

Refer page number 11 and 13 for details about Competitive Examinations considered for admission regarding MBA Programme which include KMAT, CAT & CMAT.



2017:KER:1733

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

WEDNESDAY, THE 11TH DAY OF JANUARY 2017/21ST POUSHA, 1938

WP(C).No. 38033 of 2016 (D)

PETITIONER(S) :

1. DIVYA SHAJI,
USHAS KARIKULAM PO, MUKKALUMON, RANNY, PATHANAMTHITTA.
2. SWATHY O,
SARATH BHAVAN, VALLANA, ERUMAKKADU PO, PATHANAMTHITTA.

BY ADVS.SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX

RESPONDENT(S) :

1. ADMISSION SUPERVISORY COMMITTEE FOR PROFESSIONAL COLLEGES,
REPRESENTED BY ITS MEMBER SECRETARY, M P APPAN ROAD,
VAZHUTHACAD, THIRUVANANTHAPURAM. PIN 695 014.
2. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION,
REPRESENTED BY ITS CHAIRMAN, 7TH FLOOR, CHANDRALOK
BUILDING, JANPATH, NEW DELHI. PIN 110 001.
3. APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY,
REPRESENTED BY IT S REGISTRAR, CET CAMPUS, 695001.
THIRUVANANTHAPURAM. PIN 695 016.
4. BELIEVERS CHURCH CARMEL ENGINEERING COLLEGE,
REPRESENTED BY ITS PRINCIPAL, KOONAZMKARA PO,
RANNY- PERUNAD, PATHANAMTHITTA, PIN 689 711.

R2 BY SRI.S.KRISHNAMURTHY, SC, AICTE

R1 BY SMT.MARY BENJAMIN, SC, ADMISSION SUPERVISORY COMMI

R3 BY SRI.S.KRISHNAMOORTHY, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29.11.2016, THE COURT ON 11.01.2017 DELIVERED THE FOLLOWING:



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Rajagiri Viswajyothi College of
Arts & Applied Sciences
Vengoor, Perumbavoor-683 546



WP(C) .No. 38033 of 2016 (D)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF MBA PROSPECTUS OF THE 4TH RESPONDENT COLLEGE.

EXHIBIT P2 TRUE COPY OF THE REGULATIONS FOR MBA (2016) OF THE 3RD RESPONDENT UNIVERSITY,

EXHIBIT P3 TRUE COPY OF THE LETTER DATED 25-04-2016 ISSUED BY THE VICE-CHAIRMAN, AICTE TO THE PRINCIPAL SECRETARY, DEPARTMENT OF EDUCATION, GOVERNMENT OF KERALA.

EXHIBIT P4 TRUE COPY OF STUDENT DETAILS REPORT PUBLISHED BY THE 3RD RESPONDENT IN RESPECT OF THE STUDENTS ADMITTED FOR MBA COURSE IN THE 4TH RESPONDENT.

EXHIBIT P5 TRUE COPY OF THE 1ST SEMESTER RESULTS OF THE STUDENTS UNDERGOING MBA COURSE IN THE 4TH RESPONDENT COLLEGE BY THE 3RD RESPONDENT UNIVERSITY.

EXHIBIT P6 TRUE COPY OF THE MAT SCORE OF THE 1ST PETITIONER.

EXHIBIT P7 TRUE COPY OF THE MAT SCORE OF THE 2ND PETITIONER.

EXHIBIT P8 TRUE COPY OF THE ORDER DATED 07-06-2016 ISSUED BY 1ST RESPONDENT.

EXHIBIT P9 TRUE COPY OF JUDGMENT DATED 09-08-2016 IN WPC 25866 OF 2016.

EXHIBIT P10 TRUE COPY OF JUDGMENT DATED 09-08-2016 IN WPC 26485 OF 2016.

EXHIBIT P11 TRUE COPY OF JUDGMENT DATED 08-09-2016 IN WPC 30047 OF 2016.

EXHIBIT P11(A) TRUE COPY OF LETTER DATED 20-1--2016 ISSUED BY 4TH RESPONDENT TO 1ST RESPONDENT.

EXHIBIT P12 TRUE COPY OF THE ORDER BEARING NO.ASC 100/16/MBA/BCCEC DATED 04-11-2016 ISSUED BY 1ST RESPONDENT.

EXHIBIT P13 TRUE COPY OF THE RESOLUTION DATED 17-06-2004 ISSUED BY THE DEPARTMENT OF SECONDART EDUCATION, MINISTRY OF HRD, GOVERNMENT OF INDIA.

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/



[Signature]

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2017:KER:1733

P.S TO JUDGE.



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**P.R. RAMACHANDRA MENON
&
P. SOMARAJAN, JJ.**

.....
W.P.(C)No.38033 of 2016
.....

