

[2022] 4 S.C.R. 90

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MAHA P. & ORS.

v.

THE STATE OF KERALA & ORS.

(Civil Appeal No. 3654 of 2022)

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MAY 18, 2022

**[DR DHANANJAYA Y CHANDRACHUD AND
BELA M TRIVEDI, JJ.]**

Education/Educational Institutions: Medical admissions –

- C *NEET-UG in unaided private medical colleges in the State of Kerala – Grant of time for fresh registration in the Non-resident Indian quota – Reservation of seats for the NRI quota in private medical colleges in the State of Kerala, if could be transferred to the unreserved category – On facts, out of the 358 NRI seats in the unaided private medical colleges in the State of Kerala, 300 seats*
- D *were filled up before the second allotment – About 57 seats in the NRI quota vacant – Writ petition filed seeking direction to grant time for fresh registration in the NRI quota seats before the commencement of the mop-up counselling – Direction by the Single Judge of the High Court to the Commissioner for Entrance Examination-CEE to consider the representation filed by the respondent association – On consideration thereof, the CEE held that no further extension of time could be provided since candidates had already been given sufficient time to apply for the NRI quota – Thereafter, few more students exercised their options and 47 NRI quota seats became vacant – Transfer of said 47 vacant NRI seats*
- E *in private medical institutions by CEE to the general State quota for the mop up round – Subsequently, dismissal of writ petition by the Single Judge – Writ appeal there against also dismissed – Appeal before this Court by the candidates, who qualified NEET exam and had applied under the NRI category, but were not parties before the High Court – Held: Phrase ‘special reservation’ cannot be read to include the NRI quota when the prospectus does not stipulate the NRI quota as a category of reservation under Clause 4 – Even if it is accepted that the NRI quota is a special reservation, the unoccupied seats can only be transferred to the mandatory quota-SEBC and EWS reservation seats – However, the CEE transferred*
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the unoccupied NRI quota seats to State merit – Reasoning of the High Court that the respondent could transfer the unoccupied NRI quota seats to State merit by virtue of clause 5.5.4 is erroneous – However, since the appellants have not challenged the provisions of the Information Bulletin which stipulate that the vacant NRI seats shall be converted to unreserved seats during the mop-up round, the legality of such a conversion of seats cannot be decided – Also, the appellants have not contended that the rejection of the representation seeking extension of time to apply for the NRI quota seats was malafide or arbitrary – In view thereof, the matter is dismissed.

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Dismissing the appeals, the Court

HELD: 1.1 Clause 4.1.4 of the Prospectus defines ‘Special Reservation’ as seats reserved for ‘specific categories, for certain specific courses’. Clause 5.2 provides a list of special category reservations which include Ex-servicemen Quota, dependent of Defence personnel killed/missing/disabled in action, serving Defence Personnel, CAPF, and Jewish quota. Furthermore, quotas specific to courses are also termed ‘special reservations’. Clause 4.1.5 which stipulates the breakup of reservation makes it evident that only vertical reservation as mandated by Article 15, that is for the socially and educationally backward classes and economically weaker section of the unreserved category are brought within the phrase ‘mandatory reservation’. Clause 5.5.4 is broadly worded. Though the reservation for persons with disabilities does not find a place in Clause 5.2 of the proposal, Clause 5.5.2 states that, unavailed seats of special reservation ‘including PwD’ would be transferred to mandatory reservation quota. [Para 9][101-E-G; 102-A]

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1.2 The Single Judge and the Division Bench of the High Court held that CEE can transfer the unavailed seats of the NRI quota to the State merit quota under Clause 5.5.4. The High Court held that Clause 5.5.4 was broadly worded to include the NRI quota within the meaning of ‘special reservation’. Clause 2.2 states that the categorization of seats in self-financing colleges run by institutions shall be notified separately. It also stipulates that the NRI seats in self-financing medical colleges shall be allotted by common counselling. Clauses 5.7 and 7.6(1) provide

