COUNSELLING SCHEME OF ALL INDIA QUOTA FOR NEET-Super Specialty (DM/MCh. And DNBSS) -2024

DISCLAIMER:

a) All questions in the scheme of counselling are mandatory in nature and not optional. Candidates are advised to go through these important questions related to the scheme of counselling before registering on MCC website, in order to understand the scheme of counseling.

b) Candidates are deemed to have read, agreed and accepted the Scheme of Counselling and the terms and conditions of the counselling scheme for NEET-SS Counselling on completing the online submission of application/registration form.

c) Application for NEET – SS Counselling can only be submitted online through Medical Counselling Committee website www.mcc.nic.in. Application submitted through any other mode shall be summarily rejected.

d) Candidates are further advised to fill the application form on their own on the mcc website.

e) A candidate can submit NEET-SS Counselling application form only once. Any candidate found to have submitted more than one application/registration form for NEET-SS Counselling shall be debarred from NEET-SS Counselling allotment process, his/her candidature shall be cancelled and further action as deemed appropriate by the MCC of DGHS, MoHFW shall be taken.

f) The Security Deposit will be forfeited if a candidate who has been allotted a seat in any of the Round(s) does not join the respective institution or surrender the seat due to any unforeseen reason. Also the Security Deposit will be forfeited if the admission gets cancelled due to any reason. E.g. in case the candidate gives wrong information at the time of registration on the basis of which a seat may be allotted and later cancelled by the Admission Authorities at the time of reporting or fails to produce the required documents at the time of admission (within stipulated time).

g) Candidate may kindly note that registering for NEET-SS Counselling, does not confer any automatic rights to secure a Super Specialty seat. The selection and admission to Super Specialty seats in any medical Institution recognized for running Super Specialty courses as per Indian Medical Council Act, 1956 is subject to fulfilling the merit, admission criteria, eligibility, and such criteria as may be prescribed by the respective universities, medical institutions, Medical Council of India, State/Central Government.

h) Candidate should ensure that all the information filled during the online submission of application/registration form is correct and factual. Information provided by the candidates in the online application/registration form shall be treated as correct and self-certified and MCC shall not entertain, under any circumstances, any request for change in the information provided by the candidates.

i) MCC does not change/ edit /modify/alter any information entered by the candidates at the time of online submission of application/registration form for Counselling under any circumstances.

j) The information regarding age and other eligibility criteria Stipend /fee structure/ course duration / bond amount / rendering of service in rural / tribal area/other conditions etc. has been provided by Medical Colleges. MCC/ DGHS takes no responsibility regarding the above information including Fees/ Bond/ Mode of Payment or any typographical error/ data etc. Candidates are advised to visit College website or contact the College Authorities directly for any query regarding above information before filling choices. Choices once locked cannot be modified and any request to MCC/DGHS regarding tinkering of choices will not be entertained.

k) Candidates are advised to confirm the fee structure/ any other additional fee from the colleges especially Deemed Universities before filling up choices for the same. Some All India Quota colleges might have high fee structure, therefore confirmation about the fee should be made before hand, MCC of DGHS takes no responsibility for the fee structure of the colleges and will not entertain any request or complaint regarding Fee Structure. The above information may be confirmed by the candidate before filling the choices.

l) The candidates opting for the AFMS (Armed Forces Medical Services) institutions are

advised to confirm the Age and other eligibility criteria, seats and recognition status in these institutions, process of admission & medical examination, surety bond, fee structures etc. directly from the AFMS intuitions authorities. The MCC/DGHS takes no responsibility regarding the above information regarding the AFMS.

m) The MCC, DGHS reserves its absolute right to alter, amend, modify or apply any or some of the instructions/ guidelines contained in this information bulletin.

n) In case of any ambiguity in interpretation of any of the instructions/ terms/ rules/criteria regarding the determination of eligibility/conduct of counselling/ registration of candidates/ any information contained herein, the interpretation of the MCC, DGHS shall be final and binding in nature.

o) Candidates are advised to be in touch with the MCC website (www.mcc.nic.in) for Schedule / latest updates / Results / Notices / News & Events pertaining to counselling as MCC /DGHS will not be individually contacting the candidates for the same.

p) No communication will be directly sent to the Candidate(s). They are advised to be in touch with the website on regular basis for any updates.

q) Mobile number/email id used by the Candidate(s) during registration on NBE website will be utilized for MCC counselling.

r) Court cases w.r.t. counselling must be in Delhi jurisdictions area.

***

LIST OF ABBREVIATIONS

1. AIQ- All India Quota
2. Anr. - Another
3. DGHS- Directorate General of Health Services
4. DNB-Diplomate of National Board
5. D.M- Doctor of Medicine
6. EWS- Economically Weaker Section
7. J & K- Jammu & Kashmir
8. MCh. - Masters of Chirurgiae
9. MCC- Medical Counseling Committee
10. MoHFW- Ministry of Health & Family Welfare
11. NBE- National Board of Examination
12. Ors. - Others
13. SS- Super Specialty
14. V/s- Versus
15. W.P. – Writ Petition

INDEX

CHAPTER1- INTRODUCTION

i. NEET SS Counselling

As per the directions/ instructions of the Ministry of Health & Family Welfare, Govt. of India vide letter no. V.26012/02/2016-MEP (Pt) dated 04-05-2017 the MCC of DGHS is conducting the Online Counselling for allotment of Super Specialty (DM/M.Ch) seats in all Medical Educational Institutions of the Central and State Governments, Deemed Universities established by an Act of Parliament/Act of State or Union Territory Legislature or by a Municipal Body, Trust, Society, Company or Minority Institutions.**ANNEXURE-1**

Vide MCI gazette notification No. MCI-18(1)/2017-Med./128371 dated 31st July, 2017, the DGHS is the Designated Authority for counselling for the 50% All India Quota seats of the contributing States, as per the existing scheme for Diploma and M.D./M.S. courses. Further, the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India shall conduct counselling for all postgraduate courses [Diploma, M.D. /M.S., D.M. /M.Ch.] in Medical Educational Institutions of the Central Government, Universities established by an Act of Parliament and the Deemed Universities. Furthermore, the Directorate General of Health Services shall conduct the counselling for all Super specialty courses (D.M./M.Ch.) in Medical Educational Institutions of the Central Government, Medical Educational Institutions of the State Government, Deemed Universities, Universities established by an Act of Parliament, Universities established by an Act of State/Union Territory Legislature, Medical Educational Institutions established by Municipal Bodies, Trust, Society, Company or Minority Institutions. **ANNEXURE-2**

Vide letter no. NBE/C&R/2019/1770 dated 28.06.2019, NBE requested MCC of DGHS to conduct a common counselling for admission to both DNB Super specialty & DM/MCh courses from 2019 onwards in order to minimize loss of precious post-doctoral seats in either of these streams. **ANNEXURE-3**

The scheme of Counselling was modified by the Hon'ble Supreme Court of India vide order dated 18.01.2016 in "I.A. no. 7 & 8 in Writ Petition (Civil) no.76 of 2015 in the matter of Ashish Ranjan & Ors. V/s UoI &Ors.and it was directed that, there shall only be two rounds of AIQ counselling. **ANNEXURE-4**

ii. Role of MCC in NEET

1. The MCC/DGHS will be doing Counseling for 100% AIQ counselling for NEET SS. The role of MCC of DGHS is limited to allotment of seats to the participating candidates, as per their merit, choice& eligibility, which starts only after receiving the list/data/Information of successful candidates from National Board of Examination i.e. the NEET (SS) examination conducting body.
2. Vide order dated 16/03/2022 by the Hon'ble Supreme Court of India in W.P. (C) No. 53 of 2022 in the matter of N. Karthikeyan & Ors. v/s State of Tamil Nadu & Ors.; **50% reservation for In-Service candidates will be provided in the State of Tamil Nadu for the academic year 2021-22**. Hence, the **Counselling for In-service Candidates will be conducted by Tamil Nadu State**.

CHAPTER 2- 100%ALL INDIA QUOTA

There will be three rounds of SS AIQ online counseling i.e. Round 1, Round 2 and Stray Round. All candidates who have qualified for All India Quota seats on the basis of their rank in NEET SS conducted by the National Board of Examination (NBE)will be eligible. Eligible candidates may download the Rank letter/ Result from NBE website.

ROUND-1

a) Main counseling Registration which will include payment of Non-Refundable Registration fee and Refundable Security Deposit (to be refunded only in the account from which payment has been made).
b) Exercising of Choices and Locking of choices.
c) Process of Seat Allotment Round-1
d) Publication of result of Round-1on MCC website
e) Reporting at the allotted Medical College/institute against Round-1.

ROUND-2

(Candidates who registered for Round-1 and did not get any seat allotted are not required to register again.)

a) Fresh New Registration for Round-2 for those candidates who
   - Have not registered in Round-1 (with full payment of fees).
   - Have Not reported in Round-1 will have to register again (with full payment of fees).
b) Fresh Choice filling Round-2.
c) Process of Seat Allotment Round-1
d) Publication of result of Round-2 on MCC website.
e) Reporting at the allotted Medical College/institute against Round 2.

***Round-2 will be an Upgradation Round. Candidates desirous of upgrading their seats from Round-1 will have to exercise fresh choice filling to upgrade in Round-2**

STRAY ROUND

Subject: Eligibility for Stray Round of SS Counselling 2024

A. Who are eligible for Stray Round of SS Counselling 2024

Group–I: Registered candidates who did not get any seat allotted during Round-1 or Round-2.

Group–II: Candidates who have not reported at the allotted institute during Round- 1 or Round-2 and taken exit with forfeiture option. Such candidates are eligible for participation in Stray Round of the counselling by making fresh payment (registration and security deposit).

Group–III: Candidates who did not register in earlier rounds and are registering for the first time in Stray Round.

B. Who are not eligible for Stray Round of SS Counselling 2024

Group- I: Candidates who are holding a seat in Round-1 or Round-2 of All India counselling and have obtained seat in Tamil Nadu State Counselling.

Group- II: Allotted candidates of Round-2 will not be able to participate in Stray Round.

CHAPTER 3- RESERVATION POLICY

1. There is **NO RESERVATION** in Super Specialty (D.M./M.Ch./DNB) courses in compliance of the Direction of Hon'ble Supreme Court in:

   i. W.P. (c) 290/1997 Preeti Shrivastava& Anr Vs State of Madhya Pradesh &Ors on 10th August 1999) and; **ANNEXURE-5**

   ii. W.P. (c) 444/ 2015 Dr.Sandeep and Ors.Vs Union of India and Ors. **ANNEXURE-6**

   iii. However, vide interim order dated 16/03/2022 by the Hon'ble Supreme Court of India in W.P. (C) No. 53 of 2022 in the matter of N. Karthikeyan & Ors. v/s State of Tamil Nadu & Ors.; **50% reservation for In-Service candidates will be provided in the State of Tamil Nadu for the academic year 2021-22**. Hence, the **Counselling for In-service Candidates will be conducted by Tamil Nadu State**. **-ANNEXURE-7**

   iv. **C.A. 9289 of 2019 in the matter of Dr. Tanvi Behl vs Shrey Goel & Ors.**:

   > *32. The law laid down in Jagadish Saran and Pradeep Jain has been followed by this Court in a number of decisions including the Constitution Bench decision in Saurabh Chaudri. We may also refer here judgments such as Magan Mehrotra and Ors. v. Union of India (UOI) and Ors. (2003) 11 SCC 186, Nikhil Himthani vs. State of Uttarakhand and Others (2013) 10 SCC 237, Vishal Goyal and Others v. State of Karnataka and Others (2014) 11 SCC 456 and Neil Aurelio Nunes (OBC Reservation) and Others v. Union of India and Others (2022) 4 SCC 1, which have all followed Pradeep Jain. Thus, residence-based reservations are not permissible in PG medical courses.*

   ANNEXURE-8

- ❖ The details submitted by candidates such as e-mail, Address and Mobile Number provided in the Online Application Form of NBE will be pre-populated in the Registration form on the MCC portal for Counselling. Hence, candidates must ensure that they maintain the same contact details as provided in NBE form and the E-mail ID and Mobile number remains active.
- ❖ The Candidate(s) are advised to be in touch with the MCC website on regular basis for any updates as the MCC will not individually communicate to the Candidates to inform regarding the updates.
- ❖ Any complaint with regard to the change of registered mobile number or email address shall not be entertained by the MCC of DGHS, MoHFW.

CHAPTER 4- REGISTRATION & COUNSELING PROCESS

Qualified candidates are required to register on the MCC website i.e. www.mcc.nic.in to participate in the counselling process for allotment of seat.

Q. No. 1: What is the process of online allotment?

Ans.:

a) Round 1 Registration which will include payment of Non-Refundable Registration fee of Rs. 5000/- (Rupees Five Thousand only) and refundable security deposit fee of Rs 2, 00,000/- (Rupees Two Lakh Only).
b) Exercising of choices and locking of choices.
c) Process of Seat Allotment Round-1.
d) Publication of result of Round-1.
e) Reporting at the allotted Medical College against 1st Round.(The Refundable Security Deposit of Rs. 2 Lakhs of candidates who have been allotted a seat in Round-I but do not join the allotted seat will be forfeited by MCC/DGHS).
f) **Fresh/New Registration (Round-2)** for the candidates who have not registered in the Round-1 of counselling and willing forfeited candidates of Round-1 who want to participate again in Round-2 by re-registering and paying the requisite counselling fees.
(Already registered candidates of Round-1 and candidates who were not allotted any seat in Round-1 need not to register again. Such candidates shall proceed with the candidate login directly for choice filling of Round-2).
g) Fresh Choice filling of Round-2.
h) Process of Seat Allotment Round-2.
i) Publication of result of Round-2.
j) Reporting at the allotted Medical College against Round-2.
k) Last date up to which students can be admitted/joined against vacancies arising due to any reasons for this year : as per schedule uploaded on MCC website.

Please note that registration facility and choice filling shall be available on notified dates as per schedule. Under no circumstances any request (for any reason) for re opening of registration or choice filling, shall be entertained after closing of the same. Candidates are advised to go through the schedule uploaded on the website of MCC.

Q. No.2: When will online allotment process for this year start?

Ans.: Online allotment process will start as per counselling schedule for National NEET Super specialty/ DNB SS online counselling.

Please see schedule available on www.mcc.nic.in.

Q. No.3: Do I have to report to any Counselling centre for registration or choice filling?

Ans.: No, Online registration and choice filling can be done from place of convenience (including from home) using internet. Candidates are advised not to use mobile phones for registration and choice filling purposes. Registration may be done by candidates using desktop, laptop, I-pad etc. having internet connectivity.

Q. No.4: Do I require any documents to get registered on-line?

Ans.: You will be required to fill up some of the information that you have provided (filled up) at the time of submitting application form to National Board Examinations (NBE), New Delhi and information available on admit card provided by NBE.

IMPORTANT

"Please keep information that you have furnished (filled up) on application form and admit card, confidential, and do not share it with anybody as this information will be required to register for online allotment process and to submit choices. If somebody else uses that information, he/she can misuse your online registration and prevent you from taking part in online allotment process. Keep print out of application form ready for reference with you."

Q. No.5: What information do I require for online registration?

Ans. : Please note that you will be asked to fill some of the information (we are not showing it here for security reasons) that you have provided in your application form, admit card of examination during online registration and provided by the examination conducting agency, (NBE) therefore keep a copy of your application form and admit card ready for reference. These documents may be retained as they may be required till you complete your Super Specialty course.

IMPORTANT

"Please note that on registration window of online allotment process, you have to fill in exactly same spellings, Date of Birth etc. as you have filled in your Application Form. Software will not accept any other spellings other than those filled in the form."

Q. No.6: How do I get password for logging in?

Ans.: During the process of online registration you will generate your own password. Candidates are advised to keep the password that they have created, confidential to them till the end of the counseling process. They can change the password after creating. Password is very important for participating in online allotment process. Sharing of password can result in its misuse by somebody else, leading to even exclusion of genuine candidate from online allotment process.

Q. No.7: How much time will I be given to join the allotted course?

Ans.: Candidates allotted seats will be required to join the allotted college/course within stipulated time from the date of allotment as mentioned in Counselling schedule. However, candidates are advised to join as early as possible and not to wait for last day of joining, due to different schedule of holiday/working hours in various Medical Colleges, also keeping in view that Medical colleges will have to furnish information about joining/non-joining online to Medical Counselling Committee. In some of the colleges it takes 2 to 3 days' time for completion of admission formalities.

Q. No.8: What documents are required at the time of Counseling?

Ans.: Since it is online allotment (Online Counselling) process, no documents will be required for participating in online allotment process. However, you are required to carry Original Certificates/Documents at time of Reporting for Admission against the allotted seat.
Without original Certificate/Documents candidates will not be allowed for admission at the time of reporting.

Q. No.9: What documents are required at the time of joining in allotted Medical College?

Ans.: Original documents required at the time of joining in allotted Medical College are as mentioned below:

- Provisional Allotment Letter issued by MCC
- Admit Card issued by NBE
- Result/Rank Letter issued by NBE
- MBBS Degree Certificate/Provisional Certificate.
- MD/MS/DNB Degree Certificate in the concerned Specialty.
- Permanent Registration Certificate of MBBS/MD/MS/DNB issued by MCI or NBE/State Medical Council. Students who have completed/are completing post-graduation by 30th April, of the year of admission are eligible to apply with provisional certificate.

The cutoff date for qualifying MD/MS/DNB Broad Specialty for appearing

in NEET-SS counselling s2024 shall be 30th April 2025.

- High School/Higher Secondary Certificate/Birth Certificate as proof of date or birth.
- Candidates allotted seat must carry one of the identification proofs (ID Proof) to the allotted college at the time of admission (as mentioned in the information Bulletin published by the National Board of Examinations (NBE) for NEET SS: i.e. PAN Card, Driving License, Voter ID, Passport or Aadhar Card).

Candidates without original certificates/documents shall not be allowed to take admission in allotted Medical College.

Candidates who have deposited their original documents with any other Institute/ College/University and come for admission with a certificate stating that "Candidates original certificates are deposited with the Institute/College/University" shall not be allowed to take admission in allotted Medical College.

Q. No. 10: Will my original be submitted by the allotted college?

Ans.: Yes, they will be under custody of allotted college/Institute till the candidate is in admission phase.

Q. No.11: What are the instructions regarding OBC, SC, ST& PwD certificates and in-service candidates*?

Ans.: As per direction of Hon'ble Supreme Court in (W.P. (c) 290/1997 Preeti Shrivastava & Anr Vs State of Madhya Pradesh &Ors on 10th August 1999) and W.P. (c) 444/ 2015 Dr. Sandeep and Ors. Vs Union of India and Ors, there is **NO RESERVATION** in Super Specialty (D.M. / M.Ch. / DNB) courses.

However, vide order dated 16/03/2022 by the Hon'ble Supreme Court of India in W.P. (C) No. 53 of 2022 in the matter of N. Karthikeyan & Ors. v/s State of Tamil Nadu & Ors.; **50% reservation for In-Service candidates will be provided in the State of Tamil Nadu for the academic year 2021-22**. Hence, the **Counselling for In-service Candidates will be conducted by Tamil Nadu State**.

Q. No.12: Is there any restriction for filling up number of choices of Institutions (Colleges) or subjects in choice filling form?

Ans.: No, you can give as many choices as you wish limited to the specialty opted/Exam given during the filling up of examination form and subject to the eligibility for the concerned super- specialty course as per the indicative feeder

courses as provided by MCI/ NMC notification. However, choices should be in order of preference, as the allotment is done on the basis of choices submitted by the qualified candidate in order of preference given by the candidate and as per availability.

Q. No.13: Is it necessary to fill up the choices and lock the choices to get seat allotted? Or I will be allotted seat automatically from available seats?

Ans.: After online registration (registration is compulsory to take part in online allotment process) and payment of counseling fee, you have to fill in choice of subjects and institutions/colleges in order of preference. Once choice is filled in, it can be modified before locking it. During the choice locking period it is necessary to lock the choices to get a print of your submitted choices. If candidate does not lock the choice submitted by him/her, the choices saved by him/her will be automatically locked on notified date & at notified time. However, you will be allowed to take a print of your choices after that but you will not be permitted to modify your choices.

If you don't register, you will not be allotted any seat.

If you register and do not fill in any choice, you will not be allotted any seat.

IMPORTANT:

Don't wait till the last minute to lock your choices and to take a printout. Please go through your submitted choices before locking as once you lock the choices the same cannot be modified or changed even if you have made a mistake. Mistake in filling choices may result in allotment of a seat which you never wanted.

Q. No.14: Is it necessary to join allotted Medical College to get chance to participate in next round (2nd round) for up-gradation of allotted seat?

Ans.: Yes, in case a seat is allotted during Round-1, candidate is required to join allotted institution/college and complete the admission formalities, give willingness for up-gradation to Round-II then only candidate can exercise option to participate in next round (2nd Round) and up-gradation of allotted seat. In case the seat is not upgraded, the earlier allotted seat of Round -1 will be retained.

