

**The Principal Vs. The Admission Supervisory Committee and Fee Regulatory Committ**

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**SooperKanoon Citation :** [sooperkanoon.com/50438](http://sooperkanoon.com/50438)

**Court :** Kerala

**Decided On :** Apr-10-2015

**Judge :** Honourable Mr.Justice Antony Dominic

**Appellant :** The Principal

**Respondent :** The Admission Supervisory Committee and Fee Regulatory Committ

**Judgement :**

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS FRIDAY, THE10H DAY OF APRIL201520TH CHAITHRA, 1937 WP(C).No. 17328 of 2014 (M) ----- PETITIONER(S): ----- THE PRINCIPAL, KARUNA MEDICAL COLLEGE, VILAYODI, CHITTUR PALAKKAD DISTRICT. BY ADV. SRI.GEORGE POONTHOTTAM RESPONDENT(S): ----- 1. THE ADMISSION SUPERVISORY COMMITTEE & FEE REGULATORY COMMITTEE FOR PROFESSIONAL COLLEGES OF KERALA, TC151553 PRASANTHI BUILDINGS, M.P.APPAN ROAD, VAZHUTHACAUD THIRUVANANTHAPURAM - 695 015 REPRESENTED BY THE MANAGER.

2. KERALA UNIVERSITY OF HEALTH SCIENCES, MEDICAL COLLEGE P.O.,  
THRISSUR - 680 596 REPRESENTED BY ITS REGISTRAR. R2 BY ADV.  
SRI.P.SREEKUMAR,SC,KERALA UTY.HEALTH & R1 BY ADV. SMT.MARY  
BENJAMIN, SC, ADMISSION SUPERVISORY CO THIS WRIT PETITION (CIVIL)  
HAVING BEEN FINALLY HEARD ON0104-2015, ALONG WITH WPC.26608/14  
AND CONNECTED CASES, THE COURT ON1004.2015 DELIVERED THE  
FOLLOWING: WP(C).No. 17328 of 2014 (M) ----- APPENDIX  
PETITIONER(S)' EXHIBITS ----- P1: TRUE COPY OF  
THE PROSPECTUS FOR ADMISSION TO MBBS COURSE201314 P2: TRUE  
COPY OF THE NEWS REPORT APPEARED IN MALAYALA MANORAMA DAILY  
DATED276/2013 WITH THE BILL. P3: TRUE COPY OF THE NEWS REPORT  
APPEARED IN MATHRUBHUMI DAILY DATED276/2013 WITH THE BILL. P4:  
TRUE COPY OF THE STUDENTS REGISTRATION REPORT2013 P5: TRUE  
COPY OF THE COMMUNICATION NO.KMC/KUHS/12-2013/97  
DATED3012/2013. P6: TRUE COPY OF THE LETTER NO.KMC/KUHS/12-  
2013/98 DATED3012/2013. P7: TRUE COPY OF THE NOTIFICATION  
NO.7399/KUHS/EXAM-1/1-MBBS DATED176/2014. P8: TRUE COPY OF THE  
SCHUDLE EXAMINATION OF1T PROFESSIONAL MBBS DEGREE REGULAR  
AND SUPPLEMENTARY EXAMINATIONS, AUGUST - 2014 (2010,2011, 2012 &  
2013 ADMISSIONS) P9:TRUE COPY OF THE

ORDER

NO.ASC/245/13 MBBS DATED27/2014 ISSUED BY THE1T RESPONDENT. P10:  
TRUE COPY OF THE COMMUNICATION DATED103/2014 GIVEN BY THE1T  
RESPONDENT. 2ND RESPONDENT(S)' EXHIBITS -----  
ANNEXURE I: TRUE COPY OF THE

ORDER

DATED2409.2014 OF THE1T RESPONDENT. ANNEXURE II: TRUE COPY OF  
THE GOVERNMENT

ORDER

DATED225.2013. ANNEXURE III: TRUE COPY OF THE GOVERNMENT

ORDER

DATED 52.2013. ANNEXURE IV: TRUE COPY OF THE CERTIFICATE  
DATED 39.2014 ISSUED BY THE VILLAGE OFFICER PATHANAMTHITTA.  
ANNEXURE V: TRUE COPY OF THE

ORDER

DATED 19.2014 OF THE HONOURABLE SUPREME COURT. ANNEXURE VI:  
TRUE COPY OF THE

ORDER

DATED 129.2014 OF THE HONOURABLE SUPREME COURT. ANNEXURE VII:  
TRUE COPY OF THE

ORDER

DATED 179.2014 OF THE HONOURABLE SUPREME COURT. /TRUE COPY/ PS  
TO JUDGE ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

----- W.P(C).Nos.17328, 26608 & 29538 of 2014 and 1346,  
1919, 2941, 3043, 3090, 5166, 5221, 5359, 8331 & 9218 of 2015  
----- Dated this the 10th day of April, 2015

JUDGMENT

**Antony Dominic, J.**

1.The issues raised in these writ petitions are common and therefore, all these cases were heard together and are being disposed of by this common judgment.  
2.W.P(C).17328/14 is filed by the Principal of Karuna Medical College, Palakkad. In this writ petition, he is challenging Exts.P9 and P10. Ext.P9 is a communication dated 2.7.2014, issued by the Admission Supervisory Committee, the first respondent in the writ petition (hereinafter referred to as the 'Committee', for short), addressed to the Registrar of the Kerala University of Health Sciences (hereinafter, the 'KUHS', for short), informing that for the academic year 2013-14, Karuna Medical College has not obtained prior permission or approval from the Committee at any stage of admitting students of that college or even submitted any prospectus and various other details regarding the admission of WPC.17328/14 & con. cases 2 students. It is also stated that therefore, the

Committee has found that the admission made by the college is not transparent, merit oriented and fair, thus defeating the very purpose of 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 (hereinafter, the 'Act', for short). By this letter issued by the Chairman of the Committee, KUHS was directed not to register the students admitted by the college for university examination. Ext.P10 is a communication dated 10.3.2014, issued by the Committee to the Registrar of the KUHS informing that Self Financing Professional Colleges of Medical/Dental/Nursing as well as Para Medical Streams are to submit their lists for scrutiny and approval before the Committee prior to the submission of the lists to the KUHS for registration. On this basis, the Committee requested the KUHS not to register any list submitted by the Self Financing Professional Colleges, which are without the prior scrutiny and approval of the Committee. WPC.17328/14 & con. cases 3 3. When this writ petition came up for consideration, this Court passed order dated 8.7.2014, staying Exts.P9 and P10 subject to the condition that the college will furnish all the details regarding the admission made for the year 2013-14 to the Committee within a period of one week therefrom. It was also ordered that it would be open to the Committee to proceed to act on the documents submitted in accordance with law. In compliance with the order dated 8.7.2014 mentioned above, the college submitted documents. The Committee considered the documents and passed order dated 24.9.2014. In this order, the Committee held that one Nadeem Mohammed, an NRI candidate, was sponsored by Sajith Sahim, who is stated to be the husband of the first cousin of the candidate. According to the Committee, the relationship between the candidate and the sponsor is beyond the explanation given under section 2(o) of the Act and G.O (MS).243/14 dated 6.8.2014. On that basis, the Committee held that Sri.Nadeem Mohammed does not come within the NRI quota and accordingly, his admission was rejected. WPC.17328/14 & con. cases 4 4. Producing the aforesaid order of the Committee dated 24.9.2014 as Ext.P8 and challenging the same, M/s.Safe Development Alms Trust, which has established Karuna Medical College, has filed W.P(C). 26608/14. This writ petition was admitted by order dated 14.10.2014. In this writ petition, the Trust is also challenging Exts.P1, P2

and P3 Government Orders, G.O (MS). No.34/2013/H&FWD dated 5.2.2013, G.O (MS) No.193/2013/H&FWD dated 22.5.2013 and G.O (MS) No.243/2014/H&FWD dated 6.8.2014 respectively, by which, the Government issued orders clarifying the expression 'dependant' occurring in section 2(o) of the Act and modifying the same. 5.Nadeem Mohammed, the student whose admission was invalidated by Ext.P8 in W.P(C).26608/14 has also challenged the said proceedings in W.P(C).29538/14. 6.W.P(C).1346/15 is also filed by M/s.Karuna Medical College. In this writ petition, in addition to Exts.P9 and P10 challenged by them in W.P(C).17328/14, they are also challenging Ext.P14 herein, the proceedings of the Committee dated 1.1.2015. In WPC.17328/14 & con. cases 5 this communication, the Committee has made reference to its earlier communications dated 11.10.2014 and 17.11.2014 and also to the replies submitted by the college. Overruling the objections raised by the college, the Committee has reiterated that for scrutiny and evaluation of the conduct of the professional colleges and to ascertain whether there is any profiteering or collection of capitation fees, all the details of admissions made and funds collected and utilised will have to be assessed and evaluated by the Committee. On this basis, the Committee directed the college to produce all documents, as directed in its earlier letters, on 15.1.2015.

