

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON  
&

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 30TH DAY OF SEPTEMBER 2016/8TH ASWINA, 1938

WP(C) .No. 30806 of 2016 (A)  
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PETITIONER(S) :  
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1. ARAVIND T.R.,  
S/O.T.A.REJI,  
THUNDATHIL HOUSE, NEAR S.M.H.S,  
CHERAI P.O., ERNAKULAM DISTRICT - 683 514.
2. INDULEKHA S., (MINOR),  
REPRESENTED BY HER FATHER AND GUARDIAN SHAJI M.B.,  
MADAVANAPARAMBIL, VALLUVALLY, KOONAMMAVU P.O.,  
ERNAKULAM DISTRICT - 683 518.

BY ADVS.SRI.PHILIP T.VARGHESE  
SRI.THOMAS T.VARGHESE  
SMT.ACHU SUBHA ABRAHAM  
SMT.K.R.MONISHA

RESPONDENT(S) :  
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1. THE ADMISSION SUPERVISORY COMMITTEE  
FOR PROFESSIONAL COLLEGES IN KERALA  
REPRESENTED BY ITS CHAIRMAN,  
T.C/1553-4, PRASANTHI BUILDINGS,  
M.P APPAN ROAD, VAZHUTHACADU P.O.,  
THIRUVANANTHAPURAM 695 014.
2. SREE NARAYANA INSTITUTE OF MEDICAL SCIENCES  
REPRESENTED BY ITS PRINCIPAL, CHELAKKA,  
NORTH KUTHIATHODU P.O., ERNAKULAM DISTRICT  
683 594.

R1 BY SMT.MARY BENJAMIN, SC  
R2 BY ADV. SRI.MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 30-09-2016, ALONG WITH WPC. 30816/2016, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C) .No. 30806 of 2016 (A)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF ORDER NO.ASC 100/16/MBBS-BDS/DIRECTIVES  
ISSUED BY THE 1ST RESPONDENT DATED 4/8/2016

EXHIBIT P2 TRUE COPY OF ADMISSION SCHEDULE PUBLISHED BY THE  
2ND RESPONDENT IN THEIR WEBSITE DATED NIL

EXHIBIT P3 TRUE COPY OF RANK LIST FOR MANAGEMENT SEATS PUBLISHED  
BY THE 2ND RESPONDENT ON 13/9/2016

EXHIBIT P4 TRUE COPY OF ORDER NO.ASC 100/16/MBBS/SNIMS ISSUED BY  
THE 1ST RESPONDENT DATED 17-9-2016

EXHIBIT P5 TRUE COPY OF ORDER NO.ASC 100/16/MBBS/DIRECTIVES  
ISSUED BY THE 1ST RESPONDENT DATED 17-9-2016

EXHIBIT P6 TRUE COPY OF PROVISIONAL ADMISSION LETTER  
DATED 2/9/2016 ISSUED TO 1ST PETITIONER BY NITTE  
UNIVERSITY

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

**P.R. RAMACHANDRA MENON  
&  
DAMA SESHADRI NAIDU, JJ.**

~~~~~  
W.P.(C) Nos. 30806, 30816, 30826, 31025, 31059,  
31097 and 31294 of 2016  
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Dated, this the 30<sup>th</sup> day of September, 2016

**JUDGMENT**

Ramachandra Menon, J.

These writ petitions have been filed by two groups of students who are aspirants to have admission to the first year MBBS course for the academic year 2016 - '17 in Management Quota in the respondent Self Financing institutions. One group of students, who are comparatively occupying lower level in terms of merit/rank in the NEET [National Eligibility and Entrance Test], have come up before this Court challenging the orders passed by the Admission Supervisory Committee ('ASC' in short) directing the respondent institutions to grant further time to the students, whose applications were rejected as 'defective', for curing the defects, thus changing the 'time schedule', which ought to have been summarily rejected by virtue of the terms in the Prospectus. Grievance is that, because of the misplaced sympathy and extension of time, the admissions already secured by the petitioners, based on their valid applications

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are likely to be nullified and hence interference is sought for.

2. In the other group of writ petitions [WP(C) Nos. 30826 and 31294 of 2016], the challenge is against the alleged deeds and misdeeds of the respondent institution in completing the admission/counseling process in a clandestine manner, causing rejection of the applications of more meritorious students like the petitioners for flimsy reasons, without getting sanction of the Admission Supervisory Committee [contrary to the terms of the basic order passed by the Committee on 04.08.2016, which is not under challenge by anybody] and without giving an opportunity to rectify the defects; that too, pursuing dubious exercise by not publishing the details of rejection in the website and in turn, enabling the students of lesser merit to secure admissions based on extraneous considerations. Merit is given a 'go-bye', in spite of the law declared by the Supreme Court, explaining the paramount importance of merit and transparency. It was taking note of the specific nature of the complaints preferred before the ASC and verification of the website and the details made available by the respondent institution, that the orders under challenge were passed by the ASC, to make the admission proceedings transparent in all respects.

