



ADESH UNIVERSITY

(Established under Government of Punjab Act 6 of 2012)

NH-7, Barnala Road, Bathinda-151001 Punjab (India)

Ph. 0164-2742900, 5055208, 5055000 Fax : 0164-5055255, 2742902

Ref. No. AU/Acad/Admissions-MBBS/BDS-2021/01/2022/ 47

Date: 07-01-2022

To

**The Vice Chancellor
Baba Farid University of Health Sciences
Sadiq Road, Faridkot-151203**

Sub: Admission to MBBS/BDS courses in Medical and Dental Institute in the State of Punjab for the Session 2021 onwards.

1. In reference to the Notification No. 5/5/2021-5HB-III/8191 dated 22.09.2021 issued by Govt. of Punjab Department of Medical Education & Research for Admission to MBBS/BDS for the Admission Session 2021.
2. In this connection, this is to inform you that a representation against the clause No. 14(c) and clause No. 16(i) of the above mentioned notification was submitted to The Director Research and Medical Education, Govt. of Punjab, Chandigarh, the appellate authority in the case vide this office letter No. AU/Acad/Admissions-MBBS/BDS 2021/1579 dated 06.10.2021. Copy of the same is attached herewith for your ready reference.
3. It is requested that the same may please be brought to the notice of the students. A copy of the representation may also be put up on the website of Baba Farid University of Health Sciences for the information of the candidates.
4. In the absence of any reply from the Director, Research and Medical Education Govt. of Punjab Chandigarh, Adesh University will charge the fee from the student as per the prospectus of Adesh University. The fee may accordingly be collected from the students during the counseling.
5. A copy of the prospectus of Adesh University for admission to Under Graduate medical courses, Academic Session 2021-22 which has already been shared with the Principal Secretary, Department of Medical Education and Research vide this office letter No. AU/MBBS/BDS/Admission_2021/06/984 dated 12.06.2021 is also available on the website of Adesh University <https://www.adeshuniversity.ac.in/Admissions.aspx>.

for Adesh University

Registrar

Copy to:

1. Director, Research and Medical Education, Govt. of Punjab, Chandigarh.
2. The Administrative Secretary, Department of Medical Education and Research Govt. of Punjab Chandigarh
3. The Registrar, Baba Farid University of Health Sciences , Faridkot Chairman Admission Committee



ADESH UNIVERSITY

(Established under Government of Punjab Act 6 of 2012)

NH-7, Barnala Road, Bathinda-151001 Punjab (India)

Ph. 0164-2742900, 5055208, 5055000 Fax : 0164-5055255, 2742902

Ref No: AU/Acad/Admissions-MBBS/BDS 2021/1579

Dated: 06.10.2021

To,

The Director Research and Medical Education

SAS Nagar, Mohali

(Appellate Authority for Admission Notification for Admission to
MBBS/BDS Courses).

**Sub: Admission to MBBS/BDS courses in Medical and Dental Institute in the
State of Punjab for the session 2021 onwards.**

Respected Sir,

1. That it is respectfully submitted that the department has issued the notification dated 22.09.2021 whereby the admission process to Under-graduate medical courses for the Session 2021 has been notified. The appellant is filing the present appeal being aggrieved by Clause 14 (C) and Clause 16 (i) of the Notification dated 22.09.2021. (Copy annexed)
2. That firstly qua clause 16 (i) of the Notification, it is respectfully submitted that vide the afore-said clause, 50% seats of the appellant institution has been earmarked Government Quota seats, which is not permissible at all. It is well settled legal position that State Government cannot ask for apportionment of seats in the private unaided seats and have no power to reserve the seats under the head of Government Quota. Reference in this regard can be made to the judgment of



Hon'ble Supreme Court in case of P.A Inamdar versus State of Maharashtra **2005 (6) SCC 537**. The relevant para of the afore-said judgment is re-produced herein :-

106. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

107. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalisation of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional



institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

108. The observations in paragraph 68 of the majority opinion in *Pai Foundation*, on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in *Pai Foundation*, if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter comments and reading the whole judgment (in the light of previous judgments of this Court, which have



been approved in Pai Foundation) in our considered opinion, observations in paragraph 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give free-ships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the state to cater to the educational needs of weaker and poorer sections of the society.

109. Nowhere in Pai Foundation, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or Government quota seats or management seats.

110. We make it clear that the observations in Pai Foundation in paragraph 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.

111. In Pai Foundation, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.



112. For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy to the extent it allows States to fix quota for seat sharing between management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy, in our considered opinion, does not lay down the correct law and runs counter to Pai Foundation.

113.Xxxxxxx.

114. Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1)."

Thus in view of the afore-said observation of Hon'ble Supreme Court of India, the clause 16 (i), whereby 50% seats of appellant institution, which is a private unaided institution, cannot be reserved as Government Quota seats and the said clause is liable to be deleted/rectified and all the seats are liable to be declared as open category seats.