7. W.P(c).1919/15 is filed by the Confederation of Self Financing Health Science College Management Association, Kerala and M/s.Devaki Amma Memorial College of Pharmacy, Malappuram. In this writ petition, Exts.P1 and P2 are under challenge and a declaration that the Committee has no power under the Act to issue a direction as contained in Exts.P1 and P2 are also sought for. Ext.P1 is a communication WPC.17328/14 & con. cases 6 dated 10.3.2014 issued by the Committee to the Registrar of the KUHS not to register any list submitted by any Self Financing Professional colleges of various streams and its copy has been marked to the President of Private Nursing College Management Association of Kerala and Association of the Managements of Self Financing Nursing Colleges of Kerala. Ext.P2 is another communication issued by the Chairman of the Committee on 6.1.2015 to the Principals of 48 colleges of Nursing and to the Association of the Management of Self Financing Nursing Colleges of Kerala, directing the Nursing Colleges to submit the basic/legal documents to establish

their right of admission of candidates for B.Sc Nursing courses. 8.W.P(C).5166/15 is filed by the Principal of KMCT Dental College, Kozhikode seeking to quash Ext.P2, by which, the Committee declined approval for the admission of Jesna M. and Nasla P.K., admitted in the management quota under the SEBC category. It is stated in the impugned order that in so far as Jesna M. is concerned, no documents other than the class WPC.17328/14 & con. cases 7 10th and 12th mark sheets were produced. It is also stated that the figure '0' is given against the column for 'family income' and 'nil' is recorded against the column 'eligible reservation' in the data sheet. That apart, the Committee also stated that despite repeated promises to submit the relevant documents, the college did not produce the same justifying the admission of the aforesaid two students under the SEBC category. Accordingly, approval was declined. Smt.Jesna M. and Nasla P.K. mentioned above have also filed W.P(C).5221/15 and 5359/15 challenging the aforesaid order passed by the Committee. 9.W.P(C).Nos.3043/15, 3090/15 and 8331/15 are filed by students of BDS courses. The petitioners in the first two cases are students of M.E.S. Dental College, Perinthalmanna and the petitioner in W.P(C). 8331/15 is the student of P.K.Das Institute of Medical Sciences, Ottappalam. Similarly, the petitioners in W.P(C).9218/15 are MBBS students in M.E.S. Medical College, Perinthalmanna. In the case of these petitioners also, their admissions have been WPC.17328/14 & con. cases 8 invalidated by the Committee on the ground that their family income is above Rs.6 lakhs fixed by the Government of Kerala for the benefit of relaxation available to students of SEBC category. Similar is the case of the students mentioned in Ext.P2 order challenged by the Principal, Azeezia College of Dental Sciences & Research, Kollam in W.P(C).2941/15. 10.The facts being generally as above, in the hearing that went on for quite a number of days, the contentions raised can be broadly summarised as follows. The Committee has no power under the Act to suo motu initiate any proceedings against the Self Financing Colleges. It was also contended that the constitution of the Committee has been statutorily prescribed in section 4 of the Act and that in the absence of any provision prescribing a quorum, the Committee could have transacted its business only in a meeting attended by all the members of the Committee. Yet another contention raised was regarding the determination of SEBC status of candidates for admission to professional colleges. According to

the counsel, irrespective of the income WPC.17328/14 & con. cases 9 limit, candidates belonging to OBC category are eligible and entitled to the benefit of relaxation provided to SEBC categories. 11.Counsel also contended that under section 2(o) of the Act, NRI seats have been defined as the seats reserved for children or wards or dependants of Non- Resident Indians to whom admission is given by the management in a fair, transparent and non- exploitative manner, on the basis of fees as may be prescribed. According to the counsel, the term 'dependant' is not defined in the Act. Therefore, the meaning of this term could not have been restricted by the Government by issuing executive orders evidenced by Exts.P1, P2 and P3, produced in W.P(C) 26608/14. 12.All these contentions were contradicted by the learned Government Pleader, standing counsel for the Committee and standing counsel appearing for the KUHS. WPC.17328/14 & con. cases 10 13.Having set out the issues in general, we shall now proceed to examine each one of these contentions. 14.The first contention urged was that the Admission Supervisory Committee does not have the power to initiate action suo motu and according to the petitioners, the Committee can take action only on the basis of complaints received from aggrieved persons. According to the petitioners, the process of admission can be divided into two parts; the first part commences with the publication of prospectus and ends with admission granted by the college concerned and the second part commences with steps subsequent to the admissions. Petitioners contend that on receipt of a complaint, the Committee can, in exercise of its powers under section 4(6) of the Act, issue directions correcting mistakes or irregularities, if any, committed in the process of admission and that in so far as the second part is concerned, the power under section 4(7) of the Act expires on the expiry of the cut off date prescribed for completing the admissions and that in this stage, orders for redressal of individual grievances can be WPC.17328/14 & con. cases 11 passed. According to the petitioners, in so far as these cases are concerned, the Committee has acted suo motu and that such exercise of power is beyond the provisions of the Act and is therefore ultra vires the powers of the Committee. This contention was sought to be buttressed by the counsel for the petitioners by referring to us the principles laid down by this Court in the judgment in Ramachandran Master v. Kerala Lok Ayukta [2006 (4) KLT166, where, this Court has held that the Lok Ayukta constituted under the Kerala Lok

Ayukta Act does not have the power to initiate suo motu action.

15. In so far as the powers of the Committee are concerned, what is relevant is sections 4(6) and 4(7) of the Act which read thus: "4(6) The Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional colleges or institutions with a view to ensure that the process is fair, transparent, merit-based and non-exploitative under the provisions of this Act." WPC.17328/14 & con. cases 12 "4(7)The Admission Supervisory Committee may hear complaints with regard to admission in contravention of the provisions contained herein. If the Admission Supervisory Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing a fine upto rupees ten lakhs and the Government may on receipt of such recommendation, fix the fine and collect the same in the case of each such violation or any other course of action as it deems fit and the amount so fixed together with interest thereon shall be recovered as if it were an arrear of public revenue due on land. The Admission Supervisory Committee may also declare admission made in respect of any or all seats in a particular college or institution to be de-hors merit and therefore invalid and communicate the same to the concerned University. On the receipt of such communication, the University shall debar such candidates from appearing for any further examination and cancel the results of examinations already appeared for." 16. Interpreting these provisions, a Division Bench of this Court in *Lisie Medical & Educational Institutions v. State of Kerala* [2007 (1) KLT409 held thus: WPC.17328/14 & con. cases 13

"8. From the discussion made above, it has to be held that the unaided minority or non-minority institutions have a fundamental right enshrined under Arts.19(1)(g) and 30(1) of the Constitution of India to run educational institutions. The minority institutions have an additional right which may be called as even a protection to establish and administer the institutions of their choice. The admissions can be regulated by legislation, but such legislation can only and surely be for ensuring the triple test of fair, transparent and non-exploitative procedure in the matter of admission. The State has indeed taken adequate measures in the impugned Act

itself that the admissions may be merit oriented. The provisions do adequately take care of a test which may ensure the triple test. The Admission Supervisory Committee has been constituted as per S.4. It consists of a retired Judge of the Supreme Court or High Court as Chairperson; Secretary to Government, Higher Education Department is to be Member Secretary; whereas, Secretary to Government, Health and Family Welfare Department, Secretary to Government, Law Department, The Commissioner for Entrance Examinations, Kerala, and an educational expert belonging to Scheduled Caste or Scheduled Tribe Community are to be Members of the Committee. By virtue of provisions of sub-section (6) of S.4, the Admission Supervisory Committee shall supervise and guide the entire process of WPC.17328/14 & con. cases 14 admission of students to the unaided professional colleges or institutions with a view to ensure that the process is fair, transparent, merit-based and non-exploitative under the provisions of the Act. The Admission Supervisory Committee in view of sub-section (7) of S.4 has the right to hear complaints with regard to admission in contravention of the provisions of the Act and if it may find violation of the provisions, it could make appropriate recommendation to the Government for imposing a fine up to Rupees Ten Lakhs. The Committee has also the right to declare admissions made in respect of any or all seats in a particular college or institution to be de hors merit and therefore invalid and communicate the same to the concerned University. On receipt of such communication, the University shall debar such candidates from appearing from any further examination and cancel the results of examinations already appeared for. The Committee can also recommend to the University or statutory body for withdrawal of affiliation or recognition of such college or institution or take any other action which it may deem fit. The provisions contained in sub-ss. (6) and (7) of S.4 of the Act provide foolproof procedure from the beginning of the test up to its end, which would ensure that the process is fair, transparent and non-exploitative. This is the only right of the State. Having done so, there was no need for the State to frame S.3 arrogating to itself the complete right of WPC.17328/14 & con. cases 15 admission and the procedure thereof. This is nationalisation of education and is wholly impermissible. Further, if by virtue of the provisions contained in S.3 of the Act dealing with the method of admission in professional colleges or institutions, the admissions are now to be regulated or made through

the common entrance test conducted by the State only followed by centralised counselling through the single window system by the Commissioner for Entrance Examinations, what was the requirement of making the provision such as subsections (6) and (7) of S.4. Surely, it cannot be case of the State that the procedure followed by it may be defective or lacking the triple test." This provision was again interpreted by another Division Bench of this Court in the judgment in Kerala Private Medical College Management Association v. Admission Supervisory Committee For Professional Colleges [2013 (3) KLT316, where, it was held thus:

"3. The learned counsel for the petitioners have canvassed an argument that the Admission Supervisory Committee has no power under the scheme of Act 19 of 2006 to cancel an entrance examination conducted by the Consortium of WPC.17328/14 & con. cases 16 Management and to order the conduct of a fresh examination by the said Committee or the machinery of the State. As noted above, the object of the constitution of Admission Supervisory Committee is to supervise and guide the entire process of admission of students to unaided professional colleges or institutions. It clearly denotes that the Admission Supervisory Committee has the power to supervise and guide the entire process of admission. It can be understood that the "process of admission" and "admission" are two different connotations. The process of admission is the pathway to the destination, i.e., admission. Therefore, the process of admission deals with the entire steps upto the stage of admission, for the selection of entitled aspirants to the admission on the basis of merit through fair, transparent, and non-exploitative methods. On going through the provisions contained under S.4(6) of the Act, it is further evident that the legislature has carefully used the terms in respect of the powers given to the Admission Supervisory Committee as "supervise and guide the entire process of admission of students', with a view to ensure that the process is fair, transparent, merit based and non- exploitative. Therefore, S.4(6) deals with the powers of the Admission Supervisory Committee to supervise and guide the entire process of admission, and not the admission. At the same time, S.4(7) deal with the power of the Admission Supervisory Committee to hear complaints with WPC.17328/14 & con. cases 17 regard to the admission in contravention of the provisions contained thereunder. If the Admission Supervisory Committee, after

enquiry, finds that there have been violation of the provisions for admission, on the part of the unaided professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing fine upto Rupees Ten Lakhs. The Government may, on receipt of such recommendation, fix the fine and collect the same or to take any other course of action as it deems fit. The Admission Supervisory Committee may also declare admission made in respect of any or all seats in a particular college or institution to be de hors merit and therefore invalid and communicate the same to the concerned University.