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3. Heard Mr. Thomas T. Varghese, Sri. Sajan Mannali S., Sri. T.N. Suresh and Sri. K.B. Gangesh - the learned counsel appearing for the petitioners, Sri. Millu Dandapani/Sri.Roshan Alexander - the learned counsel appearing on behalf of the respondent institution [Sree Narayana Institute of Medical Sciences], Mr. Alexander Joseph - the learned counsel appearing for the 3<sup>rd</sup> respondent in W.P.(C) No. 30826 of 2016 [Al-Azar Medical College]. The learned senior Government Pleader is appearing for the State/Department and Smt. Mary Benjamin - the learned standing counsel appears for the Committee.

4. At the very outset, it is to be noted that the orders passed by the ASC causing rectification of the defects by the respondent institutions have not been subjected to challenge by the concerned institutions, more so when, the order dated 20.09.2016 [Ext. P7 in WP(C) No. 31025 of 2016] was passed as an "agreed order". As obvious from the proceedings, the respondent institutions in all the cases [except in W.P.(C) No. 30826 of 2016] is the same [Sree Narayana Institute of Medical Sciences]; whereas in W.P.(C) No.30826 of 2016, in addition to the said respondent name of some other institutions have also been given as the respondents. However,

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the learned counsel for the petitioners in W.P.(C) No. 30826 of 2016 submitted before the Court that the grievance of the petitioners would stand confined to the respondents 3 and 4. Based on this, 'Notice on Admission' was issued only to the said respondents.

5. Before proceeding with the issue in the other cases, the involvement of the respondent by name Al-Azar Medical College [shown as the 3<sup>rd</sup> respondent in W.P.(C) No. 30826 of 2016] is to be considered as the first point. The learned counsel appearing for the said Institution submits that the Institution is not aggrieved of the orders passed by the Committee [ASC] and on the other hand, they have given effect to the orders, enabling the defects to be cured by the students concerned, whose applications had been rejected earlier. It is pointed out that the petitioners in W.P.(C) No. 30826 of 2016 and such other students had appeared before the college; and the defects in their applications have been cured, pursuant to which, they have been accepted, to be considered along with the applications of other candidates, assessing the inter-se merit. It is stated that the proceedings are published in the website as well. The learned counsel for the petitioners in W.P.(C) No.30826 of 2016 submits that, in view of the turn of events, the petitioners are having no grievance

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against the said institution (Al-Azar Medical College) and as such no further orders are called for in so far as the said Institution is concerned. As it stands so, the issue involved in all the cases stands projected against the sole respondent Institution [Sree Narayana Institute of Medical Sciences] and the same is to be dealt with accordingly.

6. For convenience of reference, the former group of the petitioners, who have challenged the proceedings of the Committee are referred to as the 'former group'; whereas the other petitioners, who have challenged the acts/deeds of the respondent Institution, are described as the 'latter group'.

7. Mr. Thomas T. Varghese, the learned counsel for the petitioners in some of the cases in the 'former group' and Mr. Sajan Mannali, the learned counsel appearing for the petitioners in some other cases in the same group submit that; there is a duty upon all the students/candidates to have submitted 'valid applications' along with all the documents in the prescribed manner. In terms of the Prospectus, the defective applications are to be summarily rejected. It is pointed out that the respondent Institution had complied with all the requirements, also notifying the defects/defective applications in

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the website and it was thereafter, that the 'final rank list' was published on 13.09.2016. It was based on such proceedings, that the petitioners came to be included in the rank list, who were granted admissions and had remitted the fees accordingly. If the belated applications/defective applications of the petitioners of the 'latter group' or such other similarly situated persons are to be considered extending misplaced sympathy, it will adversely affect the rights and interests of the 'former group' of students. It is also stated that the aggrieved petitioners were never given an opportunity of hearing by the Committee, before the impugned orders were passed and hence seeks for interference of this Court. It is further pointed out by the learned counsel for the petitioners of the 'former group' that, despite Ext. P4 order dated 17.09.2016 [in W.P.(C) No. 30806 of 2016] passed by the ASC, no candidate had turned up before the respondent Institution to have the defects cured. Despite this, a further order was passed by the ASC on the very same date, as revealed by Ext. P5 [produced in the very same petition] which has upset the proceedings in toto. But for some vague reference, no specific complaint is referred to in the said orders, to have called for interference.