Dated this the 11th January , 2017

JUDGMENT

P.R. Ramachandra Menon, J.

The petitioners are students pursuing the MBA course in the 4th respondent College, under the NRI quota. They are before this Court challenging Ext.P12 order passed by the first respondent/Admission Supervisory Committee (ASC in short), in so far as approval of Admission has been turned down holding that they were not duly qualified to have obtained Admission. The petitioners also challenge Ext.P8 order dated 07.06.2016 passed by the ASC, stipulating that no entrance examination conducted by non-governmental agencies shall be accepted for admission to MBA course except KMAT (Kerala) (conducted by the Universities in Kerala, under the supervision of the ASC), CAT (conducted by the Indian Institute of Management) and CMAT (conducted by the AICTE) and that MAT Score (conducted by All



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India Management Association) shall not be accepted for MBA admission after May, 2016. The petitioners seek for a declaration that they are entitled to continue the study.

2. The 4th respondent Institution, who is running an MBA course is stated as having approval of the AICTE vide Ext.P3. The said Institution is affiliated to the third respondent/University, who has issued Ext.P2 Regulations for MBA (2016). The 4th respondent Institution had published Ext.P1 Prospectus for MBA. The petitioners took part in the test and interview conducted by the Educational Institution, pursuant to which they were offered seats for the said course in the NRI quota in month of July, 2016. It is stated that they have satisfied the fees and are pursuing the studies accordingly. It is also stated that their admissions were approved by the third respondent/University, as disclosed from the Student Details Report published by the third respondent, vide Ext.P4. In the course of time, the petitioners appeared for the first semester MBA examinations as well. A copy of the first semester results has been produced as Ext.P5. Incidentally, it is pointed out that



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they had participated in the Management Aptitude Test (MAT) conducted by All India Management Association (AIMA) in September, 2016. Copies of the MAT score secured by them have been produced as Exts.P6 and P7 respectively.

3. As per Ext.P11 (a) letter dated 20.10.2016, the 4th respondent Institution requested the first respondent/Committee to approve the admission of the petitioners and others concerned. After considering the request, the first respondent, vide Ext.P12 approved the admission of only '31' students and rejected the candidature of '10' students including the petitioners, holding that they were not qualified. This is sought to be challenged in this writ petition along with the challenge raised against Ext.P8 proceedings of the ASC dated 07.06.2016 holding no Entrance Examination conducted by the Non-Governmental Agencies shall be accepted for admission to MBA Course, except KMAT, CAT and CMAT and further that MAT score (in the examinations conducted by AIMA shall not be accepted after May 2016.

4. Heard the learned counsel for the petitioners and the



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different learned Standing Counsel for the respondents 1 to 3.

5. Mr. Jacob Alex, the learned counsel appearing for the petitioners submits that the challenge is mainly two fold. Firstly, it is contended that the first respondent does not have any power, jurisdiction or competence to have issued Ext.P8/P12 ; more so when the admission of the petitioners was already approved by the University as disclosed from the particulars published by them vide Ext.P4. It is further contended that the petitioners are belonging to NRI category, who stand on a different footing and by virtue of settled law on the subject, particularly the verdict passed by a Division Bench of this Court in **W.P(C)14708 of 2012** (dated 18.12.2012) it is not all necessary for the NRI candidates to clear any eligibility test for getting admissions for the professional courses. As such, they form a different class to have been dealt with separately, which aspect was omitted to be considered by the Committee while passing Ext.P12 order. It is further contended that the first respondent Committee does not have any authority to have declared that the MAT Score shall not be the basis of selection

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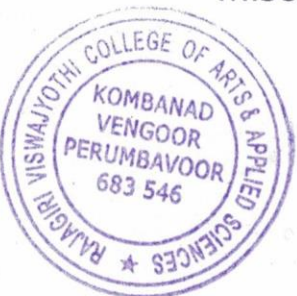
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after May 2016; when it is a National level test, conducted by the All India Management Association. Such a stipulation is stated as contrary to Ext.P13 Resolution dated **17.06.2004** issued by the Department of Secondary and Higher Education, Ministry of Human Resource Development, Govt. of India streamlining the admissions to MBA and such other courses, whereby it has been stipulated that MAT shall be one of the 5 National Entrance tests and that all Institutions admitting students on All India basis will have to opt for one of these 'five' examinations. It is also contended that 'MBA' is not a course coming within the purview of Sec.2(r) of Act 19 of 2006. The learned Counsel also pointed out that the issue whether the MAT conducted by the All India Management Association would stand excluded was not specifically considered by this Court in Exts.P9 to P11 judgments and hence the matter requires a fresh look.