64. On such recommendation, the University shall debar such candidates from appearing for any further examination and cancel the results of the examination already appeared for. Here, it has to be noted that what has been dealt with in S.4(7) is not the process of admission whereas it is with regard to any violation of the provisions for admission. The powers conferred on the Admission Supervisory Committee under S.4(7) can be said to be recommendatory in nature, which can be exercised during the post admission stage. It has to be noted that the powers conferred on the Admission Supervisory Committee under S.4(6) are totally independent of the powers conferred under S.4(7). Even though the learned counsel for the WPC.17328/14 & con. cases 18 petitioners have strenuously contended that the powers of the Admission Supervisory Committee can at the most be recommendatory in nature as contained under S.4(7), and it has no power to cancel the examination conducted by the Consortium of Managements, we are not impressed by the said argument.

65. The entire 'process of admission' contained under S.4(6) deals with the invitation of application, scrutiny of applications, list of preparing the candidates who have preferred valid applications, fixing of the date of examination, the issuance of hall tickets and the proper conduct of the examination. Not only that, it also extends to all the stages prior to the admission. As and when the admission is made, the stage goes to S.4(7). In the matter of admission, the powers of the Admission Supervisory Committee is limited, i.e, merely recommendatory in nature. It is because of the fact that all the stages prior to the admission comes through the scrutiny, supervision and guidance of the Admission Supervisory Committee. At the same time, the powers of the Admission Supervisory

Committee under S.4 (6) of the Act to supervise and guide the entire process of admission is unfettered and absolute, of course, subject only to judicial review."

17. Though the scope and ambit of the powers exercised by the Committee under sections 4(6) and 4(7) are as WPC.17328/14 & con. cases 19 explained by the aforesaid two Division Bench judgments of this Court, in so far as these cases are concerned, the contention raised before us is that the Committee does not have the power to act suo motu. The Committee being the creature of the Statute, the powers exercised by the Committee are those conferred on it by the parent statute and the restrictions on such exercise of powers are also to be found from the statutory provisions itself. It is also the settled position of law that every statutory authority also has the incidental and ancillary powers to exercise the statutory power in a meaningful and effective manner. Unlike the provisions of the Kerala Lok Ayukta Act, the provisions of the Act or the rules framed thereunder do not contain anything indicating that the powers exercised by the Committee under section 4(6), which has been understood by the Division Bench in Kerala Private Medical college management Association (supra), as separate and distinct from the powers under section 4(7), can originate only on the filing of a complaint. On the other hand, as is evident from section 4(6), the Committee has been conferred WPC.17328/14 & con. cases 20 with the powers to "supervise and guide the entire process of admission" of students of unaided professional colleges or institutions with a view to ensuring that the process is "fair, transparent, merit-based and non-exploitative" under the provisions of the Act. When such wide powers are conferred on the Committee with a view to ensuring that the admissions made by the private unaided colleges are in compliance with the triple test of fair, transparent and merit-based and non exploitative, the Legislature has deliberately chosen not to curtail or restrict the powers of the Committee by providing that it shall exercise its powers of supervision and guidance only on the making of a complaint.

18. We are also inclined to think that imposing a condition that the exercise of the powers of the Committee to supervise and guide the entire process of admission shall only be on the receipt of a complaint, would only place fetters on the powers of the Committee in effectively discharging its duties and the Act itself will be a toothless piece of WPC.17328/14 & con. cases 21 legislation. It was therefore that the Legislature has deliberately chosen not to impose such

restrictive conditions so that the Committee will have the full power to supervise and guide the entire process of admission and achieve the desired objective of ensuring that the admissions to self financing colleges in the State is in compliance with the triple test. Such being the statutory mandate, we do not think that the court will be justified in reading into the statutory provisions anything restricting the powers of the Committee and thereby preventing the Committee from acting on its own, even if it is satisfied that the process of admissions in the unaided professional colleges is not in terms of the statutory provisions. Therefore, we do not find any basis for the petitioners' contention that the powers of the Committee under section 4(6) cannot be exercised suo motu. In so far as these cases are concerned, the impugned orders are all with reference to the process of admissions covered by section 4(6) of the Act. In such issues, the Committee is entitled to interfere on its own and the contention to the contrary cannot be accepted. WPC.17328/14 & con. cases 22 19. However, when we turn to section 4(7) of the Act, reading of this provision itself shows that the Committee may hear complaints with regard to admission in contravention of the provisions of the Act. The wordings of this provision, when contrasted with the language of section 4(6), show that as rightly observed by the Division Bench of this Court in Kerala Private Medical College Management Association (supra), while section 4(6) deals with the process of admissions and empowers the Committee to act on its own, section 4(7) deals with admissions already made by the colleges and any action of the Committee at this stage, ordinarily, has to be on the basis of complaints made by the aggrieved. That the powers conferred on the Admission Supervisory Committee are very wide, has been well settled by the Division Bench decision of this Court in Kerala Private Medical Colleges Management Association's case (supra). Paragraphs 20, 21 and 23 of that decision are quoted below for profitable reference. WPC.17328/14 & con. cases 23

"0. Section 4 of Act 19 of 2006 provides for the constitution of an Admission Supervisory Committee to supervise and guide the entire process of admission of students to the unaided professional colleges or institutions. The Admission Supervisory Committee shall consist of a Retired Judge of the Supreme Court or High Court as the Chairperson. The members of the Committee are the Government Officials and educational expert mentioned in sub-s.(1) of S.4. The

Admission Supervisory Committee is empowered to adopt its own procedure for the conduct of its business. The power of supervision and guidance of the entire process of admission conferred on the Admission Supervisory Committee is with a view to ensure that the admission process is fair, transparent, merit based and non-exploitative. This is in tune with the dictum laid down in T.M.A. Pai Foundation case. A restrictive meaning with respect to the power of the Admission Supervisory Committee should not be given in view of the scheme of the Act, the regulations issued by the Medical Council of India and the directions issued by the Supreme Court in *Mridul Dhar & Anr. v. Union of India & Ors.* (2005) (1) KLT723(SC) = (2005) 2 SCC65 and *Priya Gupta v. State of Chhattisgarh & Ors.* ((2012) 7 SCC433 to comply with the time bound conduct of the entrance test and admission of the students in professional colleges. The expression "the entire process of admission" occurring in sub-s.(6) of S.4 takes in WPC.17328/14 & con. cases 24 all powers including cancellation of entrance test and issue of orders and directions to take corrective measures either before the conduct of the entrance test or thereafter. The Admission Supervisory Committee is constituted with the avowed object of the entrance test being fair, transparent, merit-based and non-exploitative. There is no meaning in saying that the Admission Supervisory Committee has no power to cancel the entrance test even after the Committee is satisfied that the entrance test was not fair, merit-based, transparent or non-exploitative.

21. The learned counsel for the petitioner submitted that going by the scheme of Act 19 of 2006, the jurisdiction of the Admission Supervisory Committee is recommendative in nature and final decision in the matter has to be taken by the Government, University concerned or Court. Sub-s.(7) of S.4 empowers the Admission Supervisory Committee to make appropriate recommendation to the Government for imposing a fine up to Rupees Ten Lakhs on the unaided professional college or institution concerned, on hearing complaints with regard to admission in contravention of the provisions contained in the Act. An enquiry should be conducted by the Admission Supervisory Committee in the matter and the recommendation to the Government can be made only after the Committee finds that there has been any WPC.17328/14 & con. cases 25 violation of the provisions for admission. On receipt of such recommendation under sub-s.(7) of

S.4, the Government has the authority to fix fine and to recover the same. The Admission Supervisory Committee is also empowered under sub-s.(7) of S.4 to declare admission made in respect of any or all seats in a particular college or institution to be de hors merit and therefore, invalid. In such an event, the Admission Supervisory Committee shall communicate the same to the University concerned. The University can debar such candidates from appearing for any further examination and cancel the result of the examinations already appeared for. Under sub-s. (8) of S.4, the Admission Supervisory Committee is also empowered to recommend to the University or statutory body for withdrawal of the affiliation of any unaided professional college or institution, if the Committee is satisfied that such college or institution has violated any of the provisions of the Act. 'Recommendation' to the Government, 'communication' to the University and the declaration of admission to 'be de hors merit', as provided under sub-sections (7) and (8) are all powers which the Admission Supervisory Committee can exercise and each one of them has specific consequence. That consequence is based on the decision to be finally taken on the recommendation or communication to the Government or University. That the Admission Supervisory Committee has no role after making such recommendation to the Government, or WPC.17328/14 & con. cases 26 after making declaration of admission to be de hors merit and communication of the same to the University, or after the recommendation to the University for withdrawal of affiliation, does not mean that the Admission Supervisory Committee has only the jurisdiction to make such recommendation or declaration. Apart from the power conferred under sub-sections (7) and (8) of S.4 of the Act, the Admission Supervisory Committee is conferred, under sub-s.(6) of S.4, wide powers to supervise and guide the entire process of admission of students to the unaided professional colleges or institutions. The power under sub-s.(6) of S.4 is not restricted by subsections (7) and (8) of S.4. The power under sub-s.(6) of S.4 is also independent of the power conferred on the Admission Supervisory Committee under sub-sections (7) and (8) of S.4. xxx xxxx xxx 23. The Admission Supervisory Committee is empowered to adopt/regulate its own procedure for the conduct of its business and in all matters arising out of the discharge of its functions, as provided under sub-s.(2) of S.4 and sub-s.(3) of S.5. The Admission Supervisory Committee, for the purpose of making

any enquiry under Act 19 of 2006, shall have all the powers of a civil court under the Code of Civil Procedure while trying a suit, in respect of the matters mentioned in sub-s.(3) of S.5 of the Act. The power given to the WPC.17328/14 & con. cases 27 Admission Supervisory Committee to regulate its own procedure, is also referable to sub-s.(6) of S.4. In the matter of supervision and guidance of the entire process of admission, as contemplated under sub-s.(6) of S.4, the Admission Supervisory Committee can adopt its own procedure and reach at the goal of ensuring that the process of admission is fair, transparent, merit based and non-exploitative. That the Admission Supervisory Committee (after the admission is over) can recommend to the Government to impose a fine upon the management, or to declare admission to be de hors merit or to recommend to the University for withdrawal of affiliation, does not mean that the Committee has to wait till the admissions are over. The consequences of making a 'recommendation' or 'declaration' or 'communication' under subsections (7) and (8) of S.6 or the recommendation to take penal action under S.5 of the Act are drastic and it may affect the prospects of a particular student or several such students and it may also affect the educational institution as such. The consequences of taking action under sub-sections (7) or (8) of S.4 or under S.5 need not necessarily have the effect of rectification. On the other hand, if timely action is taken by the Admission Supervisory Committee by exercising the powers conferred on the Committee under sub-s.(6) of S.4, the drastic consequences under subsections (7) and (8) of S.4 and under S.5 could possibly be avoided. If such corrective action is taken by the WPC.17328/14 & con. cases 28 Admission Supervisory Committee by cancelling the entrance test at the appropriate time, the prejudice caused to the candidates who appeared for the entrance test could, to a great extent, be avoided. It can also be ensured that the entrance test is conducted in a fair, transparent, merit based and non-exploitative manner, by cancelling the test conducted earlier and by conducting an entrance test afresh in a proper manner."

