HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 11281 OF 2014

1 Dr. D.Y. Patil Vidyapeeth Deemed
University Trust having office at
Sector No.7, Nerul, Navi Mumbai-400 706.
Through its Chief Administrator
Mr. Pravin N. Patil, Age 58 years,
Having office at D.Y. Patil Dental School
D.Y. Patil knowledge City, Charholi-BK,
Via Lohegaon, Pune-412 105.

2 D.Y. Patil Dental School
D.Y. Patil Knowledge City, Charholi-Bk,
Via Lohegaon, Pune-412 105.
Through its Dean,
Dr. Digesh Barfiwala, Age 49 year,
having office at D.Y. Patil Dental School
D.Y. Patil Knowledge City, Charholi-Bk,
Via Lohegaon, Pune-412 105. ….Petitioners.

Vs.

1 Maharashtra University of Health
Sciences, Nashik, Vani-Dindori Road,
Mhasrul, Nashik, Maharashtra-422003
Having its Regional office at St. George's
Hospital Compound, Mumbai 400 001.

2 Pravesh Niyantran Samiti,
305, Govt. Polytechnic Building, 49,
Kherwadi, Ali Yawar Jung Marg,
Bandra (East), Mumbai 400 051.

3 Director of Medical Education & Research
having office at St. George's Hospital
Compound, Mumbai 400 001. ....Respondents.

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Mr. V.M. Thorat a/w Ms. Pooja V. Thorat for the Petitioners.
Mr. R.V. Govilkar for Respondent No.1.
Mr. S.S. Patwardhan, for Respondent No.2.
Ms. S.S. Bhende, AGP for State.

CORAM : ANOOP V. MOHTA AND
K.R. SHRIRAM, JJ.
DATE : 21 APRIL 2015.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):-

Rule made returnable forthwith. Heard finally by consent of the parties.

2 Petitioner No.1- a Trust, registered under the Bombay Public Trust Act, submitted an application in the year 2011 for 100 students intake capacity to establish a Dental College at Pune- Petitioner No.2. The State Government issued essentiality certificate. The Central Government has also granted permission in favour of the Petitioners for admission of 100 students. However, the same was communicated after cut off date, i.e., 30 September 2014 for admission to the First Year BDS Course and therefore, the Petitioners could not admit the students for the said course. By various orders passed by Delhi High Court and in pursuance to those orders, Maharashtra University of Health Sciences, Nashik- Respondent No. 1,

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granted affiliation on 31 July 2014. By an order dated 26 August 2014, Pravesh Niyantran Samiti (for short, "PNS")-Respondent No.2, even permitted the College to take students from Government Common Entrance Test (for short, “MH-CET”). The Petitioners approached and requested the Department of Medical Education and Research, Mantralaya, Mumbai, and the Director, of Medical Education and Research-Respondent No.3 to list the Petitioner College for admission of students to the BDS course from MH-CET. The said Respondent rejected the said Application, as two rounds of admission were already over and based upon the same colleges were already listed and third round was scheduled to be held on 10 September 2014 and therefore, there was no question of adding the Petitioner's college for Centralized Admission Process.

3 However, by letter dated 6 September 2014, the Petitioners were permitted to issue their own advertisement for admitting the students from MH-CET. The Petitioners issued advertisement in all regional and English Papers in Mumbai, Pune, Nagpur, Aurangabad and Nashik after completion of the round of MH-CET and accordingly, invited applications. The Petitioners received

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application from only 29 students who had passed MH-CET. It was communicated to the Director of Medical Education and Research, Respondent No.3 and PNS- Respondent No.2 on 17 September 2014 with a request to permit taking students from another Common Entrance Test. The Petitioners, on 22 September 2014, admitted 15 NRI Students and 6 students in pursuance to MH-CET. The Petitioners communicated accordingly to PNS and reiterated the earlier request for taking students from Association Common Entrance Test (for short, "ASS-CET"), as the same is permissible and/or at least there is no total bar and also for the fact that PNS from time to time, on case to case basis, based upon certain conditions, was granting such permissions.

4 By communication dated 25 September 2014, the Director of Medical Education and Research-Respondent No.3, informed the college their inability to grant NOC for allowing the College to admit the students from ASS-CET, for want of authority and jurisdiction. Another request was made on 26 September 2014 by the Petitioners to PNS. By order dated 30 September 2014, the request of the Petitioners was rejected. This was the last date as per the Supreme Court order/direction to complete the admission process in such

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courses in the State of Maharashtra along with other States. The students in question, as recorded above, have been already admitted prior to 30 September 2014. The Petitioners, based upon even communication dated 6 September 2014 of the Director of Medical Education & Research-Respondent No.3 permitting them to issue advertisement to invite students to apply for admission for MH-CET and as no students inspite of advertisement and taking effective steps inviting applications, applied to first year course even as of today about 51 seats are still vacant.