6. The learned Standing Counsel for the first respondent/Committee points out that the idea and understanding of the petitioners is thoroughly wrong and misconceived. The scope and authority of the first respondent



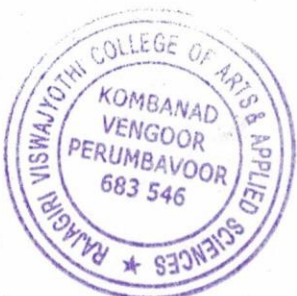
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Committee to deal with the admissions, deriving its powers specifically under **Act 19 of 2006 [The Kerala Professional Colleges or Institutions (Prohibition of capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other measures to ensure equity and excellence in Professional Education)Act, 2006]** has already been considered by a Division Bench of this Court in **2013 (3) KLT 316 [Kerala Private Medical College Management Association vs. Admission Supervisory Committee for Professional Colleges]** and it has been held that the Committee is having ample power to deal with the subject, to the extent it is required to streamline the admission proceedings ensuring that merit is never compromised and thus satisfying the 'Triple Tests' stipulated by the Supreme Court, with the intent to maintain fairness and transparency, giving paramount importance to merit; at the same time ensuring that there is no profiteering/exploitation. The validity of the Act itself was under challenge earlier; but interference made was only with regard to Section 3 and some incidental provisions, as per the decision



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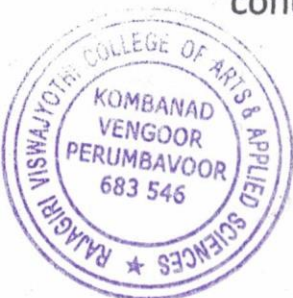
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reported in **2007(1)KLT 409 (Lisie Medical and Educational Institutions vs. State of Kerala)** and hence power of the Committee to deal with the issue stands confirmed.

7. The petitioners, who are the students were given admission by the 4th respondent Institution in July 2016 without satisfying any eligibility test, even as per Ext.P13 . The test and interview conducted by the 4th respondent/Institution, if any, cannot be treated as a National level Test coming within the purview of Ext.P13 issued by the Ministry or such other test as envisaged or permitted to be conducted by the Supreme Court, more so when Ext.P13 was having application only with regard to the 2005-2006. For the very same reason, Ext.P6/P7 MAT Score of 'September, 2016' cannot have any application to justify the admission given in July, 2016. The version of the petitioners that there was a proper process of Selection as mentioned in paragraph 40 of the **TMA Pai Foundation vs. State of Karnataka [(2002)8 SCC 481]**, is not liable to be accepted. According to the petitioners, based on the so called test conducted by the 4th respondent Institution, they were selected



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and admitted by the Institution and their admission was approved by the third respondent University as borne by Ext.P4. As per the relevant provisions of law, particularly the contents of Act 19 of 2006, no such admission could have been registered as valid, without the approval of the Committee. Rule 5 of Ext.P2 Regulations issued by the third respondent University in respect of MBA, 2016, stipulates that, notwithstanding anything that are stated in the Rules and Regulations, admission policy and procedure shall be decided from time to time by following the guidelines issued by the Government of Kerala and the Government of India. It was to streamline the process of admission in Professional Colleges and for such other measures including regulation of fees, that Act 19 of 2006 was promulgated. How that is to be accomplished is clearly discernible from the various provisions of the Act. There is no challenge against any of these provisions from the part of the petitioners.

8. To weed out the undesirable hands and to ensure clear and transparent process of admission, maintaining 'Merit' to the



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optimum level, the Admission Supervisory Committee had already issued a directive dated 11.05.2015 streamlining the process of admission (after conducting negotiations/discussions with the representatives of all the Universities in Kerala and based on the suggestions received from the various Self Financing Colleges, Universities, Subject experts, students and parents). Subsequently, it was unanimously resolved to revise the Committee's directive of 11.05.2015 partly, also changing the 'last date' of closing of admission for MBA Course. For 2016-17 batch, the Committee had decided to conduct KMAT- Kerala Test on 03.04.2016 and the task was assigned to the Kannur University who conducted the same under the supervision of the ASC on 03.04.2016 and the results were declared on 13.04.2016. The Test is to be conducted by different Universities in Kerala on a rotation basis.

9. Based on the representations from different corners with reference to the delay in declaring the results of Degree examinations by the Universities and that many students could not appear for the KMAT-Kerala Test on 03.04.2016, the Kannur



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University was required to conduct one more KMAT Test under the supervision of the Committee extending the date of admissions. It was accordingly, that Ext.P8 proceedings were issued on 07.06.2016. It is discernible from Clause 4 therein, that such an arrangement to have two KMAT-Kerala Entrance Examinations in a year will be a permanent arrangement. Clauses 6 and 7 of Ext.P8 are relevant, which read as follows:

“6. After considering the representations of ASMIK, MSN Institute of Management and Technology and the representation as well as the personal meeting of Wg.Cdr. V.S. Bejoy, the Principal Advisor and Head, the Centre for Management services, AIMA, New Delhi with the ASC Chairman, it was resolved not to consider any Entrance Examination conducted by the non-Governmental agencies and only to accept CAT and CMAT apart from KMAT as qualifying Entrance Tests.