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7. The stand of the respondent Institution [S.N. Institute of Medical Sciences] was explained by Mr. Millu Dandapani - the learned counsel for the respondent Institution and subsequently, taken over and highlighted by Mr. Roshan Alexander. It is asserted on behalf of the the said respondent, that particulars of all the applications received, details of defects in the applications, particulars of valid applications considered who got entry in the rank list, and such other relevant aspects in terms of the Prospectus and the orders passed by ASC were published in the website of the Institution. It was only since the applications were defective, and the defects were not cured by the concerned candidates, that their applications came to be rejected; confining the selection to the available valid applicants, who were given admission based on the inter-se merit. It is also pointed out that, Ext. P5 in W.P.(C) No. 30806 of 2016 is a general order passed by the Committee on 17.09.2016, in respect of all the similar Institutions, whereas Ext. P4 in the very same case was passed by the Committee, on the same day specifically in respect of the respondent Institution itself. As per the said order, chance was given to the complainants to be present before the Principal to have the defects rectified, on that day itself. Despite this, nobody had turned

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up on that day, and as such, the schedule ought not to have been widened by the Committee under any circumstances. It is pointed out that the Committee had been passing further orders based on some other vexatious complaints preferred by 'fence sitters' which is not correct or sustainable. On complying with all the directions given by ASC, yet another order was passed as Ext. P7 in W.P.(C) No.31025 of 2016 on 20.09.2016; however conceding that Ext. P7 is an 'agreed order'.

8. The learned counsel for the petitioner in W.P.(C) No. 31059 of 2016 submits that the petitioner in the said case had applied for admission, both in the 'Management quota' and 'NRI quota'. Based on the merit of the said petitioner, he has been given admission in the 'Management quota' on 17.09.2016, having secured the 21<sup>st</sup> rank. Since he was given admission in the Management quota, the petitioner was not considered in the NRI quota, and if the orders passed by the ASC are to be implemented, there is a chance for his being pushed down, in turn denying the entry either in the Management quota or in the NRI quota.

9. The learned counsel for the respondent Institution submits that the Institution had appeared before the Committee and had

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produced all the relevant records; which were verified by the Committee and it was accordingly, that the defects were published in the website on 11.09.2016, followed by the rank list published on 13.09.2016. It was based on the orders/schedule finalized by the Committee, that the first round counselling was conducted on 17.09.2016. If anybody was having any grievance, they could have corrected the defects during the period from 13.09.2016 to 17.09.2016, but, without doing that, they were simply sitting idle, whose case is not liable to be considered further; submits the learned counsel. Since the rejection of the invalid/defective applications was based on the terms of the Prospectus, the concerned students were well aware of the said terms, whose case ought not have been entertained by the Committee. It is also pointed out that, there is a reference to '68 complaints' in Ext. P7 order dated 20.09.2016 passed by the Committee [produced in W.P.(C) No. 31025 of 2016], whereas only 12 complainants were actually present before the Committee on that day and as such, the grievance, if any, of only those 12 persons, can be considered. It is also stated that 10 persons among them had appeared before the Institution and their grievance was being sorted out. It is further pointed out that the

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petitioners in W.P(C) No. 30826 of 2016 had never appeared either before the Committee or before the respondent Institution and as such, they are not liable to be heard any further.

10. During the course of hearing, it is brought to the notice of this Court that a Circular/Communication was issued by the Central Government on 09.08.2016 to all the State Government/Union territories, preferably to have 'centralised counseling' by the State/Union Territories, also specifying the time schedule. Based on the said communication, the admission process and proceedings were taken over by the State Government, to be effected through the Commissioner for Entrance Examinations, by passing two Government orders dated 20.08.2016 and 23.08.2016 [G.O.(Rt) No. 2314/2016/H&FWD dated 20.08.2016 and G.O. (Rt) No. 2336/2016/H&FWD dated 23.08.2016]. The said orders are under challenge in W.P.(C) No. 28041 of 2016 and several other cases, and wherein an interim order of stay was passed by this Court 26.08.2016.

11. The learned counsel for the respondent Institution points out that, the course and proceedings as to the admissions were summarised by the Committee as per Order dated 04.08.2015

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[Ext.P1 in W.P.(C) No. 30806 of 2016] and Clause 11 of the said proceeding stipulates that admission should not be denied to a candidate without the permission of the ASC. It was based on the proceedings of the Committee that the Prospectus was prepared and submitted for approval on 22.08.2016. Clause 2.2.d and Clause 3.3 along with 'Note' under the head "Documents to be reproduced" are as given below :

"2.2 Qualification :

.....