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- A information on the documents required to be submitted under the NRI quota. The phrase ‘special reservation’ cannot be read to include the NRI quota when the prospectus does not stipulate the NRI quota as a category of reservation under Clause 4. Moreover, Clause 2.2 states that the categorization of seats in self-financing colleges shall be notified separately. Even if the argument that the NRI quota is a special reservation is accepted, the unoccupied seats can only be transferred to the mandatory quota (i.e. SEBC and EWS reservation seats). However, in the present matter, the CEE has transferred the unoccupied NRI quota seats to State merit. Therefore, the reasoning of the High Court that the Respondent could transfer the unoccupied NRI quota seats to state merit by virtue of Clause 5.5.4 is erroneous. [Para 10][102-B-F]
 - 1.3 The names of only 7 of the 37 Appellants find place in the NRI category list which was published by CEE on 31 January 2022. The Respondent has submitted that of the 7 Appellants whose names find place in the NRI category list, only 4 of them had registered options for NRI seats. However, candidates who had received a higher rank than them were allotted those seats. Further, it was also submitted by the Respondent that none of the 7 candidates registered their options for the 45 NRI seats that were later converted to unreserved seats. The Respondent submits that only because none of the 7 candidates registered their options concerning NRI seats, were the seats converted to unreserved seats to prevent the seats from lying vacant. [Para 18][108-E-G]
 - F 1.4 Since the Appellants have not challenged the provisions of the Information Bulletin which stipulate that the vacant NRI seats shall be converted to unreserved seats during the mop-up round, present Court cannot decide on the legality of such a conversion of seats. The 4 Appellants who had registered their options for NRI seats had not exercised their options with respect to any of the vacant 45 NRI seats. The Respondents merely complied with the provisions of the Information Bulletin which is not in challenge in the present proceedings. The Respondent association had only sought an extension of time for submission of documents by candidates seeking to apply for the NRI quota
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seats. The representation was rejected by CEE since sufficient time and extension had been given for the submission of the documents. The Appellants have not contended that the rejection of the representation was malafide or arbitrary. [Para 19][108-G-H; 109-A-B]

Modern Dental College & Research Centre v. State of MP (2009) 7 SCC 751 : [2009] 9 SCR 845; TMA Pai Foundation v. State of Karnataka (2002) 8 SCC 481 : [2002] 3 Suppl. SCR 587; PA Inamdar v. State of Maharashtra (2005) 6 SCC 537 : [2005] 2 Suppl. SCR 603; RD Gardi Medical College v. State of MP (2010) 10 SCC 225 : [2010] 12 SCR 692; TMA Pai Foundation v. State of Karnataka (1995) 5 SCC 220 : [1995] 2 Suppl. SCR 608; Modern Dental College and Research Centre v. State of Madhya Pradesh (2012) 4 SCC 707 : [2012] 2 SCR 685; TMA Pai Foundation v. State of Karnataka (1994) 4 SCC 728; AP(P) Engineering College Management Association v. Government of AP (2000) 10 SCC 565 – referred to.

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<u>Case Law Reference</u>		
[2009] 9 SCR 845	referred to	Para 5
[2002] 3 Suppl. SCR 587	referred to	Para 12
[2005] 2 Suppl. SCR 603	referred to	Para 12
[2010] 12 SCR 692	referred to	Para 12
[1995] 2 Suppl. SCR 608	referred to	Para 13, 16
(1994) 4 SCC 728	referred to	Para 14
(2000) 10 SCC 565	referred to	Para 15

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3654 of 2022.

From the Judgment and Order dated 08.04.2022 of the High Court of Kerala at Ernakulam in W.A. No. 485 of 2022.

With

Civil Appeal No.3655 of 2022

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Huzefa A. Ahmadi, Dushyant A. Dave, Sr. Advs., Haris Beeran, Mushtaq Salim, Usman Ghani Khan, Azhar Assees, Radha Shyam Jena, Ms. Pallavi Pratap, Advs. for the Appellants.

B Jaideep Gupta, Sr. Adv., Nishe Rajen Shonker, Mrs. Anu K. Joy, Alim Anvar, Sayid Marzook Bafaki, C. K. Sasi, Abdulla Naseeh V. T., Ms. Meena K. P., Advs. for the Respondents.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

- C 1. These appeals arise from a judgment dated 8 April 2022 of a Division Bench of the Kerala High Court, by which a writ petition seeking a direction to grant time for fresh registration in the Non-resident Indian¹ quota in NEET-UG in unaided private medical colleges in the State of Kerala was dismissed. At the core of the dispute is whether the seats reserved for the NRI quota in private medical colleges in the State of Kerala can be transferred to the unreserved category.
- D 2. The National Testing Agency invited online applications for NEET-UG 2021-22 from 1 June 2021 to 21 June 2021. The last date for submitting applications was extended to 24 June 2021. A notification was issued on 25 June 2021 granting an opportunity to candidates to make corrections to their applications. The candidates were allowed to rectify defects from 11 September 2021 to 17 September 2021. Two extensions for the submission of documents were given. The Government issued orders permitting the NRI candidates to cure defects in attestation by 31 March 2022.
- E F 3. The private institutions reserve 15% of the total seats for the NRI category. The unaided private medical colleges in the State of Kerala have a total of 358 seats in the NRI quota. The rank list of the eligible NRI quota candidates in NEET-UG 2021-22 was exhausted after two rounds of counselling conducted by the Commissioner for Entrance G Examination². However, even after the exhaustion of the NRI rank list, 57 seats were vacant. The Kerala Private Medical College Management Association³ made a representation to the CEE on 17 March 2022,