5 The State also could not provide the students, though the Petitioners applied to follow and/or opted for the students from MH-CET. Even otherwise, after advertisement, no other students applied from the MH-CET. However, the Petitioners received application from the students from ASS-CET and accordingly, 29 students came to be admitted as recorded above, apart from 12 NRI and 6 students from MH-CET.

6 The Maharashtra University of Health Sciences, Nashik-

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Respondent No.2, by communication dated 1 November 2014, for academic year 2014-15 for the first year students in question, refused registration and eligibility to appear for the examination, for want of specific permission/order from PNS, as those 29 students have been selected from the ASS-CET list and not from MH-CET. The Petitioners, therefore, filed this Writ Petition on 13 November 2014 and prayed for various reliefs, revolving around the rights of these 29 students.

7 Respondent No.3-Director of Medical Education and Research, Mumbai, by an affidavit-in-reply dated 26 March 2015 reiterated as under:-

> *"1. I say that in para no. 233 from Islamic Academy of Education and Anr. V/s. State of Karnataka & Ors. the Hon'ble Supreme Court of India, directed the State Government to appoint committee for monitoring admissions to professional courses in unaided private colleges. In the said para, powers of the said committee were also mentioned. Pursuant to the said directions given by the Hon'ble Supreme Court of India, the State Government issued a Government Resolution dated 24.09.2003 whereby Pravesh Niyantran Samit [PNS] AND Shikshan Shulka Samiti [SSS] were formed and their duties and powers were mentioned.*
>
> *I categorically say that after formation of Pravesh Niyantran Samiti [PNS] in the year 2003, the State Government is not a monitoring/controlling authority for regularization of admission to the professional*

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courses in the State of Maharashtra.

I say that decision of Pravesh Niyantran Samiti is proper. Therefore Government has agreed with decision taken by the Pravesh Niyantran Samiti."

8 Petitioners have also filed additional affidavit dated 6 April 2015 in support of their submission, by referring also to a letter dated 26 September 2014, issued by the Director of Medical Education and Research to PNS to consider the case of the Petitioners' students and averred as under:-

"3. I further say that the Respondent Pravesh Niyantran Samiti replied both the letters dated 17.9.2014 and 26.9.2014 by letter dated 20.10.2014 which was received by Petitioner College on 7.11.2014. The reply dated 20.10.2014 are annexed to the Writ Petition on page nos. 26 to 29. I respectfully state that in none of those letters the Petitioner College was made to understand that in case the NOC is produced the students could be admitted through another CET. I further say that the decision taken by the Pravesh Niyantran Samiti on 20.9.2014 and shown to the Court on today i.e. 6.4.2015 was never communicated to the Petitioner College and therefore, it is after thought. I further state the decision dated 20.9.2014 which was shown to the Court is in relation to the letter of Petitioner College dated 17.9.2014. However, the Pravesh Niyantran Samiti expressly replied this letter dated 17.9.2014 to the Petitioner College on 20.10.2014 which is on page nos. 26 of the Writ Petition and there is a vast difference between the letter produced before this Hon'ble Court and the reply given to the Petitioner. I say that in short documents produced before this Hon'ble Court today dated 14.9.2014 is not served on Petitioner

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College."

"4. .....The College in their own right admitted 12 students from NRI quota and the Pravesh Niyantran Samiti and the University is taking no objection against these 18 seats. Since there is no response to the advertisement issued by the Petitioner College, 29 students from another CET were taken and admitted to the BDS course and Maharashtra University of Health Sciences and Pravesh Niyantran Samiti have taken objection to such admissions of 29 students of another CET. The Pravesh Niyantran Samiti now changed its stand and tried to argue before this Hon'ble Court that if list of MH-CET is exhausted, there is no problem in approving such list of 29 students who are admitted through Association CET. I say that when there was no response to the advertisement issued by the Petitioner College from MH-CET students that itself is an indication that the students from MH-CET are not interested in pursuing the BDS Course. The aforesaid facts prove that there is no claimant from MH-CET and therefore, list is exhausted. I further say and submit that even the Director of Medical Education and Research by its proposal dated 22.9.2014 requested the Pravesh Niyantran Samiti to take appropriate decision in the case of Petitioner College. The said letter dated 22.9.2014 is self explanatory and indicated that MH-CET list is exhausted. I further say that even the Government Dental College and Nair Dental College of Bombay Municipal Corporation did not get adequate students and the same is also indication that MH-CET list is exhausted."