Please note that in case you do not give willingness for up-gradation of your seat at the time of joining of seat allotted during Round -1, you will not be considered eligible for participating in Round-2 (i.e. for up-gradation of your choice).

Q. No.15: What will happen if I do not want to join allotted seat of Round-1 and not report at the allotted college during Round-1?

Ans.: If candidate did not report at allotted college in Round-1, then security fees deposited by the candidate will be **forfeited** and candidate will be eligible for participation in further round of counseling only after re-registration and payment of fees again for Round-2.

Q. No.16: What is second round of online allotment process?

Ans.: Second round of online allotment process is Fresh choice filling and fresh allotment of seat as per choice and merit.
There is new registration of candidates (only for those candidates who could not register in first round and candidates who were allotted a seat in Round-1but did not report at the allotted institute and took exit with forfeiture option). However, there will be Fresh Choice submission for 2nd Round of Counseling and eligible candidates will be allotted seats on basis of merit and fresh choices filled by the candidate.

A. Who are eligible for 2nd Round of allotment?

Group–I: Registered candidates who did not get any seat allotted during Round-1.

Group–II: Candidates who have reported/joined at allotted institute during the joining period of round-1 of allotment and submitted willingness for participating in second round up-gradation as '**Yes'**.

Group–III: Candidates who have not reported at the allotted institute during Round-1 and taken exit with forfeiture option. Such candidates are eligible for participation in Round-2 of the counselling by making fresh payment (registration and security deposit).

B. Who are not eligible for 2nd Round of allotment?

Group- I: Candidates who did not report at the allotted institute after seat allotment in Round-1 and did not register again for Round-2.

Group- II: Candidates who have reported in 1st Round and not opted for up-gradation.

Q. No.17: Do I have to fill-up choices and College to participate in Round-2 of online allotment process separately?

Ans.: Yes, for second round, candidates are required to submit fresh choices. During the second round of online allotment process, the choice of higher preference will be considered for up- gradation for those candidates who give option to upgrade their seat at the time of admission in allotted Medical College of Round-1.

Q. No.18: If I give consent for up-gradation of my choice during Round-2 and if my choice is upgraded, is it necessary to join at college allotted during second round? Or in case I change my decision of upgrading choice, can I continue to study in college allotted through first round of allotment?

Ans.: In case candidate is allotted seat during the Round-2 of allotment process (choice is up- graded), the seat allotted during the first round will be automatically cancelled (and allotted to somebody else eligible as per merit) and candidate will have to join the college/seat allotted during second round. If candidate does not join the college/seat allotted during the second round, with in stipulated time, as per schedule, from the date of allotment, the candidate will forfeit his/her allotted seat and will lose the only seat for which he/she is eligible. (Non Joining of candidates on the allotted seat of Round-2 will lead to forfeiture of their security amount deposited with MCC/DGHS).

Q. No.19.: If I give option to participate in Round-2 at the time of joining college from first round allotment, but later change my decision and want to continue studying at already allotted Medical College, what is the procedure to avoid change (cancellation) of already allotted college/seat?

Ans.: Candidates who have provided their willingness for up-gradation at the time of admission during Round-1but want to continue in Round-1 allotted college/institute need not fill any choices during Round-2. In this case his/ her earlier seat of round 1 will be retained.

Q. No.20: If I forget my password that I have created during the process of registration, how to retrieve it.

Ans.: To retrieve the forgotten password, system facilitates the following process:

The candidate is required to enter the information that he/she filled at the time of registration and then the security question & answer thereon to be entered as given during New Candidate registration process. The above data submitted by candidate will be validated with the registered candidates' database. If the above entries match, then only the candidate would be permitted to enter new password to proceed further.

IMPORTANT

Candidates are advised to remember the password and also retain their application form and admit cards printout ready till completion of admission process. It is not possible for MCC/NIC to retrieve such password.

Q. No. 21: In case I have Birth Certificate/Caste Certificate/other certificate(s) in regional language, will it be acceptable at the time of reporting/joining?

Ans.: Certificates issued by the competent authority should be in English or Hindi language. Please remember that some of the states insist for certificate in English language only. Candidates are advised to carry Certified Copy of English version of the original certificate, in case certificate issued is in other than English language along with original certificate.

Q. No. 22: If there is discrepancy in spelling of name in documents and application form, what do I do?

Ans.: If there is discrepancy in spelling in documents candidate must carry proof that the documents belong to same person, in form of an affidavit / undertaking.

Q.No.23: What about condition of Stipend/fee structure/course duration/bond amount/rendering of service in rural/tribal area/other conditionality.

Ans.: Age and other eligibility criteria like Stipend /fee structure/ course duration / bond amount / rendering of service in rural/ tribal area/other conditions etc. may vary from State to State and Institute to Institute. Some seats may be approved/ permitted but not yet recognized by NMC / NBE. The allotment made through online allotment process will be firm and final as per Hon'ble Supreme Court's directions. Therefore, the candidates should well examine these points before opting for a seat at a medical college. The Medical Counselling Committee (MCC) shall neither be responsible nor shall entertain any case on above grounds, if any. The information received from various participating Medical Colleges/Institute has been made available on Ministry of Health & Family Welfare / MCC website (under the Medical Counseling – Super Specialty Counseling - Information about college, fee, bond information etc.). Candidates are advised to visit the website of college/ institution to check the information. In case they require any additional information, they can contact the college / institution on telephone/email before opting for choices.

Q. No. 24: How to use registration and Choice filling form on website?

Ans.: Candidates will have to log on to website www.mcc.nic.in to get registered (Registration facility will open on dates as mentioned in Schedule) and then fill in choices. It is advised that after going through the seat matrix, a tentative list may be prepared first as per your preference of subjects and colleges, before attempting to fill choices on-line.

Q. No. 25: Difficulty in login, what may be the problem(s)?

Ans.: Please read User manual for the candidates. Follow the instructions about use of browser (Mozilla Fire Fox, Internet Explorer-6 or above, Google Chrome), use of same spellings, same format of date (Use digits for day, month and year with - in between) as in application form submitted to National Board Examination (NBE), New Delhi. The internet connection should be uninterrupted. If internet connection interruption takes place, the IP address which is being monitored will change and session expired message will be displayed. Please try to login from other computer from which other candidate(s) has logged in successfully, if possible.

Q. No. 26: I have difficulty in Creating Password, what may be the problem(s)?

Ans.: Creation of password should be as per password policy. Please follow the password policy. Please use the internet browser as suggested in user manual, as it is difficult to login from some of the other browsers. While creating password avoid using Caps Lock key, instead of Caps Lock use shift key.

Q. No. 27: When I try to login for choice filling/submission, It say wrong roll number /password, what may be problem(s)?

Ans.: This can happen if Roll Number/Testing ID typed is incorrect or password typed is incorrect. Password is case sensitive, therefore use password which was created by user exactly same as typed while creating. In case password is forgotten, try to generate new password by using security question and its answer.

Q. No. 28: What are the guidelines for choice filling before Round-1 of online allotment process and Round-2 Allotment Process?

Ans.: The Candidates are advised to fill in choice carefully for seats in (Higher preference to lowest preference).

Q. No. 29: Can I modify my choices during the choice submission period for Counselling?

Ans.: Yes, you can modify, add or delete your choices during this period, before you lock your choices. However, the registration (of New Users) is permitted up to date and time specified in counselling Schedule, only.

Please note that you have to lock your choice by date and time specified in Counselling Schedule.

Q. No. 30: I have not locked my choices before the time specified in Counselling schedule on last date of choice locking, what will happen to my choices?

Ans.: The choices submitted and saved by you will be locked by the system at the time of last date/date of choice locking as mentioned in Counselling Schedule, automatically.

Q. No.31: How can I get print out of my choices which system has locked?

Ans.: After the specified time of last date/date of choice locking (or after choice locking) print out can be taken from MCC website after login by the Candidate, link is available on the left hand side of the page as "Print Lock Choice".

Q. No. 32: If I opt to participate in second round of Counseling whether my allotted seat (of first round) will be cancelled?

Ans.: In case you are not allotted any seat in the second round you will retain earlier allotted seat (if you have already completed admission formalities and not resigned from the allotted seat). However, on allotment of a seat in second round the earlier allotted seat will automatically be cancelled and allotted to another candidate.

Q. No. 33: If I get up-graded in 2nd Round from my 1st Round seat, can I join that 2nd Round College directly?

Ans.: No, you will have to get a relieving letter from the earlier institute/college (allotted in Round-1) - generated on- line, before you can join the next college/institution (allotted in Round-2).

Q. No. 34: At the time of admission will my original certificates be retained by the allotted college/institution?

Ans.: Yes, all the participating colleges/institutions have been instructed to retain original certificates of admitted students and release them only on up-gradation of the seat of the candidate to prevent seat blocking.

Q. No. 35:- I have registered for Round-1. Should I register again for Round-2?

Ans:- No, only those candidates who have not registered in Round-1 need to register again in Round-2. Candidates who have exited with forfeiture in Round-1 also need to register again.

Q. No. 36: Who are eligible for "Exit with Forfeiture" option?

Ans: -

a) Candidate who has been allotted a seat in Round-1 but does not report at the college may exit with Forfeiture. (I.e. The refundable security fee will not be refunded in such a case).

b) Candidate who has been allotted a seat in Round-2 but does not report at the college may exit with Forfeiture. (I.e. The refundable security fee will not be refunded in such a case).

*It is pertinent to note that all admissions should be made online only and candidates should ensure that their Admission Letter has been generated online through the portal provided by MCC of DGHS. Any offline admission letter will be treated as 'Null & Void' and will lead to cancellation of seat of candidate.

CHAPTER 5-APPLICATION FORM & FEE OF COUNSELING

i. FEES

Refundable Security fee	*Non-Refundable Registration fee*	*Total Fee*
Rs. 2, 00,000/-	***Rs. 5000/-***	***Rs. 2, 05,000/-***

Q. No.1:- What are the various fee to be paid at the time of registration?

Ans:- At the time of registration candidates have to pay two kinds of fee :

a) Non-Refundable Registration fee of Rs. 5000/- (Rupees Five Thousand only).

b) Refundable Security fee Rs. 2, 00,000/- (Rupees Two Lakh only). Security amount deposited will be refunded only after the completion of counseling. No requisition of refund will be entertained during the counseling.

Q. No. 2:- Is this security fee refundable in all the cases?

Ans: - No, this fee will be forfeited if the candidate who has been allotted a seat in first , second or stray round does not join the respective institution. Also the security fee will be forfeited in case the candidate gives wrong information at the time of registration on the basis of which a seat may be allotted and later cancelled by the Admission Authorities at the time of reporting. Refundable fee will be refunded only after completion of all the rounds of counseling.

ii. REFUND

Q. No.3: When and where this Security Deposit will be refunded?

Ans:

1. Security amount will be refunded only after the completion of all rounds of Counseling. MCC will notify about the completion of counselling on their web-site "www.mcc.nic.in". The Financial Custodian will initiate the refund of security deposit within 15 days of such notification and complete within 30 days of such notification.

2. The security amount will be refunded to the same account from where the security amount was initially deposited by the candidate. E.g.

1) If the security amount was deposited

throughCard#1234XXXXXXXX5678, then the refund will go to Card #1234XXXXXXXX5678 only.

2) If the security amount was deposited from account # 123456789012 of State Bank of India IFSCCodeSBIN0003567 then the refund will go to #123456789012of StateBankofIndiaIFSCCodeSBIN0003567only.

Hence, the candidate must keep their card/bank account ACTIVE till refund process is completed. If card/bank account is closed before the completion of refund, the bankers will not be able to complete the refund process. Since bankers will take long time to identify & return the failed refunds to Financial Custodian and legal formalities are to be complied for initiating refund to different bank account, refund to new bank account will take very long time. Neither Financial Custodian nor MCC will be responsible for such delay.

Q.NO.4: If the security deposit is remitted through unrelated card/bank account can the candidate request for refund to different card/bank account?

Ans: NO. MCC will not entertain such requests. The security deposit will be refunded only to the account from where the security deposit was initially deposited. The candidates are advised not to use unrelated card/bank accounts for remitting security deposit.

Q. NO. 5: What happens if the candidate, by mistake, makes more than one payment for the same Roll#?

Ans: Candidate can approach the Financial Custodian after 15days of closing of Registration Window. The Financial custodian will refund the excess payment, if any, within 30days of closing of Registration Window. The financial custodian will deduct 50% of the Regn Fees or Rs.500/whichever is less from each excess receipt refund towards Admn. expenses

Q.NO.6: Do I have to request the Financial Custodian to refund the security amount? What is the schedule for refund of security amount?

Ans: NO. Candidate need not approach the Financial Custodian for refund of security amount. The Medical Counselling Committee will publish the list of candidates who are eligible for the refund of security amount on the website of MCC "www.mcc.nic.in" once all rounds of counseling are completed. The Financial Custodian will initiate the refund of security amount within 15working days and complete the refund of security deposit within 30 days of publishing the eligible list in the MCC Website. Once the Financial Custodian completes the refund, MCC will publish the refund details along with refund date & transaction # in the website of MCC "www.mcc.nic.in" within 45 days of publishing the eligible list in the MCC Website. The refund will be credited, depending upon the

level of digitalization of candidate's bank, to the candidates account between 2 to 15 days from the date of refund by Financial Custodian.

Q.NO.7: Can a candidate initiate refund proceedings through chargeback claim through the card Issuing bank?

Ans: NO. Candidates who have been allotted Roll # should not initiate refund proceedings through charge back claim through the card issuing bank. If the charge back claim is initiated, the Financial Custodian /MCC will be debarred by the Payment Gateway Service Providers from initiating direct refund. The candidate has to approach only their card issuing banks for refunds. For initiating manual refund by Financial Custodian, the candidate should withdraw the charge back claim and produce a no objection certificate from card issuing bank stating that the charge back claim is withdrawn & card issuing banker do not have any objection in Financial Custodian refunding the deposit. As this process takes lot of time and the refund will be inordinately delayed. Hence candidates are advised to not to initiate chargeback claim.

Q.NO.8: Who is the Financial Custodian?

Ans: HLL Lifecare Ltd, a Govt. of India Undertaking under Ministry of Health and Family Welfare is the Financial Custodian. They will, on behalf of MCC, collect non-refundable Registration Fees and refundable security deposit from the candidates and refund the security deposit to the candidates.

Q.No.9: How to contact the Financial Custodian?

Ans: The Financial Custodian Can be contacted through email "financemcc@lifecarehll.com" The Financial custodian will respond only to the mails through mail id registered in the application form.

Direct queries to MCC will not be entertained.

- All refund related queries must be addressed to financemcc@lifecarehll.com
- Candidate can approach Financial Custodian only after 15 days of closing Counselling Window or 30 days of publication of "candidate eligible for refund" list in MCC web-site.

Q. No.10: Will Medical Counselling Committee bear the bank charges incurred by the candidate while registering for counseling?

Ans: NO. Bank Charges if any, incurred by the candidate should be borne by the candidate only.

Q. No. 11: Can candidate remit the Registration Fee and Security Deposit from NRI Account?

Ans: NO. MCC cannot, as per Reserve Bank of India (RBI) Rules, refund security deposit to NRI Account. If the candidate wants to use the funds available in his/ her NRI Account for registering for counseling, he /she has to first transfer funds from NRI Account to NRO Account and from NRO Account to MCC. The refund from MCC will be credited to NRO Account only.

Q. No.12: Will MCC pay interest on the refundable security deposit?

Ans: NO. MCC will not pay interest on the refundable security deposit.

Annexure-1

FTS- 534249/2017

No.V.26012/02/2016-MEP (Pt)
Government of India
Ministry of Health & Family Welfare

To,

DGHS,
Dte GHS,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi

Nirman Bhawan New Delhi
Dated: 4th May, 2017

Sub: Information Bulletin for NEET- Super Specialty- 2017 session –Reg.

Sir,

I am directed to inform that it has been decided to appoint DGHS as the designated authority for common counseling for all the super specialty seats.

2. This has the approval of Secretary (HFW).

Yours faithfully

(Amit Biswas)
Under Secretary to Govt. of India
Telefax: 23061120

5/5/17

jftLx2 lo ×2o ,vo–33004l99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

vlk/kj.k
EXTRAORDINARY
èkkx III—[k.M 4
PART III—Section 4
ikf/dkj l izdkf'kr
PUBLISHED BY AUTHORITY

l. 303] ubZ fnYyh] lkseokj] tqykbZ 31] 2017@Jko.k 9] 1939
No. 303] NEW DELHI, MONDAY, JULY 31, 2017/SRAVANA 9, 1939

Hkkjrh; vk;qfoKku ifjn

vf/klwpuk

ubZ fnYyh] 31 tqykbZ] 2017

l-aa- Hkk-vk-i-–18¼1½@2017–e.M.-@128371.—Hkkjrh; vk;qfoKku ifjn vf/kfu;e] 1956 ¼1956 dk 102½ dh /kkjk 33 }kjk izn Ùk "kfä;k dk bLrseky djrs gq, Hkkjrh; vk;qfoKku ifjn] ÞLukrdkÙkj fpfdRlk f"k{kk ij fofu;ekoyh] 2000ß dk iqu: l"kks/ku djus ds fy, dsUnz ljdkj dh izo Loh d fr l ,rn}kjk fuEufyf[kr fu;e cukrh gS] uker:-

1- ¼i½ bu fofu;ekoyh ¼l"kks/ku½] 2017ß dgk tk,xkA

¼ii½ ;s ljdkjh jkti= esa mud idk"ku dh rkjh[k l izo Ùk gksxkA

2- ÞLukrdkÙkj fpfdRlk f"k{kk fofu;ekoyh] 2000ß esa "kheksd ÞLukrdkÙkj Nk=ksa dk p;uß ds vrxr [kM 9¼d½ dk fuEufyf[kr }kjk ifrLFkkfir fd;k tk,xk:-

[kM 9d¼2½ fuEufyf[kr :i esa ifrLFkkfir fd;k tk,xk–

ÞfMlykseksd vkj ,e-Mh-@,e-,l ikB;Øeksa ds fy, eksVjuks ;kuksa ds vuqlj ;kxnku djus okys jkT;ksa dh 50 ifr"kr vf[ky Hkkjrh; dksVk lhVksa ds fy, dkmlfyx gsrq uketn izkf/kdkjh LokLF; lsok egkfun"kks;] LokLF; ,oa ifjokj dY;k.k eU=ky;] Hkkjr ljdkj gksxkA bl vykok] LokLF; lsok egkfun"kks;] LokLF; ,oa ifjokj dY;k.k eU=ky;] Hkkjr ljdkj dsUnz ljdkj ds vk;qfoKku f"k{k.k laLFkkuksa] lu ds fdlh vf/kfu;e }kjk LFkkfir fo"ofo4ky;k vkj ekfur fo"ofo4ky;k e lHkh

LukrdkÙkj ikB;Øeksa ¼fMlykseksd] ,e-Mh-@,e-,l] Mh-,e-@,e-lh,p½ ds fy, dkmlfyx vk;kftr djxkA bl vykok] LokLF; lsok egkfun"kks; dsUnz ljdkj ds vk;qfoKku f"k{k.k lLFkkuksa] jkT; ljdkj ds vk;qfoKku f"k{k.k lLFkkuksa] ekfur fo"ofo4ky;ksa] lu ds fdlh vf/kfu;e }kjk LFkkfir fo"ofo4ky;ksa] jkT;@ l*k "kklfur {k= dh fo/kku lHkk }kjk LFkkfir fo"ofo4ky;ksa] E;fufliy fudk;ksa] U;kl] lkalk;Vh] dsiuh ;k vYil[;d lLFkkuksa }kjk LFkkfir vk;qfoKku f"k{k.k lLFkkuksa esa lHkh vfr fo"ekKrk ikB;Øeksa ¼Mh-,e-@,e-lh,p½ ds fy, Hkh dkmlfyx vk;kftr djxkAß

[kM 9d¼3½ fuEufyf[kr :i esa ifrLFkkfir fd;k tk,xk:-

ÞjkT; ljdkj }kjk LFkkfir lHkh vk;foKku f"k{k.k lLFkkuksa lfgr fdlh jkT;@l*k "kklr {ks= eas lHkh vk;foKku f"k{k.k lLFkkuksa] jkT;@l*k "kklr {ks= dh fo/kku lHkk dh fdlh vf/kfu;e }kjk LFkkfir fo"ofo4ky;] E;fufliy fudk;] U;kl] lkalk;Vh] diuh ;k vU;il[;d lLFkkuksa esa fMlykek vkj ,e-Mh-@,e-,l- esa nkf[kyk dh fy, dkmlfyx] jkT;@l*k "kklr {ks= dh ljdkj }kjk vk;kftr dh tk,xhAß

v"kkd dekj gfjr] mi-lfpo

ikn fVli.kh: i:/kku fofu;ekoyh] uker: ÞLukrdkUkj fpfdRlk f"k{kk fofu;ekoyh] 2000ß fnukad 07 vDrcj] 2000 dk Hkkjr dk jkti= dh Hkkx-III] [kM ¼4½ vlk/kkj.k esa idkf"kr dh xbZ Fkh vkj bl Hkkjrh; vk;ifoKku ifjekn dh fnukad 03@03@2001] 06@10@2001] 16@03@2005] 23@03@2006] 20@10@2008] 25@03@2009] 21@07@2009] 17@11@2009] 09@12@2009] 16@04@2010] 08@12@2010] 27@12@2010] 09@02@2012] 27@02@2012] 28@03@2012] 17@04@2013] 01@02@2016] 17@06@2016] 08@08@2016] 31@01@2017] 11@03@2017] 06@05@2017 vkj 27@06@2017 dh vf/klpukvksa dk vuqxr l"kkf/kr fd;k x;k FkkA

MEDICAL COUNCIL OF INDIA

NOTIFICATION

New Delhi, the 31st July, 2017

No. MCI-18(1)/2017-Med./128371.—In exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following regulations to further amend the "Postgraduate Medical Education Regulations, 2000" namely:—

1. (i) These regulations may be called the "Postgraduate Medical Education (Amendment) Regulations, 2017."