¹ “NRI”

² “CEE”

H ³ “respondent association”

requesting the authority to invite fresh applications to fill up the vacant seats in the NRI quota on the ground that many students were unable to submit the required documents before the cut-off date due to the Covid-19 pandemic. A writ petition was instituted on 24 March 2022 seeking a direction to grant time to candidates to register for the NRI quota seats before the commencement of the mop-up counselling. By an order dated 29 March 2022, the Single Judge of the Kerala High Court directed the CEE to consider the representation filed by the respondent association. Pursuant to the judgment of the Single Judge, the respondent association made another representation to the CEE on 30 March 2022. The CEE considered the representation and by an order dated 31 March 2022 held that no further extension of time could be provided since candidates had been given sufficient time to apply for the NRI quota:

“During this year, the applicants had been given sufficient time to apply for NRI quota. After two phases of allotments there are about 300 students remaining in the NRI category list and awaiting for allotment. The mop up counselling process is going on and the allotment is scheduled to be published on 02.04.2022. As per MCI schedule, the admission to MBBS course has to be completed before 05.04.2022.

In these circumstances, it is not possible to invite fresh applications for NRI quota. Hence, your demand in the representation could not be considered.”

The CEE transferred 47 vacant NRI seats in private medical institutions to the general state quota for the mop-up round. The Single Judge of the Kerala High Court dismissed the writ petition on 4 April 2022 observing that:

- (i) Out of the 358 NRI seats in the State of Kerala, 300 seats were filled up before the second allotment. At the time of the filing of the writ petition, about 57 seats in the NRI quota were vacant. After the interim order dated 29 March 2022, a few more students exercised their options. As of date, there are 46 vacant NRI quota seats;
- (ii) Sufficient time was granted to the NRI quota candidates to exercise their options. The classes have commenced. The last date for admission is 5 April 2022; and

- A (iii) The CEE would be at liberty to transfer vacant seats in accordance with clause 5.5.4 of the Prospectus for admission to Kerala Engineering, Architecture, and Medical courses⁴. There is no challenge to the prospectus. If any further extension is granted for fresh registration, it would disrupt the academic schedule.
- B 4. The writ appeal against the judgment of the Single Judge was dismissed by the Division Bench by its impugned judgment on 8 April 2022 on the following grounds:
- C (i) Clause 5.5.4 of the Prospectus provides that the vacant seats in the ‘special reservation’ category, including the quota for persons with disabilities will be transferred to the ‘mandatory reservation’ quota. Clause 5.5.4 is an inclusive provision that includes the NRI quota seats within the phrase ‘special reservation’; and
- D (ii) The CEE need not seek the permission of the members of the respondent association before converting the vacant NRI seats as per clause 5.5.4 of the prospectus; and
- E (iii) The last date for admission to MBBS courses is 8 April 2022. Therefore, time for fresh registration in the NRI quota cannot be granted. The NRI quota candidates were granted sufficient time to exercise their options. The rank list was published on 24 December 2021. Thus, it can be assumed that no eligible NRI candidate is available to exercise the options for the vacant seats.
- F 5. The appellants are candidates who have qualified in the NEET exam and had applied for the MBBS seats under the NRI category. The appellants were not parties before the High Court. Mr Dushyant Dave and Mr Huzeifa A Ahmadi, senior counsel appearing for the appellants made a three-fold submission: *one*, the NRI quota seats do not fall within the purview of ‘special reservation’ under clause 5.5.4 of the Prospectus.
- G Thus, vacant NRI quota seats cannot be transferred; *second*, a three-Judge Bench of this Court in **Modern Dental College & Research Centre v. State of MP**⁵, held that vacant NRI seats in unaided institutions cannot be transferred to the State following the earlier decisions of this court; and *third*, the admission of the unreserved category candidates to
- H ⁵ “Modern Dental College”, (2009) 7 SCC 751

the 46 NRI seats in the mop-up and stray vacancy counselling rounds is A contrary to law and thus stands vitiated.