7. The meeting discussed and decided to suggest a draft common model syllabus incorporating elective/optional subjects with the help of Subject Experts, Dr. M.S. Raju of KUFOS, Dr.K.P. Muraleedharan of Calicut University and Dr. K.S. Chandrasekar of Kerala University will be the members of the syllabus modernisation Committee and Dr. M.S. Raju will be the Convener. This Committee has been entrusted to complete the syllabus modernisation not later than 31st December



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2016.”

10. Paragraph 8 of the said proceedings summarises the directives for implementation by all the Universities and Self Financing Colleges in Kerala, relevant portion of which is reproduced below:

“8. In the light of the above decisions of the meeting of the University Representatives and Management department of various Universities, the ASC hereby issue the following directives for implementation by all the Universities and Self Financing Colleges in Kerala:

a. In modification of the directives dated 24.11.2015, the closing date of admission to MBA course, scheduled on 31.05.2016, with commencement of Academic session on the 1st week of June 2016, are rescheduled, the last date of applications will be 15.07.2016. The closing date of admission will be 31.07.2016. The commencement of the MBA course shall be 1st August, 2016.

The above rescheduled dates shall be applicable only for the Academic year 2016-17.

b. The Kannur University, which conducted a KMAT Kerala 2016 Entrance Examination shall conduct a second KMAT Kerala June 2016 Entrance Examination, under the supervisions of ASC. The test will



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be on 26.06.2016. The result shall be declared on 04.07.2016.

The above arrangements and the date of the examination shall only be for the Academic year 2016-17.

c. Owing to the variations in the declaration of the results by different Universities, there shall be two KMAT Kerala Entrance Examinations from the next academic year; the 1st Examination will be on the 1st Sunday of April and the 2nd Entrance Examination will be on the 1st Sunday of November of the year.

This arrangement of conducting two KMAT Kerala Entrance Examinations in a year shall be a permanent arrangement and each University will conduct the Entrance Examination in rotation under the supervision of ASC.

d. The 1st KMAT Kerala November Entrance Examination for the Academic year 2017-18 shall be in the 1st Sunday of November 2016 and the 2nd Exam shall be on the 1st Sunday of April 2017. This shall be conducted by MG University.

e. The 1st KMAT Kerala November Entrance Examinations for MBA admissions 2018-19 shall be in the 1st Sunday of November 2017 and the 2nd Examination shall be in the 1st Sunday of April, 2018, which shall be conducted by the University of Kerala, Thiruvananthapuram.

f. From 2017-18 Academic year, the closing of



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admission shall be on 31st of May and the commencement of classes shall be on 1st of June, every year. This time schedule shall not be changed. All the Universities, Colleges/Institutions and the candidates shall take note of these important dates and plan their academic calendar as well as the Educational Career.

g. The existing minimum cut off marks of 10%/7.5% in KMAT Kerala 2016 shall continue until an alternative formula is worked out. The score of All the Entrance Tests should be treated at par with KMAT cut off score.

h. Dr. K.P. Muraleedharan of Calicut University and Dr. K.S. Chandrasekar of Kerala University are authorised to collect the data from different agencies and work out a standardisation formula for implementation from 2017-18 academic year admissions.

i. xx xx xx

j. xx xx xx

k. xx xx xx

l. No Entrance Examination conducted by the non-governmental agencies shall be accepted for admission to MBA Course, except KMAT, CAT and CMAT. Hence, the MAT Score shall not be accepted for MBA admission after May 2016. The candidates who qualify in the above three (3) tests are eligible to receive educational loans from all the banks functioning in Kerala. The Universities/Colleges shall certify the same to the banks.

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m. xx xx xx

n. The ASC has deliberated on the directives and decided to circulate the same to all the MBA Colleges and the Universities.

o. All the relevant directives shall be included in the notification/prospectus of 2016-17 academic year onwards.

