the respondent-State. The respondent-State is directed to ensure the same.

(d) The Registry is directed to send a copy of this judgment to the RHCLSC and the concerned authority of the respondent-State to ensure the compliance of this judgment.

(e) All pending applications stand disposed of.

(YOGENDRA KUMAR PUROHIT),J

(DR.PUSHPENDRA SINGH BHATI),J

Skant/-