6. Mr Jaideep Gupta, senior counsel appearing for the State of Kerala submitted that the representation of the respondent association to the CEE for inviting fresh applicants for the NRI quota had been rejected after due consideration. It was submitted that none of the 7 appellants whose names found a place in the NRI list had exercised their options with respect to the 45 vacant NRI seats that were transferred. Further, the senior counsel argued that the judgment of the three-Judge Bench in **Modern Dental College** (supra) is not applicable to the facts in the present case since the appellants had neither challenged the prospectus nor the information bulletin which stipulates that vacant NRI seats shall be transferred. C

7. The State of Kerala submitted a status report on 23 April 2021 pursuant to an interim direction of this Court. The status report states as follows: D

- (i) Admission to various professional degree courses is conducted in terms of the Prospectus. By a notification dated 31 May 2021, CEE invited online applications for professional degree courses from 1 June 2021 to 21 June 2021. Clause 7 of the notification stipulates that the documents and certificates will have to be uploaded along with the online applications. Clause 7(iv) of the notification states that documents necessary for applying to the NRI quota will have to be submitted by the applicants. By a Notification dated 26 June 2021, the time for uploading the online application was extended to 26 June 2021, and to upload the documents to 30 June 2021; F
- (ii) By a notification dated 30 October 2021, those who had applied for admission to MBBS and BDS courses, were provided a further extension of time from 30 October 2021 to 8 November 2021 for uploading the documents. The candidates who had not claimed reservation, including under the NRI quota for admission to medical/ allied courses were again granted an extension from 4 December 2021 to 10 December 2021 for uploading the relevant documents. On the direction of the Admission Supervisory Committee, the G

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- A CEE granted candidates applying under the NRI quota seats, one month's time from the date of counselling or two days before the second allotment for submitting attested documents from the Embassy/Consulate. Therefore, the Respondent has provided sufficient time for the submission of documents to candidates seeking to apply under the NRI quota;
- B (iii) For the academic year of 2021-22, 385 seats were earmarked for the NRI quota in 19 private self-financing private colleges in the State. The CEE published a list of 614 candidates in the NRI category;
- C (iv) According to the Medical Council of India Guidelines, options exercised by the candidates for the Mop-up round are to be considered final and will be used for filing up any stray vacancies that may arise. Due to a lack of options filed by the candidates for the final phase of counselling, 45 NRI quota seats were converted to the 'State Merit seats' for mop-up allotment;
- D (v) The Information Bulletin published by the Medical Counselling Committee provides that the vacant seats have to be converted during the Mop-up round. According to the conversion algorithm mentioned in the Information Bulletin, the unavailed NRI seats have to be converted to the unreserved category. Therefore, given the procedure provided under the Information Bulletin, the 45 NRI seats were converted to State merit seats;
- E (vi) Only two vacant seats are available in Private Medical Colleges for MBBS courses in the State after the first stray vacancy round. A second round for stray vacancy allotment was published on 18 April 2022 to fill the two vacant seats in the self-financing colleges. Among the two allotted candidates, one did not join the allotted college. Thus, one seat is lying vacant in the All India Merit category in Karuna Medical College, Palakkad as of 20 April 2022;
- G (vii) According to the schedule of the Medical Counselling Committee, admission to the MBBS courses ought to have been completed by the second week of April 2022. Fresh
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applications from the candidates for the NRI quota cannot A
be invited when the counselling process is nearing completion; and

- (viii) Of the 38 petitioners, the names of 7 candidates find a place in the NRI category list published by the Respondent. 12 candidates were excluded from the final NRI category list due to the lack of proper documentation and 19 candidates did not claim NRI quota seats at any stage of the admission process. Of the 7 candidates, only 4 candidates had registered options for NRI seats in self-financing medical colleges. None of the candidates had provided the option for NRI seats during the mop-up round. B
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8. Clause 2 of the prospectus categorizes the seats in colleges. Clause 2.2 states that the categorization of seats in self-financing colleges run by institutions under Government control and other private self-financing colleges will be notified separately:

“The categorization of seats in self-financing colleges run by institutions under Govt. control and other Private Self-financing colleges will be notified separately. As per the orders of the Hon’ble Supreme Court of India dated: 09.05.2017 on WP(C) No. 267/2017, the allotments/admissions to the State Quota seats in all the Government as well as Private Self Financing Medical and Dental colleges shall be done through a Common Counselling to be conducted by the Commissioner for Entrance Examinations. The Common Counselling will include NRI seats in Self-Financing Medical & Dental Colleges and Minority Community Quota seats in Private Self Financing Medical & Dental Colleges having Minority Status.” F

Clause 4 of the prospectus provides a list of reservations. Clauses 4.1.4 and 4.1.5 define ‘Special reservation’ and ‘mandatory reservation’ respectively:

“[...] G

4.1.1 (ii) Reservation for All India Quota for MBBS/BAMS/ BSMS/BUMS Courses in Self-Financing Medical/Ayurveda/ Siddha/Unani colleges:-

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- A Fifteen percent of the seats for the admission of students to MBBS/BAMS/BSMS/BUMS Courses in Self-Financing Medical/Ayurveda/Siddha/Unani Colleges in Kerala are set apart for the allotment of candidates irrespective of their Domicile as per the rank list prepared by the Commissioner for the Entrance Examinations on the basis of the rank obtained in NEET-UG 2021 conducted by the National Testing Agency (NTA) New Delhi. See clause 4.1.11(a) and 4.1.13(a) &(b)
- B 4.12 Reservation for Nominees: These are the seats set apart for the nominees of the Government of India, Union Territories or other States for the various courses. [For details, refer Clauses 4.1.11 (b), 4.1.12, 4.1.13, 4.1.14, 4.1.15]
- C 4.1.3 Reservation for Persons with Disabilities: Leaving the seats set apart under Clauses 4.1.1, 4.1.2 above, all types of supernumerary seats sanctioned, five percent of the seats available for the state for allotment from the Entrance rank lists for all the courses in all the Government and Aided Colleges are reserved for the candidates with Benchmark disabilities [For details, refer Clause 5.3]
- D 4.1.4 Special Reservation: These are the seats reserved for certain specific categories, for different courses. [For details, refer Clause 5.2]
- E 4.1.5 Mandatory Reservation: Leaving the seats set apart for All India Quota, Government of India Nominees, Special reservations, Persons with Disabilities, all types of supernumerary seats sanctioned and Management Quota, the remaining Government seats for each course in Govt./Aided/ KAU/KVASU/KUFOS Colleges will be distributed as per the mandatory reservation principle as contemplated in G.O (P) 208/66/Edn. Dated 2.5.1966, G.O (Ms) No. 95/08/SCSTDD Dated 06.10.2008, GO (Ms) No. 10/2014/BCDD Dated 23.05.2014 and as modified from time to time.
- F The percentage break up of seats as per mandatory reservation is as follows:
- G (A) State Merit (SM) -50%
- H (B) Economically Weaker Sections in General

Category (EWS)	-10%	A
(C) Socially and Educationally backward Classes (SEBC)	-30%	
(a) Ezhavu(EZ)	-9%	
(b) Muslim (MU)	-8%	B
(c) Other Backward Hindu (BH)	-3%	
(d) Latin Catholic and Anglo Indian (LA)	-3%	
(e) Dheevara and related communities (DV)	-2%	
(f) Viswakarma and related communities (VK)	-2%	C
(g) Kusavan and related communities (KN)	-1%	
(h) Other Backward Christian (BX)	-1%	
(i) Kusumbi (KU)	-1%	
(D) Scheduled Castes and Scheduled Tribes	-10%	D
(a) Scheduled Castes (SC)	-8%	
(b) Scheduled Tribes (ST)	-2%	

[...]

5.5.4 If any seat, in any special reservation quota including PwD quota, is left unavailed by the candidates to that particular category, it will go to the Mandatory reservation quota, unless otherwise stated.”

9. Clause 4.1.4 of the Prospectus defines ‘Special Reservation’ as seats reserved for ‘specific categories, for certain specific courses’. Clause 5.2 provides a list of special category reservations which include Ex-servicemen Quota, dependent of Defence personnel killed/missing/disabled in action, serving Defence Personnel, CAPF, and Jewish quota. Furthermore, quotas specific to courses are also termed ‘special reservations’. For instance, degree holders in MBBS and BHMS have a quota in BAMS course, degree holders in Ayurveda and Homeopathy have a quota in the MBBS course, children of Agriculturists have a quota in BSc. (Hons.) Agri. Degree, and the children of Fishermen in

⁶ “SEBC”

⁷ “EWS”

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- A BFSc. course. Clause 4.1.5 which stipulates the breakup of reservation makes it evident that only vertical reservation as mandated by Article 15, that is for the socially and educationally backward classes⁶ and economically weaker section⁷ of the unreserved category are brought within the phrase ‘mandatory reservation’. Clause 5.5.4 is broadly worded. Though the reservation for persons with disabilities⁸ does not find a place in clause 5.2 of the proposal, clause 5.5.2 states that unavailed seats of special reservation ‘including PwD’ would be transferred to mandatory reservation quota.

