

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 3345/2020

NILAY GUPTA

...APPELLANT(S)

VERSUS

**CHAIRMAN NEET PG MEDICAL AND
DENTAL ADMISSION/COUNSELLING
BOARD 2020 AND PRINCIPAL GOVT.
DENTAL COLLEGE & ORS.**

...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 3346 - 3348/2020

CIVIL APPEAL NO. 3349/2020

CIVIL APPEAL NO. 3350/2020

CIVIL APPEAL NOS. 3351- 3352/2020

J U D G M E N T

S. RAVINDRA BHAT, J.

.1 These appeals were heard with the consent of learned counsel for the parties.

.2 The appellants are aggrieved by a decision of a Division Bench of the Rajasthan High Court, which upset the findings of a learned Single Judge of that High Court, who found that the change of seat matrix for admission to post graduate (PG) medical and dental seats in colleges in the State of Rajasthan, for the academic year 2020-21, by eliminating the Non-Resident Indian (NRI) quota was unsustainable in law. The appellants were admitted pursuant to the direction issued by the learned Single Judge, who had ruled that the deletion of such quota was contrary to law. Two sets of appeals and intervention applications arise for consideration: one, appeals arising from petitions filed by Dr. Nilay Gupta, and Dr. Surmil Sharma, the original writ petitioners (who had succeeded before the single judge and were consequently given admission as NRI candidates) and two, appeals filed by Dr. Arushi Mittal, Dr. Priyanka Sharma, Dr. Anjali Agarwal, Dr. Aditya Punia, Dr. Varun Bhargava and Dr. Deepak Ramnani, who are aggrieved by the impugned judgment inasmuch as the admissions they were granted pursuant the single judge's directions, despite not being parties to the original writ petition, have now been overturned. An application to intervene has been preferred by Dr. Tirth Jitendra Kumar Modi, who was granted admission to a PG course in the respondent private college on 27.08.2020, after the impugned judgment was delivered; he has paid the fees and attended classes so far.

.3 The factual matrix is that the process of admission to PG medical and dental courses for academic year (AY) 2020-21 began sometime in early 2020. The procedure for selection for admissions began with the NEET Post Graduate Test/Common Eligibility Test, which was held in January, 2020. The schedule/calendar for filling of the PG seats was made available online and also published in leading newspapers. Contemporaneously, a meeting of the PG Counselling board for admissions to MD/MDS course was held by the Chairman, NEET PG Counselling board – 2020 (hereafter “board”). This meeting held on 17.03.2020, was attended by representatives of colleges, including private colleges as well as officials of the State and Union Governments. The minutes, *inter alia*, recorded as follows:

“The following is a brief record of discussions held and decisions taken during the meeting.

- 1. The notification for NEET PG Medical Dental advertisement was discussed finalized and approved.*
- 2. The instruction booklet was discussed and finalized and on direction it was decided to send it to Hon’ble Advocate General for vetting.*
- 3. The seat matrix and fees structure was obtained from all medical dental colleges.*
- 4. It was decided to send the instruction booklet along with seat matrix and the fee structure information obtained from all the medical dental college to the Government.*
- 5. Seats remaining vacant, if any due to non availability of NRI candidates in second round of counselling will be filled up as per merit and choice of the candidates applying under 15% quota of the college and fees as prescribed by the fee committee of the college.*

Meeting ended with the vote of thanks.”

.1 The NEET PG 2020 examination had been held sometime in January, and the results were declared on 31.01.2020. The appellants were registered under the NRI category with the board for allotment of seats in the discipline of MD (Radio-diagnosis) in Rajasthan, sometime in the third week of March 2020.

.2 The Instruction Booklet for State Medical & Dental PG Seats Allotments, 2020, which intimated the terms which applied to candidates stated *inter alia* that:

- (a) NEET qualified candidates possessing a degree of MBBS/ BDS from colleges situated in the State of Rajasthan, and all medical officers/ medical teachers serving under the Government of Rajasthan are eligible to participate for admissions in 50% of the total seats in private medical colleges;
- (b) For the remaining 50% of the total seats in private colleges, all NEET qualified candidates possessing an MBBS/ BDS degree from *anywhere* are eligible to participate;
- (c) There are 3 types of seats as per the Medical Council of India (MCI) – government seats, management seats, and NRI seats. The responsibility for the type of seats in the seat matrix lie with the concerned institution.

.3 The Instruction Booklet further stipulated, *inter alia*, that the seat matrix would be announced in “due course”. The medical and dental colleges which offered admissions, were to delineate the categories of seats as well as the respective fee to be charged in accordance with prevailing laws, regulations etc. Clause 19 of the Instruction Booklet required separate documents to be furnished for NRI candidates in Proforma II and in the form of undertakings.