d. In order to seek admission, the candidate must be in the rank list of the NEET Entrance Examinations 2016 for admission to M.B.B.S. Courses and the Candidates must be eligible as per the norms prescribed by the MCI.

.....

3.3 Self - attested documents required to be submitted along with application

- a. Copy of relevant page of School records namely SSLC / ISC / CBSE or equivalent certificate showing the date of birth should be furnished as proof of age.
- b. Mark list and Pass certificate of the qualifying examination (Plus Two/12<sup>th</sup> standard).
- c. Nativity Certificate, if applicable.
- d. Self-addressed stamped envelope (12x25 cms size) with

Indian Postal stamps worth Rs.10/- affixed thereon.

e. Eligibility/equivalency certificate obtained from the Kerala University of Health Sciences by applicants who have passed the qualifying examination from Boards other than the State of Kerala/CBSE/ISCE.

f. Course and conduct certificate from the Institution last attended.

g. Copy of Mark list (Result) of the NEET Entrance Examinations 2016.

h. Admit Card of NEET 2016.

i. Copy of Certificates/documents as a proof for claiming admission under reservation category.

j. Copy of Certificate in proof of SEBC/SC/ST status obtained from the Tahsildar/Village Officer/Authorities concerned.

k. Undertaking for Bank Guarantee (**Annexure I**).

For NRI Quota, the following additional documents are to be submitted:

a. Copy of the employment certificate from the employer or if self-employed, a statment duly attested by the concerned Embassy/Consulate.

b. Copy of An affidavit/declaration of Undertaking by the sponsor.

c. Copy of Embassy attested visa endoresed passport copy of

the sponsor (1<sup>st</sup> page, Last page and Visa page).

d. Copy of Certificate from the Village officer/revenue authorities to prove the relationship between the applicant & NRI. The format can be downloaded from <http://eservices.kerala.gov.in/documents/10180/28e23250-4809-4f3b-9490-40982076dbd4>

As the number of seats in the NRI category are limited, the applications are carefully scrutinized to assess the relative merits of the applicants before being selected for admission. Once accepted to the course, the applicant will be notified regarding their status. All the selected applicants will have to pay the tuition fees and other annual fees on or before the date specified.

Note: All certificates/documents submitted by the applicants shall be self attested.

***Application not accompanied by documents in proof of claims made therein will be summarily rejected without further intimation. Documents / Certificates furnished after submission of the application will not be entertained under any circumstances. Incorporating any details or documents after the submission of applications will not be entertained. Late and incomplete applications will be rejected. Applicants are instructed NOT TO ENCLOSE ANY ORIGINAL CERTIFICATES along with the applications.***

*The management shall not be responsible for any postal/courier delay.*

12. It is pointed out that many of the applications/documents were defective in several manner and by virtue of the 'Note', such applications were liable to be summarily rejected. But the above

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Prospectus was not approved by the ASC, for not being in conformity with the Government Orders dated 20.08.2016 and 23.08.2016 (cited supra). Thereafter, pursuant to negotiations, an 'agreement' was executed between the respondent Institution and the Government; based on which, Government Order dated 03.09.2016 was issued agreeing to have 50% seats to be left in the Government quota and to have the rest filled up by Management Quota/NRI quota [35+15]. It was accordingly, that a new 'Prospectus' was submitted for approval before the Committee, which in turn was approved as well. Clause 2.2.f, 3.2.c. and d and 3.3 to k of the approved Prospectus are reproduced below for convenience of reference:

"2.2.f. In view of the Indian Medical Council (Amendment) Ordinance No. 4 of 2016, G.O. (Rt.) No. 2463/2016/H&FWD dated 01.09.2016 and the consensual agreement signed on 03.09.2016 between SNIMS Medical College and the Govt. of Kerala, Commissioner for Entrance Examinations will allot students to 50% Govt. Merit Quota seats in Private Self-financing professional colleges on the basis of merit from the list of students who have qualified themselves in Kerala Engineering Agriculture Medical Entrance Examination 2016 (KEAM 2016) in accordance with merit and complying with the principles of reservations in Government Colleges.



3.2.c. Mere submission of application 'online' will not complete the procedure and will not be considered at all. Printout of the online application with required documents and application fees received on time only would be considered.

3.2.d. Applications without attachments of required documents or without the uploaded photograph and signature will be rejected.

3.3 Documents attested by a Gazetted Officer required to be submitted along with application.

- a. Copy of relevant page of School records namely SSLC/ISC/CBSE or equivalent certificate showing the date of birth should be furnished as proof of age.