   (ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the "Postgraduate Medical Education Regulations, 2000", in Clause *9A under the* heading "Selection of postgraduate students", the following shall be substituted:-

   Clause 9A (2) shall be substituted as under:-

   "The Designated Authority for counselling for the 50% All India Quota seats of the contributing States, as per the existing scheme for Diploma and M.D./M.S. courses shall be the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India. Further, the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India shall conduct counselling for all postgraduate courses [Diploma, M.D./M.S., D.M./M.Ch.] in Medical Educational Institutions of the Central Government, Universities established by an Act of Parliament and the Deemed Universities. Furthermore, the Directorate General of Health Services shall conduct the counselling for all Superspecialty courses (D.M./M.Ch.) in Medical Educational Institutions of the Central Government, Medical Educational Institutions of the State Government, Deemed Universities, Universities established by an Act of Parliament, Universities established by an Act of State/Union Territory Legislature, Medical Educational Institutions established by Municipal Bodies, Trust, Society, Company or Minority Institutions".

   Clause 9A (3), shall be substituted as under:-

   "The counselling for admission to Diploma and M.D./M.S. in all Medical Educational Institutions in a State/Union Territory, including, Medical Educational Institutions established by the State Government, University established by an Act of State/Union Territory Legislature, Municipal Bodies Trust, Society, Company or *Minority Institutions shall be conducted by the State/Union Territory Government."*

ASHOK KUMAR HARIT, Dy. Secy.

Footnote: The Principal Regulations namely, "Postgraduate Medical Education Regulations, 2000" were published in Part III, Section 4 extraordinary of the Gazette of India on 7th October, 2000 and amended vide Medical Council of India Notification dated 03/03/2001, 06/10/2001, 16/03/2005, 23/03/2006, 20/10/2008, 25/03/2009, 21/07/2009, 17/11/2009, 09/12/2009, 16/04/2010, 08/12/2010, 27/12/2010, 09/02/2012, 27/02/2012, 28/03/2012, 17/04/2013, 01/02/2016, 17/06/2016, 08/08/2016, 31/01/2017, 11/3/2017, 06/05/2017 and 27/06/2017.

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

राष्ट्रीय परीक्षा बोर्ड
NATIONAL BOARD OF EXAMINATIONS

1982-2018
36 Years of Excellence in Post Graduate Medical Education and Examinations

Ref No: NBE/C&R /2019/ 1770

Dated – 28.06.2019

Dr. B.Srinivas
ADG (ME)
Directorate General of Health Services
352-A Nirman Bhawan
New Delhi - 110011

Sub: Conduct of Common Counseling for DM/MCh and DNB Super Specialty Courses – Regarding

Sir,

National Board of Examinations (NBE) has been conducting Counseling for DNB Super specialty Courses from January to June every year. Candidate, who qualifies DNB-CET-SS conducted by NBE in the month of December will be eligible for participate in the said counseling. NBE has conducted the last DNB Super specialty counseling during March-April 2018, based on DNB-CET-SS conducted on 21st December, 2017.

NBE administers DNB Super specialty courses in 26 discipline of modern medicine. In 2019 admission session onwards, the admissions to DNB Superspecialty courses are being done through NEET-SS conducted by NBE. NEET – SS for 2019 is scheduled on 28-06-2019.

The accreditation committee of NBE is of the view that there should be a common counseling for admissions to both DNB Superspecialty and DM/MCh admissions 2019 admission session onwards so as to minimize loss of precious post-doctoral seats in either of these streams. If agreed, it is suggested that a meeting may be convened to work out the mode of operation to conduct a common counseling for DNB Super specialty and DM/MCH courses from 2019 onwards.

Considering the limited time available for 2019 admission session, it is requested to share your view with NBE at the earliest.

Thanking you,

With Regards

(SURESH KUMAR K)
Deputy Director
Counseling and Registration

Copy to:

Sh. Amit Biswas,
Under Secretary to the Govt. of India
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi

अंसारी नगर, महात्मा गांधी मार्ग, (रिंग रोड़) नई दिल्ली – 110029
Ansari Nagar, Mahatma Gandhi Marg, (Ring Road) New Delhi-110029
mail@natboard.edu.in, Tel : 91-11- 45593000, Fax : 91-11- 45593009

30

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO.7 & 8

IN

WRIT PETITION (CIVIL) NO.76 OF 2015

Ashish Ranjan & Ors. … **Petitioners**

VERSUS

Union of India & Ors. … **Respondents**

WITH

WRIT PETITION NOS.314 AND 328 OF 2015

O R D E R

Applications for impleadment are allowed.

Heard learned counsel for the petitioner, Mrs. Pinky Anand, learned additional solicitor general for the Union of India and Mr. Gaurav Sharma for the Medical Council of India.

Mr. Gaurav Sharma, has filed the notifications issued by the Medical Council of India with the previous sanction of the Central Government. The said Notification reads as under :

> **"In exercise of the powers conferred by Section 10(A) read with Section 33 of the Indian medical Council Act, 1956 (102 of 1956), the Medical Council of India wit the previous sanction of the Central Government hereby makes the following Regulations to further amend the "Establishment of Medical College Regulations, 1999" namely:-**
>
> **(i) These Regulations may be called the 'Establishment of Medical College**

31

Regulations, (Amendment), 2015'.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the 'Establishment of Medical College Regulations, 1999', in SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA' the following shall substituted as under:-

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES/RENEWAL OF PERMISSION AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 15th June to 7th July (both days inclusive) of any year
2.	Forwarding application by the Central Government to Medical Council of India.	By 15th July
3.	Technical Scrutiny, assessment and Recommendations for Letter of Permission by the Medical Council of India.	By 15th December
4.	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any, and forwarding of compliance by the Central Government to the Medical Council of India.	Two months from receipt of recommendation from MCI but not beyond 31st January.
5.	Final recommendations for the Letter of Permission by the Medical Council of India.	By 30th April
6.	Issue of Letter of Permission by the Central Government.	By 31st May

Note 1. In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

xxx xxx xxx

In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102) of 1956, the Medical Council of India with the previous sanction of the Central Government,

hereby makes the following Regulations to further amend the "Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (Including a Postgraduate Course of Study or Training) Regulations 2000", namely:-

1(i) These Regulations may be called the "Opening of a New or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (including Postgraduate Course of Study or Training (Amendment) Regulations 2015'.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In 'Part II – SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT TO INCREASE THE ADMISSION CAPACITY IN ANY COURSE OF STUDY OR TRAINING (INCLUDING POST GRADUATE COURSE OF STUDY OR TRAINING) IN THE EXISTING MEDICAL COLLEGES/INSTITUTIONS" of the 'Opening of a New or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (Including a Postgraduate Course of Study or Training) Regulations 2000", after point no.7 the following shall be added:-

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR INCREASE OF ADMISSION CAPACITY IN MBBS COURSE/RENEWAL OF PERMISSION FOR INCREASE OF SEATS AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 15th June to 7th July (both days inclusive) of any year
2.	Forwarding application by the Central Government to Medical Council of India.	By 15th July
3.	Technical scrutiny, assessment and Recommendations of Letter of Permission by the Medical Council of India	By 15th December
4.	Receipt of reply/compliance from the applicant by the Central Government and	Two months from receipt of recommendation from MCI

	for personal hearing thereto, if any and forwarding of compliance by the Central Government to the Medical Council of India.	but not beyond 31st January
5.	Final recommendations for the Letter of Permission by the Medical Council of India	By 30th April
6.	Issue of Letter of Permission by the Central Government	By 31st May

Note 1. In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

xxx xxx xxx

In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government, hereby makes the following Regulations to further amend the 'Regulations on Graduate Medical Education, 1997', namely:-

1.(i) These Regulations may be called the 'Regulations on Graduate Medical Education, 2015.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the 'Regulations on Graduate Medical Education, 1997', Appendix E shall be replaced as under:-

TIME SCHEDULE FOR COMPLETION OF THE ADMISSION PROCESS FOR FIRST MBBS COURSE

Sr. No.	Schedule for Admission	Seats to be filled up by the Central Government through the All India Entrance Examination	Seats to be filled up by the State Govt./ Institution.
1.	Conduct of Entrance Examination	Between 1st to 7th May	Between 10th to 17th May
2.	Declaration of the Result of the Qualifying Exam/Entrance Exam.	By 1st June	By 1st June
3.	1st round of counselling/admission	To be over by 25th June	Between 6th July to 15th July
4.	Last date for joining the	By 5th July	By 22nd July

	allotted college and the course		
5.	2nd round of counselling/admission for vacancies	Between 23rd July to 30th July	Between 10th to 22nd August
6.	Last date of joining for the 2nd round of counselling/admission	By 9th August	By 28th August
7.	Commencement of academic session/term	1st of August	1st of August
8.	Last date up to which students can be admitted/joined against vacancies arising due to any reason.		By 31st August

Note:

1. All India Quota Seats remaining vacant after last date for joining, i.e. 9th August will be deemed to be converted into state quota.

2. Institute/college/courses permitted after 31st May will not be considered for admission/allotment of seats for current academic year.

3. In any circumstances, last date for admission/joining will not be extended after 31st August.

xxx xxx xxx

In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following Regulations to further amend 'The Opening of a New or Higher Course of Study or Training (including Post Graduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (including a Post Graduate Course of Study Or Training), Regulations 2000' namely:-

1(i) These regulations may be called 'The Opening of a New or Higher Course of Study or Training (including Post Graduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (including a Post Graduate Course of Study Or Training (Amendment) Regulations 2015'.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In 'The Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Post Graduate Course of Study Or Training), Regulations, 2000', the following additions/modifications deletions/substitutions shall be indicated therein:-

3. In the Schedule and Note in 'The Opening of a New or Higher Course of Study or Training (including Post Graduate Course of Study or Training) and increase of Admission Capacity in any course of Study or Training (including a Post Graduate Course of Study or Training), Regulations, 2000', after Appendix-II, the schedule included vide notification dated 11th January, 2010, be substituted by the following schedule:-

TIME SCHEDULE FOR RECEIPT OF THE APPLICATIONS OF POST GRADUATE (BROAD SPECIALITY) COURSES/INCREASE OF ADMISSION CAPACITY AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND MEDICAL COUNCIL OF INDIA.

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 15th March to 7th April (both days inclusive of any year)
2.	Forwarding application by the Central Government to Medical Council of India	By 15th April
3.	Technical scrutiny, assessment and Recommendations of Letter of Permission by the Medical Council of India	By 30th September
4.	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any and forwarding of compliance by the Central Government to the Medical Council of India.	Two months from receipt of recommendation from MCI but not beyond 15th November
5.	Final recommendations for the Letter of Permission by the Medical Council of India	By 31st January
6.	Issue of Letter of Permission by	By 28th February

	the Central Government	

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR OPENING OF POSTGRADUATE (SUPER SPECIALITY) COURSES/INCREASE OF ADMISSION CAPACITY AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND MEDICAL COUNCIL OF INDIA

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 1ST August to 21st August (both days inclusive) of any year
2.	Forwarding application by the Central Government to Medical Council of India	By 31st August
3.	Technical Scrutiny, assessment and recommendations for Letter of Permission by the Medical Council of India	By 31st December
4.	Receipt of reply/compliance from the applicant by the central Government to the Medical Council of India	By 15th February
5.	Final recommendations for the Letter of Permission by the Medical Council of India	By 30th April
6.	Issue of Letter of Permission by the Central Government	By 31st May

xxx xxx xxx

In exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following regulations to further amend the 'Postgraduate Medical Education Regulations, 2000', namely:-

1.(i) These regulations may be called the 'Postgraduate Medical Education (Amendment) Regulations, 2015'.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the 'Postgraduate Medical Education Regulations, 2000' further amended till 17/04/2013, the following additions / modifications / deletions / substitutions, shall

37

be as indicated therein.

3. In the appendix in 'Postgraduate Medical Education Regulations, 2000', included vide amendment notification dated 23rd March, 2006, the time schedule for completion of admission process for postgraduate courses stands substituted by the following schedules:-

Time Schedule for completion of Admission Process for PG (Broad Speciality) Medical Courses for All India Quota and State Quota

S. No.	Schedule for admission	Broad Speciality	
		All India quota	State quota
1.	Conduct of Entrance Examination	Month of December	Month of January
2.	Declaration of result of the qualifying Exam/Entrance Exam	By 15th of January	By 15th of February
3.	1st round of counselling/ admission	Between 12th March to 24th March	Between 4th April to 15th April
4.	Last date for joining/reporting the allotted college and the course.	By 3rd April	By 22nd April
5.	2nd round of counselling/ admission for Vacancies	Between 23rd April to 30th April	Between 11th May to 20th May
6.	Last date of joining for the 2nd round of counselling/admission.	By 10th May	By 27th May
7.	Commencement of the academic session/term.	1st May	1st May
8.	Last date up to which students can be admitted/joined against vacancies arising due to any reason	-	By 31st May

Note:

1. All India Quota Seats remaining vacant after last date for joining, i.e. 10th May will be deemed to be converted into state quota.

2. Institute/college/courses permitted after 28th February will not be considered for admission/allotment of seats for current academic year.

3. In any circumstances, last date for admission/joining will not be extended after 31st May.

38

Time Schedule for completion of Admission Process for PG (Super speciality) Medical Courses)

S. No.	Schedule for admission	Super Speciality
1.	Conduct of Entrance Examination	By 10th July
2.	Declaration of result of the qualifying Exam/Entrance Exam	By 15th July
3.	1st round of counselling admission	By 31st July
4.	Last date for joining the allotted college and the course	Between 1st to 7th August
5.	2nd round of counselling/admission	By 20th August
6.	Last date of joining for the 2nd round of counselling/admission	By 27th August
7.	Commencement of academic session/term	1st August
8.	Last date up to which students can be admitted/joined against vacancies arising due to any reason	31st August

Note:

1. Institute/college/courses permitted after 31st May will not be considered for admission/ allotment of seats for current academic year.

2. In any circumstances, last date for admission/ joining will not be extended after 31st August."

This Court gives the stamp of approval to the aforesaid schedule.

Regard being had to the prayer in the writ petition, nothing remain to be adjudicated. The order passed today be sent to the Chief Secretaries of all the States so that they shall see to it that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever. Needless to say the AIIMS and the PGI (for the examination held in July) shall also follow

39

the schedule on letter and spirit.

An application has been filed by the National Board of Examination for extension of time in respect of declaration of result of the Post Graduation Medical Education Examination. It is submitted by Mr. Gaurav Sharma, learned counsel for the Medical Council of India that the result can be declared by 10th February by the said Board but counselling must be held by the time stipulated in the schedule as the date of counselling is not changed and there was a natural calamity in the State of Tamil Nadu. Accordingly, we extend the time.

All the interlocutory applications and writ petitions are disposed of.

. .....,J.
(Dipak Misra)

.....,J.
(N.V. Ramana)

New Delhi;
January 18, 2016.

ITEM NO.6 COURT NO.4 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A.NOS.7 & 8 in Writ Petition(s)(Civil) No(s). 76/2015

ASHISH RANJAN & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(for impleadment and modification/direction and office report)

WITH
W.P.(C) No. 314/2015
(With appln.(s) for stay and Office Report)

W.P.(C) No. 328/2015
(With appln.(s) for directions and Office Report)

Date : 18/01/2016 This application was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Mr. Prashant R. Dahat, Adv.
Mr. Puneet Yadav, Adv.
Mr. Akarsh Kamra, Adv.
Mr. Venkateswara Rao Anumolu, AOR

Mr. Prashant R. Dahat, Adv.
Mr. Parthiban M.P., Adv.
Mr. Akarsh Kamra, Adv.
Mr. Puneet yadav, Adv.
Mr. T. R. B. Sivakumar, AOR

For Respondent(s) Mr. Anip Sachthey, AOR

AP Mr. Guntur Prabhakar, AOR
Ms. Prerna Singh, Adv.

Gujarat Ms. Hemantika Wahi, AOR
Ms. Vinakshi Kadan, Adv.

West Bengal Mr. Soumitra G. Chaudhuri, Adv.
Mr. Parijat Sinha, Adv.

Chandigarh		**Mr. Sangram S. Saron, Adv.**
		Mr. Shree Pal Singh, AOR
		Mr. M. T. George, AOR
		Mrs. Kirti Renu Mishra, AOR
		Ms. Pinky Anand, Adv.
		Mr. S.S. Rawat, Adv.
		Mr. Ajay Sharma, Adv.
		Ms. Rekha Pandey, Adv.
		Mr. R.S. Nagar, Adv.
		Mr. D.S. Mahra, Adv.
		Ms. Sunita Sharma, AOR
		Mr. S. Udaya Kumar Sagar, AOR
		Mr. Krishna Kumar Singh, Adv.
		Mr. V. N. Raghupathy, AOR
Assam		**Ms. Apeksha Sharan, Adv.**
	For	**M/s Corporate Law Group, AOR**
		Mr. Rajesh Srivastava, AOR
Chhattisgarh		**Mr. C.D. Singh, Adv.**
		Mr. A.P. Mayee, AOR
		Mr. Udit Arora, Adv.
		Mr. A. Selvin Raja, Adv.
U.P.		**Mr. Irshad Ahmad, AAG**
		Mr. Som Raj Choudhary, Adv.
		Mr. Abhisth Kumar, AOR
		Mr. Manu Yadav, Adv.
Odisha		**Mr. Pawan Upadhyay, Adv.**
		Mr. Sarvjit Pratap Singh, Adv.
		Ms. Sharmila Upadhyay, AOR
		Mr. Vikas Mehta, AOR
		Ms. Nidhi Gupta, Adv.
		Dr. Monika Gusain, AOR
		Mr. R.K. Gupta, Adv.
		Mr. M.K. Singh, Adv.
		Mr. B.P. Gupta, Adv.
		Mr. A.K. Singh, Adv.
		Mr. Shekhar Kumar, AOR

H.P.	**Mr. Suryanarayana Singh, Sr. AAG**
	Ms. Pragati Neekhra, AOR
	Mr. Sudarshan Rajan, AOR
	Ms. Shriya Chauhan, Adv.
	Mr. Rajeev Khurana, Adv.
	Mr. S.S. Shamshery, AAG
	Mr. Amit Sharma, Adv.
	Mr. Yishu Prayash, Adv.
	Ms. S. Spandana Reddy, Adv.
	Mr. Milind Kumar, Adv.
	Ms. Ruchi Kohli, Adv.
Jharkhand	**Mr. Ajit Kumar Sinha, Sr. Adv.**
	Mr. Tapesh Kumar Singh, AOR
	Mr. Mohd. Waquas, Adv.
	Mr. Aditya N. Das, Adv.
	Mr. Shashank Singh, Adv.
Goa	**Mr. Siddharth Bhatnagar, Adv.**
	Mr. Sidharth Mohan, Adv.
	Ms. Garima Tiwari, Adv.
	Mr. Nirnimesh Dube, AOR
Maharashtra	**Mr. Sachin Patil, Adv.**
	Mr. Nishant Katneshwarkar, Adv.
	Mr. B. Balaji, AOR
	Mr. Sudhanshu, Adv.
MCI	**Mr. Gaurav Sharma, AOR**
	Mr. Prateek Bhatia, Adv.
	Mr. Dhawal M., Adv.
	Mr. Mukul Gupta, Sr. Adv.
	Mr. Kaushik Poddar, AOR
	Mr. Rakesh Gosain, Adv.
	Ms. Suvarna Kashyap, Adv.
	Mr. Tushar Gupta, Adv.
	Mr. Rudreshwar Singh, Adv.
	Mr. Gopal Singh, AOR
	Ms. Vimla Singh, Adv.
	Mr. S.N. Bhat, AOR
	Ms. Vaijayanthi Girish, Adv.