22. Section 11 of the Act provides that "Any admission made in violation of the provisions of this Act or the Rules thereunder shall be invalid." Though it is not explicitly stated in Section 11 as to the authority which is to exercise the power to invalidate such admissions, it implicitly and naturally flows from the scheme of the Act that power to invalidate such admissions referred to Section 11 is vested with

the Admission Supervisory Committee. Section 11 does not make any distinction between the stage of "the process of admissions" and the "post admission" stage. So also there is no explicit or implicit restriction in Section 11 that the power thereunder can be exercised only on the basis of complaints. As the very objective in the establishment of the WPC.17328/14 & con. cases 29 Admission Supervisory Committee is with a view that admissions are carried out in unaided professional colleges and institutions in a merit based, fair, transparent and non-exploitative basis, the Admission Supervisory Committee, if it is convinced that admissions have been made in flagrant violation of the aforementioned principles based on merit, fairness, transparency etc., shall have the power to invalidate such illegal admissions, even without a complaint, in exercise of the powers under Section 11.

23. We are also unable to accept the contention of the petitioners that once the cut off date prescribed for completing the process of admission has expired, the Committee cannot thereafter exercise any power in relation to the admissions made by the unaided professional colleges. If this argument of the learned counsel for the petitioners is accepted, the dangerous result would be that once the cut off date has expired, the Committee will be rendered absolutely ineffective in remedying the illegalities committed by unaided professional colleges. On the WPC.17328/14 & con. cases 30 other hand, according to us, even if the Committee initiates or completes its action after the expiry of the cut off date prescribed for completing the process of admission, if such steps initiated or completed by the Committee are in respect of any act or illegality committed by the college with reference to any stage prior to the completion of the admissions, the Committee will be well within its powers to do so. In other words, as in these cases, even if the action initiated or completed by the Committee is after the expiry of the cut off date prescribed, so long as that action is based on the illegality or irregularity committed by the college prior to the expiry of the cut off date, the steps taken by the Committee deserve to be upheld in the light of the provisions contained in section 4(6). Moreover, as held hereinabove, the Committee is also vested with the power to invalidate illegal admissions, in view of the power flowing from Section 11 of the Act. 24. The second contention raised by the counsel for the petitioners was that if any admission remains WPC.17328/14 & con. cases 31 undisturbed till the end of the cut off date prescribed for completing the

admissions, the University should consider those candidates for registration. On this basis, counsel contended that the direction issued by the Committee after the expiry of the cut off date not to grant registration to the students concerned is totally illegal.

25. When this contention was raised, counsel for the University submitted that the University is only concerned with the minimum eligibility of the students and that the University was not ensuring the triple test indicated by the Supreme Court that the process of admission may fair, transparent or merit based, which, according to them, is entirely within the powers of the Committee. 26. In our view, when section 4 of the Act provides that the process of admission shall be fair, transparent, merit based and non exploitative under the provisions of the Act and when the Committee finds that this triple test is violated in the process of admission, the University is bound by such finding. The fact WPC.17328/14 & con. cases 32 that such finding is not communicated to the University before the expiry of the cut off date does not entitle the management or the students concerned for an automatic registration of the candidates.

27. The other contention that was raised by the counsel for the petitioners was that the communications impugned in these writ petitions were issued either by the Chairman of the Committee himself or by the Chairman and another member of the Committee. According to him, the Committee constituted under section 4(1) of the Act is a 6 member Committee and when the Act does not prescribe a quorum, the Committee can transact its business only in a meeting of all the members of the Committee. Therefore, according to counsel, since the impugned orders are not the result of the deliberation of the Committee in its full meeting, they are totally illegal and are liable to be declared so. In support of this contention, learned counsel referred us to the provisions of section 4(1) and judgments of the Apex Court in *The Punjab University, Chandigarh v. Vijay WPC.17328/14 & con. cases 33 Singh Lamba* [1976 3 SCC344 and *Ram Bharosey Agarwal v. Har Swarup Maheshwari* [(1976) 3 SCC435. 28. Section 4(1) of the Act, providing for the constitution of the Committee, reads thus: "4. Admission Supervisory Committee - (1) The Government shall constitute an Admission Supervisory Committee to supervise and guide the process of admission of students to unaided professional

colleges or institutions consisting of the following members, namely:- (i) A retired Judge of the Supreme Court or a Chairperson High Court: (ii) The Secretary to Government, Higher Member Education Department (ex-officio): Secretary (iii) The Secretary to Government, Health and Member Family Welfare Department (ex-officio): (iv) The Secretary to Government, Law Member Department, (ex-officio): (v) The Commissioner for Entrance Member Examinations, Kerala (ex-officio): (vi) An Educational Expert belonging to the Scheduled Caste or Scheduled Tribe Community: Member" WPC.17328/14 & con. cases 34 29. The above provision of the Act shows that the Chairman of the Committee shall be a retired Judge of the Supreme Court or the High Court and the Committee consists of 5 other members, among whom, 4, who are State Government officials, are ex-officio members. Section 4(2) provides that "the Admission Supervisory Committee may adopt its own procedure for the conduct of its business". The Act does not contain any provision prescribing quorum for the meeting of the Admission Supervisory Committee and it is on that basis, the contention is now raised that a meeting to be valid, should be with all members present and that therefore, the decisions which are impugned in these writ petitions being that of the Chairman and Chairman and another member are illegal.

30. As we have already stated, section 4(2) of the Act empowers the Committee to adopt its own procedure for the conduct of its business. Further, Section 5(3) of the Act also explicitly mandates that the Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions. Considering the fact that the members of WPC.17328/14 & con. cases 35 the Committee, other than the educational expert belonging to Scheduled Caste or Scheduled Tribe community, are all Secretaries to the Government and the Commissioner for Entrance Examination, having multifarious official duties to discharge, the Legislature has incorporated such a provision fully being conscious of the practical difficulties which the Committee would otherwise face in transacting its business. 31. Along with her memo dated 5.3.2015 in W.P(C). 2941/15, the standing counsel for the Committee has produced the minutes of the meeting of the Committee held on 19.2.2007, where, a decision was taken by the Committee that the Chairman and two other members can take up matters for hearing and for passing final decision. It is also decided that in the absence of at

least two members, Chairman and one member can transact all routine matters of the Committee, including hearing of the complaints, taking evidence etc as and when found necessary and that in such cases, final decision will be taken only in the meeting of the Committee where the Chairman and two WPC.17328/14 & con. cases 36 other members are present. This decision of the Committee reads thus: "II Quorum of the Committee. As per Sec 4(2) of the Act 19 of 2006, the Admission Supervisory Committee may adopt its own procedure for the conduct of the business. There is no provision either in the Act or in the Rules made thereunder, regarding quorum of the Committee and it was observed that there is practical difficulty in transacting the matters coming up for decision by the Committee, in the absence of the majority of the members at the meeting. Therefore the Committee decided that the Chairman and two other members can take up matter for hearing and passing final decision and such decision will be treated as the decision of the Committee for all purposes. The Committee also decided that in the absence of at least two members, the Chairman and one member can transact all routine matters of the Committee, including hearing of complainants, taking evidence etc., as and when found necessary. However in such cases, final decision will be taken only in the meeting of the Committee where Chairman and two other members are present." 32. Again, the Committee in its meeting held on 4.7.2013, modified the above decision by resolving thus: WPC.17328/14 & con. cases 37 "(ii) Modification of the minutes dated 10.02.2007 of ASC In the meeting of the Committee held on 19.02.2007, it was observed that there is practical difficulty in transacting the matters coming up for decision by the Committee, in the absence of the majority of the members at the meeting. Therefore invoking section 4(2) of the Act, the Committee decided that chairman and 2 other members can take up matter for hearing and passing final decision and such decision will be treated as the decision of the Committee for all purposes. The Committee also decided that in the absence of at least 2 members, the chairman and one member can transact all routine matters of the Committee including hearing of complaints, taking evidence etc, as and when found necessary. However in such cases final decision will be taken only in the meeting of the Committee where chairman and 2 other members are present. Most of the matter coming up for consideration before the Committees are generally related to denial of admission to deserving students,