- b. Copy of Mark list and Pass certificate of the qualifying examination (Plus Two/12<sup>th</sup> standard).
- c. Nativity Certificate, if applicable.
- d. Self-addressed stamped envelope (12x25 cms size) with Indian Postal stamps worth Rs.10/- affixed thereon.
- e. Eligibility/equivalency certificate obtained from the Kerala University of Health Sciences by applicants who have passed the qualifying examination from Boards other than the State of Kerala/CBSE/ISCE.
- f. Course and conduct certificate from the Institution last attended.
- g. Copy of Mark list (Result) of the NEET Entrance Examinations 2016.
- h. Copy of Admit Card of NEET 2016.
- i. Copy of Certificates/documents as a proof for claiming admission under reservation category.

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- j. Copy of Certificate in proof of SEBC/SC/ST status obtained from the Tahsildar/Village Officer/Authorities concerned.
- k. Undertaking for Bank Guarantee (Annexure I).

For NRI Quota, the following additional documents are to be submitted:

- a. Copy of the employment certificate from the employer or if self-employed, a statement duly attested by the Indian embassy.
- b. Copy of the relevant pages of the passport containing visa details.
- c. Certificate issued by a scheduled bank stating that he/she is a Non-Resident Indian holding an NRI account other than a zero balance account.
- d. An affidavit/declaration (Annexure II) by the NRI relative/Sponsor.
- e. Certificate from the Village officer/revenue authorities to prove the relationship between the applicant & NRI. The format can be downloaded from <http://eservices.kerala.gov.in/documents/10180/28e23250-4809-4f3b-9490-40982076dbd4>

As the number of seats in the NRI category is limited, the applications are carefully scrutinized to assess eligibility and the relative merit of the applicants before being selected for admission. Once accepted, the applicant will be notified regarding their status. All the selected applicants will have to pay the tuition fees and other annual fees on or before the date specified.

Note: All certificates/documents submitted by the applicants shall be attested by a Gazetted officer.

Application not accompanied by documents in proof of claims made therein will be summarily rejected without further intimation. Documents / Certificates furnished after

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submission of the application will not be entertained under any circumstances. Incorporating any details or documents after submission of applications will not be entertained. Late and incomplete applications will be rejected. Applicants are instructed NOT TO ENCLOSE ANY ORIGINAL CERTIFICATES along with the applications.

The management shall not be responsible for any postal/courier correspondence"

The significant change from the old prospectus is as to the 'time schedule' according to the learned counsel for the respondent Institution; who submitted that there is no change with regard to the Clause/Note, enabling the right of the Institution to reject the defective applications. The new Prospectus was approved on 02.09.2016 and it was thereafter; that the Government Order dated 03.09.216 was issued by the Government. The learned counsel for the respondent Institution submits that, even after approval of the 'new Prospectus', the power to reject the defective applications stands intact.

13. As mentioned already, there is no challenge against the first/basic order dated 04.08.2016 passed by the Committee. The relevant clauses of which are reproduced below :

"2. The prospectus should be submitted for the approval of the ASC, with such documents, if any, to authenticate

the statements made therein. On approval, the same should be published in the website of the Association/College.

3. The calling of the applications and submission of the same by the candidates **should only be online**. The candidates, who successfully complete the online applications, should automatically be issued with an acknowledgment. **Any other mode of application submission will be rejected**. Each College shall extend its online facility to the ASC so as to monitor the entire admission procedure of the college. (This procedure could be clarified directly from the ASC Head Office, Thiruvananthapuram). The activity of any college subverting the admission of inter se merit, if found, will be considered as violation of the order of the ASC.

4. The details including the total applications received together with the NEET and College ranks of the applicants should be notified in the website of the College. In case of any rejection of application, the same should also be notified with reasons for rejection.

8. Any candidate may discontinue from the admitted self financing college to another college, if allotted by CEE. However, no candidate shall be permitted to shift within three days from the closing date of admission, from one self financing college to another.

11. Sufficient time to be given to the candidates for the production of the Bank Guarantee. The admission should not be denied to a candidate without permission of the ASC.

12. The counselling details and the draft admission list, basing on inter se merit, should be instantaneously published for the information of all concerned.

15. All the information regarding admissions, rejection, grievance redressal, vacancies, college rank list, counselling/admitted details etc. should be retained in the website for the information of all concerned, till their admissions are approved/registered by the ASC/KUHS.

16. The right of admission, including eligibility relaxation and NRI claims, should be supported with documents, as per the existing regulations/G.Os. No documents will be received by the ASC, after the closing date of admission.