11. Admission was given to the petitioners by the 4th respondent/Institution, contrary to the mandate of Ext.P8. The 4th respondent Institution had not chosen to challenge Ext.P8 at any point of time. The petitioners also did not challenge Ext.P8 or even the earlier proceedings containing the directives dated 11.05.2015. A feeble attempt is made in this regard only after passing Ext.P12 on 04.11.2016. The correctness and sustainability of Ext.P8 order had already come up for consideration before this Court, as discernible from Ext.P9 to P11 judgments. The nature of challenge raised from the part of the petitioners therein, i.e. Association of Management Institutions in Calicut University, was clearly adverted to, along with the request for postponing KMAT Examination was also a subject matter of



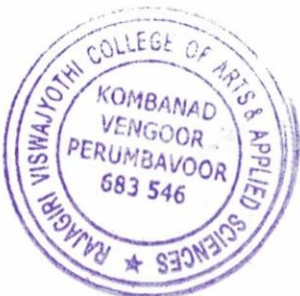
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consideration. The challenge raised by the petitioners in W.P.(C) 30047 of 2016 against the order dated 07.06.2016 of the Committee(Ext.P8 herein) has been specifically referred to in the opening paragraph of Ext.P11 verdict. A detailed discussion is there in the next paragraph as well and it was after considering all the facts and circumstances, that interference was declined and the writ petition was dismissed as per Ext.P11. It was also specifically observed in the concluding paragraph of Ext.P11, that the petitioners could not point out any vitiating circumstance in the decision of the 2nd respondent Committee that MAT score in the test conducted by 'AIMA' shall not be accepted for admission to MBA programme for the academic year 2016-17 onwards and further that the decision of the Committee, which is an Expert body, cannot lightly be interfered with as a matter of course, in exercise of the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. This being the position, the challenge against Ext.P8 proceedings of the Committee stipulating that MAT score shall not be reckoned, is a subject matter which has become stale, as the issue stands already



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covered against the petitioners by virtue of Exts.P9 to P11.

12. The next point to be considered is whether the petitioners, by virtue of their status as 'NRI' students, could be regarded as a separate class, who have been admitted in the 4th respondent Institution without satisfying the prescribed test. In other words, whether there is any pith or substance in the contention of the petitioners that NRI students are not required to satisfy the eligibility test ?

13. Some reliance is sought to be placed by the petitioners on Ext.P13 proceedings of the Department of Secondary and Higher Education, Ministry of Human Resource Development to the effect that MAT conducted by 'AIMA' is one of the five National entrance tests to be reckoned for the purpose of admissions to MBA, whereas 'KMAT-Kerala' is not one of such tests and hence it is not liable to be reckoned, being contrary to Ext.P13. It is to be noted that KMAT(Kerala) is being conducted by one of the Universities in Kerala (to be on rotation basis) under the strict supervision of the Admission Supervisory Committee, who is a Statutory Body created under the relevant



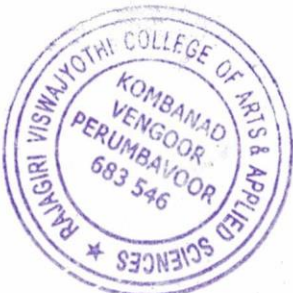
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provisions of Act 19 of 2006. Admission to the professional College as defined under **Section 2(r)** of the Act is to be governed under the provisions of **Section 4**. The fee is also to be regulated by the Fee Regulatory Commission in terms of the powers under **Section 6** and elsewhere. The validity of the Act stands upheld [but for Section 3 and some incidental provisions-struck off as per the decision in **Lisie Hospital's case (cited supra,** which is now pending consideration before the Supreme Court]. Obviously, by virtue of the law declared by the Supreme Court, the power and authority to regulate admissions has been taken over by the State Government by way of legislation ['Education' being a subject at 'entry 25' of List III (concurrent list) of the 7th Schedule to the Constitution of India], giving shape to Act 19 of 2006, which is very much after the date of issuance of Ext.P13 by the Central Government. That apart, Ext.P13 was the arrangement made for the year 2005-2006 as clearly stated therein. Further, KMAT (Kerala) conducted as above is on a National basis, giving open invitation to the students concerned from all over the country and beyond.



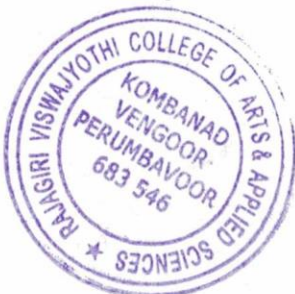
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14. It has been conceded by the petitioners in paragraph '8' and Grounds 'G, H and I' of the writ petition that the total number of available seats in the 4th respondent College is 60; whereas only 32 students have been admitted and they are studying there, leaving '28 seats vacant'. This shows the dearth of candidates or the demand for the course or the Institution. If this be the position, what was the test stated as conducted by the 4th respondent Institution to identify the eligible candidates to be admitted, weeding out the ill-qualified/undeserving hands, is not known. In other words, almost all the candidates who passed the basic qualification have been given admission without proper appreciation of the merit level. If the version of the petitioners that no 'merit rating' is required to be done in the case of NRI candidates is to be accepted, it will be totally alien to the scheme of professional education and the mandate given by the Apex Court as per the rulings rendered at different points of time, holding that there shall be no compromise with merit. We find support also from the recent ruling of the Apex Court (Constitution Bench) in **Modern Dental College and Research**