.4 The eligibility for filling NRI seats was spelt out in the following terms:

“Eligibility for NRI Seats

As per order no. F.5 (968)DME/LC/2018/1997 dated 29.04.2019 of Government of Rajasthan, following will be the guidelines applicable for the admission in Under

Graduate/Post Graduate, Medical/Dental courses under NRI quota in all Private and Government institutions of the State:

1. *At least one of the parents of students should be an NRI and shall ordinarily be residing abroad as an NRI; or*

2. *The person who sponsors the student for admission should be a first degree relative of the student (i.e. real Brother/real Sister) and should be ordinarily residing abroad as an NRI; or*

3. *If student is taken as a ward by some other nearest relative [as mentioned below (i) to (v)] such students also may be considered for admission provided the guardian has bonafidely treated the student as a ward. For this following nearest relative (NRI) of candidate, who should be ordinarily residing abroad as an NRI can only be considered:*

(I) Real Brother and sister of father i.e. real uncle and real aunt.

(ii) Real brother and sister of mother i.e. real maternal uncle and maternal aunt.

(iii) Father and mother of father i.e. grandfather and grandmother.

(iv) Father and mother of mother i.e. maternal grandfather and maternal grandmother.

(v) First degree-paternal and maternal cousins.”

4. *All NRI candidates shall submit a proof being sponsored as NRI/OCI/PIO in the form of certificate issued by the Indian embassy/Ministry of external affairs, Government of India for this purpose. In the absence of that certificate a duly notarized undertaking executed by the sponsor and notarized by the Notary Public of the foreign country where the sponsor resides being submitted by the sponsor, it be treated as sufficient as to the factum of the residence of the sponsor.*

5. An affidavit from the sponsor that he/she looks after such student and will sponsor the entire course fee of the candidate.

(Refer requirement of additional documents for candidates applying for NRI seats under ‘List of documents to be deposited at the time of reporting’, Page 11 and 12 of the instruction booklet)

Priority

For admission under NRI Quota in Medical/Dental Courses in the colleges in the State of Rajasthan, priority shall be given to the NRI with ancestral background of the State of Rajasthan by own/parents/Grandparents resided in State of Rajasthan at least for a period of 5 years at any time. The proof of residence will also be applicable for the consideration priority for NRI Quota, for which document (electricity/water bill/Documents of immovable property/Indian Passport/Ration Card/Voter ID/Aadhaar Card etc.) to the effect for this criteria is required to be submitted by ward of NRI (including PIO/OCI).

Firstly, allotments of NRI Quota seats shall be allotted to candidate having ancestral background of the State of Rajasthan by own/parents/Grandparents resided in State of Rajasthan at least for a period of 5 years. Later on remaining Vacant NRI seats will be allotted/filled by the candidates of NRI belonging to other states.

For PIO/ OCI: Overseas Citizens of India (OCI), Persons of Indian Origin (PIO) are allowed for admission under NRI Quota.”

8. On 11.04.2020 apparently, one of the respondents, i.e. Mahatma Gandhi Medical College, Jaipur (hereafter “MGMC”), published its admission notification which stated *inter alia* that the total MD seats offered were 144; that

NRI/management quota seats would be 22, (i.e. 15% of the total seats) and that other than NRI/management quota seats, the other 50% would be state quota seats (of the total, i.e. 72) and 50 seats were All India quota seats. The details of MD/MS seats available in the MGMC were also shown in a tabular form. For MD (Radio diagnosis), 1 seat was earmarked in the All-India 35% quota; 3 seats were set apart for the state quota; and 2 seats were set apart for NRI/management quota seats. The appellants had by then, furnished the requisite documents to claim admission in the NRI quota sometime in early March itself.

9. The original notice spelling out the schedule for admissions, including verification of documents etc. had fixed 30.03.2020 as the date for verification of status of NRI applicants. This process was postponed on 10.04.2020, to 14.04.2020. Before that date, however, on 13.04.2020, the State NEET PG Counselling board published a seat matrix in which the NRI quota was shown as NIL. It transpired that the MGMC had, in the meanwhile furnished a seat matrix to the State NEET Board showing that there would be no separate seats earmarked for the NRI quota, and that such NRI candidates would be considered for admission in the management quota. The final seat matrix for PG medical allotments for AY 2020-21 - furnished by the MGMC - was annexed to the reply filed by the board before the single judge. It clearly showed that 22 seats were set apart as 'management' seats, and none were shown as part of the management seats under the NRI quota. With respect to Radio Diagnosis, the position was that out of a total of 6 seats, 1 was kept apart as 'management quota'.

On 14.04.2020, a notification was issued by the board stating that the seat matrix for the current year would not contain the NRI Quota. The said notification/intimation read as follows:

“Office of the Chairman,

***NEET PG Medical & Dental Admission/Counseling Board -2020 and
Principal, Govt. Dental College, Subhash Nagar, Behind T. B. Hospital, Jaipur,
Rajasthan***

Phone: 0141-2280090

***NEET PG MEDICAL & DENTAL ADMISSION/COUNSELING 2020
(Rajasthan State)***

***IMPORTANT INFORMATION
FOR
NRI CANDIDATES***

14.04.2020

Seat Matrix (13.04.2020) available at the website (compiled on the basis of seats information provided by respective colleges) does not have any NRI seat this year. The candidates who have applied for allotment on NRI seats will accordingly be considered based on their remaining eligibility criteria.