18. The agreement of the College with the Government of Kerala should be published in the website of the College and should be retained.

20. Each Medical/Dental College shall submit the prospectus, as stated in clause 1 of the directives above, for prior approval of the ASC/FRC before the commencement of admission process, as the Colleges has to obtain prior approval in each stage of admission.

21. The Fees shall be as regulated by the FRC or as

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contained in the consensual agreement between the Government of Kerala. No college shall collect any fees in excess of what is prescribed by the authorities.

14. On going through the relevant clauses in the earlier Prospectus dated 22.08.2016 and 'Note' thereunder, the power to reject the applications is only, if the relevant documents are not attached. In other words, it does not specifically say that any defect in the application by itself will entail in summary rejection of the application. That apart, by virtue of the relevant clauses of the unchallenged order dated 04.08.2016 of the Committee, rejection of the candidature has to be with approval of the Committee, which admittedly has not been sought for and obtained. It also remains a fact that the respondent Institution has not challenged the subsequent Order dated 17.09.2016 passed by the Committee, with reference to the complaints received. Same is the position with regard to the still further order dated 20.09.2016 [Ext. P7 in W.P.(C) No. 31025 of 2016]; which is an 'agreed order'. We find considerable force in the submissions made by the learned standing counsel for the Committee, with reference to the entries on the web site of the Institution as on 20.09.2016 [after passing the order by the

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Committee on 17.09.2016] as to some additional particulars given as "New - 1, 2, 3, 4, 5, leaving the items 6, 7, 8, 9 without change, as it was available earlier as well. The said web page [produced along with memo dated 26.09.2016 filed by the standing counsel for the Committee], clearly refers to the Order passed by the Committee on 17.09.2016 [right top portion]. The aforesaid new entries/particulars in relation to the details of defect, total number of applications received and the particulars of candidates who were given admissions under the Management quota and NRI quota, as such, were not available on the web site earlier, as discernible from Ext. P2 in W.P. (C) No. 30806 of 2016. Incorporation of such additional particulars as new items prima facie reveals that the course pursued by the Institution was defective earlier, which made the Committee to interfere, based on the complaints, to maintain transparency and to preserve the inter-se merit. It also remains a fact, that the Institution appears to have understood/realized their defects/lapse, which presumably led to the **agreed order** passed by the Committee on '20.09.2016' as discernible from **clause v** of the said order, which is reproduced below:

"(i) Basing on the list of complainants, the Medical College

shall give opportunity to the applicants to rectify the defects noted against each one of them. On rectification and submission of the records, the applicant-complainants shall be given the opportunity to be considered on inter-se merit, maintaining transparency and academic excellence for the admission of MBBS 2016-17 in the Medical College.

ii. To enable the Medical College to accept the documents and include in the eligible list of applicants, the complainant applicants shall appear before the Medical College on 23.09.2016, between 10:00 AM and 01.00 PM

iii. Those applicants who come under inter se merit, and admitted by the Medical College, shall remit the required fees through DD.

iv. The admitted applicants shall submit the Bank Guarantee on or before 27.09.2016, 05.00 P.M.

v. The above conditions are agreed by both the parties.

15. In so far the respondent Institution has not challenged the basic Order dated 04.08.2016, the Order dated 17.09.2016 and above all, the "agreed order" dated 20.09.2016, it goes without saying that the respondent institution had necessarily to comply with the directions issued by the Committee and the challenge raised by the petitioners against these orders has to fail.

16. The plea of the petitioners in the former group, who are



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occupying much a lower pedestal by virtue of their merit in the rank list; that they were not heard by the Committee before passing the orders under challenge is of no significance, as the right of the said persons is only a right to be considered along with other eligible candidates. Right of such other eligible candidates came to be adversely affected because of the lapse on the part of the Institution, which was intercepted by the Committee and on realizing the lapse/defect, it was voluntarily rectified by the respondent Institution as well [presumably from the "agreed order" dated 20.09.2016]. As such, the petitioners in the said group has no valid cause of action, to be entertained by this Court.

16. In the course of further proceedings, the respondent Institution filed counter affidavits in W.P(C) No. 30826 of 2016 and W.P(C) No. 31294 of 2016. Mr. Roshan Alexander, the learned counsel for the 3<sup>rd</sup> respondent submits, with reference to the contents of the counter affidavit, that the respondent Institution has given effect to the order dated 20.09.2016 passed by the Committee and has given an opportunity to all concerned, to cure the defects on 23.09.2016. It is pointed out that, only few persons appeared and cured the defects. Still, only one among the complainants by name

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'Aneesh' had satisfied the DD towards payment of fees and secured admission. The petitioners in W.P.(C) No. 30826 of 2016, did not wait to have the proceedings completed and left the premises, for reasons of their own, without curing the defects.