induction of ineligible students in the admission of any stream of education, withholding of the certificates of the students and so on. The Committee has to rely on the record submitted by the students, colleges and reports WPC.17328/14 & con. cases 38 of KUHS. The sittings are often adjourned and there would be repeated postings. In the above situations, it may not be feasible for all the members of the Committee to be present on each occasion of sitting/meeting. Therefore the Committee authorises the Chairman to make all the day to day correspondences with the parties, to hear the complaints, to prepare minutes of his opinion on the basis of available records and hearing made. Thereupon the chairman, along with one other member, can take final decision and such decision will be treated as the decision of the Committee for all purposes. Such decision has to be placed for ratification by the Committee consisting of 2 members along with the chairman. If urgent decisions are to be taken and/or interim orders passed, the Chairperson is empowered to pass orders, interim or otherwise, as the situation warrants and then get the same ratified in the Committee meeting. The Committee also authorise the manager to issue letters and make correspondences on behalf of the Chairman upon direction of the Chairman. Most of the matters coming up before the Committee involves financial matters also, like creamy layer, non-refund of tuition fees, non- WPC.17328/14 & con. cases 39 payment of fees remitted by the student, etc. The Committee therefore authorizes the Chairman to convene joint meeting of ASC and FRC, whenever Chairman feels necessary, with a minimum of one member from FRC in addition to 2 members of ASC including Chairman. Any decision taken by the said Committee of these 3 members shall be the decision of the Committee for all purposes. The Committee also contacted Dr.K.M.Abrham, Additional Chief Secretary to Government, Mr.Rajeev Sadanandan, Principal Secretary to Government, H&FWD Department and Mr.Ramaraja Premaprasad, Law Secretary to Government. All the three of them had given their consent to the above decisions." 33.We also find that in *Tavistock Iron Works Co Lyster's Case* [1867 L.R. 4 Eq.233], it has been held that "where the articles of association of a company do not prescribe the number of directors required to constitute a quorum (an unlikely event in modern circumstances), the member who usually acts in conducting the business of the company will constitute a quorum" (Shackleton on the law and Practice of Meetings 11th Edition

page 54). WPC.17328/14 & con. cases 40 34. Therefore, this is a case where, even apart from the principle we have extracted from Shackleton on the Law and Practice of Meetings, since the Committee itself has, in exercise of its powers under section 4 (2) and 5(3), adopted its own procedure for the conduct of its business and when the impugned orders are in compliance with the procedure thus adopted, the petitioners cannot be heard to contend that the Committee has acted without quorum and therefore, its decision is illegal. 35. In this context, we may also mention that lack of quorum in the proceedings of the Committee was one of the contentions urged by the petitioner in W.P(C). 122/15. The said contention was dealt with and rejected by this Court in the judgment rendered on 6.1.2015, where, it has been inter alia held thus:

"4. Learned counsel then contended that Ext.P7 order has been passed by two members of the Committee and that since the Committee constituted in terms of Section 4(1) is having 6 members, it could not have passed such an order with 2 members alone signing the order. WPC.17328/14 & con. cases 41 Admittedly, no provision of this Act prescribe quorum of the Committee. In such a situation, we cannot see how this order could be invalid for the reason that it has been signed only by two members. Even apart from that, the petitioner does not have a case that such a contention was raised before the Committee. If that be so, having submitted to the Committee, it is not permissible for the petitioner to now raise this contention for the first time before this Court." This judgment was confirmed by the Apex Court by its order dated 16.1.2015 by dismissing SLP.1250/15. 36. However, counsel for the petitioners relied on the judgment of the Apex Court in The Punjab University, Chandigarh (supra) in order to draw support for the contention raised by him. That was a case where the syndicate of the University appointed a standing Committee with three members without providing for any quorum for its meeting. The Full Bench of the Punjab High Court set aside the decision of the standing Committee on the ground that the meeting was attended by only two members and that therefore, the decision was without jurisdiction. The appeal that WPC.17328/14 & con. cases 42 was filed before the Apex Court was allowed by the above judgment and it was inter alia held thus in paragraph 7 of the judgment: "7. . . . . 'Quorum' denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its

business validly so that its acts may be lawful. It is generally left to Committee themselves to fix the quorum for their meetings and perhaps, if the Syndicate had not fixed the quorum, it might have been competent to the Standing Committee itself to devise its day-to-day procedure including the fixation of quorum. But that is going one step ahead, for here the quorum was fixed not by the Standing Committee but by the Syndicate itself which appointed the Standing Committee and which indubitably had the right to appoint the Committee under Regulation 31. We are unable to see any valid reason for which the fixation of quorum for the meetings of a Committee appointed by the Syndicate can be said to be beyond the powers of the Syndicate. It is wholly inappropriate in this connection to draw on the constitution of judicial tribunals as a parallel because, if by law such a tribunal must consist of 3 members there is no jurisdiction in the tribunal to fix a smaller quorum for its sittings. A Court is not a Committee and if by law any matter is required to be heard, say by a bench of three Judges to resolve that only two of them will form a quorum. WPC.17328/14 & con. cases 43 In fact, quorum is fixed for meetings of Committees and not for the sittings of Courts. . . . ."

37. Ram Bharosey Agarwal (supra) was a case where the validity of the decision of the disciplinary Committee of the Bar Council was considered and in paragraph 9 of the judgment, it was held thus: "9. Thirdly, it has been argued by Mr. Sen that although Section 9 of the Advocates Act provided that the Bar Council shall constitute one or more disciplinary Committees, each of which "shall consist of three persons", only two persons were present on July 21, 1974 when the appellant's defence was closed and arguments were heard in the case. Mr. Sharma appearing on behalf of the respondent has not been able to deny that this was so. He has argued that, by virtue of Sec. 13 of the Act, an act done by the Bar Council or its Committee could be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Council or Committees, as the case may be. We have gone through Section 13, but it is inapplicable to the present controversy as it cannot be said that there was any "vacancy" in the Disciplinary Committee. It is nobody's case that any of the three members of the Committee ceased to be a WPC.17328/14 & con. cases 44 member thereof at any time during the course of the proceedings before the Committee. It is also nobody's case that there was any defect in the constitution of

the Committee or that it was permissible to function with two members only. There is therefore justification for the third argument of Mr.Sen also." 38.First of all, both these judgments do not consider a situation where the relevant statutes contained provisions similar to sections 4(2) and 5(3) of the Act under consideration. Secondly, in *The Punjab University Chandigarh (supra)*, the Supreme Court has drawn a distinction between Committees such as the Standing Committee constituted under Regulation 31 of the Punjab University Calendar and Judicial Tribunals/ courts. The reading of the judgment shows that according to the Supreme Court, in so far as Committees are concerned, it is generally left to the Committees themselves to fix the quorum for their meetings and in the case of a court, if by law, any matter is required to be heard, say by a Bench of three Judges, there is no power in those three Judges to resolve that only two of them will form a quorum. WPC.17328/14 & con. cases 45 The Supreme Court clarifies this decision by holding that quorum is fixed for meeting of the Committees and not for sitting of courts. Relying on that part of the judgment which deals with the court and its requirement to transact its work in the manner provided by law, counsel for the petitioners was arguing that in view of the provisions contained in the Act, the Committee could have transacted its business only if the meeting is attended by two members of the Committee. 39.In so far as this argument is concerned, as observed by the Supreme Court in the *The Punjab University Chandigarh (supra)* itself, it is wholly inappropriate to draw on the constitution of judicial Tribunals/ courts as a parallel to the business transacted by the Committee. Secondly, to apply the principles which regulate the work in a court to the work transacted by the Committee, this Court should first of all hold that the Committee is a court or a Judicial Tribunal. The question whether the Committee is a Judicial Tribunal, we do not think, should detain us any further as the law in this WPC.17328/14 & con. cases 46 regard is no longer res integra and was finally stated by the constitution Bench of the Supreme Court in *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjunwala* [AIR 1961 SC1669. In that judgment, while setting aside the order of the Central Government, the Apex Court draws a distinction between court and Tribunal and held thus:

"1. When rights are infringed or invaded, the aggrieved party can go and commence a querela before the ordinary Civil Courts. These Courts which are

instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or some Act of legislature constituting them. Their number is ordinarily fixed and they are ordinarily permanent, and can try any suit or cause within their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent and go under the compendious name of "Courts of Civil Judicature". There can thus be no doubt that the Central Government does not come within this class.

32. With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a WPC.17328/14 & con. cases 47 judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Courts, but are not Courts. When the Constitution speaks of 'Courts' in Art. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227. By "Courts" is meant Courts of Civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that Courts have "an air of detachment". But this is more a matter of age and tradition and is not of the essence. WPC.17328/14 & con. cases 48 Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient. Lord Sankey, L. C. in *Shell Co. of Australia v. Federal Commissioner of Taxation*, (1931) A. C. 275 (296) observed: "The authorities are clear to show that there are tribunals with many of

the trappings of a Court, which, nevertheless, are not Courts in the strict sense of exercising judicial power..... In that connection it may be useful to enumerate some negative propositions on this subject:

1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision.
2. Nor because it hears witnesses on oath.
3. Nor because two or more contending parties appear before it between whom it has to decide.
4. Nor because it gives decisions which affect the rights of subjects.
5. Nor because there is an appeal to a Court.

6. Nor because it is a body to which a matter is referred by another body. See *Rex v. Electricity Commrs.*, (1924) 1 K. B. 171." 40. The above principles were followed by the Apex Court in its judgment in *S.D. Joshi v. High Court of Judicature at Bombay* [AIR 2011 SC848]. If the law thus laid down by the Apex Court is applied to the facts of these cases, it can be safely concluded that WPC.17328/14 & con. cases 49 the Committee constituted under the Act, for discharging its statutory duties, is not a court or a judicial body. The nature and character of the functions of the Admission Supervisory Committee referred to in Section 4(6) to supervise and guide the entire process of admissions of students to unaided professional colleges with a view to ensuring that the process is fair, transparent, merit-based and non-exploitative are predominantly administrative. But where the Committee propose to interfere with and rectify the actions of the unaided professional colleges, which are prima facie found to violate the principles of merit, transparency, fairness and non-exploitation, then the nature of the powers to be exercised by the Committee may attain the colour of quasi-judicial power, especially if it proposes to take some decision adverse to the college concerned. So also, the powers referred to in Sections 4(7), 4(8), 5(2), 11, etc. of the Act, in the matter of invalidation of admissions and other related remedial and penal measures, are in the nature of quasi-judicial functions. As the powers and

WPC.17328/14 & con. cases 50 functions conferred on the Committee are a mixture of administrative and quasi judicial functions, the Legislature has consciously mandated in Section 4(2) that the Committee may adopt its own procedure for the conduct of its business and in Section 5(3) that the Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions. It was in exercise of these powers, the Committee has passed resolutions dated 19.2.2007 and 4.7.2013, regulating its procedures.