*Chairman
NEET PD Medical & Dental Admission
Counseling Board-2020 and
Principal, Govt. Dental College, Jaipur*

10. Feeling aggrieved, the two appellants, i.e. Dr. Nilay Gupta and Dr. (Ms) Surmi Sharma (both of who had concededly applied as NEET qualified candidates for the admission in the NRI seats) approached the Rajasthan High Court, contending that the decision to do away with the NRI quota was arbitrary. They highlighted their having received a notice on 10.04.2020 to be in readiness for online counselling towards admission to the NRI seats. They relied upon the minutes of the meeting dated 17.03.2020 and submitted that the the NEET Counselling Board was to first fill the NRI seats in NRI quota, and if there were no left out seats, to fill them as part of the larger management quota. It was also submitted that on 13.04.2020, the NEET PG Counselling Bord whimsically and without any rationale, in its final seat matrix deleted the NRI quota altogether following it up with a notification of 14.04.2020, stating that all NRI seats would now be considered as part of the management quota.

The board and the MGMC resisted the writ petition, especially the appellants' reliefs claimed (that the respondents be directed to give them admission to seats as NRI candidates). It was stressed by the respondents that no student has a right to claim admission and that private medical colleges cannot be compelled to earmark a separate quota for NRI candidates if they chose not to do so out of volition. It was further stated that NRI candidates could and were considered for admission to seats in the management quota.

11. By the judgment and order dated 10.07.2020, the learned Single Judge of the High Court, relying upon the seven judges' ruling of this Court in *P.A. Inamdar & Ors. v. State of Maharashtra*¹, as well as other rulings² held that after having appeared in the NEET PG examination and qualifying it, and after having approached the colleges (including MGMC) for the NRI seats, the appellants could not be deprived of their choice of admission in NRI seats by the respondents through the process of deletion of the NRI quota seats altogether. The learned Single Judge held that there can be no distinction between the NRI seats and management seats and it was only after exhausting the option of filling eligible NRI candidates in that quota that the remaining seats in the 15% could be treated as management quota seats. Relying upon the minutes of the meeting of 17.03.2020, which indicated the sequence of admission (in which NRI students were to be first counselled for the purpose of their document verification, after which management seats could be filled), it was held that the change of policy mid-stream as it were, by the board and the colleges was contrary to law. The learned Single Judge also directed that the appellants, i.e. the writ petitioners before the High Court should be given admission forthwith.

¹ (2005) 6 SCC 537

² *Modern Dental College and Research Centre v. State of M.P & Ors.*, 2012 (7) SC 433 and *Manipal University v. Union of India* (2017) 15 SCC 664.

12. In compliance with the directions of the single judge, the two appellants were given admission to courses of their choice. Since the judgment had far reaching repercussions, third party appeals were filed by students who had been offered MD/MDS seats in the management quota, and who faced threat to their admission; likewise, the board too appealed. The Division Bench allowed these appeals by the impugned judgment, by accepting the plea of the colleges, the board and the third-party appellants. The Division Bench reasoned that no student can claim a right to a quota (NRI quota in this case). It also held that the judgments of this court in *P.A. Inamdar*³ and the other decisions nowhere indicate that an obligatory NRI quota should be earmarked by all private colleges, which have a choice of either doing it, or filling the seats, which otherwise fall within the management quota, as part of the management quota seats. In other words, according to the Division Bench, the private institution has the choice of earmarking an NRI quota or not doing so, and proceeding to fill the management quota by considering NRI students as part of the general management seats quota. The impugned judgment also held that the respondents could not be blamed for not providing an NRI quota, or for changing the seat matrix; it further noted that the object of carving out a quota was to enable the private institution to charge a higher fee; in the present case, it held that the fee prescribed for NRI candidates and management quota candidates was the same; therefore, the private colleges could well exercise their discretion not to earmark an NRI quota.

13. Mr. V. Giri, learned senior counsel for the appellants argued that the action of the board, in countenancing the MGMC's decision to abolish the NRI quota, *after* calling the students to opt for such quota, much after the declaration of NEET test results on 31.01.2010, is arbitrary. It was urged that the entire sequence in this case, shows that the board, the universities and the concerned colleges were clear that there would be an NRI quota and that if seats from that quota, after the counselling,

³ Supra n.1

remained unfilled, only such residual seats would be filled up by management quota candidates. Much emphasis was placed upon the minutes of the meeting dated 17.03.2020, under the aegis of the board, to which all colleges were parties. This court's attention was also drawn to the original seat matrix, published in the notification dated 11.04.2020, of MGMC, which clearly represented that out of 144 seats in the MGMC, a clear 15% NRI quota was shown; and that the table even detailed that two NRI seats in the Radio Diagnosis discipline for MD seats. Being so, the board and the MGMC could not have gone back on their decisions, at a late stage, when the students (who had opted for NRI seats in Rajasthan) were left with little or no choice.

14. Mr. Siddharth Dave, learned senior counsel appearing for another candidate who was prejudiced on account of the Division Bench's directions, supported Mr. Giri's submissions. He highlighted that right from the decision in *P.A. Inamdar*⁴ this court has maintained that an NRI quota is available for overseas/NRI candidates, who wish to undertake studies in private colleges in India, especially in medical courses. There is a twin objective behind creation of this quota: first, to augment the coffers of the private college, and enable "cross-subsidization" of seats, for the benefit of meritorious but poor students, and secondly, to enable students who have been schooled abroad to culturally immerse themselves and find their roots in Indian society. Such being the case, the managements of private colleges could not have unilaterally and at the last moment, withdrawn this quota, to the detriment of the students who had consciously opted for it, and were left with little, or worse, no options. It was submitted that even the seat matrix shown last, i.e. on 13.04.2020, should not have included management quota candidates as eligible for the NRI quota; this aspect was noticed, and commented upon by the single judge, based on a correct reading of the scheme of admissions.