Punjab **Mr. Kuldip Singh, Adv.**
Mr. M.S. Bakshi, Av.
Ms. Kirti Kumar, Adv.

Mr. S. Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Ms. Swati Vellodi, Adv.
For M/s. Lawyer's Knit & Co.

UPON hearing the counsel the Court made the following

O R D E R

Applications for impleadment are allowed.

All the interlocutory applications and writ petitions are disposed of in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)

44

Annexure-5

CASE NO.:
Writ Petition (civil) 290 of 1997

PETITIONER:
PREETI SRIVASTAVA (DR.)& ANR.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT: 10/08/1999

BENCH:
A.S.ANAND CJI & S.B.MAJMUDAR & SUJATA V.MANOHAR & K.VENKATASWAMI & V.N.KHARE

JUDGMENT:
JUDGMENT

DELIVERED BY

S.B.MAJMUDAR, J.

SUJATA V.MANOHAR, J.

S.B.Majmudar, J.

Leave granted.

I have carefully gone through the draft judgment prepared by our esteemed colleague Justice Sujata V. Manohar. I respectfully agree with some of the conclusions arrived at therein at pages 61 and 62, namely, conclusion nos. 1 and 4. However, so far as conclusion nos. 2 and 3 are concerned, I respectfully record my reservations and partially dissent as noted hereinafter. In my view, the common entrance examination envisaged under the regulations framed by the Medical Council of India for Postgraduate Medical Education does not curtail the power of the State Authorities, legislative as well as executive, from fixing suitable minimum qualifying marks differently for general category candidates and for SCs/STs and OBC candidates as highlighted in my present judgment.

So far as conclusion no.3 is concerned, with respect, it is not possible for me to agree with the reasoning and the final conclusion to which our esteemed colleague Justice Sujata V. Manohar has reached, namely, that fixing minimum qualifying marks for passing the entrance test for admission to postgraduate courses is concerned with the standard of Postgraduate Medical Education.

I, however, respectfully agree to that part of conclusion no.3 which states that there cannot be a wide disparity between the minimum qualifying marks for reserved category candidates and the minimum qualifying marks for general category candidates at this level. I also respectfully agree that there cannot be dilution of minimum qualifying marks for such reserved category candidates up to

almost a vanishing point. The dilution can be only up to a reasonable extent with a rock bottom, below which such dilution would not be permissible as demonstrated hereinafter in this judgment. In my view, maximum dilution can be up to 50% of the minimum qualifying marks prescribed for general category candidates. On that basis if 45% passing marks are prescribed for general category, permissible dilution can then go up to 22 and 1/2 % (50% of 45%). Any dilution below this rock bottom would not be permissible under Article 15(4) of the Constitution of India.

For reaching the aforesaid conclusions, I have independently considered the scheme of the relevant provisions of the Constitution in the light of the various judgments of this Court as detailed hereinafter :

Entry 66 of List I, Old Entry 11(2) of List II and Entry 25 of List III:

Entry 66 of List I of the Seventh Schedule reads as under : Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Old Entry 11 of List II, as earlier existing in the Constitution of India, read as under :

Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

While Entry 25 of List III as now existing in the Seventh Schedule of the Constitution reads as under : Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

A conjoint reading of these entries makes it clear that as per Entry 11 of List II which then existed on the statute book, all aspects of education, including university education, were within the exclusive legislative competence of the State Legislatures subject to Entries 63 to 66 of List I and the then existing Entry 25 of List III. The then existing Entry 25 of the Concurrent List conferred power on the Union Parliament and State Legislature to enact legislation with respect to vocational and technical training of labour. Thus, the said Entry 25 of List III had nothing to do with Medical Education. Any provision regarding Medical Education, therefore, was thus covered by Entry 11 of List II subject of course to the exercise of legislative powers by the Union Legislature as per entries 63 to 66 of List I. In the light of the aforesaid relevant entries, as they stood then, a Constitution Bench of this court in The Gujarat University, Ahmedabad vs. Krishna Ranganath Mudholkar & Ors., 1963 Suppl.(1) SCR 112, speaking through J.C.Shah, J., for the majority, had to consider whether the State Legislature could impose an exclusive medium of instruction Gujarati for the students who had to study and take examination conducted by the Gujarat University. It was held that If a legislation imposing a regional language or Hindi as the exclusive medium of

instruction is likely to result in lowering of standards, it must necessarily fall within Item 66 of List I and be excluded to that extent from Item 11 of List II as it then stood in the Constitution. Medium of instruction was held to have an important bearing on the effectiveness of instruction and resultant standards achieved thereby. In this connection, pertinent observations were made at pages 142 and 143 of the aforesaid Report: If adequate text-books are not available or competent instructors in the medium, through which instruction is directed to be imparted, are not available, or the students are not able to receive or imbibe instructions through the medium in which it is imparted, standards must of necessity fall, and legislation for co-ordination of standards in such matters would include legislation relating to medium of instruction. If legislation relating to imposition of an exclusive medium of instruction in a regional language or in Hindi, having regard to the absence of text-books and journals, competent teachers and incapacity of the students to understand the subjects, is likely to result in the lowering of standards, that legislation would, in our judgment, necessarily fall within item 66 of List I and would be deemed to be excluded to that extent from the amplitude of the power conferred by item No.11 of List II.

However, after the deletion of Entry 11 from List II and re-drafting of Entry 25 in the Concurrent List as in the present form, it becomes clear that all aspects of education, including admission of students to any educational course, would be covered by the general entry regarding education including technical and medical education etc. as found in the Concurrent List but that would be subject to the provisions of Entries 63 to 66 of List I. Therefore, on a conjoint reading of Entry 66 of List I and Entry 25 of List III, it has to be held that so long as the Parliament does not occupy the field earmarked for it under Entry 66 of List I or for that matter by invoking its concurrent powers as per Entry 25 in the Concurrent List, the question of admission of students to any medical course would not remain outside the domain of the State Legislature. It is not in dispute that up till now the Parliament, by any legislative exercise either by separate legislation or by amending the Indian Medical Council Act, 1956 has not legislated about the controlling of admissions of students to higher medical education courses in the country. Therefore, the only question remains whether the Indian Medical Council Act enacted as per Entry 66 of List I covers this aspect. If it covers the topic then obviously by the express language of Entry 25 of List III, the said topic would get excluded from the legislative field available to the State Legislature even under Entry 25 of Concurrent List. For answering this question, we have therefore, to see the width of Entry 66 of List I. It deals with Co-ordination and determination of standards in institutions for higher education... A mere reading of this Entry shows that the legislation which can be covered by this entry has to deal basically with Co-ordination anddetermination ofstandards in institutions for higher education. Meaning thereby, the standards of education at the institutions of higher education where students are taking education after admission are to be monitored by such a legislation or in other words after their enrolment for studying at such institutions for higher education such students have to

undertake the prescribed course of education evolved with a view to having uniform and well laid down standards of higher medical education. It cannot be disputed that postgraduate teaching in medical education is being imparted by institutions for higher medical education. But the question is whether the topic of admission of eligible candidates/students for taking educationin such institutions has anything to do with co-ordination and determination of standards in these institutions. Now standards in the institutions have been prefixed by two words, namely, co-ordination and determination of such standards as per Entry 66 of List I. So far as co-ordination is concerned, it is a topic dealing with provision of uniform standards of education in different institutions so that there may not be any hiatus or dissimilarity regarding imparting of education by these institutions to the students taking up identical courses of study for higher medical education in these institutions. That necessarily has a nexus with the regulations of standards of education to be imparted to already admitted students to the concerned courses of higher education. But so far as the phrase determination of standards in institutions for higher education is concerned, it necessarily has to take in its sweep the requirements of having a proper curriculum of studies and the requisite intensity of practical training to be imparted to students attaining such courses. But in order to maintain the fixed standard of such higher medical education in the institutions, basic qualification or eligibility for admission of students for being imparted such education also would assume importance. Thus, the phrase determination of standards in institutions for higher education would also take in its sweep the basic qualifications or eligibility criteria for admitting students to such courses of education. It can, therefore, be held that the Indian Medical Council Act, 1956 enacted under Entry 66 of List I could legitimately authorise Medical Council of India which is the apex technical body in the field of medical education and which is enjoined to provide appropriately qualified medical practitioners for serving the suffering humanity to prescribe basic standards of eligibility and qualification for medical graduates who aspire to join postgraduate courses for obtaining higher medical degrees by studying in the institutions imparting such education.

But the next question survives as to whether after laying down the basic qualifications or eligibility criteria for admission of graduate medical students to the higher medical education courses which may uniformly apply all over India as directed by the Medical Council of India, it can have further power and authority to control the intake capacity of these eligible students in a given course conducted by the institutions for higher postgraduate medical education. In other words, whether it can control the admissions of eligible candidates to such higher medical education courses or lay down any criteria for short-listing of such eligible candidates when the available seats for admission to such higher postgraduate medical education courses are limited and the eligible claimants seeking admission to such courses are far greater in number? So far as this question is concerned, it immediately projects the problem of short- listing of available eligible candidates competing for admission to the given medical education course and how such admissions could be controlled by short-listing a number of eligible candidates out of the

larger number of claimants who are also eligible for admission. In other words, there can be too many eligible candidates chasing too few available seats. So far as this question is concerned, it clearly gets covered by Entry 25 of Concurrent List III rather than Entry 66 of List I as the latter entry would enable, as seen above, the Medical Council of India only to lay down the standards of eligibility and basic qualification of graduate medical students for being admitted to any higher postgraduate medical course. Having provided for the queue of basically eligible qualified graduate medical students for admission to postgraduate medical courses for a given academic year, the role of Medical Council of India would end at that stage. Beyond this stage the field is covered by Entry 25 of List III dealing with education which may also cover the question of controlling admissions and short-listing of the eligible candidates standing in the queue for being admitted to a given course of study in institutions depending upon the limited number of seats available in a given discipline of study, the number of eligible claimants for it and also would cover the further question whether any seats should be reserved for SC,ST and OBCs as permissible to the State authorities under Article 15(4) of the Constitution of India. So far as these questions are concerned, it is no doubt true that Entry 25 of Concurrent List read with Article 15(4) of the Constitution of India may simultaneously authorise both the Parliament as well as the State Legislatures to make necessary provisions in that behalf. The State can make adequate provisions on the topic by resorting to its legislative power under Entry 25 of List
III as well as by exercising executive power under Article 162 of the Constitution of India read with entry 25 of List III. Similarly, the Union Government, through Parliament, may make adequate provisions regarding the same in exercise of its legislative powers under Entry 25 of List III. But so long as the Union Parliament does not exercise its legislative powers under Entry 25 of List III covering the topic of short-listing of eligible candidates for admission to courses of postgraduate medical education, the field remains wide open for the State authorities to pass suitable legislations or executive orders in this connection as seen above. As we have noted earlier, the Union Parliament has not invoked its power under Entry 25 of List III for legislating on this topic. Therefore, the field is wide open for the State Governments to make adequate provisions regarding controlling admissions to postgraduate colleges within their territories imparting medical education for ultimately getting postgraduate degrees. However, I may mention at this stage that reliance placed by Shri Chaudhary, learned senior counsel for the State of Madhya Pradesh on a Constitution bench judgment of this Court in Tej Kiran Jain & Ors. vs. N.Sanjiva Reddy & Ors., 1970(2) SCC 272, interpreting the word in in the phrase in Parliament to mean during the sitting of Parliament and in the course of the business of Parliament cannot be of any avail to him while interpreting the phrase determination of standards in institutions for higher education as found in Entry 66 of List I. His submission, relying on the aforesaid decision that directions regarding standards in institutions mean only those directions of the Medical Council of India which regulate the actual courses of study after the students are admitted into the institutions and cannot cover the situation prior to their admission, meaning thereby, pre-admission stage for students seeking entry to the institution of higher education cannot be countenanced.

The reason is obvious. Once it is held that the Medical Council of India exercising its statutory functions and powers under the Indian Medical Council Act, 1956 which squarely falls within Entry 66 of List I can lay down the eligibility and basic qualifications of students entitled to be admitted to such postgraduate courses of study, their eligibility qualification wouldnaturally project a consideration which is prior to their actual entry in the institutions as students for being imparted higher education. That would obviously be a pre-admission stage. Therefore, the phrase determination of standards in institutions does not necessarily mean controlling standards of education only after the stage of entry of students in these institutions and necessarily not prior to the entry point. However, as seen earlier, the real question is whether determination of standardsin institutions would go beyond the stage of controlling the eligibility and basic qualification of students for taking up such courses and would also cover the further question of short-listing of such eligible students by those running the institutions in the States. For every academic year, there will be limited number of seats in postgraduate medical courses vis-a-vis a larger number of eligible candidates as per guidelines laid down by the Medical Council of India. Short-listing of such candidates, therefore, has to be resorted to. This exercise will depend upon various imponderables like i) limited number of seats for admission in a given course vis-a-vis larger number of eligible candidates seeking admissions and the question of fixation of their inter se merits so as to lay down rational criteria for selecting better candidates as compared to candidates with lesser degree of competence for entry in such courses; ii) Whether at a given point of time there are adequate chances and scope for SC,ST and OBC candidates who can equally be eligible for pursuing of such courses but who on account of their social or economic backwardness may lag behind in competition with other general category candidates who are equally eligible for staking their claims for such limited number of seats for higher educational studies, iii) availability of limited infrastructural facilities for training in institutions for higher medical education in the State or in the colleges concerned. All these exigencies of the situations may require State authorities, either legislatively or by exercise of executive powers, to adopt rational standards or methods for short-listing eligible candidates for being admitted to such medical courses from year to year also keeping in view the requirement of Article 15(4) of the Constitution of India. While dealing with Entry 25 of List III it has also to be kept in view that the word education is of wide import. It would necessarily have in its fold (i) the taught, (ii) the teacher, (iii) the text and also (iv) training as practical training is required to be imparted to students pursuing the course of postgraduate medical education. Who is to be the taught is determined by Medical Council of India by prescribing the basic qualifications for admission of the students. Adequate number of teachers keeping in view teacher taught ratio is also relevant. Prescribing appropriate courses for study i.e. curricula is also covered by the term education. Training to be imparted to the students has a direct nexus with infrastructural facilities like number of beds of patients to be attended to by postgraduate medical students, providing appropriate infrastructure for surgical training etc. also would form part of education. Role of Medical Council of India is exclusive in the field of laying

down of basic qualifications of the taught and also the requirement of qualified teachers, their numbers and qualifications, prescribing text and requisite training to be imparted to students undertaking postgraduate medical courses. All these provisions quite clearly fall within the domain of Medical Council of Indias jurisdiction. However, the only field left open by the Parliament while enacting the Indian Medical Council Act, 1956 under Entry 66 of List III of Schedule VII is the solitary exercise of short-listing of eligible taught for being admitted to such courses. That field can validly be operated upon by the State authorities so long as Parliament, in its wisdom, does not step in to block even that solitary field otherwise remaining open for State authorities to function in that limited sphere. Infrastructure facilities, therefore, for giving such practical training to the taught also would be an important part of medical education. It is of course true that not only the eligibility of students for admission to medical courses but also the quality of students seeking to get medical education especially postgraduate medical education with a view to turning out efficient medical practitioners for serving the suffering humanity would all be covered by the term education. So far as the quality of admitting students to the courses of higher medical education i.e. postgraduate medical courses is concerned, the admission of students may get sub-divided into two parts; i) basic eligibility or qualification for being permitted to enter the arena of contest for occupying the limited number of seats available for pursuing such education; and ii) the quality of such eligible candidates for being admitted to such courses. As we have seen earlier, the first part of exercise for admission can be covered by the sweep of the parliamentary legislation i.e. the Indian Medical Council Act, 1956 enabling the delegate of the Parliament namely, Medical Council of India to lay down proper criteria for that purpose as per regulations framed by it under Section 33 of the Indian Medical Council Act. This aspect is clearly covered by Entry 66 of List I but so far as the second part of admissions of eligible students is concerned, it clearly remains in the domain of Entry 25 of List III and it has nothing to do with Entry 66 of List I and as this field is wide open till the Parliament covers it by any legislation under Entry 25 of List III, the State can certainly issue executive orders and instructions or even pass appropriate legislations for controlling and short-listing the admissions of eligible candidates to such higher postgraduate medical courses in their institutions or other institutions imparting such medical education in the States concerned. A three Judge bench of this Court in Ajay Kumar Singh & Ors. vs. State of Bihar & Ors., 1994(4) SCC 401, has taken the same view on these entries which commands acceptance. Jeevan Reddy, J., speaking for the three Judge bench placing reliance on an earlier three Judge bench judgment of this Court in State of M.P. vs. Nivedita Jain, 1981(4) SCC 296, and agreeing with the view expressed therein observed in para 22 of the Report as under : The power to regulate admission to the courses of study in medicine is traceable to Entry 25 in List III. (Entry 11 in List II, it may be remembered, was deleted by the 42nd Amendment to the Constitution and Entry 25 of List III substituted). The States, which establish and maintain these institutions have the power to regulate all aspects and affairs of the institutions except to the extent provided for by Entries 63 to 66 of List I. Shri Salve contended that the determination and coordination of

standards of higher education in Entry 66 of List I takes in all incidental or ancillary matters, that Regulation of admission to courses of higher education is a matter incidental to the determination of standards and if so, the said subject- matter falls outside the field reserved to the States. He submits that by virtue of Entry 66 List I, which overrides Entry 25 of List III, the States are denuded of all and every power to determine and coordinate the standards of higher education, which must necessarily take in regulating the admission to these courses. Even if the Act made by parliament does not regulate the admission to these courses, the States have no power to provide for the same for the reason that the said subject-matter falls outside their purview. Accordingly, it must be held, says Shri Salve, that the provision made by the State Government reserving certain percentage of seats under Article 15(4) is wholly incompetent and outside the purview of the field reserved to the States under the Constitution. We cannot agree. While Regulation of admission to these medical courses may be incidental to the power under Entry 66 List I, it is integral to the power contained in Entry 25 List
III. The State which has established and is maintaining these institutions out of public funds must be held to possess the power to regulate the admission policy consistent with Article 14. Such power is an integral component of the power to maintain and administer these institutions. Be that as it may, since we have held, agreeing with the holding in Nivedita Jain that Entry 66 in List I does not take in the selection of candidates or regulation of admission to institutions of higher education, the argument of Shri Salve becomes out of place. The States must be held perfectly competent to provide for such reservations.

It is also pertinent to note that decision of this Court in Kumari Nivedita Jain (supra) is approved by a Constitution bench of nine Judges of this court in Indra Sawhney vs. Union of India, 1992 Supp. 3 SCC 217 at page 751, to which I will make a detailed reference later on.
II. Role of the Medical Council of India: As noted earlier, the Indian Medical Council Act, 1956 was enacted by the Union Parliament in exercise of its powers under Entry
66 of List I of the Seventh Schedule of the Constitution. The statement of objects and reasons of the said Act read as under : The objects of this Bill are to amend the Indian Medical Council Act, 1933 (Act XXVII of 1933) - (a) to give representation to licentiate members of the medical profession, a large number of whom are still practising in the country; (b) to provide for the registration of the names of citizens of India who have obtained foreign medical qualifications which are not at present recognised under the existing Act; (c) to provide for the temporary recognition of medical qualifications granted by medical institutions in countries outside India with which no scheme of reciprocity exists in cases where the medical practitioners concerned are attached for the time being to any medical institution in India for the purpose of teaching or research or for any charitable object; (d) to provide for the formation of a Committee of Postgraduate Medical Education for the purpose of assisting the Medical Council of India to prescribe standards of postgraduate medical education for the guidance of Universities and to advise Universities in the matter of securing uniform standards for postgraduate medical education throughout India; (e) to provide for the

maintenance of an all-India register by the Medical Council of India, which will contain the names of all the medical practitioners possessing recognised medical qualifications.