- C 10. The Single Judge and the Division Bench of the High Court held that CEE can transfer the unavailed seats of the NRI quota to the State merit quota under Clause 5.5.4. The High Court held that Clause 5.5.4 was broadly worded to include the NRI quota within the meaning of ‘special reservation’. The prospectus does not mention the NRI quota in chapter 4 which is titled ‘reservation of seats for various courses’. The only reference to the NRIs’ in the prospectus is in clauses 2.2, 5.7 and 7.6(i). Clause 2.2 states that the categorization of seats in self-financing colleges run by institutions shall be notified separately. It also stipulates that the NRI seats in self-financing medical colleges shall be allotted by common counselling. Clauses 5.7 and 7.6(1) provide information on the documents required to be submitted under the NRI quota. The phrase ‘special reservation’ cannot be read to include the NRI quota when the prospectus does not stipulate the NRI quota as a category of reservation under Clause 4. Moreover, Clause 2.2 states that the categorization of seats in self-financing colleges shall be notified separately. Even if the argument that the NRI quota is a special reservation is accepted, the unoccupied seats can only be transferred to the mandatory quota (i.e SEBC and EWS reservation seats). However, in the present matter, the CEE has transferred the unoccupied NRI quota seats to State merit. Therefore, the reasoning of the High Court that the respondent could transfer the unoccupied NRI quota seats to state merit by virtue of clause 5.5.4 is erroneous.
- G 11. The Medical Counselling Committee issued the Information Bulletin and Counselling Scheme⁹ for admission to medical courses in 2021. Chapter 3 of the bulletin provides the process of admission for the

⁸ “PWD”

H ⁹ “Bulletin”

MBBS course in 100% deemed universities. The relevant portions of A the bulletin are extracted below:

“ Chapter 3- 100% Deemed University

[...]

Reservation Policy:

- Candidates who fall under the category of NRI as per the directions/orders of the Hon’ble Supreme Court of India in the case (W.P (C) No. 689/2017-Consortium of Deemed Universities in Karnataka (CODEUNIK) & Anr. v. Union of India & Ors.) dated 22-08-2017 are eligible for NRI category. OCI/PIO/Foreign Nationals candidates will be considered as NRI. OCI/PIO/Foreign Nationals Candidates will only be eligible for NRI seats vide Ministry of Home Affairs Gazette notification No. S.O.1050(E) dated 04th March 2021.

[...]

JAIN MINORITY/MUSLIM MINORITY/NRI CONVERSION: JAIN MINORITY/MUSLIM MINORITY/NRI seats remaining vacant during the Mop-Up rounds will be converted to Private Deemed University seats after the exhaustion of all eligible Jain Minority/Muslim Minority/NRI candidates to avoid wastage of seats.

- The conversion of seats will be carried out during the Mop Up Round of Deemed Universities. The said conversion will be done only when the eligible Candidates belonging to the said Conversion Category have exhausted.

CONVERSION ALGORITHM

S. No.	Conversion Category	Category Converted To
1	NRI/Jain Minority/Muslim Minority	UR

The information bulletin elaborates on the categorisation of seats for the NRI quota in deemed universities, the eligibility for the NRI quota

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- A and the conversion of unoccupied NRI quota seats to unreserved seats (that is, State merit seats).

- B 12. In **Modern Dental College** (*supra*), petitions were filed challenging the constitutional validity of the Madhya Pradesh Niji Byavsayik Shikshan Sanstha (Pravesh Ka Vinyaman Avam Shulk Ka Nirsharan) Adhiniyam 2007 and the Rules framed thereunder. This Court held that the provisions of the 2007 Act providing that the entire selection process for admission to UG and PG medical courses and fee fixation shall be done by the State Government is contrary to the principles laid down by the eleven-Judge Bench in **TMA Pai Foundation v. State of Karnataka**¹⁰ and **PA Inamdar v. State of Maharashtra**¹¹. However, this Court issued an interim order for admission to the medical seats in unaided colleges for the academic term of 2009-10:

- C “We, therefore, direct that the admissions in the private unaided medical/dental colleges in the State of Madhya Pradesh will be done by first excluding 15% NRI seats (which can be filled up by the private institutions as per para 131 of *Inamdar case* [(2005) 6 SCC 537]), and allotting half of the 85% seats for admission to the undergraduate and post-graduate courses to be filled in by an open competitive examination by the State Government, and the remaining half by the Association of the Private Medical and Dental Colleges. Both the State Government as well as the Association of Private Medical and Dental Colleges will hold their own separate entrance examination for this purpose. As regards “the NRI seats”, they will be filled as provided under the Act and the Rules, in the manner they were done earlier.”