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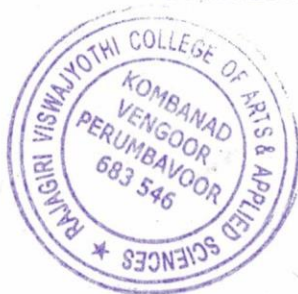
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Centre and others vs. State of Madhya Pradesh and others

[(2012) 4 SCC 707]. No provision to have exemption from Entrance Test for admission to MBA (PG Management course) either by way of orders of the Government/Authorities concerned or by way of judicial precedents is brought to the notice of this Court.

15. Coming to the reliance sought to be placed on the decision of the Division Bench in W.P.(C)No.14708 of 2012, it was a case of admission to Medical seats (Post Graduation). It is true that a specific point was raised by the Bench as to whether the allocation of seats to NRI students, without providing for the same in the prospectus, was illegal and whether participation in the Entrance examination was necessary. The said point has been dealt with in paragraph 16 onwards. After making a reference to the observations made by the Apex Court in paragraph 131 in **P.A.Inamdar vs. State of Maharashtra [(2005)6 SCC 537]** and Regulation No.9 of **MCI(PG Medical Education) Regulation (2000)** stipulating that admission to PG Medical admission shall be on academic merit, the Bench observed in



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paragraph 20 as follows.

."20. It is no doubt true that inter se academic merit is shown as the sole criterion for admission to Post Graduate Medical Course and the manner of determining the same is also indicated, as we have referred to already. In fact, it is submitted on behalf of the Medical Council that NRIs were given the quota as it were on the strength of the decision of the Apex Court in the year 1993. Regulations were framed by the MCI. It related to the MBBS Course. It is pointed out that the said Regulations itself came to be struck down as unconstitutional by the Apex Court in **TMA Pai's case**. The Regulations relating to admission for Post Graduate Medical Courses were made in the year 2000. They remain on the Statute book and they do not provide for a NRI quota and the question is also posed as to how admissions can be made to NRI quota in the Post Graduate stream overlooking statutory Regulations. It is pertinent to refer at this juncture to paragraph 131 of the decision in **Inamdar's case**, which reads as follows:

"131. 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 a certain



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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 their level of education and also to enlarge their educational activities. It was also pointed out that the 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 the 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



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subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised 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 the direction in Islamic Academy to regulate."

The Regulations were made in 2000. It is subsequent to the same that the Supreme Court pronounced its Judgment in *Inamdar's case*. It is thereunder that the Supreme Court has allowed admissions to be made in favour of NRIs. It was subjected to the condition, namely that the admissions must be in favour of genuine NRIs and the children/wards. The further condition is that as far as the admission to the NRI quota is concerned, merit should not be completely ignored. We notice that the Apex Court further directed that suitable legislation or Regulations need be framed and so long as the State does not do it, it will be for the Committees constituted to regulate. In this regard, we may notice that the law



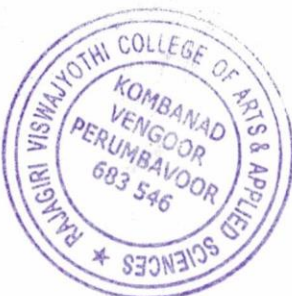
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made by the State as now in force, is the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Explorative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 Act (Act 19 of 2006). Therein, Section 2(o) defines a non-resident Indian seat as a seat reserved for children or wards or dependants of non-resident Indians to whom admission is given by a management in a fair, transparent and a nonexploitative manner on the basis of fees as may be prescribed. Section 3 of the Act provides for method of admission in the professional colleges or institution. It provides that admissions of students in a professional college or institution to all seats except NRI seats are to be made through a common entrance test conducted by the State. No doubt, Section 3 has been declared as unconstitutional by a Division Bench of this Court in the decision reported in *Lisie Medical & Educational Institution v. State* (2007 (1) KLT 409). From the aforesaid provisions, we notice that as far as NRI seats are concerned, the State Legislature has widened the scope of NRI seats by including the dependants of NRIs also. This is apart from providing for children or wards as contemplated in the decision of the Apex Court. We are not called upon to pronounce on the validity of the Act on the score that it is not in tune with what the Apex Court has laid down. As things stand, therefore, NRIs include children or wards and dependants of NRIs. NRIs were exempted from taking part in the test. Therefore, the law made by the State presumably drawing inspiration from the decisions of the Apex Court does not contemplate the holding of any examination. We are not informed of any case of any college where NRIs had to take



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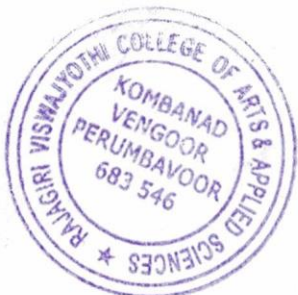
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examination.