Amongst others, the object and reason no.(d) clearly indicated that the Act was to provide for the formation of a Committee of Postgraduate Medical Education for the purpose of assisting the Medical Council of India to prescribe standards of postgraduate medical education for the guidance of Universities. This necessarily meant conferring power on Medical Council of India to be the approving body for the universities for enabling them to prescribe standards of postgraduate medical education. Naturally that referred to the courses of study to be prescribed and the types of practical training to be imparted to the admitted students for such courses. We may now refer to the relevant statutory provisions of the Act. Section 10-A empowers the Central Government to give clearance for establishing medical colleges at given centres and the statutory requirements for establishing such colleges. It is the Medical Council of India which has to recommend in connection with such proposed scheme for establishing medical colleges. Sub-section (7) of Section 10-A lays down the relevant considerations to be kept in view by the Medical Council of India while making such recommendations in connection with any scheme proposing to establish a medical college. They obviously refer to the types of education to be imparted to admitted students and the basic requirement of infrastructure for imparting such education which only would enable the proposed college to be established. None of these requirements has anything to do with the controlling of admissions out of qualified and eligible students who can take such education. Section 11 deals with medical qualifications granted by any University or medical institution which can be recognised as medical qualifications for the purpose of the Act. Meaning thereby, only such qualified persons can be registered as medical practitioners under the Act. None of the other provisions of the Act deal with the topic of short-listing of eligible and otherwise qualified candidates for being admitted to medical courses either at MBBS level or even at post-graduate level. As we are concerned with minimum standards for medical education at postgraduate level, Section 20 of the Act becomes relevant. It reads as under : 20. Postgraduate Medical Education Committee for assisting Council in matters relating to postgraduate medical education - (1) The Council may prescribe standards of postgraduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for postgraduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Postgraduate Medical Education Committee (hereinafter referred to as the Postgraduate Committee). (2) The Postgraduate Committee shall consist of nine members all of whom shall be, persons possessing postgraduate medical qualifications and experience of teaching or examining postgraduate students of medicine. (3) Six of the members of the Postgraduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members. (4) For the purpose of considering Postgraduate studies in a subject, the Postgraduate Committee may co-opt, as and when necessary, one or more members qualified to assist it in

that subject. (5) The views and recommendations of the Postgraduate Committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the Postgraduate Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision.

Sub-section (1) of Section 20 while dealing with prescription of standards of postgraduate medical education by the Council for the guidance of Universities does not by itself touch upon the topic of controlling of admission of eligible medical graduates or short-listing them according to the exigencies of the situations at a given point of time by those running medical institutions imparting postgraduate medical courses in the colleges. Standards of postgraduate medical education as mentioned in sub-section (1) of Section 20 therefore, would include guidance regarding the minimum qualifications or eligibility criteria for such students for admission and after they are admitted having undergone the process of short-listing at the hands of the State authorities or authorities running the institutions, how they are to be trained and educated in such courses, how practical training has to be given to them and what would be the course of study, the syllabi and the types of examination which they have to undertake before they can be said to have successfully completed postgraduate medical education in the concerned States. But having seen all these it has to be kept in view that all that Sub-section (1) of Section 20 enables the Medical Council of India is to merely give guidance to the Universities. What is stated to be guidance can never refer to the quality of a candidate who is otherwise eligible for admission. None of the remaining provisions up to Section 32 deal with the question of controlling of admission by process of short-listing from amongst eligible and duly qualified candidates seeking admission to postgraduate medical courses. We then go to Section 33 which confers power on the Medical Council of India to make regulations. It provides that the Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act. Therefore, this general power to make regulations has to be with reference to any of the statutory purposes indicated in any other provisions of the Act. As none of the provisions in the Act enables the Medical Council of India to regulate the admission of eligible candidates to the available seats for pursuing higher medical studies in institutions, the general power to make regulations cannot cover such a topic. So far as the express topics enumerated in Section 33 on which regulations can be framed are concerned, the relevant topics for our purpose are found in clauses (fc) and (j). So far as clause (fc) is concerned, it deals with the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of Section 10B. When we turn to Section 10B, we find that it deals with those students who are admitted on the basis of the increase in its admission capacity without previous permission of the Central Government. Any medical qualification obtained by such student will not enable him or her to be treated as duly medically qualified. The medical qualification is obviously obtained by the student who has successfully completed his course of study and obtained the requisite degree. It is the obtaining of such requisite medical

degree and qualification that entitles him to get enrolled as per Section 15 on any State Medical Register so that he can act as a Registered Medical Practitioner. That obviously has nothing to do with the admission of students desirous of obtaining medical degrees after undergoing requisite educational training at theinstitutions. Therefore, no regulation framed under Section 33(fc) can cover the topic of short-listing of eligible candidates for admission. Then remains in the filed clause (j) which provides as under : [(j)the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications; A mere look at the said provision shows that regulations under this provision can be framed by the Medical Council of India for laying down the courses and period of study and of practical training to be undertaken, the subjects of examination and the standard of proficiency therein to be obtained by the admitted students for obtaining recognised medical qualifications. They all deal with post- admission requirements of eligible students in the medical courses concerned. That has nothing to do with pre-entry stage of such students eligible for admission. Consequently, any regulation framed by the Medical Council of India under Section 33 which seeks to give any guidelines in connection with the method of admission of such eligible students to medical courses would obviously remain in the realm of a mere advise or guidance and can obviously therefore, not have any binding force qua admitting authorities. It, therefore, must be held that once the Medical Council of India has laid down basic requirements of qualifications or eligibility criteria for a student who has passed his MBBS examination for being admitted to postgraduate courses for higher medical education in institutions and once these basic minimum requirements are complied with by eligible students seeking such admissions the role of Medical Council of India comes to an end. As seen earlier, the question of short-listing falls squarely in the domain of State authorities as per entry 25 of List III till Parliament steps in to cover this field. We may now briefly deal with decisions of this Court rendered from time to time in connection with this question. A three Judge bench of this Court in D.N. Chanchala vs. State of Mysore & Ors.etc., 1971 Supp. SCR 608, speaking through Shelat, J., emphasised the necessity for a screening test and short-listing of eligible candidates for being admitted to medical courses in view of the fact that claimants are many and seats are less. Dealing with three universities set up in the territories of the then State of Mysore catering to medical education, the following relevant observations were made at page 619 of the Report : The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs.Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centres for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do notsuffer from infirmities,

constitutional or otherwise. Similar observations were made at page 628 of the Report :

On account of paucity of institutions imparting training in technical studies and the increasing number of candidates seeking admission therein, there is obviously the need for classification to enable fair and equitable distribution of available seats. The very decisions relied on by counsel for the petitioner implicitly recognise the need for classification and the power of those who run such institutions to lay down classification.

A three Judge bench of this Court in State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors., (supra) had to consider the legality of order passed by the State of Madhya Pradesh completely relaxing the conditions relating to the minimum qualifying marks for SC,ST candidates for admission to medical courses of study on non- availability of qualified candidates from these categories. Such an exercise was held permissible under Articles 14 and 15 of the Constitution of India. A.N. Sen, J., speaking for the Court in this connection referred to Entry 25 of the Concurrent List and also the constitutional scheme of Entry 66 of List I and held that: By virtue of the authority conferred by the Medical Council Act, the Medical Council may prescribe the eligibility of a candidate who may seek to get admitted into a Medical College for obtaining recognised medical qualifications. But as to how the selection has to be made out of the eligible candidates for admission into the Medical College necessarily depends on circumstances and conditions prevailing in particular States and does not come within the purview of the Council. Regulation I which lays down the conditions or qualifications for admission into medical course comes within the competence of the Council under Section 33 of the Act and is mandatory, whereas Regulation II which deals with the process or procedure for selection from amongst eligible candidates for admission is outside the authority of the Council under Section 33 of the Act, and is merely in the nature of a recommendation and is directory in nature. (paras 19 and 21) Entry 25 in List II is wide enough to include within its ambit the question of selection of candidates to Medical Colleges and there is nothing in the Entries 63, 64 and 65 of List I to suggest to the contrary. (para 22) As there is no legislation covering the field of selection of candidates for admission to Medical Colleges, the State Government would, undoubtedly, be competent to pass executive orders in this regard under Article 162. (para 24) Thus Regulation II of the Council which is merely directory and in the nature of a recommendation has no such statutory force as to render the Order in question which contravenes the said Regulation illegal, invalid and unconstitutional. The Order can therefore be supported under Article 15(4). (paras 22 and 25) The State is entitled to make reservations for the Scheduled Castes and Scheduled Tribes in the matter of admission to medical and other technical institutions. In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservations have been made. In any particular situation, taking into consideration the realities and circumstances prevailing in the State it will be open to the State to vary and modify the conditions regarding selection for admission, if such modification or variation becomes

necessary for achieving the purpose for which reservation has been made and if there be no law to the contrary. Note (ii) of Rule 20 of the Rules for admission framed by the State Government specifically empowers the Government to grant such relaxation in the minimum qualifying marks to the extent considered necessary. Such relaxation neither can be said to be unreasonable, nor constitutes violation of Article 15(1) and (2) or Article 14 of the Constitution. The impugned order does not affect any relaxation in the standard of medical education or curriculum of studies in Medical Colleges for those candidates after their admission to the College and the standard of examination and the curriculum remains the same for all. (paras 26 and 27)

(Emphasis supplied)

The aforesaid observations of the court are well sustained on the scheme of the relevant entries in VIIth Schedule to which we have made a reference earlier. As noticed herein before, this judgment of three member bench is approved by the Constitution bench in its judgment in Indra Sawhneys case (supra). It is of course true that these observations are made with reference to admission to MBBS course and not to postgraduate medical courses. But on the constitutional scheme of the relevant entries, the very same result can follow while regulating admissions to postgraduate medical courses also. Before parting with discussion on the topic regarding role of Medical Council of India, we may also usefully refer to the observations of Jeevan Reddy, J., in the case of Ajay Kumar Singh & Ors. vs. State of Bihar & Ors., (supra). Jeevan Reddy, J., speaking for the three Judge Bench in para 18 of the Report on the review and relevant provisions of the Indian Medical Council Act has made the following pertinent observations in the said para of the Report at page 415 : A review of the provisions of the Act clearly shows that among other things, the Act is concerned with the determination and coordination of standards of education and training in medical institutions. Sections 16, 17, 18 and 19 all speak of the courses of study and examinations to be undergone to obtain the recognised medical qualification. They do not speak of admission to such courses. Section 19-A expressly empowers the council to prescribe the minimum standards of medical education required for granting undergraduate medical qualification. So does Section 20 empower the council to prescribe standards of postgraduate medical education but for the guidance of universities only. It further says that the council may also advise universities in the matter of securing uniform standards for postgraduate medical education throughout India. (The distinction between the language of Section 19-A and Section 20 is also a relevant factor, as would be explained later.) Clause (j) of Section 33 particularises the subjects with respect to which Regulations can be made by the council. It speaks of the courses and period of study and the practical training to be undergone by the students, the subjects of examination which they must pass and the standards of proficiency they must attain to obtain the recognised medical qualifications but it does not speak of admission to such courses of study. Indeed, none of the sections aforementioned empower the council to regulate or prescribe qualifications or conditions for admission to such courses of study. No other provision in the Act does. It is thus clear that the Act does not purport to deal with, regulate or provide for

admission to graduate or postgraduate medical courses. Indeed, insofar as postgraduate courses are concerned, the power of the Indian Medical Council to prescribe the minimum standards of medical education is only advisory in nature and not of a binding character. In such a situation, it would be rather curious to say that the Regulations made under the Act are binding upon them. The Regulations made under the Act cannot also provide for or regulate admission to postgraduate courses in any event.

In our view, these observations are clearly borne out from the statutory scheme of the Indian Medical Council Act, as seen earlier.

III. Role of States for short-listing of admissions to postgraduate courses:

As seen earlier, so far as the field consisting of the short- listing of admission out of eligible and duly qualified medical graduates for being admitted to postgraduate medical courses in institutions is concerned, as the Union Parliament has not said anything about the same, the field is wide open for the State authorities to regulate such admissions by short-listing the available candidates keeping in view the concept of reservation of seats as permitted by Article 15(4) of the Constitution. In the case of R. Chitralekha & Anr. vs. State of Mysore & Ors., 1964 (6) SCR 368, a Constitution bench of this Court while dealing with Entry 66 of List I and Article 15(4) of the Constitution of India had to consider the question whether the State Government could prescribe the criteria for selection of students having minimum qualifications laid down by the university for admission to medical courses and whether it would affect the central legislation enacted under Entry 66 of List I of the Constitution? Answering this question in favour of the State authorities, it was observed at page 379 of the Report by Subba Rao, J., speaking on behalf of the Constitution bench as under : If the impact of the State law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to colleges, it would be directly encroaching on the field covered by entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law. It is then said that the Mysore University Act conferred power to prescribe rules for admission to Colleges on the University and the Government cannot exercise that power. It is true that under s.23 of the Mysore University Act, 1956, the Academic Council shall have the power to prescribe the conditions for admission of students to the University and, in exercise of its power, it has prescribed the percentage of marks which a student shall obtain for getting admission in medical or engineering colleges. The orders of the Government do not contravene the minimum qualifications prescribed by the University; what the Government did was to appoint a selection committee and prescribe rules for selection of students who have the minimum qualifications

prescribed by the University. The Government runs most of the medical and engineering colleges. Excluding the State aided colleges for a moment, the position is as follows : The Colleges run by the Government, having regard to financial commitments and other relevant considerations, can only admit a specific number of students to the said Colleges. They cannot obviously admit all the applicants who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis. The aforesaid orders of the Government only prescribed criteria for making admissions to Colleges from among students who secured the minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power.

At page 381 of the same Report, the following observations are made by the Constitution Bench, speaking through Subba Rao, J. :

We, therefore, hold that the Government has power to prescribe a machinery and also the criteria for admission of qualified students to medical and engineering colleges run by the Government and, with the consent of the management of the Government aided colleges, to the said colleges also.

Another decision of the Constitution bench of this Court was rendered in the case of Chitra Ghosh & Anr. vs. Union of India & Ors., 1970 (1) SCR 413. Grover, J., speaking for the Constitution bench observed at page 418 as under : It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter-alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.

At page 419 of the Report it has been further stated as under : The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In Minor P.Rajendran v. State of Madras it has been stated that the object of selection for admission is to secure the best possible

material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.

In the case of State of Andhra Pradesh & Anr. vs. Lavu Narendranath & Ors.etc., 1971(1) SCC 607, a four Judge bench of this Court had to consider whether the entrance test prescribed by the Government for short-listing eligible candidates for being admitted to medical courses in colleges was legally permissible or not. Upholding the power of the State Government on the anvil of the Constitution, Mitter, J., speaking on behalf of the four Judge bench held that : Merely because the University had made regulations regarding the admission of students to its degree courses, it did not mean that any one who had passed the qualifying examination such as the P.U.C. or H.S.C. was ipso facto to be entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available the University can have to make its choice out of the applicants to find out who should be admitted and if instead of judging the candidates by the number of marks obtained by them in the qualifying examination the University thinks fit to prescribe another test for admission no objection can be taken thereto. What the University can do in the matter of admissions to the degree courses can certainly be done by the Government in the matter of admission to the M.B.B.S. course. 9. In our view the test prescribed by the Government in no way militates against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. The said entry provides :

Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

The above entry gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It has no relation to a test prescribed by a Government or by a University for selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject.

Similar observations were found in para 15 of the Report, wherein it was observed that : .The University Act, as pointed out, merely prescribed a minimum qualification for entry into the higher courses of study. There was no regulation to the effect that admission to higher course of study was guaranteed by the securing of eligibility.The Executive have a power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the field and the Government order in this case in no way affected the rights of candidates with regard to eligibility for admission : the test prescribed was a further hurdle by way of competition when mere eligibility could not be made the determining factor.

The aforesaid observations of the four Judge bench, in our view, correctly bring out the permissible scheme of short-listing of eligible candidates in the light of the relevant provisions with which we are concerned. In the case of Dr. Ambesh Kumar vs. Principal, L.L.R.M.Medical College, Meerut & Ors., 1986 (Supp) SCC 543, a two Judge bench of this court had to consider the question whether out of the eligible candidates qualified for being considered for admission to medical education imparted in medical colleges of the State, looking to the limited number of seats available, the State could resort to the process of weeding out by laying down further criteria for short-listing such candidates. Upholding such an exercise undertaken by the State in the light of the relevant provisions of the Constitution, B.C.Ray, J., speaking for the court, made the following observations at pages 544 and
545 of the Report as under : The State Government can in exercise of its executive power under Article 162 make an order relating to matters referred to in Entry 25 of the Concurrent List in the absence of any law made by the State Legislature. The impugned order made by the State Government pursuant to its executive powers was valid and it cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in Entry 66 of List I. The order in question merely specified a further eligibility qualification for being considered for selection for admission to the postgraduate courses (degree and diploma) in the Medical Colleges in the State in accordance with the criteria laid down by Indian Medical Council. The number of seats for admission to various postgraduate courses both degree and diploma in Medical Colleges is limited and a large number of candidates apply for admission to these courses of study. In such circumstances the impugned order cannot be said to be in conflict with or repugnant to or encroach upon the Regulations framed under the provisions of Section 33 of the Indian Medical Council Act. On the other hand by laying down a further qualification of eligibility it promotes and furthers the determination of standards in institutions for higher education.

In this connection, we may also refer to a later Constitution bench Judgment of this Court in Indra Sawhney & Ors. vs.Union of India & Ors., (supra). As noted earlier, judgment of this Court in Kumari Nivedita Jains case (supra) was approved therein. Jeevan Reddy, J., speaking on behalf of the Constitution bench, at page 751 of the Report in para 837 has referred to, with approval, the observations of this Court in State of Madhya Pradesh vs. Kumari Nivedita Jain, (Supra) to the effect that admission to medical courses was regulated by an entrance test for general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For SC/ST candidates, however, it was 40% and 30% respectively. The said deviation was upheld in Kumari Nivedita Jains case (supra) and the same was also approved by the Constitution Bench in the aforesaid decision. In this connection, we may also usefully refer to the relevant observations in the case of State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors. (supra) which got imprimatur of the Constitution bench of this court in Indra Sawhneys case (supra). At

page 751 of the Report in Indra Sawhneys case (supra), the following pertinent observations are found in the majority judgment wherein Jeevan Reddy, J., in paragraph 837 of the Report observed as under :

Having said this, we must append a note of clarification. In some cases arising under Article 15, this Court has upheld the removal of minimum qualifying marks, in the case of Scheduled Caste/Scheduled Tribe candidates, in the matter of admission to medical courses. For example, in State of M.P. v. Nivedita Jain admission to medical course was regulated by an entrance test (called Pre-Medical Test). For general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For Scheduled Caste/Scheduled Tribe candidates, however, it was 40% and 30% respectively. On finding that Scheduled Caste/Scheduled Tribe candidates equal to the number of the seats reserved for them did not qualify on the above standard, the Government did away with the said minimum standard altogether. The Governments action was challenged in this Court but was upheld. Since it was a case under Article 15, Article 335 had no relevance and was not applied. But in the case of Article 16, Article 335 would be relevant and any order on the lines of the order of the Government of Madhya Pradesh (in Nivedita Jain) would not be permissible, being inconsistent with the efficiency of administration. To wit, in the matter of appointment of Medical Officers, the Government or the Public Service Commission cannot say that there shall be no minimum qualifying marks for Scheduled Caste/Scheduled Tribe candidates, while prescribing a minimum for others. It may be permissible for the Government to prescribe a reasonably lower standard for Scheduled Castes/Scheduled Tribes/Backward Classes - consistent with the requirements of efficiency of administration - it would not be permissible not to prescribe any such minimum standard at all. While prescribing the lower minimum standard for reserved category, the nature of duties attached to the post and the interest of the general public should also be kept in mind.

In para 20 of the Report in the case of State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors. (supra) the following pertinent observations are found : Undoubtedly, under Section 33 of the Act, the Council is empowered to make regulations with the previous sanction of the Central Government generally to carry out the purposes of the Act and such regulations may also provide for any of the matters mentioned in Section 33 of the Act. We have earlier indicated what are the purposes of this Act. Sub-sections (j), (k), (l) and (m) of the Act which we have earlier set out clearly indicate that they have no application to the process of selection of a student out of the eligible candidates for admission into the medical course. Sub- sections (j), (k) and (l) relate to post-admission stages and the period of study after admission in Medical Colleges. Sub-section (m) of Section 33 relates to a post-degree stage. Sub-section (n) of Section 33 which has also been quoted earlier is also of no assistance as the Act is not concerned with the question of selection of students out of the eligible candidates for admission into Medical Colleges. It appears to us that the observations of this Court in the case of Arti Sapru v. State of Jammu & Kashmir which we have earlier quoted and which were relied on by Mr. Phadke, were made on such consideration, though the question was not very properly

finally decided in the absence of the Council.

The aforesaid observations are also well borne out from the scheme of the Indian Medical Council Act to which we have made a detailed reference earlier. But even apart from that, once these observations have been approved by a Constitution Bench of nine learned Judges of this Court, there is no scope for any further debate on this aspect in the present proceedings.

We may now refer to a two Judge Bench decision of this Court in Dr. Sadhna Devi & Ors. vs. State o f U.P. & Ors., 1997(3) SCC 90. The court was concerned with the short-listing of eligible candidates who have got basic qualification for admission to postgraduate medical courses. Reservation of seats for SC and ST candidates in postgraduate courses was not challenged but providing zero percent marks for them for passing the entrance examination for admission to postgraduate course was questioned before the Bench. It was held that once minimum qualifying marks for passing the entrance examination for admission to postgraduate courses was a pre- requisite, in the absence of prescription of any minimum qualifying marks for reserved category of candidates, admitting such students who did not get any marks at the entrance test amounted to sacrificing merit and could not be countenanced. In para 21 of the Report, the following observations are made: In our view, the Government having laid down a system for holding admission tests, is not entitled to do away with the requirement of obtaining the minimum qualifying marks for the special category candidates. It is open to the Government to admit candidates belonging to the special categories even in a case where they obtain lesser marks than the general candidates provided they have got the minimum qualifying marks to fill up the reserved quota of seats for them.