41. True that in terms of Section 5(3) of the Act, the Committee in the aid of its performance of the quasi judicial functions, has also been equipped with some of the powers of a civil court, as enumerated therein and that any proceeding before such Committee shall be deemed to be judicial proceeding with the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code. Merely because the Committee is performing some quasi judicial functions apart from its administrative functions and merely on WPC.17328/14 & con. cases 51 account of the aforementioned provisions in Section 5 (3) conferring some of the powers of the civil court in the performance of its quasi judicial functions, will not make the Committee a court or a judicial body, as far as the manner of the transactions of business of the Committee is concerned. In the light of these aspects, we have no hesitation to hold that the law which governs the manner in which judicial work is transacted in a court can have no relevance or applicability insofar as the Admission Supervisory Committee constituted under Act 19 of 2006 is concerned. A contention similar to the one in these cases was raised before a Division Bench of this Court in W.P.(C).No. 122 of 2015 that the Admission Supervisory Committee could have passed an order invalidating admissions, with only two of its members out of the six members participating therein. The Division Bench of this Court as per judgment dated 6.1.2015 dismissed W.P.(C).No. 122 of 2015 repelling the above said contention, as no provision of the Act prescribes any quorum for the Committee. The said judgment in W.P.(C).No. 122/2015 was impugned by WPC.17328/14 & con. cases 52 filing SLP(C) No.1250 of 2015 before the Supreme Court. The Apex Court as per order dated 16.1.2015 has dismissed SLP (C) 1250 of 2015 arising out the judgment dated 6.1.2015 in W.P.(C).No. 122 of 2015. For all these reasons, we are unable to accept the above said contentions of the petitioners.

42. Counsel for the petitioners relied on

the Apex Court judgments in T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC481 and P.A.Inamdar v. State of Maharashtra [(2005) 6 SCC537 and contended that the orders passed by the Committee are against the principles laid down by the Apex Court. In particular, he has referred to paragraphs 40, 50, 54, 56 and 59 of the judgment in T.M.A. Pai Foundation (supra) and contended that there shall be no interference as long as admission is merit based and transparent. Similarly, in the P.A.Inamdar (supra), he referred to us paragraphs 44, 68, 91, 92, 93 and 105. However, when the Act has conferred on the Committee powers to supervise and guide the entire process of admission of students to the unaided WPC.17328/14 & con. cases 53 professional colleges or institutions with a view to ensuring that the process is fair, transparent, merit based and non exploitative and under section 4(7) empowered the Committee to hear complaints with regard to admission in contravention of the provisions of the Act and when the orders are found to be passed within those powers, the action of the Committee cannot be said to be illegal applying the principles laid down by the Apex Court in T.M.A. Pai Foundation (supra) or P.A.Inamdar (supra), particularly when there is no challenge against the statutory provisions contained in the Act. It is also to be mentioned that the constitutionality of sections 4(6) and 4(7) was upheld by the Court in the judgment in Lisie Medical & Educational Institutions (supra). Therefore, we are unable to accept this contention of the learned counsel either.

43.The issue raised in W.P(C).26608/14 is regarding the validity of Ext.P8, the order passed by the Committee, by which approval has been declined to the admission of a Non Resident Indian candidate, who has filed W.P(C).29538/14. The reason for this action of WPC.17328/14 & con. cases 54 the Committee is that the candidate is not a dependant of the sponsor and this conclusion is arrived at by the Committee relying on Exts.P1, P2 and P3 Government Orders clarifying the expression 'dependant'. The petitioners are also challenging Exts.P1, P2 and P3 and according to them, the Government cannot modify a statutory provision by executive orders. In support of this contention, counsel placed reliance on the judgment of the Apex Court in Union of India v. Elphinstone Spinning And Weaving Co. Ltd. [(2001) 4 SCC139 where the Apex Court inter alia held that the court is not concerned with statements made in the affidavits filed by the parties to justify and sustain the Legislation and that deponents of the affidavits filed in the

courts may speak for the parties on whose behalf they swear to the statements. It is also held that such parties do not speak for the Parliament and that once a statute leaves the Parliament House, the court is the only authentic voice which may echo the Parliament and that this, the court will do, with reference to the language of the statute and other permissible aids. (vide paragraph 9 of the judgment). WPC.17328/14 & con. cases 55 44. However, this contention of the petitioner was sought to be contradicted by the learned Government Pleader by referring to us section 2(o) and section 14 of the Act, judgment of this Court in W.P(C). 19748/12 and various judgments of the Supreme Court. Section 2(o) of the Act provides that 'Non-Resident Indian Seats' means seats reserved for children or wards or dependants of Non-Resident Indians to whom admission is given by the management in a fair, transparent and non-exploitative manner on the basis of fees as may be prescribed. Reading of this provision shows that Non-Resident Indians can avail of this seats earmarked as Non-Resident Indian seats for the benefit of their children or wards or dependants. The Act does not contain any provision defining the word 'dependant' and this word, in the ordinary parlance, means one who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else (Blacks Law Dictionary, 7th Edn). WPC.17328/14 & con. cases 56 45. Taking note of the absence of such a definite meaning to the word 'dependant', in the judgment in W.P(C).14708/12 dated 18.12.2012, a Division Bench of this Court had directed that the Government of Kerala will look into the issue relating to what is meant by 'dependant' under section 2(o) of the Act so that clarity is obtained. It was directed that the Government will do the same at the earliest and in any event, before the succeeding academic year. 46. In compliance with the direction in the judgment, the Government of Kerala issued Ext.P1 GO(MS) No. 34/2013/H&FWD dated 5.2.2013 clarifying as follows: "3. Government have examined the matter in detail in consultation with the Director of medical Education and are pleased to issue the following orders: (i) The term "dependents" in Section 2(o) of the Act read as 1st paper above in respect of Under Graduate and Post Graduate Medical and Dental admissions is defined as follows: "An Applicant who depends upon his/her Father/Mother /Husband/Wife/Brother/ WPC.17328/14 & con. cases 57 Sister/ Half Brother/Half Sister who is working abroad" 47. Subsequently, the Government

modified the above by GO(MS) No.193/2013/H&FWD dated 22.5.2013 (Ext.P2) thus: "3. Government have examined the matter in detail and are pleased to modify the "dependents" as envisaged in the Government Order read as 3rd paper above as follows: "An applicant, who depends upon his/her Father/ Mother/ Brother/ Sister/ Husband/ Wife/ Brothers and Sisters (inclusive of first cousins) of Father or Mother/ Half Brother/ Half Sister/ Adopted Father or Adopted Mother working abroad" 48.The said Government Order again was modified by the Government by GO(MS) No.243/2014/H&FWD dated 6.8.2014, by ordering thus: "6. Government are also pleased to modify the term "dependents" as in Section 2(o) of the Act read as 1st paper above in respect of Under WPC.17328/14 & con. cases 58 Graduate and Post Graduate Medical and Dental admissions as follows: "An applicant, who depends upon his/her Father/ Mother/ Brothers and Sisters (inclusive of first cousins)/ Husband/ Wife/ Brothers and Sisters (inclusive of first cousins) of Father or Mother/ Half Brother/ Half Sister/ Adopted Father or Adopted Mother working abroad". 49.The contention of the petitioner is that in the absence of any definition to the said term in the Act, by Exts.P1, P2 and P3, being executive instructions, the meaning of the term 'dependant' occurring in section 2(o) of the Act cannot be modified as instructed. 50.The Act which came into force from the year 2006 was legislated in the background of the judgments of the Apex Court in the cases in T.M.A. Pai Foundation (supra), P.A.Inamdar (supra) and Islamic Academy of Education [AIR 2003 SC3724. In P.A.Inamdar (supra), the Apex Court has laid down the extent of seats that can be earmarked for Non-Resident Indian WPC.17328/14 & con. cases 59 students and the categories to which admissions can be offered. This aspect of the matter is dealt with in paragraph 131 of the judgment in P.A.Inamdar (supra), which reads thus:

"31. 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 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 WPC.17328/14 & con. cases 60 of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be 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." 51. Reading of the above paragraph shows that the Apex Court has specifically held that a limited reservation of such seats not exceeding 15% may be made available to Non-Resident Indians depending upon the discretion of the management. It was clarified that such reservation is subject to two conditions WPC.17328/14 & con. cases 61 and the first among the conditions is that the seats should be utilised bonafide by Non-Resident Indians only and for their children or wards. In the Act that was enacted in the background of the judgments of the Apex Court including P.A.Inamdar (supra), section 10 deals with allotment of seats and as per sub-section 2 thereof, in an unaided professional college or institution belonging to both minority and non- minority upto fifteen per cent of the total number of sanctioned seats is permitted to be filled up by candidates under the category of Non-Resident Indian seats. It is also provided that seats not filled up under the Non-Resident Indian seats shall be filled up from

general merit seats. 52. The term 'Non-Resident Indian seats' is defined in section 2(o) of the Act. As per this section, the term 'Non-Resident Indian seats' means seats reserved for "children or wards or dependants" of Non-Resident Indians to whom admission is given by the management in a fair, transparent and non-exploitative manner on the basis of fee as may be prescribed. WPC.17328/14 & con. cases 62 53. If the principles laid down by the Apex Court in paragraph 131 of P.A. Inamdar (supra) extracted above is read in comparison with the provisions contained in section 2(o) of the Act, it is obvious that the inclusion of "dependants" of Non-Resident Indians and treating them also as eligible for admission in the seats reserved as 'Non-Resident Indians seats' is clearly beyond what was permitted by the Apex Court. However, in the absence of any challenge to the said provision and in deference to the legislative wisdom, we do not propose to go into the validity of the said provision and confine ourselves to the validity of Exts. P1 to P3 Government Orders and the correctness of the view taken by the Committee. 54. Section 14 of the Act provides that the Government may issue such directions to any professional college or institution as in its opinion are necessary or expedient for carrying out the purposes of the Act or to give effect to any of the provisions contained therein or in any rules or orders made thereunder and that the management of the college or institution shall comply with every such direction. Section 14 WPC.17328/14 & con. cases 63 (2) also enables the Government to give such directions to officers or authorities under its control, which, in its opinion, are necessary or expedient for carrying out the purposes of the Act (See paragraph 52 of Kerala Private Medical College Management Association v. Admission Supervisory Committee For Professional Colleges [2013 (3) KLT316]). It was taking note of this power of the Government that in the judgment in W.P(C).14708/12, a copy of which has been produced as Ext.R1(a), this Court directed the Government to evolve an appropriate formulae and bring clarity to the expression 'dependant' occurring in section 2(o) of the Act. Accordingly, the Government issued Exts. P1, P2 and P3 orders and as per Ext.P3, the last of such orders, the dependant is an applicant, who depends upon his/her Father/ Mother/ Brothers and Sisters (inclusive of first cousins)/ Husband/ Wife/ Brothers and Sisters (inclusive of first cousins) of Father or Mother/ Half Brother/ Half Sister/ Adopted Father or Adopted Mother working