3. That, without admitting the power of State Government to fix fee structure for appellant institute, it is respectfully submitted that vide clause 14 (c), the department has fixed the rigid fee structure for all the private institutions, which is not permissible in view of law laid down by Hon'ble Supreme Court of India in case of PA Inamdar (Supra) and Modern Dental College & Research Centre versus State of Madhya Pradesh, 2016 (7) SCC 353 and it has been further held by the Hon'ble Supreme Court of India in both the cases, the private institution has a right to fix its own fee structure and fixing of rigid fee structure would amount to interfering in the functioning of private unaided institutions, which is not permissible at all. Therefore the afore-said clause i.e. 14 (C) be deleted from the notification qua the appellant and the appellant institution be authorized to fix their own fee structure.
4. That further, though the State has no power to fix fee structure for private unaided institution, however even otherwise also, fee fixed by State/department vide clause 14 (c) of the notification is not sustainable in the eyes of law. Firstly the Government has fixed the fee of 50% Government Quota seats at the rate which is approximately 1/3rd of fee fixed for Management Seats. It is humbly submitted that once in view of afore-said legal position laid down in PA Inamdar judgment (supra), State has no power to claim seats in private unaided institutions then the fixation of fee for 50% seats under Government quota seats is totally impressible, unjustified and is in violation of law of land. Thus it is humbly submitted that no seats under the head of



Government quota can be reserved in the appellant institution and the fee provided in clause 14 (c) for Government quota seats be fixed at the same rate as fixed for Management Quota. So far as the fee of Management quota is concerned, the same has also not been rightly fixed by the department and a rigid fee structure has been fixed for every institution without application of mind and the same has been fixed in mechanical manner, which is also not sustainable in the eyes of law. Further there is no rationale behind fixing the fee structure as provided in clause 14 (c). It is pertinent to mention herein that the Hon'ble Punjab and Haryana High Court, while dealing with another writ petition filed by appellant institution in relation to PG admission has categorically observed that under the 2006 Act, the State has no power to fix the rigid fee structure for all the private institution. The copy of the interim order dated 15.07.2020 passed in CWP No. 7941 of 2020 is annexed herewith. Thus fee provided in the clause 14 (c) has not been fixed rightly and the said clause may kindly be deleted from the notification and further the appellant institution be given power to fix their own fee structure in view of the law laid down by the Hon'ble Supreme Court of India and the orders passed by Punjab and Haryana High Court. It is humbly submitted that the appellant institution is unable to meet their daily expenses at the present fee fixed by the department and will become financial unviable, if the fee is of appellant institution is not fixed to at least Rs. 11, 90,000 with annual



increase of 10% as was being charged by the appellant in the year 2019.

5. That It is pertinent to mention herein that the last year also, similar clauses were added in the notification dated 02.09.2020 issued by Department for under-graduate courses and the same was challenged by the appellant by filing CWP No. 14902 of 2020 titled as Adesh University and another versus State of Punjab and another, wherein while passing the order dated 18.09.2020, the statement of Ld. State Counsel is recorded to the effect that the state is not interfering in the admission to 50% seats reserved for State quota and the admission is to be made as per merit obtained in NEET. Further vide order dated 18.09.2020, the Hon'ble Punjab and Haryana High Court, granted the interim relief to the appellant in the following terms :-

10. *It is directed that in the meanwhile, the Petitioners will be permitted to collect the fee prescribed for the management quota even in respect of the 50% government quota seats, subject to the stipulation that the differential amount qua the government quota seats be kept, within two weeks of the completion of the admission process, in a Fixed Deposit by Petitioner No.2 in its own name, with a copy of the Fixed Deposit Receipt being furnished to the Department of Medical Education & Research, State of Punjab, and with the further stipulation that the said FDR shall not be encashed by the Petitioners till further orders of this Court.*
11. *It is further directed that while granting admission to the students, the Petitioners will inform them that the reduction in the amount of fees prescribed for the previous academic year is the subject matter of challenge by the Petitioners in the present petition, and that the differential fees, if any, payable by the students would be subject to the outcome of the present petition."*



The complete copy of the order dated 18.09.2020 is annexed herewith for your kind consideration.

In view of the afore-said submissions, it is respectfully prayed that the clause 14 (c) of notification may kindly be deleted qua the appellant and the appellant Institution, being an unaided private institution, be given power to fix its own fee structure and further 50% seats earmarked as Government Quota seats as per clause 16 (i), be declared open seats as the State has no right to claim seats in private unaided institution and all the seats be declared as open category seats, to which the admission be made as per NEET.



For Adesh University

A handwritten signature in blue ink, appearing to be 'V. D. Singh'.

Registrar

Enclosures : As above.

Copy to:

- The Administrative Secretary,
Department of Medical Education and Research,
Government of Punjab.