⁴ Supra n.1

15. Mr. Wasim Qadri, learned senior counsel, Mr. Anand Verma and Mr. DK Garg, learned counsel, made submissions on behalf of candidates. It was submitted that as a result of the single judge's directions, another round of counseling had taken place and students were accommodated in the NRI quota; they had to give up the seats which they had previously opted for, in other medical colleges, to accept NRI seats, because that conformed to their choice of discipline. Hence, submitted these counsel, the Division Bench's ruling has resulted in adverse consequences to them.

16. Mr. Manish Singhvi, learned Additional Advocate General for the state of Rajasthan, argued that the NRI quota could not apply in the facts and circumstances of the case as the institutions (private colleges) had not claimed any seats under the NRI quota, for which the seat matrices were furnished by them on 11.04.2020. The allotment of seats was thus required to be made strictly in accordance with the merit of the candidates who had applied in the NRI quota, as well as for the management seats. It was urged that the learned Single Judge erred in usurping the powers of the Counselling Board and directing it to allot particular subjects (Radio-diagnosis to Dr. Nilay Gupta and Obstetrics & Gynaecology to Dr. Ms. Surmil Sharma).

17. Mr. Nakul Dewan, learned senior counsel appearing for the intervenor, Dr. Modi, highlighted that due to disruption which occurred on account of the Covid-19 pandemic, the process for admission of PG courses was delayed; on 10.04.2020, the revised schedule was issued by the board. When the private colleges had to furnish their seat matrices to the board, they took a decision not to avail of the NRI quota. Thus, the board published the seat matrix, which clearly indicated that 22 seats were earmarked for candidates who had applied in the management quota category. Agreeing with the submissions on behalf of the state, that an NRI quota was not obligatory, Mr. Dewan contended that the genesis of that quota can be traced to the observations in *TMA Pai Foundation v. State of Karnataka*⁵ that unaided private

⁵ 2002 (8) SCC 481

colleges are “*entitled to autonomy in their administration*” even when they are bound to make merit-based admissions. The court had stated that a “*certain percentage*” (of the total intake) can be set apart to be filled by college managements, based on merit determined by a common test, to be conducted by the state or its agencies, or the college. These observations were elaborated, and the court enabled the creation of an NRI quota in such colleges, in *P.A Inamdar*⁶. He also relied on the subsequent decision in *Modern Dental College*⁷.

18. Mr. Shiv Mangal Sharma, appearing for the fourth respondent, i.e. Dr. Anjaneya Singh Kathait, in the appeal filed by Dr. Deepak Ramnani, supported the submissions of Shri Dewan, and highlighted that all candidates who were granted admissions in the NRI quota, after the single judge’s directions, were considerably low in merit. They were given undeserving benefit, *entirely* because of erroneous directions by the single judge, who could have at best required the board to consider NRI candidates, on the basis of their merit, in the NEET process. It was submitted that as a result, there was no question of interfering with the impugned judgment, which was justified both on merits as well as in law. This position was also adopted on behalf of the board, which is separately arrayed as respondent.

Analysis and Conclusions

19. The documents on the record show that a total of 717 seats were initially notified for admission in postgraduate medical courses in government colleges in the Rajasthan State; 427 of were notified as intake in five private colleges in the state. The board, in its notification dated 10-04-2020 had stated that the rescheduling of Central NEET Counselling for the state of Rajasthan had been re-notified; the fresh schedule for the state indicated that counselling fee was to be deposited between 11.04.2020 and 13.04.2020. Concurrently the online registration for first counselling and information for filing of applications by the candidates was between 11.04.2020

⁶ Supra n.1

⁷ Supra n.2

and 13.04.2020, up to 11.55 PM. The third and fourth steps comprised of verification of disability certificate of all persons with disabilities as well as verification of status of NRI applicants. Management quota seats were notified by MGMC on 13.04.2020; these were 22 (out of a total of 144 seats available in that college.) During the intervening period, the private colleges lodged their seat matrices; consciously, they omitted the NRI quota. After publishing the matrix on 13.04.2020 and after the board's notification of 10.04.2020 (setting out sequentially, in terms of date and time, the steps to be taken for registration counselling and admission), the final position vis-à-vis unavailability of NRI seats was notified on 14.04.2020.