A cursory reading of these observations seems to indicate that once the minimum qualifying marks are prescribed for otherwise eligible candidates for short-listing them for admission to postgraduate courses, minimum qualifying marks prescribed for general category candidates and reserved category candidates must be uniform. But then follows para 22 which relies on the decision of this court in State of Madhya Pradesh vs. Kumari Nivedita Jain (supra) wherein prescription of lesser minimum qualifying marks in the entrance test for SC,ST and Other Backward Class candidates as compared to the minimum qualifying marks for general category candidates was approved. Even in earlier para 18 it is observed that if in the entrance test special category candidates obtain lesser marks than general category candidates even then they will be eligible for admission within their reserved quota. These observations indicate that for reserved category of candidates there can be separate minimum qualifying marks. Thus, on a conjoint reading of observations in paras 18, 21 and 22 of the Report it has to be held that the ratio of the decision in Sadhna Devis case (supra) is that even for reserved category candidates there should be some minimum qualifying marks if not the same as prescribed as bench marks for general category candidates. Thus, there cannot be any zero qualifying marks for reserved category candidates in the entrance test for admission to postgraduate courses. Hence, this judgment cannot be taken to have laid down that there cannot be lesser qualifying

marks for reserved category candidates as compared to the general category candidates who are otherwise eligible and qualified for being considered for admission to postgraduate medical courses. That takes us to the consideration of a three Judge Bench decision of this Court in Postgraduate Institute of Medical Education & Research, Chandigarh & Ors., vs. K.L. Narasimhan & Anr., 1997 (6) SCC 283. Ramaswamy, J., speaking for the Bench had mainly to consider two questions; 1) whether there can be reservation under Articles 15(4) and 16(4) of the Constitution in connection with only one post in a discipline; and 2) whether reservation of seats in postgraduate courses was permissible as per Articles 14, 15 and 16 of the Constitution. Both the aforesaid questions were answered in the affirmative in favour of the schemes of reservations. So far as the question of reservation of seats when there is only one post in the discipline is concerned, decision rendered thereon by the three Judge Bench is expressly overruled by a Constitution Bench judgment of this Court in Postgraduate Institute of Medical Education & Research, Chandigarh vs. Faculty Association & Ors., 1998(4) SCC 1. However, so far as the second question is concerned, in the aforesaid judgment it was held that there can be reservation of seats in postgraduate courses as per the mandate of Articles 15(4) and 16(4). In the present proceedings, there is no dispute on this score. Hence the said judgment on the second point is not required to be reconsidered. However, certain observations are found in para 21 of the report wherein Ramaswamy, J., has observed that diluting of minimum qualifying marks in an entrance test for entry into postgraduate courses for reserved category of candidates cannot be said to be unauthorised or illegal. It has been observed that: Equally, a student, admitted on reservation, is required to pass the same standard prescribed for speciality or a superspeciality in a subject or medical science or technology. In that behalf, no relaxation is given nor sought by the candidates belonging to reserved categories. What is sought is a facility or opportunity for admission to the courses, Ph.D., speciality or superspeciality or high technology by relaxation of a lesser percentage of marks for initial admission than the general candidates. For instance, if the general candidate is required to get 80% as qualifying marks for admission into speciality or superspeciality, the relaxation for admission to the reserved candidates is of 10 marks less, i.e., qualifying marks in his case would be 70%. A doctor or a technologist has to pass the postgraduation or the graduation with the same standard as had by general candidate and has also to possess the same degree of standard. However, with the facility of possessing even lesser marks the reserved candidate gets admission.

Now, so far as these observations are concerned, as the court was not called upon to consider the question whether prescription of lesser qualifying marks for SC,ST and other reserved category candidates for admission to postgraduate or super speciality courses in medicine was permissible, they are clearly obiter. So far as admission to super speciality courses are concerned, in the present reference we are not concerned with the said question, hence, we need not say anything about the same. However, so far as admission to postgraduate courses is concerned the question of providing of lesser qualifying marks for reserved category candidates for admission to these courses directly arises for our consideration. Hence, the obiter

observations in the aforesaid case on this aspect do require consideration for their acceptance or otherwise. As per the scheme of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution of India, as discussed earlier goes, it is not possible to countenance the submission of Shri Salve, learned senior counsel for the Medical Council of India and other counsel canvassing the same view that the question of short-listing of eligible candidates who were otherwise duly qualified for being admitted to postgraduate courses in Medicine is not within the domain of State authorities especially in view of the fact that the Parliament, in exercise of its legislative powers under Entry 25 of List III, has still not spoken on the point nor does the Indian Medical Council Act, 1956 enacted under Entry 66 of List I covers this question. Hence, while providing for entrance test as an additional requirement for eligible candidates for being short-listed in connection with admission to smaller number of seats available in postgraduate courses, it cannot be said that the State authorities in exercise of their constitutional right under Article 15(4) cannot give additional facilities to reserved category of candidates vis-a-vis their requirement of getting minimum qualifying marks at such entrance tests so that seats reserved for them may not remain unfilled and the reserved category of candidates do get adequate opportunity to fill them up and get postgraduate education on the seats reserved for them which in their turn would not detract from the availability of remaining seats for general category candidates. Thus, the observations in para 21 of the aforesaid judgment that there can be lesser qualifying marks for admission to postgraduate courses for reserved category of candidates cannot be found fault with. It is made clear that similar observations for admission to super speciality courses and the relaxation of minimum qualifying marks for candidates appearing at the entrance test for such courses are not being approved by us as we are not required to consider that aspect of the matter, as noted earlier. As it will be presently shown, once reservation of seats in postgraduate courses under Article 15(4) is accepted then even lesser bench marks being prescribed for reserved category of candidates in the common entrance examination which they undertake along with general category of candidates would in substance make no difference so far as the un-reserved seats available to general category of candidates are concerned. In a later three Judge Bench Judgment of this Court in Medical Council of India vs. State of Karnataka & Ors., 1998(6) SCC 131, it was held that in the light of Sections 10-A, 10-B, 10-C, 19-A and 33(fa), (fb), (fc), (j), (k) and (l) of the Indian Medical Council Act, 1956 fixation of admission capacity in medical colleges/institutions is the exclusive function of Medical Council of India and increase in number of admissions can only be directed by the Central Govt. on the recommendation of the Medical Council of India. This function of the Medical Council of India was upheld in the light of Entries 66 List I and 25 of List III thereof. Now it becomes at once obvious that providing for number of seats to be filled up by eligible candidates in any medical course imparted by medical colleges or medical institutions will have a direct nexus with coordination and determination of standards in medical education, as larger the seats in medical colleges wherein students can be admitted to MBBS or even higher courses in medicine, larger infrastructure would be required by way of beds and eligible and efficient teachers and all other infrastructure for

imparting proper training to the admitted students. Once this exercise is clearly within the domain of the Medical Council of India in the light of the aforesaid statutory provisions it becomes obvious that Entry 66 of List I of the Seventh Schedule would hold the field and consequently States will not be empowered under entry 25 of List III to legislate on this topic as such an exercise would be subject to legislation under Entry 66 of List I which would wholly occupy the field. However, a moot question remains whether given the permissible intake capacity for admitting students in any medical college as laid down by the Medical Council of India can the available intake capacity of students be regulated at the admission stage when the number of eligible candidates aspiring to be admitted is larger than the available intake capacity? This question will remain outside the domain of the Medical Council of India under the aforesaid Act. As we have discussed earlier, there being no parliamentary legislation on this aspect even under entry 25 of List III of the Seventh Schedule, the short-listing of eligible candidates for being admitted to the available permitted intake capacity in medical colleges will obviously remain in the domain of State legislature and State executive on the combined reading of entry 25 of List III as well as Article 162 of the Constitution of India. In view of the aforesaid discussion, it therefore, becomes clear that once seats in postgraduate medical courses are reserved for SC, ST and OBC candidates as per Article 15(4) of the Constitution the question as to how admission to limited number of general seats and reserved seats are to be regulated will remain in the domain of the State authorities running these institutions. Theycan, therefore, legitimately resort to the procedure of short-listing of otherwise eligible candidates. While undertaking this exercise of short-listing, the state authorities have to see how best in a given academic year the reserved seats and general category seats can be filled in by available and eligible candidates. The question is while undertaking the task of short-listing of available eligible candidates vis-a-vis limited number of seats that may be available for being filled in in a given academic year, uniform qualifying bench marks for passing the entrance test should be prescribed for both the general category candidates as well as reserved category candidates or there can be lesser bench marks for the latter category of students. If due to non-availability of reserved category candidates who could obtain minimum qualifying marks prescribed for all the examinees whether there can be any legitimate dilution of minimum qualifying marks for these reserved category of question. candidates and if so, to what extent is the moot

In the case of M.R. Balaji & Ors. vs. State of Mysore,
IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII
1963 Supp.(1) SCR 439, a Constitution bench of this court was concerned with the extent of reservation which could be legally permissible under Article 15(4) of the Constitution of India. Gajendragadkar, J., speaking for the Constitution bench held that reservation of 68% seats in educational institutions was inconsistent with the concept of special provision authorised by Article 15(4). It was then observed as under : Reservation should and must be adopted to advance the prospects of weaker sections of society, but while doing so, care should be taken not to exclude admission to higher educational centres of deserving and qualified candidates of other communities. Reservations under Arts.15(4) and 16(4) must be within reasonable limits. The interests of weaker sections of society, which are a

first charge on the States and the Centre, have to be adjusted with the interests of the community as a whole. Speaking generally and in a broad way, a special provision should be less than 50%. The actual percentage must depend upon the relevant prevailing circumstances in each case. The object of Art.15(4) is to advance the interests of the society as a whole by looking after the interests of the weaker elements in society. If a provision under Art.15(4) ignores the interests of society, that is clearly outside the scope of Art.15(4). It is extremely unreasonable to assume that in enacting Art.15(4), Parliament intended to provide that where the advancement of the backward classes or the Scheduled Castes and Tribes were concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored. Considerations of national interest and the interests of the community and the society as a whole have already to be kept in mind.

Thus, even accepting that when seats are reserved for SC and ST and Other Backward Classes for admission to be given to such reserved category of eligible candidates in postgraduate medical courses, the concession or facility given to them cannot exceed 50% of the facility otherwise available to members of the general public. Keeping the aforesaid ratio of the Constitution Bench in view, therefore, even proceeding on the assumption that 50% of the available seats in postgraduate medical courses in a given year may be reserved for SC,ST and OBCs, further concession that may be given to them by State authorities by diluting the minimum qualifying marks at the entrance test so that seats reserved for them may not remain unfilled by the reserved categories of persons for whom they are meant, the dilution of such marks cannot exceed 50% of the general standards of qualifying bench marks laid down for the general categories of candidates. Otherwise even the said dilution would become unreasonable and would be hit by Articles 14 and 15(1) of the Constitution of India. In the case of Minor P. Rajendran vs. State of Madras & Ors., 1968 (2) SCR 786, another Constitution bench of this court had to consider whether district-wise distribution of reserved seats in medical courses for granting admission to reserved category of candidates was violative of Article 15
(1) read with Article 14 of the Constitution of India. Answering the question in the affirmative it was observed by Wanchoo, J., speaking for the Constitution bench at pages 792 and 793 of the Report as under : The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district. It cannot be and has not been denied that the object of selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors.

Relying on these observations of the Constitution bench Shri P.P. Rao and Shri Chaudhary, learned senior counsel appearing for the State of Madhya Pradesh, submitted that when there is a pool of eligible candidates who have all passed MBBS examination and are duly qualified and

eligible to pursue postgraduate medical courses of study, and if in a given institution there are seats reserved for them then the selection out of the reserved category candidates for filling up of these reserved posts can be done in a selective manner and that would permit reasonable dilution of the uniform qualifying marks at the entrance test as required to be obtained by the examinees concerned. This submission is amply borne out from the aforesaid observations of the Constitution bench decision of this court. However, a further question survives as to whether in diluting the minimum qualifying marks for reserved category of candidates who are otherwise eligible for being admitted to postgraduate courses on the seats reserved for them, whether Article 335 can get attracted. It is of course true that candidates appointed or admitted to postgraduate medical course have to work as registrars, some posts of the registrars are fully paid posts while others may be stipendary residents posts. However, it is not possible to accept the contention of learned counsel for the Special Leave Petitioners that admission to postgraduate courses would amount to recruitment to any posts. Concept of recruitment to posts is entirely different from the concept of admission to the course of study which in its turn may require the students concerned to take practical training by functioning as registrars attached to wards where patients are treated. Even though such students work as registrars during the course of study as postgraduate students, they essentially remain students and their working as registrars would be a part of practical training. They would all the same remain trainee registrars and not as directly recruited registrars through any recruitment process held by the Public Service Commission for filling up full-fledged medical officers posts. They work as registrars as a part of postgraduate educational training only because they are admitted to the course of study as postgraduate students in concerned disciplines. It is easy to visualise that calling for applications from open market by advertisement for appointment of full-fledged medical officers to be recruited through the process of selection to be undertaken by Public Service Commission or other departmental selection committees will stand entirely on a different footing as compared to the process of admitting eligible students to postgraduate medical courses of studies. Thus, keeping in view the nature of working as trainee registrars by admitted students to postgraduate medical courses it cannot be said that such admitted students are recruited to any posts of registrars. Consequently, Article 335 of the Constitution of India which has relevance while considering reservation of posts under Article 16(4) cannot have any direct impact on reservation of seats in educational institutions as permitted under Article 15(4). Learned counsel for the petitioners had invited our attention to a decision of two Judge bench of this Court in S. Vinod Kumar & Anr. vs. Union of India & Ors., 1996(6) SCC 580, wherein it was held that while providing for reservations to posts in the hierarchy by invoking powers under Article 16(4), making a provision for lower qualifying marks or lesser level of evaluation for members of reserved category was impermissible on account of Article 335 of the Constitution of India. The aforesaid decision obviously cannot be pressed in service while considering the question of giving facilities to reserved category of candidates for being admitted to the seats reserved for them in educational institutions wherein they can undertake courses of studies for ultimately obtaining

postgraduate degrees in medicine. In the case of Ajay Kumar Singh & Ors. vs. State of Bihar & Ors.(supra), this aspect of the matter has been correctly highlighted by Jeevan Reddy, J., speaking for the court in para 14 of the Report. It has been held therein that : We see absolutely no substance in the third submission of Shri Singh. The argument taxes ones credulity. We are totally unable to appreciate how can it be said that admission to postgraduate medical course is a promotional post just because such candidate must necessarily pass MBBS examination before becoming eligible for admission to postgraduate medical course or for the reason that some stipend - it is immaterial whether Rs.1000 or Rs.3000 p.m. - is paid to postgraduate students. Admission to such course cannot be equated to appointment to a post and certainly not to an appointment by promotion. The argument is accordingly rejected.

(Emphasis supplied)

It is obvious that only because a person who has passed MBBS examination and is made eligible for admission to postgraduate course is paid stipend during the course of his studies at postgraduate level, he cannot be said to have been appointed to the post of a registrar. It may be that he has to work as a trainee registrar during the course of his study to obtain practical training but that is a part of the curriculum of studies and not because he is appointed to the post of the registrar after undergoing selection process whereunder a person from open market is recruited as a medical officer and whose recruitment as medical officer would be subject to rules and regulations and would not terminate only because his training period is over. In fact such a full-fledged medical officer has no training period. He has if at all probation period. In case of a trainee registrar who has to work as such during the course of his studies as a postgraduate student on the other hand, his work as registrar would be co-terminus with his passing the postgraduate examination as M.D. or M.S./M.D.S. as the case may be. He is also not liable to be transferred as a full-fledged registrar, duly appointed as such, is liable to be transferred due to exigencies of service. Thus, the working of such students during the course of study as residents whether on full payment or on stipendary payment would make no difference and they cannot be said to be holding any civil post in any hospital as full- fledged medical officers. Consequently, Article 335 of the Constitution of India cannot by itself be applied for regulating the admission of eligible reserved category students to postgraduate medical courses in the seats reserved for them under Article 15(4) of the Constitution of India. The next question that falls for consideration that even assuming that Article 335 cannot be pressed in service while considering the question of admission of eligible and qualified candidates for enabling them to pursue courses of postgraduate medical studies the guidelines laid down by the Medical Council of India pursuant to the regulations made under Section 33 of the Indian Medical Council Act, even though persuasive in nature and not mandatory, can be totally by-passed or ignored by the State authorities concerned with short-listing of candidates for admission to limited seats available in medical institutions imparting postgraduate medical education? The answer obviously would be in the negative. The guidelines laid down by the Medical Council of India though persuasive have to be kept in view

while deciding as to whether the concession or facility to be given to such reserved category of candidates should remain within the permissible limits so as not to amount to arbitrary and unreasonable grant of concessions wiping out the concept of merit in its entirety. Consequently, it cannot be said that even though short-listing of eligible candidates is permissible to the State authorities, while doing so, the State authorities can completely give a go-by to the concept of merit and can go to the extent of totally dispensing with qualifying marks for SC,ST and OBC candidates and can short-list them for being considered for admission to reserved categories of seats for them in postgraduate studies by reducing the qualifying marks to even zero. That was rightly frowned upon by this court in Sadhana Devis case (supra) as that would not amount to short-listing but on the contrary would amount to completely long listing of such reserved category candidates for the vacancies which are reserved for them and on which they would not be entitled to be admitted if they did not qualify according to even reduced bench marks or qualifying marks fixed for them. As seen earlier, keeping in view the ratio of the Constitution bench of this court in M.R. Balajis case (supra) it must be held that along with the permissible reservation of 50% of seats for reserved category of candidates in institutions imparting postgraduate studies, simultaneously if further concessions by way of facilities are to be given for such reserved category of candidates so as to enable them to effectively occupy the seats reserved for them, such concessions by way of dilution of qualifying marks to be obtained at the entrance test for the purpose of short-listing, can also not go beyond the permissible limits of 50% of the qualifying marks uniformly fixed for other candidates belonging to general category and who appear at the same competitive test along with the reserved category of candidates. It is found from the records of these cases that qualifying marks at the entrance test for general category of candidates are fixed at 50%. In fact such is the general standard of qualifying marks suggested by the Medical Council of India even at the stage of entrance examination to MBBS course which is at the gross-root level of medical education after a student has completed his secondary education. Thus it would be proper to proceed on the basis that minimum qualifying marks for clearing the entrance test by way of short-listing for getting admitted to postgraduate medical courses uniformly for all candidates who appear at such examination should be 50% but so far as reserved category of candidates are concerned who are otherwise eligible for competing for seats in the postgraduate medical courses, 50% reduction at the highest of the general bench marks by way of permissible concession would enable the State authorities to reduce the qualifying marks for passing such entrance examination up to 50% of 50% i.e. 25%. In other words, if qualifying marks for passing the entrance examination for being admitted to postgraduate medical courses is 50% for a general category candidate, then such qualifying marks by way of concession can be reduced for reserved category candidates to 25% which would be the maximum permissible limit of reduction or deviation from the general bench marks. Meaning thereby, that a reserved category candidate even if gets 25% of the marks at such a common entrance test he can be considered for being admitted to the reserved vacancy for which he is otherwise eligible. But below 25% of bench marks for reserved category of candidates, no further dilution can be permitted. In other words, concession or facility for

reserved category of candidates can remain permissible under Article 15(4) up to only 50% of bench marks prescribed for general category candidates. The State cannot reduce the qualifying marks for a reserved category of candidate below 25% nor can it go up to zero as tried to be suggested by Shri P.P.Rao, learned senior counsel for the State of Madhya Pradesh as that would not amount to the process of short-listing but would in fact amount to long listing or comprehensive listing of such reserved category of candidates as seen earlier. Any such attempt to further dilute the qualifying marks or bench marks for reserved category of candidates below 25% of the general passing marks would be violative of the provisions of Article 15(4) as laid down by the Constitution Bench in M.R.Balajis case (supra) and would also remain unreasonable and would be hit by Article 14 of the Constitution of India. Within this sliding scale of percentages between 25% and 50% passing marks appropriate bench marks for passing the entrance test examination can be suitably fixed for SC/ST and OBC candidates as exigencies of the situation may require. But in no case the qualifying marks for any of these reserved categories of students can go below 25% of the general passing marks. Any reserved category candidate who gets less than 25% of marks at the entrance examination or less than prescribed reduced percentage of marks for the concerned category between 50% and 25% of passing marks cannot be called for counselling and has to be ruled out of consideration and in that process if any seats reserved for reserved categories concerned remains unfilled by candidates belonging to that category it must go to the general category and can be filled in by the general category candidate who has already obtained 50% or more marks at the entrance examination but who could not be accommodated because of lesser percentage of marks obtained by him qua other general category candidates in the limited number of seats available to them in a given institution in postgraduate studies. As we will presently show even if minimum passing marks in the entrance test for admission to postgraduate courses is either reduced to 25% uniformly for all the candidates or is reduced and diluted only for reserved category of candidates, the net result would remain substantially the same. This aspect can be highlighted by taking an illustration. Suppose there are six seats in a given postgraduate medical course. Then applying the ratio of 50% permissible reservation of seats for reserved category of candidates like SC/ST and OBCs three seats get reserved, one each for SC,ST and OBC while three seats will remain available to general category of candidates passing the common entrance test. On the basis of this illustration let us take a hypothetical case of 13 eligible candidates who have passed basic MBBS examination and are duly qualified to compete for the six seats in a given course of postgraduate study. These 13 candidates undertake the same entrance test and all of them as a result of the said test obtained marks as under : A 75 out of 100, B 70, C(SC) 65, D 60, E(SC) 55, F51, G50, H(OBC) 48, I 42, J(ST) 40, K35, L30, M25, N (SC) 21. In the aforesaid illustration C, E and N are SC candidates, H is OBC and J is a ST candidate. Now if 50% passing marks are uniformly applied to all of them as tried to be suggested by learned counsel for the petitioners, the following picture will emerge : Situation No.1: Seat numbers 1,2, and 3 are general seats, 4 reserved for SC, 5 reserved for ST and 6 reserved for OBC. If 50% passing marks are uniformly applied to seat nos.1,2,3,4,5 &
6 : Seat no.1 will go to A, 2 to B, 3 to C (SC), 4 to E