abroad. WPC.17328/14 & con. cases 64 55. As we have already stated, in general, dependant is one who looks to another for support and maintenance or one who is sustained by another or one who relies on another for support or favour. But as observed by this Court in the judgment in W.P(C).14708/12, considering the peculiar position of the Non-Resident Indians and also the need of the funds of the Non- Resident Indians to augment the income of the Self- Financing institution, though the Non-Resident Indians quota has been allowed, that does not mean that admissions can be to such seats in a manner that would render the process of admissions itself unfair or allowing the colleges to set apart plum courses perennially in the Non-Resident Indians quota without any limitations whatsoever. It is this desired result which is sought to be achieved by the Government Orders. When such an administrative order is issued by the Government in exercise of its power under section 14 of the Act and that too, in a situation when the statute does not contain any definition for the term dependant, we feel such executive instructions only supplement the statutory provisions or cover areas to which the statute does not extend. To that limited extent, the Government is entitled to issue orders and if Exts.P1, P2 and P3 are so understood, the challenge against these orders will have to be repelled. See in this connection, the Apex Court judgments in Joint Action Committee of Air Line Pilots' Association of India v. Director General of civil Aviation [(2011) 5 SCC435 and State of Jharkhand v. Jitendra Kumar Srivastava [(2013) 12 SCC210. 56. However, in so far as Ext.P8 order challenged in this writ petition is concerned, the reason stated by the Committee for rejecting approval to the admission of Sri.Nadeem Mohammed reads thus: "However, in the case of 1 NRI candidate, Nadeem Mohammed, the certificate shows that the sponsor, Sajith Sahim is stated to be the husband of the 1st cousin of the candidate. This relationship is against the explanation given under section 2(o) of Act XIX of 2006 and even the new GO (MS) 243/14 dated 6.08.2014. In the result, Nadeem Mohammed does not come within the NRI Quota and his admission is rejected." WPC.17328/14 & con. cases 66 57. Evidently therefore, the fault that was found by the Committee was that his sponsor Sajith Sahim is the husband of the first cousin of the candidate and that the relationship between the sponsor and the candidate is beyond Ext.P3 Government Order dated 6.8.2014 extracted above. Admittedly, the sponsor of the

candidate is the husband of his first cousin and if the first cousin herself, who is also stated to be a Non-Resident Indian, was the sponsor, the candidate would have been a dependant even as laid down in Ext.P3 Government Order dated 6.8.2014. Considering that factual circumstance and also that there is no dispute regarding his eligibility, despite upholding Exts.P1, P2 and P3 Government Orders, we feel that the admission of Sri.Nadeem Mohammed should be upheld and we do so. 58.W.P(C).1919/15 is filed by the Federation of Self Financing Health Science College Management Association, Kerala and M/s.Devaki Amma Memorial College of Pharmacy. In this writ petition, Exts.P1 and P2 are under challenge. Ext.P1 is a WPC.17328/14 & con. cases 67 communication issued by the Committee to the Registrar of KUHS requesting not to register any list submitted by the Self-Financing Professional Colleges of various streams without the prior scrutiny and approval of the Committee. Ext.P2 is a communication issued by the Committee to 48 Nursing Colleges and to the Association of Management of Self Financing Nursing Colleges of Kerala, directing the colleges to submit documents to establish their right of admission of candidates to the Nursing Courses. Neither Ext.P1 nor Ext.P2 is issued to the petitioners. Therefore, they have no locus standi to challenge Exts.P1 and P2. Secondly, in so far as Ext.P1 requesting the authorities of the KUHS not to register any list of candidates submitted by the Self Financing Professional Colleges of various streams without the prior scrutiny and approval of the Committee is concerned, as we have already explained, section 4(6) of the Act entitles the Committee to supervise and guide the entire process of admission of students with a view to ensuring that the process is fair, transparent, merit-based and non- exploitative. It is in exercise of that power that WPC.17328/14 & con. cases 68 the Committee is requiring the colleges to submit their list of students for scrutiny and approval, prior to its submission to the University for registration. When the colleges fail to comply with that statutory requirement, the Committee is certainly entitled to require the KUHS not to register such students. Therefore, we see absolutely no justification to the challenge raised against Ext.P1 communication issued by the Committee, to the college. Therefore, we do not find any merit in the challenge in this writ petition. 59.Another issue that was hotly contested by the parties is regarding admission to students under the SEBC category. As we have already stated, the thrust of the contentions raised

was that SEBC status should be recognized for educational purposes without reference to income factor. According to the students and the management, what is claimed by the students under this category is not reservation but relaxation of eligibility. This contention has been negated by the Committee mainly by holding that students whose admission has been invalidated by the WPC.17328/14 & con. cases 69 Committee belonged to creamy layer on account of the fact that the income of their family is beyond Rs.6 lakhs limit prescribed by the Government. 60. At the outset, we make it clear that there is no dispute in these cases that the annual income of the families of the candidates concerned is more than Rs.6 lakhs. Although it is true that the private managements have published their own prospectus like the prospectus published by the Commissioner for Entrance Examinations, to be eligible under the general category, the students should have 50% marks in the subjects concerned and those who aspire for admission in the SEBC category, the minimum prescribed is 40% marks. The question that arises in these writ petitions is who is an SEBC and whether such SEBC status is to be recognised only on the basis of their OBC status and without reference to income criteria.

61. Article 15 of the Constitution of India prohibits the State from discriminating any citizen on grounds only of religion, race, caste, sex, place of birth or WPC.17328/14 & con. cases 70 any of them. However, Article 15(4) which was added by the Constitution (First Amendment) Act, 1951, provides that nothing in Article 15 or in clause 2 of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Therefore, it is the State which has been conferred with the discretionary power to take the affirmative action as contemplated under Article 15(4) to make special provisions in the advancement of any socially and educationally backward classes of citizens. It was accordingly that the Government appointed the Justice Kumara Pillai Commission and on the basis of the recommendations of the Commission, issued GO(P) No.208/66/Edn. dated 2.5.1966. Recommendation No.1 and its acceptance by the Government as contained in the Government Order read thus: "(i) Recommendation No.1. Only citizens who are members of families which have an aggregate income (i.e. Income of all members in the family from all sources taken

WPC.17328/14 & con. cases 71 together) of less than Rs.4200/- (Rupees four thousand and two hundred) per annum and which belong to the Castes and Communities mentioned in Appendix VIII constitute socially and educationally backward classes for purposes of Art.15(4). There is no justification in including in the socially and educationally backward classes of citizens, any group of person other than those specified in Appendix VIII. By the term 'family' is meant the applicant seeking admission and his parents. If either of the parents is dead and a grand parent is the legal guardian such guardian also will include in term 'family'. (vide paras 14, 20 and 29 of the report). The statutory provision enabling the State to reserve seats in educational institutions in favour of the socially and educationally backward classes is contained in Art.15(4) of the Constitution. After the Commission collected the data for its report, the cost of living has risen further and the income-tax exemption limit has been raised. Having regard to the current cost of maintenance of a student in a professional or technical institution, Government consider that the income limit of Rs.4,200 suggested by the Commission should appropriately be raised to Rs.6,000 per annum. In the circumstances, Government accept the above recommendation subject to the modification that only citizens who are members of family which WPC.17328/14 & con. cases 72 have an aggregate income (i.e. Income of all members in the families from all sources taken together) of less than Rs.6,000 (Rupees Six thousand only) per annum and which belong to the castes and communities mentioned in the Annexure to this G.O. will constitute socially and educationally backward classes for purposes of Article 15(4)." 62. The income limit prescribed in this Government Order was modified by the State from time to time and when the prospectus was published for the academic year 2014-15, it was specified that candidates belonging to SEBC whose family income is up to Rs.6 lakhs alone are eligible for reservation in that category. In the mean while, this Court rendered the judgment in W.P(C).Nos.29271/12 and 11578/13 on 7.8.2013. In this judgment, referring to the judgment of the Apex Court in Ashoka Kumar Thakur v. Union of India [(2008) 6 SCC1, this Court directed the Government to conduct an independent study on the basis of the principles laid down in Ashoka Kumar Thakur (supra) and evolve a scheme for excluding the creamy layer from the backward classes, taking into consideration the socio-economic and educational

background for WPC.17328/14 & con. cases 73 different communities, including the income derived by the family. It was also ordered that such study may be conducted and shall be implemented during the academic year 2014-15. 63. In compliance with the directions of this Court, the Government entrusted the matter to the Kerala State Commission for Backward Classes to conduct a study on the basis of the principles laid down by the Apex Court and to submit a report for evolving a scheme for excluding the creamy layer from the backward classes for reservation in admission to professional degree courses. The Commission accordingly conducted a study and submitted its report vide its letter dated 15.12.2014. The Government examined the matter and accepted the recommendations and guidelines for excluding the creamy layer from among SEBCs and issued GO(P) No.1/2015/BCDD dated 1.1.2015. In this Government Order, it is ordered thus: "3. Government have examined the matter in detail and considered the report and accept the recommendations and guidelines for excluding the creamy layer among SEBCs for the purpose of WPC.17328/14 & con. cases 74 reservation of seats in admission to Professional degree courses in Kerala as per the terms of reference and order as follows: (i) Annual income of Rs.6 lakhs or above or possession of wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years, is fixed as the criterion for determining the creamy layer. (ii) The guidelines and criteria to be adopted for identifying the creamy layer among SEBCs made by the KSCBC are accepted and shall be observed. (iii) The Creamy Layer criteria applied to SEBCs shall be applied to OECs and children of intercaste married couples as well.