9 PNS-Respondent No.2, by an affidavit through the Desk Officer, resisted the claim of the Petitioners on 8 April 2015, referring to para 16 of Supreme Court Judgment in the case of *Islamic Academy*

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of Education Vs. State of Karnataka[1] and also averred as under:-

> *"4. I, however, say that since the petitioners had represented that they did not get adequate number of students from the State CET list, and keeping in view their request, a decision was taken to permit the petitioners to admit students from Association CET, subject to two conditions namely I) that the petitioners must get an NOC from the respondent no.3, Director of Medical Education, which would satisfy the respondent no.2 Samiti that the list of the students, who have passed the MH CET is exhausted; & ii) the petitioners comply with the schedule of admissions. I say that the said decision was communicated to the representatives of the petitioners.*
>
> *5. I say that the petitioners had accordingly applied to the respondent no.3 for necessary certification. They have however, failed to get the same certified from the respondent no.3. The respondent no.3 is an invitee member of the respondent no.2 committee and was present in the meeting dated 29.9.2014, where the decision impugned in this petition is taken by the respondent no.2. The petitioners have not produced any material before the respondent no.2 committee to show that the list of students, who had passed the MH CET is exhausted. They have not been able to satisfy the committee that the list is indeed exhausted. The Committee was willing to permit the petitioners to take students from the Association CET, if the petitioners satisfied the Committee that the list of students, who have passed the State CET is exhausted, and therefore, there is no possibility of any student, whose name is included in that list, suffers because of the admission done by the petitioners from the Association CET. But the petitioner could not produce necessary documents. I say that I have placed before this Hon'ble Court the relevant record in that regard during the course of hearing on*

1 2003 (6) SCC 697

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> *6.4.2015. The same is annexed herewith and marked as* ***Exhibit 1****.*
>
> *6. In so far as the cases of Tatyasaheb Kore Warana College and Y.C. Memorial Colleges' cases are concerned, there is no parity between them and the petitioners. Firstly they have sourced their students from the Association CET. Secondly, they have placed before the respondent no.2 committee sufficient material to prove that the list of students of Association CET is exhausted and that there are no students available to admit except from the other CET namely MH CET. Thirdly they are postgraduate colleges, where admissions are done of graduate doctors, who have been screened through the process of admissions at undergraduate level also. The petitioners reliance on the permissions granted to the said two colleges is thus misplaced."*

10 PNS-Respondent No.2, referring to the Petitioners Application insisted the merit lists from the MH-CET, by relying upon para 16, [*Islamic Academy of Education (Supra)*]. The relevant extract is as under:-

> *"We thus told that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test*

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conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit List."

11 Director of Medical Education and Research-Respondent No.3, after due discussion, in support of their contention filed an additional affidavit dated 15 April 2015 and reiterated as under:-

"9. I categorically say that from the entire correspondence mentioned above, it is crystal clear that PNS is the only authority to grant permission to the Petitioner college and to give them approval to fill up vacant seats from more than one CET and the same is not within the purview of the State Government and D.M.E.R.

In the present case, admissions to dental course were conducted at institute level by the Petitioner college hence, the State Government and D.M.E.R. is not in a position to make a statement and issue No Objection Certificate to the effect that "MH-CET list of students who applied to the Petitioner is exhausted."

10. I say that averments made in para no.4 of the Affidavit filed by PNS is not in consonance with the minutes of the meeting held by PNS which is at page 27 and 29 to the petition.. In the said meeting it was decided that the petitioner college should be permitted to fill up vacant seats through one CET only i.e. MH-

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CET. I say that admissions for Dental course in the petitioner college was done at institute level. Hence it is only the petitioner college was done at institute level. Hence it is only the petitioner institute who can confirm that State list of candidates who had applied to the petitioner college directly is exhausted.

I respectfully say that DMER would have given such No Objection Certificate had it been allotment of students to the petitioner college though CAP round and as name of the petitioner college was not included in preference form filling process, DMER is not the authority to issue No Objection Certificate certifying that State list has been exhausted.

I say that PNS has been constituted pursuant to the directions given by the Apex Court and it is mandatory for the State Government as well as DMER to implement the orders passed by PNS and it is not vice-versa.