(SC), seat nos.5&6 will not get filled in by the reserved category candidates as there are no ST or OBC candidates who have obtained 50% and more marks. These two seats which remain unfilled will go to D and F general category candidates who have obtained more than 50% marks, but who could not be accommodated in the seats available to general category of candidates as the last candidate in the general category who got admission though SC, was having 65% marks. Thus the situation would be the two seats i.e. seat nos. 5 and 6 which are reserved for ST and OBC and were otherwise not available to general category of candidates would not go to eligible and qualified ST and OBC candidates namely, H and J even though they had obtained MBBS degrees and had the basic qualification and eligibility for being admitted to the seats reserved for them. That may affect the real purpose underlying reservation under Article 15(4). Situation No.2: We may now take the alternative situation for consideration : If the minimum qualifying marks are reduced to 25% for all categories of candidates to the rock-bottom permissible limit including SC/ST and other reserved category candidates, then the following picture would emerge : Seat no.1 will go to A, seat no.2 will go to B, seat no.3 will go to C(SC), seat no.4 which is reserved for SC candidate will go to E, seat no.5 which is reserved for ST will go to J, seat no.6 which is reserved for OBC will go to H. All six seats will be filled up by A,B, C,E,J & H. Thus even if the minimum passing marks are uniformly reduced to 25% which is the permissible rock-bottom as seen earlier the general category candidates will get the same seats which would have been available to them even if the minimum qualifying marks for admission would have been uniformly kept at 50% for all candidates at the entrance test. But what will happen is, that by reduction of these qualifying marks to 25% all the reserved category seats 4 to 6 will get filled in by otherwise eligible and qualified reserved category candidates E,J and H and there will remain no occasion for making any of such seats available to left out general category candidates like D and F for whom they were not meant even otherwise and reservation of seats under Article 15(4) would get fully fructified.

Situation no.3: Now let us assume that for general category candidates minimum passing marks at the entrance test are kept at 50% but for reserved category candidates the passing marks are reduced to the permissible rock-bottom limit of 25%. If that happens, the result would remain the same, namely, as found in situation no.2, i.e. A will be admitted to seat no.1, B will be admitted to seat no.2, C (SC) will be admitted to seat no.3, E will be admitted to seat no.4 reserved for SC, J will be admitted to seat no.5 reserved for ST and H will be admitted to seat no.6 reserved for OBC. Then the net result would be that because of the limited deviation of minimum qualifying marks only for reserved category candidates, E, J & H who would have otherwise been admitted to reserved category seats even if there was universal and uniform reduction of qualifying marks at 25%, will get the same benefit without affecting the admission of general category candidates. Situation No.4: As minimum qualifying marks for reserved category of candidates are kept at 25% and are not reduced below the same, candidate N who is a SC candidate and who has obtained only 21% passing marks at the entrance test will be totally ruled out of consideration, but even if the qualifying marks are reduced to below the permissible limit of 25%, N will not get any seat as the seat reserved for such candidates is

only one being no. 4 in the said course of study and is already occupied by E who is a more meritorious SC candidate qua N. Situation No.5: Now let us consider a situation wherein E a SC candidate, who is entitled to reserved category seat no.4 and has excluded D who is a general category candidate who has obtained more marks than him because of such permissible reservation of a seat for him, for any reason does not join the course of study and his seat becomes vacant, then in such a situation, the following picture may emerge in different categories of cases where minimum passing marks are fixed differently : i) In case E is not available and 50% minimum passing marks are fixed for all categories of candidates then seat no.1 will go to A, seat no.2 will go to B., seat no.3 will go to C, seat no.4 would not go to N who is the next eligible SC candidate who has qualified for being admitted but has got less than passing marks at the entrance test. That seat will remain unoccupied and will go to the general category candidate D. Seat no.5 which is reserved for ST person also cannot go to J as he has got less than the passing marks. Seat no.5 will therefore, go to F. Seat no.6 reserved for OBC also will not go to H as he has got only 48% marks, less than the minimum passing marks. His seat will go to general category candidates who are in the waiting list and will be offered to G who has just got the passing marks. Thus in the absence of availability of E the six seats will go as under
: A,B,C,D,F & G. Thus all the reserved category seats will remain unfilled by reserved category candidates and will be added to general category seats. Result will be reservation under Article 15(4) will totally fail. ii) Now let us take another category of situation where minimum passing marks are fixed at 25% for all candidates. In that case even if E is not available then the first three general category seats will go to A,B,C and the 4th seat reserved for SC candidate will remain unfilled as the next available eligible SC candidate is N who has got less than 25% minimum marks. So his seat will go to the general category candidate who is in the waiting list namely, D. While seat no.4 reserved for ST candidate will go to J and seat no.6 reserved for OBC candidate will go to H. Therefore, the net result will be as under : 1 to 6 seats will go to A,B,C,D,J & H. iii) The same result would follow for general category candidates even if the minimum passing marks are fixed at 50% and for the reserved category candidates the minimum qualifying marks are reduced to 25%. Then the first three seats will go to A,B,C, and seat no.4 not occupied by E a SC candidate cannot go to N the next SC candidate who has got less than 25% marks. It will be occupied by D from the general category candidates. While seat no.5 will go to J a ST candidate who has more than 25% marks and seat no.6 will go to H who is a OBC candidate having got 48% marks. Thus the six seats will go to A,B,C,D,J & H. Thus it is clear that where the minimum passing marks are uniformly reduced for all candidates or they are reduced only for backward class candidates but to the same extent, the result regarding occupation of these seats by general category candidates and reserved candidates would remain the same if E does not occupy the seat available to him as an SC candidate. iv) If for any reason the minimum qualifying marks for reserved category candidates are still further reduced to 20% then in the absence of availability of a SC candidate E, the next SC candidate N having 21% may get it and occupy the seat reserved for a SC candidate. In such a situation the following picture will emerge : 1 to 3 will go to A,B,C; seat no.4 reserved for SC candidate will go to N and seat

no.5 will go to ST candidate J and seat no.6 reserved for OBC candidate will go to H. Resultantly no seat will be left for being made available to general category candidate D and he will get excluded. But as we have seen earlier, if concession or dilution of minimum qualifying marks at the entrance test for admission to postgraduate medical courses is kept within the permissible limit of 50% dilution and can go down only up to 25% minimum qualifying marks for reserved category candidates then N in no case would get in to displace D who is a general category candidate and who had an opportunity to get in vis-a-vis the seat reserved for SC candidate as E the eligible SC candidate is not available at a given point of time. The aforesaid illustration shows that as C (SC candidate) has got the seat in general category on his own merit his occupancy is not to be considered while granting admission to the seat reserved for SC candidate as held by a Constitution bench decision of this Court in R.K. Sabharwal & Ors. vs. State of Punjab & Ors., 1995(2) SCC 745. We may at this stage refer to decision of a three Judge bench of this court in Dr. Pradeep Jain & Ors. vs. Union of India & Ors., 1984(3) SCC 654, wherein in the context of reservation in medical education courses on the basis of territorialor institutional preference, Bhagwati, J., speaking for the court in para 22 of the Report observed as under : But as far as admissions to postgraduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. There the excellence cannot be compromised by any other considerations because that would be detrimental to the interest of the nation. It is of course true that the aforesaid observations were made not with reference to any reservations as per Article 15(4). However, while considering the extent of dilution of minimum passing marks in the entrance examination for admission of reserved category candidates to postgraduate medical courses, the permissible limit below which the concessions available to reserved category of candidates cannot be permitted to go, would require serious consideration, otherwise merit would be totally by-passed and jeopardised. It is also pertinent to note that in the aforesaid decision the permissible limit of reservation by way of institutional preference was held to be only up to 50% of the total available seats. While dealing with the scope and ambit of reservation under Article 15(4) in postgraduate courses, which of course is not in challenge before us, we have also to keep in view, the observations of the nine Judge bench of this Court in Indra Sawhneys case (supra). In para 146 of the Report at page 401 Pandian, J., concurring with the main majority decision rendered by Jeevan Reddy, J., observed that : The basic policy of reservation is to off-set the inequality and remove the manifest imbalance, the victims of which for bygone generations lag far behind and demand equality by special preferences and their strategies. Therefore, a comprehensive methodological approach encompassing jurisprudential, comparative, historical and anthropological conditions is necessary. Such considerations raise controversial issues transcending the routine legal exercise because certain social groups who are inherently unequal and who have fallen victims of societal discrimination require compensatory treatment. Needless to emphasise that equality in fact or substantive equality involves the necessity of beneficial treatment in order to attain the result which establishes an equilibrium between two sections placed

unequally.

Same learned Judge at pages 402-403 of the Report considered a passage by Allan P. Sindler in his book Bakke, Defunis and Minority Admissions (The Quest for Equal Opportunity) which dealt with a running race between two persons i.e. one who has his legs shackled and another not. In such a race between unequals it was found necessary to remove the inequality between the two runners by giving compensatory edge to the shackled runner. The learned Judge also noted the submission of learned counsel for the petitioners who demonstrably explained that as unwatered seeds do not germinate, unprotected backward class citizens will whither away. In the earlier Constitution bench judgment in M.R.Balaji vs. State of Mysore (supra), Gajendragadkar, J., at page 467 of the Report, this Court made the following pertinent observations with reference to Article 15(4) : When Art.15(4) refers to the special provision for the advancement of certain classes or scheduled castes or scheduled tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Art.15(4) authorises special provision to be made.

We may also refer to the contention of learned senior counsel Shri Rajendra Sachar, placing reliance on page 474 of the Report in M.R.Balajis case (supra) to the effect that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration and that it was undoubtedly the effect of Article 335. Therefore, what is true in regard to Art.15(4) is equally true in regard to Art.16(4). These observations, strongly relied upon by Shri Sachar for importing the impact of Article 335 on the reservations under Article 15(4) cannot be treated to be of any real assistance to him. The aforesaid observations were made by the Constitution bench while considering the reasonableness of reservation of seats in educational institutions and for highlighting the point that such reservation of seats should not be more than 50% and reservation of 68% of seats was not within the permissible limit of special provision under Article 15(4). From these observations, it cannot necessarily follow that admission to such reserved seats can tantamount to appointments to any posts to which Article 335 would get directly attracted. While considering the permissible limits of dilution of minimum passing marks for reserved category candidates appearing at the entrance test for being called for counselling for admissions to postgraduate medical courses, we have to keep in view the salient fact that different universities examining students for obtaining MBBS degrees on the basis of the same syllabus may have different yardsticks and standards of assessment of papers and, therefore, students passing their MBBS examinations from different universities cannot ipso facto be treated to be equally meritorious and consequently the common entrance test for admission to postgraduate courses cannot be said to be totally uncalled for. However, because reservation of seats at postgraduate educational level is countenanced, as

a logical corollary, to make effective the reservations and with a view to seeing that the reserved category students do not get excluded from getting admitted as far as possible, provision for lesser qualifying marks for reserved category candidates at the common entrance test cannot be said to be totally illegal. However, with a view to seeing that crutches provided to such weaker sections of society do not cripple them for ever, the dilution of passing marks at the common entrance test at which such reserved category candidates appear after obtaining their MBBS degrees from different universities cannot be totally arbitrary and must have a permissible rock-bottom limit below which it cannot go and that is why it is reasonable to hold that when reservation of seats under Article 15(4) in postgraduate medical courses cannot exceed 50% as held bythe Constitution bench in M.R. Balajis case (supra) then on the same line of reasoning additional facilities to be given to such reserved category candidates for being admitted to the seats reserved for them in the postgraduate medical courses also should not exceed the permissible limit of 50% dilution from the general cut-off marks provided uniformly for general category of candidates competing for admission to such limited number of seats at postgraduate level. While dealing with the question of dilution of minimum passing marks for reserved category of candidates appearing at the entrance tests for admission to postgraduate courses it has to be kept in view that general category students form a separate class as compared to reserved category candidates for whom seats are reserved under Article 15(4). Once that is kept in view, as a logical corollary, it must follow that to make such reservations effective appropriate dilution of the minimum cut-off marks for students belonging to the reserved category would become permissible subject to the rider that such dilution should not be so unreasonable as to go out of the beneficial protective umbrella of Article 15(4) as seen earlier. If that happens it would squarely get hit by Article 15(1) read with Article 14 of the Constitution of India. However, within such permissible limits such dilution for different reserved categories of candidates who may be given benefit of sliding scales of reduced passing marks as required by exigencies of situation would remain legal and valid.In this connection, observations in the Constitution bench judgment of this court in Chitra Ghosh & Anr. vs. Union of India & Ors. (supra), wherein Grover, J., spoke for the Constitution bench as to which we have made a detailed reference earlier are required to be kept in view. To recapitulate, it has been held that selection of eligible candidates for admission to medical courses can be made by classifying such candidates category-wise keeping in view the services from which they are drawn. The aforesaid decision of the Constitution bench was directly concerned withthe admissions in medical colleges. It would squarely get attracted while deciding the present controversy. It is obvious that if for admission to a medical education course at gross-root level of MBBS, different rules for selecting candidates from different sources from which they are to be drawn are countenanced, then even at the stage of admission at postgraduate level, the ratio of the aforesaid decision of the Constitution bench would squarely get attracted and would permit separate treatment for students drawn from different sources. It is of course true that in the said case, the Constitution bench was concerned with the nominations made by the Central Government on seats reserved for such nominees. However, that would not whittle down the

decision of the Constitution bench to the effect that while imparting education in theory and practice in medical courses of study, the source from which candidates are drawn can be a relevant classificatory criterion and there can be different rules in the matter of selection of candidates drawn from different sources. It is axiomatic that reserved category candidates competing for being selected to the seats reserved for them in postgraduate medical courses as per the mandate of Article 15(4) of the Constitution have to compete inter se with their own colleagues from the same categories and not necessarily have to compete with general category candidates who form entirely a different class. Once such classification is countenanced, as a necessary concomitant, separate provision for reserved category of candidates forming a separate class for which reservation of seats in postgraduate medical courses is permitted cannot be faulted and hence the dilution of minimum qualifying marks for reserved category of candidates cannot by itself be treated to be unauthorised or illegal from any view point. Otherwise the very purpose of reserving seats for such class of candidates at postgraduate level of medical education would be denuded on its real content and the purpose of reservation would fail. The seats reserved for such category of persons would go unfilled and will swell the admission of general category of candidates for whom these seats are not at all meant to be made available, once the scheme of reservation of seats under Article 15(4) is held applicable. In the light of the aforesaid discussion, the following conclusions emerge : 1) It is permissible to the

JJJJJJJJJJJJJJJJJJJJ

State authorities which are running and/or controlling the medical institutions in the States concerned to short-list the eligible and qualified MBBS doctors for being considered for admission to postgraduate medical courses in these institutions. For the purpose of such short-listing full play is available to the State authorities to exercise legislative or executive power as the field is not occupied till date by any legislation of the Parliament on this aspect in exercise of its legislative powers under Entry 25 of List III of the Constitution of India and this topic is also not covered by any legislation under Entry 66 of List I of the Constitution. 2) The Indian Medical Council Act and the regulations framed thereunder do not cover the question of short-listing of admission of eligible and duly qualified MBBS doctors who seek admission to different medical institutions imparting postgraduate education run or controlled by the States concerned. 3) The regulations and guidelines given by the Medical Council of India in this connection, though persuasive and not having any binding force, cannot be totally ignored by the State authorities but must be broadly kept in view while undertaking the exercise of short-listing of eligible candidates for being admitted to postgraduate medical courses. 4) While short-listing candidates having basic qualifications of MBBS for being considered for admission to limited number of vacancies in postgraduate courses available at the medical institutions in the Sates, it is permissible for the State authorities to have common entrance tests and to prescribe minimum qualifying marks for passing such tests to enable the examinees who pass such test to be called for counselling. That would be in addition to the basic qualification by way of MBBS degree. The performance of the candidate concerned during the time he or she undertook the study at MBBS level for ultimately getting the MBBS degree also would be a relevant consideration for the State

authorities to be kept in view. 5) It is equally permissible for the State authorities while undertaking the aforesaid exercise of short-listing to fix 50% minimum qualifying marks at the entrance test for general category of candidates and to dilute and prescribe lesser percentage of passing marks for reserved category of candidates as exigencies of situation may require in a given year but in no case the minimum qualifying marks as reduced for reserved category of candidates can go below 25% of passing marks for such reserved category of candidates. In other words, a play is available to the State authorities to prescribe different minimum passing marks for SC/ST and OBC eligible candidates between 50% and 25% as the prevailing situation at a given point of time may require. In such categories for SC, ST & OBC candidates different diluted passing marks can be prescribed, but this exercise has to be within the permissible limits of less than 50% & up to minimum 25% passing marks for each of such reserved categories. No eligible candidate belonging to reserved category who does not obtain minimum percent of passing marks as diluted for such category of candidates by the State authorities can be considered to be eligible for undertaking postgraduate medical courses in a given year for which he has offered his candidature and if any seat reserved for such categories of candidates remain unfilled due to non-availability of such eligible reserved category candidate to fill up such seat, then the said seat would go to general category candidates and will be available in the order of merit in the light of marks obtained by such wait-listed general category candidates having obtained requisite passing marks who otherwise could not get admitted due to non-availability of general category seats earlier. The ratio of various decisions of this court considered herein above will have to be implemented in the light of the aforesaid conclusions to which we have reached. The aforesaid practice has to be followed and should hold the field from year to year so long as the Parliament does not pass any legislation for regulating admission to postgraduate medical courses either by separate legislation or by appropriately amending Indian Medical Council Act by empowering the Medical Council of India to prescribe such regulations. The writ petitions and the civil appeal arising out of the special leave petition as well as the review petitions would stand disposed of accordingly in the aforesaid terms and the judgments rendered by the High Courts will stand modified and the impugned orders passed by the State authorities will also stand set aside accordingly. However, the present judgment will operate purely prospectively and will not affect the admissions already granted by the concerned authorities in the postgraduate medical courses prior to the date of this judgment. In other words, the State authorities will have to comply with the directions contained in this judgment and put their house in order for regulating the admissions to postgraduate medical courses starting hereinafter in the medical institutions concerned.

Mrs. Sujata V.Manohar, J.

Leave granted in SLP(C) No.12231 of 1997.

The following issue formulated by this Court at the commencement of hearing, requires consideration: "The question is whether apart from providing reservation for admission to the Post Graduate Courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category."

"This question certainly requires consideration of the Constitution Bench as it arises and is likely to arise in a number of cases in different institutions of the country and needs to be decided authoritatively keeping in view the observations made in three different two or three-Judge Bench judgments". These judgments are Ajay Kumar Singh & Ors. v. State of Bihar & Ors. ([1994] 4 SCC 401), Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. ([1997] 3 SCC 90) and Post Graduate Institute of Medical Education & Research, Chandigarh & Ors. v. K.L. Narasimhan & Anr. ([1997] 6 SCC 283)

Facts:

The State of Uttar Pradesh has prescribed a Post Graduate Medical Entrance Examination for admission to Post Graduate Degree/Diploma courses in medicine. This is in conformity with the relevant Regulations of the Medical Council of India. By G.O. dated 11.10.1994, the State Government fixed a cut-off percentage of 45% marks in the Post Graduate Medical Entrance Examination (PGMEE) for admission of the general category candidates to the Post Graduate Courses in Medicine. The cutoff percentage of marks for the reserved category candidates viz. Scheduled Castes, Scheduled Tribes etc. was fixed at 35%. Thereafter, by another G.O. dated 31.8.1995 the State of Uttar Pradesh completely did away with a cut-off percentage of marks in respect of the reserved category candidates so that there were no minimum qualifying marks in the Post Graduate Medical Entrance Examination prescribed for the reserved category candidates who were seeking admission to the Post Graduate Courses.