4. The guidelines for excluding the creamy layer among SEBCs mentioned in para 3(ii) above are given in Annexure I to this Order.

5. The list of SEBCs in Kerala for whom Creamy Layer assessment is applicable is shown in Annexure II.

6. The Schedule showing the description of categories of people to whom the rule of exclusion will apply is appended as Annexure III. WPC.17328/14 & con. cases 75

7. The Form of application for the issue of certificate will be as shown in

#### Annexure IV.

8. The form of Certificate to be issued will be as shown in Annexure V.

9. The authority to issue the certificate to candidates who do not belong to the Creamy Layer among SEBCs will be any of the following officers:- (a) District Magistrate/ Additional District Magistrate/ Collector/ I Class Stipendiary Magistrate/ Sub Divisional Magistrate/ Taluk Magistrate/ Executive Magistrate/ Extra Assistant Commissioner (not below the rank of I Class Stipendiary Magistrate). (b) Chief Presidency Magistrate/ Additional Chief Presidency Magistrate/ Presidency Magistrate. (c) Revenue Officer not below the rank of Tahsildar and (d) Sub Divisional Officer of the area where the candidates and/or his family normally resides. 10. The Creamy Layer Certificate should be issued or refused, as the case may be within 7 days of the receipt of the application for such certificate.

11. These orders will apply to all educational institutions owned/controlled by the State Government other than the Institutions governed WPC.17328/14 & con. cases 76 by minority communities under Article 30(1) of the Constitution of India.

12. It is clarified that for the purpose of claiming reservation of seats in professional degree courses, the Government Order read as 4th paper above and related clarifications/ Orders will stand." 64. Annexure to the Government Order containing the guidelines for excluding the creamy layer shows that the recommendation of the Commission was to implement its recommendations from the academic year 2015-16. It appears that therefore, the Government filed IA.4559/15 in W.P(C).29271/12 and this Court passed order dated 30.3.2015 directing that it would suffice that the directions are complied with from the academic year 2015-16. 65. From what we have stated above, it is clear that income was always taken as one of the criteria for identifying creamy layer within OBC category of students for the benefit of concessions that are provided to SEBC from time to time. Whether income should also be a criterion for the identification of WPC.17328/14 & con. cases 77 creamy layer for determining the SEBC category is one issue that requires to be answered. This issue, in our view, need not detain us any longer since *Indra Sawhney v. Union of India* [1992 Suppl (3) SCC217] upheld the exclusion of creamy layer for the purpose of Article 16(4)

and these principles have been applied by the Apex Court in the context of Article 15(4) of the Constitution, in its judgment in Ashoka Kumar Thakur (supra). In that judgment, while answering the question as to what should be the parameters for determining the creamy layer group, the Apex Court made reference to the office memorandum dated 8.9.1993 issued by the Government of India, where, income/wealth test also has been prescribed and it was ordered that the same principle for determining the creamy layer can be followed in the case of reservation envisaged under Article 15 of the Constitution. It was also ordered that it is for the Union Government and the State Governments to issue appropriate guidelines to identify the creamy layer so that SEBCs are properly determined in accordance with the guidelines issued by the court. WPC.17328/14 & con. cases 78 66. In the judgment in W.P(C).29271/12 and 11578/13, this Court had taken note of the above principles laid down by the Apex Court and directed the State Government to conduct an independent study on the basis of the principles laid down in Ashoka Kumar Thakur (supra) and to evolve a scheme for excluding the creamy layer from the backward classes, taking into consideration the socio-economic and educational backgrounds of different communities including the income derived by the family. Therefore, though it is not the sole criterion, income certainly is one of the major criteria to identify the socially and educationally backward categories. This is the background in which even as early as on 2.5.1966, when, on the basis of Justice Kumara Pillai Commission, the Government issued order accepting the recommendations, income was adopted as one of the criteria for identifying creamy layer. As we have already stated, periodically the income limit prescribed was revised by the State Government and by the time the prospectus was issued, the income limit prescribed was Rs.6 lakhs. In the above background, it cannot be argued that income shall not be a WPC.17328/14 & con. cases 79 criterion for determining creamy layer and that SEBC status should be recognized merely on the basis of birth mark. 67.Placing reliance on the Government Order dated 1.1.2015 referred to hereinabove, counsel contended that by this order, various incomes which were reckoned earlier to quantify the annual income were ordered to be excluded and that since the said Government Order was issued in pursuance of the directions in the judgment in W.P(C).29271/12 and 11578/13, which also ordered that the result of

the study conducted shall be implemented with effect from the academic year 2014-15, the students are entitled to the benefit of the Government Order since they were admitted during the academic year 2014-15. Though this contention would sound fair enough, still, when the learned Single Judge has, by the order dated 30.3.2015 in I.A.4559/15, directed that it would suffice that the directions in the judgment are complied with from the academic year 2015-16, such a claim raised before us is totally untenable and cannot be accepted. WPC.17328/14 & con. cases 80 68. One of the contentions in this context was that the power to make regulations governing medical admissions are conferred on the authorities created under the Medical Council of India Act and the Dental Council of India Act. According to the petitioners, regulations governing admissions were quashed by the Apex Court in its judgment in *Christian Medical College, Vellore v. Union of India* [(2014) 2 SCC305. It was also contended that the KUHS, though having such power to frame regulations, have not made any such prescription and that in such a situation, the State cannot exercise its power under Article 162 of the Constitution and prescribe standards including the one relating to identification of creamy layer. This contention again deserves only to be rejected in view of the fact that identification of creamy layer, as held by the Apex Court in the judgment in *Indra Sawhney* (supra) and *Ashoka Kumar Thakur* (supra), is the responsibility of the State Government. In this view that we have taken, it is unnecessary to refer to or deal with the judgment in *Christian Medical College Vellore* (supra). WPC.17328/14 & con. cases 81 69. Apart from the above, we must also state that as rightly pointed out by the standing counsel appearing for the Committee, the petitioners in W.P(C).8331/15, 9218/15, 5166/15 and 5359/15 did not even make a claim for admission in the SEBC category. 70. Yet another issue that was raised by the petitioner in W.P(C).2941/15 where the challenge is against Ext.P7, the order passed by the Committee, is that in this order, the Committee has invalidated admissions made to the lapsed 7 seats. In so far as these admissions are concerned, the Committee proceeded to examine whether these students were admitted after 5 p.m. on 20.9.2014. Thereafter, the Committee has examined the cases of each of the students. Accordingly, in the case of Fouziya Muhammed, admitted on 20.9.2014 with DD No.198565, the Committee found that the college has not stated whether the admission was after 5 p.m. on 20.9.2014. In so far as

Gouri Mohan, Naziya N. and Neethi Das are concerned, the Committee found that they have remitted their fee through demand draft on 19.9.2014 WPC.17328/14 & con. cases 82 which is well before the last seat becomes due under clauses 5 and 8 (e) of the consensual agreement with the Government. It is also stated that there cannot be fee remittance after 5 p.m. on 20.9.2014 as the bank would close the normal business transaction by that time and on this basis, the Committee has found that the aforesaid 4 candidates have been admitted before 5 p.m. on 20.9.2014 when there was no lapsed seat available. The Committee had summoned the Admission Register of the Dental College and found that the lapsed seats entries were seen made at the closing of the Admission Register for 2014-15. On such examination, the Committee found that there were overwritings, corrections and erasures in the Register. It also found that when the demand drafts were drawn and received on 19.9.2014 and 20.9.2014, the receipts showing that cash is received on 30.9.2014 is a contradiction. Accordingly, the Committee concluded that the Dental College had manipulated the records to somehow bring the students under the lapsed seats and on that basis, the Committee rejected and disapproved the admission of the above 4 students. WPC.17328/14 & con. cases 83 71. In so far as the above conclusion of the Committee is concerned, the management has produced before us the Register which was perused by the Committee and the standing counsel for the Committee has also produced photocopies of the extract of the Register retained by the Committee along with her statement dated 30.3.2015. On a perusal of the originals which tally with the photocopies produced by the Committee, we found certain corrections which were concealed with whitener. However, these were inconsequential corrections and the Register therefore should not have been rejected by the Committee on the basis that it contains overwriting, corrections and erasures. 72. We also note that the date of the demand drafts produced by the aforesaid candidates are 19.9.2014 and 20.9.2014 and this is evident from a communication issued by the college to the Committee on 1.10.2014. The records produced by the college also show that the fee was remitted by these students in the college on 30.9.2014 and the receipts issued by the college, photocopies of which were produced, WPC.17328/14 & con. cases 84 show that in the receipts, the DD numbers were also recorded. 73. Further, the college, in its communication dated 1.10.2014, has also informed

the University that these admissions were made on 30.9.2014. In such circumstances, the conclusion of the Committee that admissions were completed before 5 p.m. on 20.9.2014 when lapsed seats were not available does not seem to be factually correct and in any case, such a conclusion could not have been arrived at based only on the date of the demand drafts produced by the students. We, therefore, do not agree with the Committee on its conclusion in so far as the aforesaid 4 students are concerned. 74. We may also record here that no arguments were raised before us in regard to the students who were admitted in the dependants list and which was invalidated by the Committee. In the result, Ext.P8 in W.P(C).26608/14 is set aside and W.P(C).29538/14 is also allowed. Ext.P7 in W.P WPC.17328/14 & con. cases 85 (C).2941/15, to the extent admission of Fouziya Muhammed, Gouri Mohan, Naziya N. and Neethi Das is invalidated, is set aside. In all other respects, the writ petitions are dismissed. Sd/- ANTONY DOMINIC, Judge. Sd/- ALEXANDER THOMAS, Judge. kkb.

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