11. I say that letter dated 22.9.2014 issued by DMER to PNS which is annexed to the affidavit filed by the petitioner at Page-41 is neither a recommendation nor No Objection Certificate but by the said letter PNS was requested to take appropriate action for giving permission and approval to the petitioner college to fill up vacant seats through Association CET after exhausting list of MH-CET students."

12 Strikingly, and considering the earlier orders so read and referred passed by PNS in other matters and even otherwise after reading the Judgment of *Islamic Academy of Education (Supra)* including paragraph so reproduced above, there is no total bar to have a Common Entrance Test conducted by the Government only and not

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by the other Associations. The requirement is, the parties must give its option between either of these tests and it must be exercised before issuance of prospectus and after intimation to the concerned Authority and the Committee set up, thereafter. The college must choose to admit the students from the list which it had opted for. If any professional college chooses not to take the students from the Common Entrance Test conducted by the Association, then they must be able to necessarily admit students from Common Entrance Test undertaken by the State. The selection of students must be on the basis of merit, as per the merit list. Every year regularly such types of tests are conducted by Association, as well as, the respective States, as per the agreed option, such colleges proceed to admit the students. The Respondent-State, therefore, is also under obligation to follow and prepare the list of students, after test and declare accordingly on their respective websites. The student, one who desires to get admission in a particular colleges as listed, opts for the said college. The State Government, based upon the list so finalized, proceed to hold counseling to filter the students and allot them to their respective chosen colleges. The State Authority, as directed and decided, proceed to hold final counseling also. Thus, the vacant seats, if are

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available, they again publish the list of colleges and respective vacancies, then the students can again apply within the time so fixed, so that, further steps can be taken to admit the students even after last round. The Authorities, thereafter, and specifically after expiry of the cut-off date, as declared by the Supreme Court and even otherwise as agreed, cannot even take further steps. However, before the published cut off date, students may apply and opt for admission in the Institutes/colleges, where seats were still vacant. The colleges are also required to admit those students as it is listed through MH-CET list, but thereafter if no student applied for the respective colleges, where vacancies still remain, everybody is helpless. The State list get exhausted. Such state of vacant seats is an every year problem. The State Authority cannot do anything with the vacancy list after due date. There is nothing on record to show that the said Authority can compel and/or direct the students, who have not opted for a particular college of which the vacancies are published, after last round, to join the said college. It is ultimately, the students' option and decision to apply for particular college and based upon the merits, the Authority needs to proceed and not otherwise. The State Authorities, thereafter having no jurisdiction and/or power to deal

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with the list of such students, including the vacant seats so available in the respective colleges, though listed and/or not listed. Those respective colleges, therefore, are required to deal with their vacant seats by following the other procedure and/or mechanism available to fill in the vacant posts.

13 In the present case, the last/final round was conducted and list was declared on 17 September 2014. As per the Supreme Court order, 30 September 2014 was the cut off date for the admission to these courses. This covers the admission of aided, non-aided, Government and/or non-government colleges and/or institutions. PNS is the Authority, as recorded above, that deals with the situation where seats are still vacant and the students from MH-CET, as well as, the students from ASS-CET are available and the respective colleges, where the seats are still vacant, applied for permission to admit those students from other list than to those the college had opted for. In the present matter, PNS insisted on obtaining a NOC from the State Authority. The Petitioners' students are eligible for appearing in the examination after due affiliation by the Maharashtra University of Health Sciences, Nashik-Respondent No.1. There is no serious issue so

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far as the University is concerned about permitting the Petitioners' students to appear in the examination and for grant of registration, except permission from PNS.

14 The requirement of NOC needs to be considered based upon the scheme and object of exhausting MH-CET list and deal with the vacancies of the respective colleges, which are large in numbers, in the background where the students are willing to apply and/or volunteer to complete the course in other colleges, based upon their requirement and need and so also the location. The Petitioners, as recorded above, received Applications from students of ASS-CET within time. PNS also, in various matters, in the interest of students and as there is no total bar, permitted such colleges to admit such students from ASS-CET list and others, subject to certain conditions. Therefore, as per the practice and as the mode is available and even recognized by PNS, the college as seats were vacant, admitted provisionally the students from the other CET, i.e., ASS-CET. The State Authority, therefore, has no further power and jurisdiction to interfere with such decision of PNS and/or no further power to direct the students, even from meritorious candidates from MH-CET, as the

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students themselves did not opt to get admission in these colleges. It is ultimately, the college, who has to declare and point out that even after last round the seats are vacant and therefore, they have no choice, but to admit the students from other CET. The college has admitted such students, as no other mode was available to fill the sanctioned vacant seats based upon the sanction/approval granted by the Council/Authorities including Medical Council. Such seats could not be kept vacant inspite of available infrastructures and the facilities. The students from MH-CET list, though meritorious unwilling to join the other colleges, in our view, the MH-CET list so contemplated, needs to be treated as exhausted. The State Authority, inspite of undertaking/willingness by the Petitioners to accommodate the students, could not forward any students. The State Authority could not provide meritorious students from the MH-CET-2014 to the Petitioners. The Petitioners therefore, have no choice but to admit the students from the other CET list.