20. The provisions of the Rajasthan University of Health Sciences Act, 2005⁸ throws open admission to all courses, offered by medical colleges affiliated to the University, to be open to all, subject to such reservations as may be made in favour of Scheduled Caste, Scheduled tribe, Other backward classes, girl students “*and other categories in accordance with any law or orders of the State Government for the time being in force.*” By virtue of insertion of Section 10-D in the Medical Council of India Act, 1956 and regulations framed thereafter, participation in a common National Examination, (“NEET”) by institutions offering medical courses – including postgraduation courses, as well as its attempt by candidates wanting admission, became compulsory. The governing enactment, which set up the respondent MGMC, is the Mahatma Gandhi University of Medical Sciences and Technology, Jaipur Act, 2011. It provides⁹ for the procedure to be adopted for admissions, as well as for reservations. *Per proviso to Section 32(2), admission in*

⁸ Section 7

⁹ Section 32, which reads as follows:

“*32. Admissions.* - (1) Admission in the University shall be made strictly on the basis of merit.

(2) Merit for admission in the University may be determined either on the basis of marks or grade obtained in the qualifying examination and achievements in co-curricular and extra-curricular activities or on the basis of marks or grade obtained in the entrance test conducted at the State level either by an association of the universities conducting similar courses or by any agency of the State:

Provided that admission in professional and technical courses shall be made only through entrance test.

(3) Reservation in admission to the University for scheduled castes, scheduled tribes, backward classes, special backward classes, women and handicapped persons shall be provided as per the policy of the State Government.”

professional courses is to be only through entrance test; By Section 32(3), reservations for “*scheduled castes, scheduled tribes, backward classes, special backward classes, women and handicapped persons shall be provided as per the policy of the State Government.*” Regulations framed pursuant to the amendment effected in 2016, to the Medical Council of India Act, in respect of admission to postgraduate medical courses, made it obligatory for both institutions and students alike to give effect to the common eligibility test (NEET).¹⁰

21. The rival contentions of the parties may be summarized as follows. The original writ petitioners, (all of whom are before this court) argue on the one hand that the admission process really began sometime in January 2020 when the NEET written test took place. The meeting convened by the board and attended by all parties concerned including private colleges who participated in admissions to postgraduate courses in private colleges, clearly intended as on 17.03.2020, to fill up the 15% quota firstly amongst eligible NRI candidates and thereafter fill the leftover seats as part of the management quota. This understanding resulted in two consequences for NRI candidates; the first was that they filed their applications and produced all relevant documents to support the claim that they were eligible for that

¹⁰ Regulation 9, to the extent it is relevant, introduced in 2018, reads as follows:

“9. Procedure for selection of candidate for Postgraduate courses shall be as follows:- (1) *There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely ‘National Eligibility-cum-Entrance Test’ for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.*

(2) *The “designated authority” to conduct the ‘National Eligibility-cum-Entrance Test’ shall be the National Board of Examination or any other body/organization so designated by the Ministry of Health and Family Welfare, Government of India.*

(3) *In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the ‘National Eligibility-Cum-Entrance Test for Postgraduate courses’ held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. 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 Postgraduate courses.*

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 Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only.

(4) *The reservation of seats in Medical Colleges/institutions 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 Postgraduate Courses from the said merit lists only.”*

quota; secondly with the publication of the board's notification of 10.04.2020, some of them (if not all of them) had applied as NRI candidates within the time indicated in the rescheduled timeline. Thus, goes the argument, having held out to all NRI candidates about the availability of seats for that quota as well as the sequence of filling up those seats, at the penultimate hour, the board could not have decided unilaterally or even permitted colleges unilaterally to withdraw the NRI quota seats altogether. In support of their arguments two lines of authorities are cited: the first are those judgements starting with *P.A. Inamdar*¹¹ which hold that while private educational institutions have the right to admit students of their choice, that right can be regulated by law and that a quota for NRI candidates to the extent of 15% is permissible. The *second* is the line of reasoning which says, typically in the context of selection process for recruitment to public posts¹², that once the process begins, there cannot be a change in the "rules of the game", i.e. substantial change in the matrix of consideration which adversely or irreversibly affects the prospects of candidates who reposed their faith and expectations on the integrity of the procedure, and its continuance till its completion.

22. The arguments of the state, the colleges and candidates (who were admitted to the seats *after* the impugned judgment), on the other hand, is that *P.A. Inamdar*¹³ did not carve out the NRI quota in stone. In other words, private educational institutions including medical colleges, are not obliged to set apart such a quota, and that the observations of this court in the said decision only enable the colleges or universities to avail of that quota to the extent of 15%. In a given year, the management of the private college may choose not to have any quota for NRI candidates; in the next year, it may choose to have it but not to the extent of 15% and prefer to limit it to 5%; likewise, for the third year, depending on demand, the private college or institution may provide for 15% NRI quota. It is hence argued that the decision of all

¹¹

Supra n.1

¹² *K. Manjushree v. State of Andhra Pradesh & Anr.*, (2008) 3 SCC 512

¹³ Supra n.1

private colleges in Rajasthan not to avail of the NRI quota reservation or set apart, and rather fill up the entire 15% from amongst those who had opted for management seats, was justified. The counsel appearing for the private colleges urged that the decision not to offer an NRI quota in medical colleges in the state of Rajasthan was voluntarily and consciously taken, given the extraordinary and unusual situation created by the pandemic. The explanation given by the colleges was that in their assessment, NRI quota seats might not have been filled up to the normal expected levels and in the circumstances, it was more appropriate to merge the seats earmarked for NRI candidates with the management seats. The accommodation of NRI quota candidates who had opted to be treated as such, in the admission process was transparent and uniform in that all of them were considered on merits for the management quota seats. Thus, there was no real prejudice suffered by such NRI candidates. It was underlined by the candidates admitted pursuant to the impugned judgement, that were the clock to be set back and the directions of the single judge affirmed, they would be irreparably prejudiced. It was lastly argued that the single judge could not have directed the admission of the petitioners who had approached the High Court, regardless of their merit, even within the NRI quota.