Thereafter reference was made to the verdict passed by the Apex Court in **Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others [((2012) 4 SCC 707]** in relation to the filling up of 15% of the unfilled NRI seats in the unaided private Medical/Dental Colleges and the interim directions given to hold good till the disposal of the matter by the Constitution Bench. As per one of such interim orders reported in **(2009) 7 SCC 751 [Modern Dental College and Research Centre and Ors v. State of M. P and Ors]**, it was held that, as regards the NRI seats, they will be filled up as provided in the Act and Rules in the manner, they were done earlier. It was with reference to the above observations that, the Bench made further observations in paragraph 22 in the following words:

“xx xx xx xx xx xx Therefore we are of the view that it may not be open to the petitioner and the MCI to render vulnerable the admissions to the NRIs for this year on the strength that the students have not passed the entrance examination. In fact, we were also informed about the judgment by another Bench of this Court



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wherein the Bench has only recorded the stand of the MCI that from next year onwards they would enforce the Regulations which contemplated the holding of the national eligibility test."

The declaration given by this Court was obviously with reference to the factual situation prevailing in the year concerned for admission and as such, the said decision does not bar the way of this Court in taking an independent decision in respect of any subsequent year of selection as involved in the present case.

16. As pointed out already, the finding of the Division Bench of this Court in **W.P.(C)14708 of 2012** that clearance of the Entrance Test will not be applicable in the case of NRIs, was only in the given context and in respect of the particular year, leaving the fate/course to be decided, as per the verdict to be pronounced by the Constitution Bench of the Apex Court, where the matter was pending. The Constitution Bench of the Apex Court has passed the final verdict, as reported in **AIR 2016 SC 2601** (5 member Bench) (cited supra). The relevant portion, in so far as the present issue is concerned, as dealt with in paragraphs 60 and 61 are extracted below:



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"60. Undoubtedly, right to establish and administer educational institutions is treated as a fundamental right as it is termed 'occupation' which is one of the freedoms guaranteed under Article 19(1)(g). It was so recognised for the first time in T.M.A. Pai Foundation (AIR 2003 SC 355). Even while doing so, this right came with certain clutches and shackles. The Court made it clear that it is a noble occupation which would not permit commercialisation or profiteering and, therefore, such educational institutions are to be run on 'no profit no loss basis'. While explaining the scope of this right, right to admit students and right to fix fee was accepted as facets of this right, the Court again added caution thereto by mandating that admissions to the educational institutions imparting higher education, and in particular professional education, have to admit the students based on merit. For judging the merit, the Court indicated that there can be a CET. While doing so, it also specifically stated that in case of admission to professional courses such a CET can be conducted by the State. If such a power is exercised by the State assuming the function of CET, this was so recognised in T.M.A. Pai Foundation itself, as a measure of 'reasonable restriction on the said right'. Islamic Academy of Education further clarified the contour of such function of the State while interpreting T.M.A. Pai Foundation itself wherein it was held that there can be Committees constituted to supervise conducting of such CET. This process of interpretative



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balancing and constitutional balancing was remarkably achieved in P.A. Inamdar (AIR 2005 SC 3226) by not only giving its premature to deholding of CET but it went further to hold that agency conducted the CET must be the one which enjoys the utmost credibility and expertise in the matter to achieve fulfillment of twin objectives of transparency and merit and for that purpose it permitted the State to provide a procedure of holding a CET in the interest of securing fair and merit based admissions and preventing maladministration.

61. We are of the view that the larger public interest warrants such a measure. Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of materials is produced, it is, undoubtedly, in the larger interest and welfare of the students community to promote merit, add excellence and curb malpractices. The extent of restriction has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount to 'restrictions' on the right of the appellants to carry on their 'occupation' are clearly 'reasonable' and satisfied the test of proportionality.

17. Incidentally, it is also brought to the notice of this Court that in respect of medical admissions, **NEET** [National Entrance Eligibility Test] has been declared as mandatory by the



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Supreme Court as per the recent decision rendered on the point. It is obligatory for the NRI candidates as well, to participate in the NEET, which reflects the true purport and intent and sanctity of the eligibility test; to ensure that merit is of paramount importance and 'minimum satisfaction' of clearance in the eligibility test is mandatory. It is quite evident that the verdict in W.P(C)14708 of 2012 does not come to the rescue of the petitioners in any manner.