17. Taking note of the turn of events and after hearing both the sides, we found that the subsisting grievance was only in respect of the petitioners in the two cases belonging to the 'latter. Among them, in the case of the 5<sup>th</sup> petitioner in W.P(C) No. 31294 of 2016 by name **Bhamini** her rank was 2,85,461, which was much lower than the merit of the petitioner in W.P.(C) No.31313 of 2016 [Varun Mohan], whose case was not considered because of the lower merit, which reasoning hence is equally applicable in the case of **Bhamini** as well. In view of the subsequent development and the rectification steps taken by the respondent Institution in terms of the orders passed by the Committee, we confined the scope of further scrutiny to the grievance of the petitioners in W.P(C) No.30826 of 2016 and the petitioners 1 to 4 in W.P(C) No. 31294 of 2016 and passed an interim order on 27.09.2016; reads as given below :

"6. After hearing both the sides, this Court does not

find it necessary to deal with the alleged grievance of any other persons who have not approached this Court, except the persons named as above. We also find considerable force in the submission made by Mrs.Roshal Alexander, the learned counsel for the 3<sup>rd</sup> respondent Institution that the field need not be thrown to the remaining complainants who had approached the Committee, but did not turn up before the respondent Institution or before this Court with subsistence grievance if any.

7. To solve the situation once and for all, we find it appropriate to have the admission finalized by causing to consider the credentials of the petitioners in W.P.(C). No.30826 of 2016 and the petitioners except the 5<sup>th</sup> petitioner by name **Bhamini** in W.P.(C).No.31294 of 2016; who shall be present before the respondent Institution and cure the defects tomorrow itself; upon which they shall be given admission based on the inter-se merit, subject to satisfaction of the fees then and there. The 3<sup>rd</sup> respondent Institution is directed to make all necessary arrangements to enable the said students to rectify the defects and to satisfy the fees accordingly. It is open for the said petitioners to appear before the respondent Institution and satisfy the requirements as above between 10 a.m. and 2 p.m.

8. In view of the limited time frame available to complete the process, we permit the petitioners to furnish the

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'Bank Guarantee'; for the requisite amount (on succeeding in getting admission tomorrow) **by one week** i.e., till the closing of the office hours on 05.10.2016. The undertaking made by the learned counsel for the above petitioners that, if there is any default on the part of the said petitioners in satisfying the 'Bank Guarantee', after getting admission, they are ready to compensate the respondent Institution as well and besides facing such other adverse circumstances in accordance with law is recorded.

List the matter for further consideration on  
29.09.2016."

The cases were accordingly listed for further consideration on 29.09.2016.

18. Yesterday (on 29.09.2016), when the matters are taken up for further consideration, Mr. Roshan Alexander - the learned counsel appearing for the respondent Institution submitted taking earnest efforts, appropriate arrangements were made by the Institution, to give effect to the interim order passed by this Court on 27.09.2016, for enabling the persons named in the said order to have the defects rectified and to secure admission, based on the inter se merit. Despite waiting for hours, from 10.00 a.m and even beyond the closing time, no other person than the candidate by name

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'**Soubhagya**' appeared to complete the proceedings and to get admission. The candidate by name '**Soubhagya**' was permitted to rectify the defects and based on her merit, she was given admission to the first year MBBS course 2016-'17, who satisfied the fees and assured to furnish the 'Bank guarantee' for the requisite amount within one week as ordered by this Court on 27.09.2016. The learned counsel submitted that the course and conduct of the other persons, who were stated as aspirants to have admission in the respondent Institution have only alleged to take this Court for a ride, based on frivolous complaints preferred before the Admission Supervisory Committee, with no bonafide intent to get admission and hence is liable to be deprecated.

19. The learned counsel appearing for the petitioners in W.P. (C) No. 30826 of 2016 [viz. Sethu Lakshmi N. Pearson and Ankita] and the petitioners in W.P.(C) No.31294 of 2016 [Akshay Vimal, Aparna Thoma, Bhadra Sree B, Soubgagya and Bhamini] submitted that the reason for non-appearance before the institution to obtain admission in terms of interim order passed by this Court on 27.09.2016, was only because of the inadequacy of the time frame to furnish 'Bank Guarantee' [i.e. within one week or on before

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05.10.2016].