23. It is undoubtedly a matter of record that on 17.03.2020, when the board convened the meeting attended by representatives of all participating colleges (including private medical colleges offering seats in the postgraduate medical courses in Rajasthan), the unanimous thinking was to offer NRI/Management seats to the extent of 15% of the total admission intake. This 15% turned out to be about 22 seats in MGMC. In the same meeting, it was unanimously decided that the task of filling NRI seats would be taken up before filling the management seats; this meant as a corollary, that NRI counselling would be taken up first and after allocation of seats to suitable NRI candidates, the leftover seats would be filled by management quota candidates. This was followed by the submission of forms by NRI candidates for the purpose of verification of their documents. When the provisional seat matrix

was published on 10.04.2020, it did not indicate that those opting for admission exclusively as NRI candidates would be considered as belonging to any other category. It was only on 11.04.2020 that the private colleges appear to have sent their final matrix to the board. This matrix, unbeknown to the NRI candidates, proposed deletion of the NRI quota. In the circumstances, when the final matrix was published for each college detailing the quotas for individual disciplines, the original earmarking for NRI candidates was absent.

24. A plain reading of the judgement of this court in *Inamdar*¹⁴ reveals that a provision for 15% NRI quota was a not compulsory; it was only *potential*. This is clearly evident from the following passage in that judgment, which all counsel from either side of the bar, insisted on reading:

“Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs

¹⁴ Supra n.1

only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to Islamic Academy's direction to regulate.”

(emphasis supplied)

Clearly, this court had the benefit of past experience with the concept of NRI quota: witness its skepticism about filling of such seats (in the past) by undeserving and unmerited candidates, to the detriment of more meritorious students. Therefore, the court indicated a limited quota with some essential controls in the manner of filling up of such NRI quota seats. These were:

- a) The NRIs, who wish to bring their children to this country not only for their education but also to get them reunited with the Indian cultural ethos by virtue of being here and to enable the NRIs to expend money, (which they would be spending elsewhere on education of their children) to reach their mother land.
- b) Having pointed out the reality behind the incorrect or “misnamed” NRI quota and found substance in the purpose behind allowing such quota, this court favoured a limited reservation, not exceeding 15% of sanctioned seats, to be made available for the NRIs, however, *depending on the discretion of the management*.
- c) This court, however, imposed two conditions for admission under the NRI quota, firstly, that such seats should be utilized *bona fide* by NRIs only and for their children or wards and secondly, that within this quota, merit should not be given a complete go by.

25. The four crucial elements in the NRI quota, *per Inamdar*¹⁵ are: one, the discretion of the management (whether to have the quota or not); two, the limit (15%); three, that seats should be available for *genuine* and *bona fide* NRI students, and lastly that the quota was to be filled based on *merit*.

26. The board's notification dated 10.04.2020 with respect to the sequence or calendar of events, for the purpose of admissions to PG courses in medical colleges in Rajasthan, on which much emphasis was placed, reads as follows:

¹⁵ *Supra* n.1

S. No.	Event	Date (s) for Medical Courses	Date(s) for Dental Courses	Date(s) for 6 months Ultra-Sound Course under PCNDT Act
1.	Deposition of the counseling fee (on-line) Those who have already deposited earlier (from 18.03.2020 to 26.03.2020) need not deposit again	11.04.2020 to 13.04.2020 by 5.00 pm	11.04.2020 to 13.04.2020 by 5.00 pm	11.04.2020 to 13.04.2020 by 5.00 pm
2.	On-line registration for first and second round of counseling and information form filing by the candidates Those who have successfully completed / filed both Part 1 as well as Part 2 of the information form earlier need not fill again Those who deposited the counseling fee earlier but could not complete Part 2 of the information form are required to complete the same now	11.04.2020 to 13.04.2020 by 11.55 pm	11.04.2020 to 13.04.2020 by 11.55 pm	11.04.2020 to 13.04.2020 by 11.55 pm
3.	Verification of Disability certificate of all persons with disabilities (PwD) candidates	14.04.2020	14.04.2020	--
4.	Verification of status of NRI applicants	14.04.2020	14.04.2020	--
5.	Verification, Allotment and Joining by Sr. Demonstrator candidates for In-Service Quota (sub quota)	14.04.2020	14.04.2020	--
6.	Publishing of merit list	15.04.2020	15.04.2020	-
7.	Deposition of registration amount as per forfeiture clause (on-line)	16.04.2020 to 18.04.2020 by 4.00 pm	Not applicable	--
8.	On-line choice filing and locking by the candidates	16.04.2020 to 18.04.2020 by 11.55 pm	16.04.2020 to 18.04.2020 by 11.55 pm	--
9.	Processing of seat allotment (on-line) by Admission Board-2020	21.04.2020 to 22.04.2020	21.04.2020 to 22.04.2020	Dates to be declared later
10.	Declaration of the result & generation of on-line allotment letters	22.04.2020 (midnight)	22.04.2020 (midnight)	
11.	Physical reporting OR on-line reporting and document verification at the allotted college along with printout of allotment letter, all original documents, deposition of prescribed admission fee, required bonds and other documents as listed in instruction booklet and as per the procedure mentioned in the allotment letter Guidelines for reporting shall be available at the website separately.	23.04.2020 to 29.04.2020 by 5:00 pm	23.04.2020 to 29.04.2020 by 5:00 pm	
12.	Second round of counseling	To be announced later		
13.	Commencement of academic session	To be announced later		