- D F **(emphasis supplied)**

- E A dispute arose over the unfilled seats in the 15% seats that are set aside for NRIs’. In **RD Gardi Medical College v. State of MP**¹², 10 NRI quota seats in the petitioner-college were unfilled. The High Court held that the unfilled NRI seats have to be shared between the G State and the petitioner-college in equal proportion. This Court dismissed the appeal against the judgment of the High Court observing that the order was in compliance with the judgment in **Modern Dental College**

¹⁰ (2002) 8 SCC 481

¹¹ (2005) 6 SCC 537

H ¹² (2010) 10 SCC 225

(supra) where it was directed that the NRI seats be filled “as provided under the Act and the Rules, in the manner they were done earlier.” Since Rule 8 of the Admission Rules 2008 stipulated that the vacant NRI seats shall be merged into the general pool, it was held that the vacant NRI seats were filled up in accordance with the judgment in **Modern Dental College** (supra): A

“28. A plain reading of the above leaves no manner of doubt that unfilled NRI seats had to be transferred to the general pool to be filled up on the basis of the merit of the candidates in the State-level common entrance test conducted by the Madhya Pradesh Vyavsayik Pariksha Mandal or by any other agency authorised by the State Government for that purpose. The unfilled seats in the NRI quota were, therefore, to be treated as a part of the general pool and once that was done the share of the College in terms of the order passed by this Court would be 50% out of the said seats. The High Court has, in that view, rightly held that while the management was justified in filling up 5 unfilled seats in NRI quota, the remaining 5 could not have been filled up otherwise than on the basis of the entrance test referred to in Rule 8.” B

13. In view of the observations in **RD Gardi Medical College** (supra), IAs were filed for modication/clarification of the orders passed by the two-Judge Bench in **Modern Dental College** (supra) and **RD Gardi Medical College** (supra). This Court noted that there is a conflict between the observations in para 28 of the judgment in **RD Gardi Medical College** (supra) and para 27(1) of **TMA Pai Foundation v. State of Karnataka**¹³. In **TMA Pai** (supra), it was observed that the college shall admit students in the order of merit in the vacant NRI quota seats. Therefore, the matter was referred to a larger Bench. However, the larger Bench could not resolve the apparent conflict before the admissions for the academic year 2011-12 were to begin. C

14. The same issue of transfer of vacant NRI seats arose in the academic year of 2012-13. A two-judge Bench by an order dated 9 December 2011 had directed that the matter be placed before a D

¹³ (1995) 5 SCC 220

¹⁴ (2012) 4 SCC 707, “**Modern Dental College and Research Centre**” E

- A Constitution Bench. However, since the matter was not likely to be heard by a Constitution Bench shortly, a three-Judge Bench in **Modern Dental College and Research Centre v. State of Madhya Pradesh**,¹⁴ heard the IA's on the issue of transfer of unfilled NRI seats for the academic term of 2012-13. Allowing the IA's, it was observed that the finding in **RD Gardi Medical College** (*supra*) is contrary to the judgments of the Constitution Bench in **TMA Pai Foundation v. State of Karnataka**¹⁵, a three-Judge Bench in **TMA Pai Foundation v. State of Karnataka**¹⁶, and **Inamdar** (*supra*). The Court observed:

- C “18. We are of the considered view that the above principles laid down by the larger Benches of this Court, in the matter of filling up of NRI seats were not correctly understood or applied by this Court in *R.D. Gardi Medical College* [(2010) 10 SCC 225] while interpreting Rule 8 of the M.P. Admission Rules, 2008. The finding recorded in *R.D. Gardi Medical College* [(2010) 10 SCC 225] that the unfilled seats in NRI quota in unaided professional colleges should be treated as a part of the general pool and be shared equally by the State and the unaided professional colleges goes contrary to the principles laid down by the eleven-Judge Bench in *Pai Foundation* [(2002) 8 SCC 481], *Inamdar* [(2005) 6 SCC 537] as well as the judgments rendered by the three-Judge Bench
- D [Ed. : And the judgment rendered by the five-Judge Bench in *Pai Foundation*, (1994) 4 SCC 728.] in *Pai Foundation* [(1995) 5 SCC 220], referred to earlier. The wrong interpretation given in *R.D. Gardi Medical College* [(2010) 10 SCC 225] is seen incorporated in Rule 5 of the Madhya Pradesh Private Medical and Dental Undergraduate Course Entrance Examination Rules, 2011 as well, which in our view cannot be legally sustained.”