15 There is no provision and/or rule and/or judgment to support the contention and/or submission of the learned counsel appearing for PNS that the NOC so contemplated, is requirement of

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law. The Supreme Court judgment so referred above, is also silent on the issue and so also on the issue of how to deal with the vacant seats in the present scenario, where the seats are vacant every year inspite of the competition in such field. The students from both the lists are available, but they have not opted for these colleges. Some students, opted for these colleges within the prescribed period, based upon these two lists (MH-CET and ASS-CET). The Petitioners and/or such colleges, in our view, if admitted those students and if are otherwise eligible, insistence of NOC from the State Government by PNS, to place on record NOC for exhaustion of list of MH-CET, in the background, in the present facts and circumstances, was uncalled for.

16 Therefore, taking overall view of the matter and considering the urgency so expressed by the learned counsel appearing for the Petitioners and as even otherwise, the First Year BDS Examination will commence in last week of May 2015, and as the last date for filing the forms is already crossed, we are inclined to permit the Petitioners to approach PNS not later than 27 April 2015 with all the necessary recourse, additional details, if required in support of their submission for the requisite permission by PNS. Once we come

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to the conclusion, as recorded above, that the NOC and/or any certificate referring to exhaustion of MH-CET is not required in the facts and circumstances, and as PNS in the affidavit and even otherwise, already submitted to the Court that except for NOC, they have no objection to grant the permission, therefore, as condition of NOC, in view of above is not necessary and/or required, the PNS to reconsider the additional Application to be filed by the Petitioners, as early as possible, by completing other formalities, if any, within one week from receiving the same.

17 The Maharashtra University of Health Sciences, Nashik-Respondent No.1, in view of the reasons so recorded, are also directed to accept the examination forms/applications and issue requisite hall tickets to the Petitioners' students, once PNS has cleared and/or granted the permission as prayed for. In this background, and as the Petitioners have filed this Petition even before the last date of the submission of the forms and as the Petition is pending for hearing and now for the reasons so recorded above, the insistence for paying any late fees has to be waived. The Maharashtra University of Health Sciences, Nashik-Respondent No.1, to accept the forms without late

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fees, but with requisite examination fees, as required, submitted by the Petitioners and proceed to issue necessary permission/hall tickets and allow the Petitioners' students to appear in the examinations.

18 We are inclined to observe that the respective higher council/Authority and the State of Maharashtra, need to consider to frame some policy to see that the vacant seats of all courses, to be filled in before closing of the admission process, as per the dates so prescribed by the Supreme Court. If there is no bar, the students from all CET, subject to following the basic procedure and formality, need to be permitted to admit by the colleges/institutions, where the seats are vacant. It is not in the interest of any one, including the students and people at large to keep the seats vacant and get it lapsed in the respective year itself. For this, if required, apart from an additional policy, constitute a Competent Authority to deal with such situation covering every stage of aided and unaided colleges, admission process till the exhaustion of such vacancy from every CET (MH-CET and/or ASS-CET and other CET).

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19 For the reasons so stated above, we are inclined to pass the following order:-

ORDER

a) Communication/minutes dated 29 September 2014 (Item No.7) is set aside, so also (Item No.12(a)) dated 29 September 2014 only to the extent of rejecting Application of the Petitioners for other CET.

b) The Petitioners are permitted to approach PNS and file Application not later than 27 April 2015 and PNS to reconsider the said Application, as early as possible, preferably within one week from receiving the additional Application.

c) Communication of the Maharashtra University of Health Sciences, Nashik dated 1 November 2014 referring to 29 students of ASS-CET, is set aside.

d) The Maharashtra University of Health Sciences, Nashik, to accept the forms without late fees, but with requisite examination fees and to issue

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necessary permission/hall tickets and allow the Petitioners' students to appear in the examination.

e) Writ Petition is accordingly allowed to the above extent.

f) Rule made absolute accordingly.

g) There shall be no order as to costs.

The parties to act on the basis of an authenticated copy of this Judgment.

(K.R. SHRIRAM, J.) **(ANOOP V. MOHTA, J.)**

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