All eligible candidates who wish to participate in the counseling process must register themselves through the above mentioned websites by completing Part 1 as well as Part 2. A candidate who fails to register by completing both Part 1 as well as Part 2 shall not be eligible to participate in the counseling.

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27. Earlier, the break of seats published on 17.03.2020, stated that 15% of the total intake in PG medical courses were to be filled by NRI/management quota aspirants; the sequence to be adopted undoubtedly clarified that in the order of things, the NRI candidates' applications would be considered first for counselling and admissions, and the 'left over' seats would then be filled from amongst merited management quota applicants, in addition to the 35% management seat candidates. The colleges, however consciously decided not to go-ahead with the NRI quota - a decision, the

basis of which is explained as the assessment by such private colleges offering MD courses, that there was a likelihood that many NRI seats would go unfilled.

28. Given that the decision in *TMA Pai Foundation*¹⁶ was by a larger bench of 11 judges, and *PA Inamdar*¹⁷ was a judgment delivered by seven judges, this court is clear that precedentially, those and other previous judgements of this court, only declared that as a part of the *private colleges' autonomous decision making*, they could set apart some percentage of seats for admission to *students of their choice*. The *Inamdar*¹⁸ decision is important, inasmuch as it declared that the set apart (or quota, so to say) for NRIs should be about 15% of the overall intake. Other decisions of this court¹⁹ have underlined the paramountcy of the NEET requirement as a common standard regulating medical courses' admissions in India, irrespective whether the courses are offered in publicly owned, state owned or privately owned or managed institutions. A combined effect of the provisions of the Medical Council of India Act and regulations with respect to admissions (which have been progressively amended in respect of eligibility for admission to courses, procedure for admission, etc.) and the decisions of this court, is that private colleges and institutions which offer such professional and technical courses, have some elbow room: they can decide whether, and to what extent, they wish to offer NRI or management quotas (the limits of which are again defined by either judicial precedents, enacted law or subordinate legislation). In these circumstances, it is held that the respondent management (of MGMC) possessed the discretion to indicate whether, and to what extent, NRI reservations could be provided. As is evident, there is nothing in *PA Inamdar*²⁰ to say that a 15% NRI quota is an unqualified and unalterable part of the admission process in post graduate medical courses. It was, and remains within the

¹⁶ Supra n.3

¹⁷ Supra n.1

¹⁸ Supra n.1

¹⁹ *Modern Dental College & Research Centre* (supra) and the recent decision in *Christian Medical College Vellore Association v. Union of India*, 2020 SCC OnLine SC 423

²⁰ Supra n.1

discretionary authority of the management of private medical colleges, within their internal policy making domain.

29. The impugned judgment, in this court's opinion, is correct, in that it held that the single judge could not have directed admission of the candidates before him. There is a body of case law²¹ which clarifies that *sans* a statutory duty, a positive direction to do something in a specific manner, cannot be given (*"it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."*²²). The NRI candidates could not assert a right to be admitted; furthermore, while granting relief, the single judge could at best have directed consideration of the cases of the writ petitioners before him. However, the broad nature of the relief granted resulted in creation of rights which, implicated parties had not in the first instance, approached the High Court (unlike Dr. Nilay Gupta or Dr. Surmil Sharma), at the cost of third parties who had by then been given admission based on their merit as management quota students, another set of individuals who had not professed any grievance, were given admission, *post* judgement of the single judge.

30. The preceding observations ought to have been dispositive of the present case. Nevertheless, the court is of the opinion that the discretion of private managements who set up and manage medical colleges cannot be left to such an untrammelled degree as to result in unfairness to candidates. Undoubtedly, these private institutions have the discretion to factor in an NRI or any other permissible quota. Yet that discretion should be tempered; if the discretion to have such a quota is exercised, it should be revised or modified reasonably, and within reasonable time. This case presents some unusual features in that the admission calendar appears to have been thrown out of gear on account of the Covid-19 pandemic. The NEET written test was

²¹ *Tirumala Tirupati Devasthanams v. K. Jotheeswara Pillai*, (2007) 9 SCC 461; *Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh* (1977) 4 SCC 145; *K.V. Rajalakshmiiah Setty v. State of Mysore*, AIR 1967 SC 993.