20 After hearing both the sides, we find that the explanation offered by the learned counsel for the above petitioners, except the petitioner by name '**Soubhagya**' [who had turned up and obtained admission] and the petitioner by name '**Bhamini**' [who was found as not eligible by virtue of lesser merit, as dealt with in interim order dated 27.09.2016], is not at all palatable to this Court. Evidently, the said petitioners and others were agitating the matter before the Committee as to the alleged deeds and misdeeds of the respondent Institution, as an attempt to deny admission to meritorious candidates and fill up the vacancies by persons of their choice having lesser merit, for extraneous consideration. The complaints preferred by them before the Committee virtually made the Committee to rise to the occasion and pass different interim orders on different dates, to meet the situation and to ensure that 'merit' was never given a 'go-bye'. As dealt with in the interim order dated 27.09.2016, the respondent Institution has filed an affidavit as to the steps taken by the Institution for giving effect to the orders passed by the Committee on different dates including on 17.09.2016 and 20.09.2016; throwing the gate/doors open to all concerned, to have

the defect rectified, if any.

21. The petitioners approached this Court raising serious allegations against the respondent Institution and in spite of the positive orders passed by this Court enabling them to have admission based on their merit, they simply took a 'U' turn and disappeared from the scene, without even appearing before the respondent Institution to cure the defects and satisfy the fees, for getting admission. The explanation offered that, the time of 'one week' granted by this Court for furnishing the 'Bank Guarantee' was inadequate is devoid of any merit and is puerile. As a matter of fact, the petitioners, as any other aspirant, are well aware of the necessity to furnish 'Bank Guarantee' in terms of the Prospectus published much ago, who ought to have made much arrangements to have obtained from the Bank, once they get succeeded in the admission process. Even otherwise, when the Court was about to order that 'Bank Guarantee' had to be furnished on or before the 30<sup>th</sup> of September, one week's time was sought for and based on the submission made by the learned counsel for the petitioners, it was extended till 5.p.m, on 05.10.2016. As it stands so, the conduct of the petitioners is nothing but an abuse of the process of Court. The

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petitioners, who did not turn up for curing the defects and to get admission on 28.09.2016, in terms of the interim order dated 27.09.2016, reflect their scant regards to the efforts, course and proceeding pursued by this Court to settle their grievance. It suggests that the desire expressed by them to have admission in the respondent College for the first year MBBS 2016 - '17 was not a bonafide one and it appears that they were only interested in creating news, may be dancing to the tune of some others behind the curtain, which is liable to be deprecated in the strongest possible words.

22. In the said circumstances, the writ petitions filed by the petitioners in W.P.(C) Nos. 30826 of 2016 and 31294 of 2014 are liable to be dismissed with cost. Even though 'exemplary cost' is liable to be ordered for wasting the time of this Court, by virtue of the posting on different dates and hearing the matters at length, which time could have been effectively utilized by this Court to deal with the genuine cases which are pending for quite long, considering the fact that the petitioners are young and are of formative stage of their career, we find it appropriate to impose only a nominal cost of **Rs.10000/- each [Rupees Ten thousand only] except in the case of the petitioners by name Soubhagya** [petitioner No. 4 in



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W.P.(C) No. 31294 of 2016] who got admission **and Bhamini** [petitioner No. 5 in W.P.(C) No. 31294 of 2016 - who was otherwise found ineligible by this Court as per the interim order dated 28.09.2016. The cost shall be satisfied to the Kerala State Mediation and Conciliation Centre, Ernakulam within two weeks, failing which, it will be open for the Registrar General to issue necessary Certificate in favour of the Director, Mediation Centre – beneficiary - to have the cost realized by way of appropriate proceedings in accordance with law.

21. In the light of the above discussion, we find that W.P(C) Nos. 30806, 30816, 31025, 31059 and 31097 of 2016 are devoid of any merit and they are dismissed accordingly. However, dismissal of the said writ petitions, will not bar the way of the said writ petitioners in sustaining the admission stated as given to them on the basis of inter-se merit, if otherwise sustainable in accordance with law.

22. W.P(C) Nos. 30826 and 31294 of 2016 are dismissed with a cost of Rs. 10,000/- to be paid by each of the petitioners as mentioned above, except the petitioners by name **Bhamini and Soubhagya** in W.P.(C) Nos. 31294 of 2016

23. The proceedings finalized by the respondent Institution in

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connection with the first year MBBS 2016 - '17, forming the subject matter of the above cases, shall be subject to the further scrutiny by the Admission Supervisory Committee and orders to be passed with reference to the lapses, if any, in connection with the admission or the fees collected.

sd/-

**P. R. RAMACHANDRA MENON,  
JUDGE**

sd/-

**DAMA SESHADRI NAIDU,  
JUDGE**

kmd

/True copy/

P.A. to Judge