18. There is a further contention as raised in Ground 'K' of the writ petition (though not much pressed during the course of hearing) that the 4th respondent College/MBA Course is not covered under Section 2(r) of the Act 19 of 2006. Section 2(r) of the Act defines the term '**professional college or institution**', which reads as follows:

"(r) Professional college or institution ' means a college or institution aided or unaided imparting professional courses in any of the following disciplines, namely:-

- (a) Engineering and Technology;*
- (b) Medicine, Dentistry, Pharmacy, Ayurveda, Homeopathy, Siddha and Nursing*



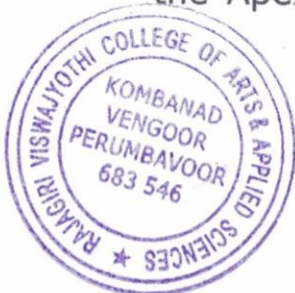
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© *Teacher education or any other discipline as may be declared by the Government by notification in the Gazette.*

Act 19 of 2006 was brought in by the State with a view to provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education and for matters connected therewith or incidental thereto. The power and jurisdiction of the Committee concerned is to deal with admissions in the professional colleges and such other institutions, as defined under Section 2(r). At the first blush, it may appear that 'MBA' is not a '**professional course**' as defined under Section 2(r) of the Act. The institutions/Courses which are coming within the purview of the Act are clearly given in the said provision. A question may also arise, whether it could be taken as a '**technical course**'. A dispute had arisen whether institutions conducting MBA course required the approval of the AICTE. The issue was considered by the Apex Court and it was held that the Institutions rendering



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studies in the Engineering field, if conduct a course of MBA as well , approval was necessary. In **Association of Management of Private Colleges v. All India Council for Technical Education and Ors[(2013) 8 SCC 271 = AIR 2013 SC 2310]** it was held that, unlike MCA, 'MBA' was not a technical course where approval of the AICTE was required . The said observation in paragraph 65 of the **above verdict** however does not promote the case of the petitioners, to be taken outside the purview of the Act 19 of 2006 in so far as the Act itself, by virtue of the amendment brought about and notified as per G.O. (P) No.105/2012/H.Edn. dated 29.03.2012 has changed/modified the definition of the term **"professional course"**, whereby the course **"MBA"** **has been incorporated** as one of the disciplines coming within the purview of the **professional course/Institutions** as defined under the Act. This being the position, the contention raised by the petitioner that 4th respondent Institution/MBA does not come within the purview of 'Section 2(r)' of the Act is not at all correct or sustainable and is rather unfounded.



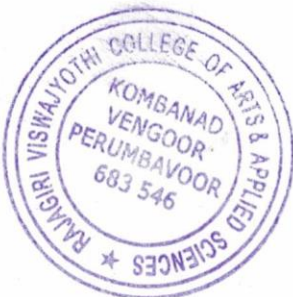
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19. During the course of hearing, it was pointed out before this Court on behalf of the petitioners, that several seats are lying vacant in the respondent Institution and hence that admission given to the petitioners in the 'NRI' segment will not prejudice anybody else, in turn submitting that rejection of approval ordered by the Committee requires interference. The fact that 'Seats are lying vacant in an Educational Institution' itself is not a ground to admit students, if they are not otherwise eligible. The merit cannot be an instance of casualty and the said point has been explained by the Apex Court repelling such contentions as per the decision reported in (2011) 4 SCC 606 **(Visveswaraiah Technological University and another vs. Krishnendu Halder and others)(2011)4 SCC 606 =AIR 2011 SC 1429)** , paragraph '10' (in AIR 2011 SC 1429)of which reads as follows:

10. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, para



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41(v) and (vi) of Adhiyaman would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Dr. Preeti Srivastava and the decision of the larger Bench in S.V. Bratheep which explains the observations in Adhiyaman in the correct perspective. We summarise below the position, emerging from these decisions :

- (i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the Central Body/AICTE. The term 'adversely affect the standards' refers to lowering of the norms laid down by Central Body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the Central Body/AICTE.
- (ii) The observation in para 41(vi) of Adhiyaman to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.



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(iii) *The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.*

(iv) *The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations.*

20. The crux of the discussion made above is that the



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challenge raised against Ext.P8 order dated 07.06.2016 stipulating that 'MAT' (conducted by All India Management Association) shall not be reckoned as an approved eligibility test after May, 2016, making it clear that the tests conducted by non-governmental agencies will not be reckoned, is not assailable. Similarly, the challenge raised against Ext.P12 order passed on 04.11.2016, whereby approval has been rejected in respect of the petitioners herein (stated as under the NRI quota), also fails. The writ petition is devoid of any merit. Interference is declined and the writ petition is dismissed accordingly.

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

**P. SOMARAJAN,
JUDGE**

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