²² *Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh*, (1977) 4 SCC 145.

held in January, and the results were declared on i.e. 31.01.2020. At that stage, and soon thereafter till the end of March, the thinking of the colleges and the board appears to be that the NRI quota in private medical colleges would be maintained (evident from the minutes of meeting dated 17.03.2020). The rapidity with which the pandemic progressed perhaps generated a broad consensus among private colleges that going ahead with the NRI quota would be inadvisable. This court cannot comment on the wisdom of such thinking as it falls within the exclusive domain of private decision-making. What is striking however is that even when this thinking was emerging, the original schedule, and the sequence for filling up of the NRI seats was maintained – and even rescheduled. Thus, in terms of the board's notification of 10.04.2020, the NRI students' documents were to be verified on 14.04.2020. Apparently, immediately a day after that notification, on 11.04.2020 to be precise, the private colleges *en masse* appear to have decided not to proceed with the NRI quota and instead 'merge' it with the 35% management quota seats, and proceed to fill them entirely based upon rank based merit of the management quota candidates arranged in terms of their ranking and performance in the NEET. NRI candidates were to be treated as management quota candidates, and their applications too, considered on the basis of their overall merit in that category. Viewed in isolation, this decision is perfectly valid; it gives one the impression that NRI students were not prejudiced. Undoubtedly, the decision to abolish the NRI quota was exclusively within the scope of the private institutions' decision-making. Yet what is apparent is that by this time, the NRI students had not only started applying for counselling, but had also submitted all their documents for verification to determine their eligibility for the NRI quota seats, and in a sense, committed themselves as candidates for NRI quota seats in Rajasthan for whatever perceived advantages they could reasonably see in their favour. Hence, when the matter stood thus, when the final seat matrices were published on 13.04.2020, it acted to the unfair detriment of these NRI students.

31. Noticeably, the writ proceedings initiated by the two candidates (Dr. Nilay Gupta and Dr. Surmil Sharma) did not claim that it was representative in character. It only sought to highlight the arbitrariness in the admission procedure and premised it largely upon the violation of the mandate of this court in *PA Inamdar*²³. As held earlier, private medical colleges are not obliged to provide for such NRI quota seats to the extent of 15% in any given year, but the peculiarities of this case, which are: the prevailing pandemic, the various steps which impelled the NRI quota candidates to commit themselves, and the eleventh hour policy change brought about through the final matrix published on 13.04.2020, acted to the distinct disadvantage of these NRI candidates. It also appears from the record that most of the students reconciled themselves to their candidature being considered on merits at *par* with the management quota candidates. Many such NRI students who did not approach the court were given admission in disciplines other than their primary choices, due to their relative standing in the state merit list of NEET eligible candidates.

32. The directions of the single judge injected in an altogether different dimension to the facts in directing that the writ petitioners before him be given admission, rather than leaving it to the board. A Pandora's box of fresh claims appears to have been opened up. This resulted in a so-called second round of counselling exclusively meant for NRI candidates (in the second and third week of July, 2020), resulting in the drawing up of an NRI quota list, which was then acted upon. The resultant displacements led to those who had been given admission based upon the relatively higher merit ranking in the management quota, approaching the Division Bench with third-party appeals. The Division Bench set aside the single judge's directions. Another round of admissions to postgraduate seats was given to the third-party appellants. It therefore falls upon this court to work out the most equitable manner of ensuring that the least disturbance occurs in the particular circumstances of this case.

²³ *Supra* n.1

33. As a result of the above discussion, it is evident that the NRI quota is neither sacrosanct, not inviolable in terms of existence in any given year, or its extent. However, if a medical college or institution or, for that matter, the state regulating authority, such as the board in the present case, decide to do away with it, reasonable notice of such a decision should be given to enable those aspiring to such seats to choose elsewhere, having regard to the prevailing conditions.

34. In the circumstances of this case and to do justice to all the parties, this court is of the opinion that a special counselling session should be carried out by the board, confined or restricted to the seats in respect of which admissions were made pursuant to the single judge's directions. In this counselling session, the board should ensure participation of the concerned colleges; the counselling shall be a limited one, confined only to the number of seats offered and filled as a result of the single judge's judgment. Such seats shall be offered to the NRI applicants solely on the basis of merit; the seats vacated by such merited students (in the other disciplines) shall then be offered to the beneficiaries of the single judge's orders. If for any reason, such students (i.e. lower down in NRI merit, who are offered seats in other disciplines) do not wish to take up the offer, the college concerned shall refund the fee collected from such student. It is also made clear that this special round of counselling should not disturb those admissions, where students had accepted the deletion of the NRI quota, and were accommodated in the management quota, unless they had approached the court at the earliest opportunity, in April 2020, before the judgment of the learned single judge. The entire process shall be completed within a week from the date of this judgment.

35. This court clarifies that the validity of deletion of the NRI quota altogether, by colleges, and their "merger" as part of the larger management quota, was not questioned as a general proposition; the premise on which the parties argued their cases was that the NRI quota is inflexible and cannot be altered. The time within

which an institution decides to do away with the quota during an ongoing admission process has not been prescribed, inasmuch as the observations as to unfairness in the nature of the deletion is in the specific circumstances of this case. Likewise, the directions in the previous paragraph are with regard to the circumstances of this case, and to do complete justice to all parties.

36. The appeals and pending applications are disposed of in the above terms.

.....J
[L. NAGESWARA RAO]

.....J
[S. RAVINDRA BHAT]

**New Delhi,
October 9, 2020.**