15. The Constitution bench in **TMA Pai Foundation** (*supra*) had held that the unfilled NRI quota seats can only be filled by the management at its discretion:

- G “3. So far as the NRI quota is concerned, we fixed the same as 15% last year. We fixed the NRI quota in respect of minorities' institutions as 5%. Although the NRI quota should not, normally, be more than 5%, but keeping in view the reduction in the fee

H ¹⁵ (1994) 4 SCC 728

¹⁶ (1995) 5 SCC 220

structure, we fix the same as 10% (of the total seats) for this year. *We further make it clear that in case any seat in the NRI quota remains unfilled, the same can be filled by the management at its discretion.*” A

The three judge Bench in **TMA Pai Foundation** (supra) reiterated the observations of the Constitution Bench: B

“(I) So far as NRI quota is concerned, it is fixed at fifteen per cent for the current academic year. *It shall be open to the management to admit NRI students and foreign students within this quota and in case they are not able to get the NRI or foreign students up to the aforesaid specified percentage, it shall be open to them to admit students on their own, in the order of merit, within the said quota. This direction shall be a general direction and shall operate in the case of all the States where admissions have not been finalised.* It is, however, made clear that by virtue of this direction, no student who has already been admitted shall be disturbed or removed.” C D

A similar observation was also made by a two-Judge Bench of this Court in **AP(P) Engineering College Management Association v. Government of AP**¹⁷. This Court in **Modern Dental College and Research Centre** (supra) had further referred to **Inamdar** (supra) where it was held that the imposition of the reservation policy of the State on unaided private universities is an encroachment of the right and autonomy of private professional educational institutions: E

“125. [...] such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. [...] Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution.” F G

16. In **Modern Dental College and Research Centre** (supra), an IA was filed challenging the transfer of unfilled NRI seats to the State. However, in the matter before us, only an extension of time for H

¹⁷ (2000) 10 SCC 565

- A the submission of documents necessary for applying for the NRI quota seats was sought. The prayer in the writ petition is extracted below:
- “i. Issue a Writ of Mandamus or such other writ, order or direction directing the Respondents to grant time for fresh registration in NRI Quota to the eligible before commencement of the Mop-up counselling.
- B ii. Issue a Writ of Mandamus or such other writ, order or direction directing, the 3rd Respondent to consider and pass orders in Exhibit P3 representation within a time limit to be fixed by this Hon’ble Court.
- C iii. Permit the members of the Petitioner association to admit the NEET qualified eligible students who produce the necessary documents in NRI Quota before the cut off date stipulated by the Kerala University of Health Sciences vide Exhibit P4, in the event the Respondents does not invite fresh applications in the NRI Quota.
- D
- E Issue such other writ, order, or direction as may be just and necessary in the interest of justice.”
17. Moreover, the observations in **Modern Dental College and Research Centre** (supra) were made concerning admissions for the year 2011-2012. The principal issue of whether the unfilled NRI seats in unaided universities can be transferred to the State is pending before the Constitution Bench. Further, the observations made in **PA Inamdar** (supra) and the Constitution Bench in **TMA Pai** (supra) will have to be read with Article 15(5) which was included by the Constitution (Ninety-third Amendment) Act 2005.
18. The names of only 7 of the 37 appellants find place in the NRI category list which was published by CEE on 31 January 2022. The respondent has submitted that of the 7 appellants whose names find place in the NRI category list, only 4 of them had registered options for NRI seats. However, candidates who had received a higher rank than them were allotted those seats. Further, it was also submitted by the respondent that none of the 7 candidates registered their options for the 45 NRI seats that were later converted to unreserved seats. The respondent submits that only because none of the 7 candidates registered
- H

their options concerning NRI seats, were the seats converted to A unreserved seats to prevent the seats from lying vacant.

19. Since the appellants have not challenged the provisions of the Information Bulletin which stipulate that the vacant NRI seats shall be converted to unreserved seats during the mop-up round, we cannot decide on the legality of such a conversion of seats. The 4 appellants who had registered their options for NRI seats had not exercised their options with respect to any of the vacant 45 NRI seats. The respondents merely complied with the provisions of the Information Bulletin which is not in challenge before us in the present proceedings. The respondent association had only sought an extension of time for submission of documents by candidates seeking to apply for the NRI quota seats. The representation was rejected by CEE since sufficient time and extension had been given for the submission of the documents. The appellants have not contended that the rejection of the representation was malafide or arbitrary. B C

20. We accordingly dismiss the appeals for the reasons set out above.

21. Pending applications, if any, stand disposed of.

Nidhi Jain

Appeals dismissed.