This G.O. of 31.8.1995 was challenged before this Court in Writ Petition (C) No.679 of 1995 Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. [1997] 3 SCC 90). This Court, by its judgment dated 19.2.1997, held that while laying down minimum qualifying marks for admission to the Post Graduate Courses, it was not open to the Government to say that there will be no minimum qualifying marks for the reserved category of candidates. If this is done, merit will be sacrificed altogether. This Court struck down G.O. dated 31.8.1995.

After the said decision, the State of U.P. issued another G.O. dated 2.4.1997 under which the cut-off percentage of marks for the reserved category candidates was restored at 35%. However, the State of U.P. moved an application before this Court, being I.A. No.2 of 1997 Dr. Sadhna Devi (Supra) in which the State of U.P. (inter alia) prayed that it should be given the liberty to reduce the cut-off percentage from 35% to 20% for the reserved category candidates who appear in the PGMEE for 1997. Without

waiting for a decision, by an Ordinance dated 15.6.1997, the State of U.P. reduced the minimum qualifying marks for the reserved category candidates appearing in the PGMEE 1997 from 35% to 20%. This Ordinance is challenged in the present Writ Petition (C) No.300 of 1997. The Ordinance has now been replaced by the Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1997. The petitioners have now amended the said writ petition to challenge this Act.

For admissions effected in 1998, the State of U.P. again prescribed a cut-off percentage of 20% marks for the reserved category candidates. Learned counsel for the State of U.P. has further stated that for the current year's admission, i.e. for admission to the P.G.M.E.E. 1999, the State has introduced a Bill in the Legislative Assembly prescribing the same cut-off percentage of 20% marks for the reserved category candidates.

The lower percentage of qualifying marks prescribed for the scheduled caste, scheduled tribe and backward class candidates are in conjunction with the following reservation of seats at the PGMEE:

Scheduled Castes : 21%, Scheduled Tribes : 2%, Backward Classes : 27% In the State of Madhya Pradesh also a common entrance examination is held for admission to the Post Graduate Courses in Medicine. Under the Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules, 1997, certain seats were reserved for the Scheduled Caste, Scheduled Tribe, BC and in-service candidates. The Rules, however, did not lay down any minimum qualifying marks for admission to the Post Graduate Courses either for the general category or for the reserved category of candidates. These Rules were challenged by a writ petition before the Madhya Pradesh High Court. By its judgment which is under challenge in these proceedings, the Madhya Pradesh High Court directed the State Government to stipulate minimum qualifying marks in the PGMEE for all categories of candidates, including the general category candidates, in view of the decision of this Court in Dr. Sadhna Devi's case (supra).

By G.O. dated 7.6.1997 the State of Madhya Pradesh prescribed the following minimum percentage of qualifying marks for the reserved category candidates to make them eligible for counselling and admission to the Post Graduate Medical Courses:

Scheduled Castes : 20% Scheduled Tribes : 15% Other Backward Classes : 40%

This Government Order of the State of Madhya Pradesh is under challenge before us.

We have, therefore, to consider whether for admission to the Post Graduate Medical Courses, it is permissible to prescribe a lower minimum percentage of qualifying marks for the reserved category candidates as compared to the general category candidates. We do not propose to examine whether reservations are permissible at the Post Graduate level in medicine. That issue was not debated before us, and we express no opinion on it. We need to examine only whether any special provision in the form of lower qualifying marks

in the PGMEE can be prescribed for the reserved category.

The Constitutional Imperative:

The constitutional protection of equality before the law under Article 14 of the Constitution is one of the basic tenets of the Constitution. It is a cardinal value which will govern our policies and actions, particularly policies for employment and education. Article 15(1) prohibits State discrimination on the ground (among others) of religion, race or caste. Article 16(1) prescribes equality of opportunity for all in matters relating to employment or appointment to any office under the State. Article 16(2) prohibits discrimination on the ground (among others) of religion, race, caste or descent. At the same time, the Constitution permits preferential treatment for historically disadvantaged groups in the context of entrenched and clearly perceived social inequalities. That is why Article 16(4) permits reservation of appointments or posts in favour of any backward class which is not adequately represented in the services under the State. Reservation is linked with adequate representation in the services. Reservation is thus a dynamic and flexible concept. The departure from the principle of equality of opportunity has to be constantly watched. So long as the backward group is not adequately represented in the services under the State, reservations should be made. Clearly, reservations have been considered as a transitory measure that will enable the backward to enter and be adequately represented in the State services against the backdrop of prejudice and social discrimination. But finally, as the social backdrop changes ? and a change in the social backdrop is one of the constitutional imperatives, as the backward are able to secure adequate representation in the services, the reservations will not be required. Article 335 enters a further caveat. While considering the claims of Scheduled Castes and Scheduled Tribes for appointments, the maintenance of efficiency of administration shall be kept in sight.

Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, inter alia, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of non- discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. As a result of the combined operation of these Articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government. Marc Galanter, in his book, "Competing Equalities" has described the constitutional scheme of compensatory discrimination thus: "These compensatory discrimination policies entail systematic departures from norms of equality (such as merit, evenhandedness, and indifferences of ascriptive characteristics). These departures are justified in several ways: First, preferential treatment may be viewed as needed assurance of personal fairness, a guarantee against the persistence of discrimination in subtle and indirect forms. Second, such policies are justified in terms of beneficial

results that they will presumably promote: integration, use of neglected talent, more equitable distribution, etc. With these two - the anti-discrimination theme and the general welfare theme - is entwined a notion of historical restitution or reparation to offset the systematic and cumulative deprivations suffered by lower castes in the past. These multiple justifications point to the complexities of pursuing such a policy and of assessing its performance." Since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That is its final constitutional justification. Therefore, programmes and policies of compensatory discrimination under Article 15(4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public polices, therefore, in this area have to be tested on the anvil of reasonableness and ultimate public good. In the case of Article 16(4) the Constitution makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration. Article 15(4) also must be used, and policies under it framed, in a reasonable manner consistently with the ultimate public interests.

In the case of M.R. Balaji & Ors. v. State of Mysore ([1963] Suppl. 1 SCR 439 at pages 466-467), a Constitution Bench of this Court considered this very question relating to the extent of special provisions which it would be competent for the State to make, under Article 15(4). This Court accepted the submission that Article 15(4) must be read in the light of Article 46 and that under it, the educational and economic interests of the weaker sections of the people can be promoted properly and liberally, to establish social and economic equality. The Court said, "No one can dispute the proposition that political freedom and even fundamental rights can have very little meaning or significance for the backward classes and the Scheduled Castes and Scheduled Tribes unless the backwardness and inequality from which they suffer are immediately redressed".

The Court, however, rejected the argument that the absence of any limitation on the State's power to make an adequate special provision under Article 15(4) indicates that if the problem of backward classes of citizens and Scheduled Castes and Scheduled Tribes in any given State is of such a magnitude that it requires the reservation of all seats in the higher educational institutions, it would be open to the State to take that course. This Court said: "When Article 15(4) refers to the special provisions for the advancement of certain classes or Scheduled Castes or Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character so that, in looking after the advancement of those classes the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But

if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored." This Court struck down a reservation of 68% made for backward classes for admission to Medical and Engineering Courses in the university. This Court further observed, (at page 407) "A special provision contemplated by Article 15(4), like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. The interest of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interest of the community as a whole". The Court also said that while considering the reasonableness of the extent of reservation one could not lose sight of the fact that the admissions were to institutes of higher learning and involved professional and technical colleges. "The demand for technicians, scientists, doctors, economists, engineers and experts for the further economic advancement of the country is so great that it would cause grave prejudice to national interests if considerations of merit are completely excluded by wholesale reservation of seats in all technical, medical or engineering colleges or institutions of that kind." (Page 468) Therefore, consideration of national interest and the interests of the community or society as a whole cannot be ignored in determining the reasonableness of a special provision under Article 15(4).

In the case of Dr. Jagdish Saran & Ors. v. Union of India ([1980] 2 SCC 768), reservation of 70% of seats for the local candidates in admissions to the Post Graduate Medical Courses by the Delhi University was struck down by this Court. While doing so, Krishna Iyer J. speaking for the Court spelt out the ambits of Articles 14 and 15. He said, (at page 778) "But it must be remembered that exceptions cannot overrule the rule itself by running riot or by making reservations as a matter of course in every university and every course. For instance, you cannot wholly exclude meritorious candidates as that will promote sub-standard candidates and bring about a fall in medical competence injurious in the long run to the very region.....Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation. So, within these limitations without going into excesses there is room for play of the State's policy choices." He further observed, "The first caution is that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation.....A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potentials of the weak with the partial recognition of the presence of competitive merit - such is the dynamic of social justice which animates the three egalitarian articles of the Constitution."

"Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the

preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best scale or talent must be handpicked by selecting according to capability. At the level of P.H.D., M.D. or levels of higher proficiency where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss, the considerations we have expended upon as important, lose their potency, where equality measured by matching excellence has more meaning and cannot be diluted much without grave risk."

The same reasoning runs through Dr. Pradeep Jain & Ors. v. Union of India & Ors. ([1984] 3 SCC 654). It dealt with reservation of seats for the residents of the State or the students of the same university for admission to the medical colleges. The Court said, (at page 676) "Now, the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere ideal indentation but it must become a living reality for the large masses of people..... It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed in order to bring about real equality." The Court after considering institutional and residential preferences for admission to the M.B.S.S. course, said that different considerations would prevail in considering such reservations for admission to the Post Graduate Courses such as M.D., M.S. and the like. It said, (at page 691) "There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation." Quoting the observation of Justice Krishna Iyer in Dr. Jagdish Saran case (supra) the Court said, "This proposition has far greater importance when we reach the higher levels of education like Post Graduate Courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise." (underlining ours)

A similar strand of thought runs through Indra Sawhney & Ors. v. Union of India & Ors. ([1992] Supp.(3) SCC 217), where a Bench of nine Judges of this Court considered the nature, amplitude and scope of the constitutional provisions relating to reservations in the services of the State. Jeevan Reddy J. speaking for the majority (in paragraph 836) stated that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid if the constitutional promise of social justice is to be redeemed. We also formally believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with ? and may in some cases excel ? members on open competition. Having said this, the Court went on to add, (in paragraph 838) "We are

of the opinion that there are certain services and positions where either on account of nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained herein above alone counts. In such situations it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/departments/institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical science and mathematics, in defence services and in the establishments connected therewith." (underlining ours)

A similar view has been taken in Mohan Bir Singh Chawla v. Punjab University, Chandigarh & Anr. ([1997] 2 SCC 171) where this Court said that at higher levels of education it would be dangerous to depreciate merit and excellence. The higher you go in the ladder of education, the lesser should be the reservation. In Dr. Sadhna Devi's case (supra) also this Court has expressed a doubt as to whether there can be reservations at the Post Graduate level in Medicine.

We are, however, not directly concerned with the question of reservations at the Post Graduate level in Medicine. We are concerned with another special provision under Article 15(4) made at the stage of admission to the Post Graduate Medical Courses, namely, providing for lesser qualifying marks or no qualifying marks for the members of the Scheduled Castes and Scheduled Tribes for admission to the Post Graduate Medical Courses. Any special provision under Article 15(4) has to balance the importance of having, at the higher levels of education, students who are meritorious and who have secured admission on their merit, as against the social equity of giving compensatory benefit of admission to the Scheduled Caste and Scheduled Tribe candidates who are in a disadvantaged position. The same reasoning which propelled this Court to underline reasonableness of a special provision, and the national interest in giving at the highest level of education, the few seats at the top of the educational pyramid only on the basis of merit and excellence, applies equally to a special provision in the form of lower qualifying marks for the backward at the highest levels of education.

It is of course, important to provide adequate educational opportunities for all since it is education which ultimately shapes life. It is the source of that thin stream of reason which alone can nurture a nation's full potential. Moreover, in a democratic society, it is extremely important that the population is literate and is able to acquire information that shapes its decisions.

The spread of primary education has to be wide enough to cover all sections of the society whether forward or backward. A large percentage of reservations for the backward would be justified at this level. These are required in individual as well as national interest. A university level education upto graduation, also enables the individual concerned to secure better employment. It is permissible and necessary at this level to have reasonable reservations for the backward so that they may also be able to avail of these opportunities for betterment through education, to which they may not have access if the college admissions are entirely by merit as judged by the marks obtained in the qualifying examination. At the level of

higher post-graduate university education, however, apart from the individual self interest of the candidate, or the national interest in promoting equality, a more important national interest comes into play. The facilities for training or education at this level, by their very nature, are not available in abundance. It is essential in the national interest that these special facilities are made available to persons of high calibre possessing the highest degree of merit so that the nation can shape their exceptional talent that is capable of contributing to the progress of human knowledge, creation and utilisation of new medical, technical or other techniques, extending the frontiers of knowledge through research work - in fact everything that gives to a nation excellence and ability to compete internationally in professional, technical and research fields.

This Court has repeatedly said that at the level of superspecialisation there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level of a super speciality, something more than a mere professional competence as a doctor is required. A super-specialist acquires expert knowledge in his speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. For example, specialised sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even ability to innovate and device new lines of treatment in critical situations, requires high levels of intelligent understanding of medial knowledge or skill and a high ability to learn from technical literature and from experience. These high abilities are also required for absorbing highly specialised knowledge which is being imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz. the best brains in the country, irrespective of the class to which they belong.

At the next below stage of post-graduate education in medical specialities, similar considerations also prevail though perhaps to a slightly lesser extent than in the super specialities. But the element of public interest in having the most meritorious students at this level of education is present even at the stage of post-graduate teaching. Those who have specialised medical knowledge in their chosen branch are able to treat better and more effectively, patients who are sent to them for expert diagnosis and treatment in their specialised field. For a student who enrols for such speciality courses, an ability to assimilate and acquire special knowledge is required. Not everyone has this ability. Of course intelligence and abilities do not know any frontiers of caste or class or race or sex. They can be found anywhere, but not in everyone. Therefore, selection of the right calibre of students is essential in public interest at the level of specialised post-graduate

education. In view of this supervening public interest which has to be balanced against the social equity of providing some opportunities to the backward who are not able to qualify on the basis of marks obtained by them for post-graduate learning, it is for an expert body such as the Medical Council of India, to lay down the extent of reservations, if any, and the lowering of qualifying marks, if any, consistent with the broader public interest in having the most competent people for specialised training, and the competing public interest in securing social justice and equality. The decision may perhaps, depend upon the expert body's assessment of the potential of the reserved category candidates at a certain level of minimum qualifying marks and whether those who secure admission on the basis of such marks to post-graduate courses, can be expected to be trained in two or three years to come up to the standards expected of those with post-graduate qualifications.

The speciality and super speciality courses in medicine also entail on-hand experience of treating or operating on patients in the attached teaching hospitals. Those undergoing these programmes are expected to occupy posts in the teaching hospitals or discharge duties attached to such posts. The elements of Article 335, therefore, colour the selection of candidates for these courses and the Rules framed for this purpose.

In the premises the special provisions for SC/ST candidates whether reservations or lower qualifying marks - at the speciality level have to be minimal. There cannot, however, be any such special provisions at the level of super specialities.

Entrance Examination for post-graduate courses and qualifying marks:

When a common entrance examination is held for admission to postgraduate medical courses, it is important that passing marks or minimum qualifying marks are prescribed for the examination. It was, however, contended before us by learned counsel appearing for the State of Madhya Pradesh that there is no need to prescribe any minimum qualifying marks in the common entrance examination. Because all the candidates who appear for the common entrance examination have passed the M.B.B.S. examination which is an essential pre-requisite for admission to postgraduate medical courses. The PGMEE is merely for screening the eligible candidates.

This argument ignores the reasons underlying the need for a common entrance examination for post-graduate medical courses in a State. There may be several universities in a State which conduct M.B.B.S. courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the M.B.B.S. examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the M.B.B.S. examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the

M.B.B.S. examination; while it may also be easier for candidates to secure marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the M.B.B.S. examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the M.B.B.S. examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the M.B.B.S. examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialised education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialised education and the need to provide for some room for the backward even at the stage of specialised post-graduate education which is one step below the super specialities.

The submission, therefore, that there need not be any qualifying marks prescribed for the common entrance examination has to be rejected. We have, however, to consider whether different qualifying marks can be prescribed for the open merit category of candidates and the reserved category of candidates. Normally passing marks for any examination have to be uniform for all categories of candidates. We are, however, informed that at the stage of admission to the M.B.B.S. course, that is to say, the initial course in medicine, the Medical Council of India has permitted the reserved category candidates to be admitted if they have obtained the qualifying marks of 35% as against the qualifying marks of 45% for the general category candidates. It is, therefore, basically for an expert body like the Medical Council of India to determine whether in the common entrance examination viz. PGMEE, lower qualifying marks can be prescribed for the reserved category of candidates as against the general category of candidates; and if so, how much lower. There cannot, however, be a big disparity in the qualifying marks for the reserved category of candidates and the general category of candidates at the post-graduate level. This level is only one step below the apex level of medical training and education where no reservations are permissible and selections are entirely on merit. At only one step below this level the disparity in qualifying marks, if the expert body permits it, must be minimal. It must be kept at a level where it is possible for the reserved category candidates to come up to a certain level of excellence when they qualify in the speciality of their choice. It is in public interest that they have this level of excellence.

In the present case, the disparity of qualifying marks being 20% for the reserved category and 45% for the general category is too great a disparity to sustain public interest at the level of post-graduate medical training and education. Even for the M.B.B.S. course, the difference in the qualifying marks between the reserved category and the general category is smaller, 35% for the reserved category and 45% for the general category. We see no logic or rationale for the difference to be larger at the post-graduate level.

Standard of Education:

A large differentiation in the qualifying marks between the two groups of students would make it very difficult to maintain the requisite standard of teaching and training at the post-graduate level. Any good teaching institution has to take into account the calibre of its students and their existing level of knowledge and skills if it is to teach effectively any higher courses. If there are a number of students who have noticeably lower skills and knowledge, standard of education will have to be either lowered to reach these students, or these students will not be able to benefit from or assimilate higher levels of teaching, resulting in frustration and failures. It would also result in a wastage of opportunities for specialised training and knowledge which are by their very nature, limited.

It is, therefore, wrong to say that the standard of education is not affected by admitting students with low qualifying marks, or that the standard of education is affected only by those factors which come into play after the students are admitted. Nor will passing a common final examination guarantee a good standard of knowledge. There is a great deal of difference in the knowledge and skills of those passing with a high percentage of marks and those passing with a low percentage of marks. The reserved category of students who are chosen for higher levels of university education must be in a position to benefit and improve their skills and knowledge and bring it to a level comparable with the general group, so that when they emerge with specialised knowledge and qualifications, they are able to function efficiently in public interest. Providing for 20% marks as qualifying marks for the reserved category of candidates and 45% marks for the general category of candidates, therefore, is contrary to the mandate of Article 15(4). It is for the Medical Council of India to prescribe any special qualifying marks for the admission of the reserved category candidates to the post-graduate medical courses. However, the difference in the qualifying marks should be at least the same as for admission to the under-graduate medical courses, if not less.

Learned senior counsel Mr. Bhaskar P. Gupta for the intervenors drew our attention to an interesting study done by R.C. Davidson in relation to the affirmative action and other special consideration admissions at the University of California, Davis, School of Medicine. The study graded the students who were admitted on a scale (MCAC) with a range from 1 to 15. On this scale, the students who received special consideration admission had an average score of nine while the students who were admitted on open merit had an average of 11. However, when both these groups graduated

from medical school both the groups had a high rate of successful graduation though the general group had a statistically significant higher rate. The special group had a graduation rate of 94% while the general group had a graduation rate of 98%. The study also found that the differences in the abilities of special consideration students were more evident in the first and second years of the curriculum. In the third year also the differences were visible. However, the two groups had begun to merge in their achievements; and ultimately by the time the groups qualified in the final examination, there was a convergence of academic progress between the special consideration admission students and the regularly admitted students as the process of training lengthened. A similar study does not appear to have been made in our country relating to the progress of the reserved category candidates in the course of their studies. But two things are evident even from the study made by Davidson. The longer the period of training, the greater the chances of convergence of the two groups. Secondly, both the groups had an initial high score - more than halfway up the scale. Also, the initial difference in their scores was not very large. It was nine as compared to eleven on a scale of fifteen. Therefore, at a high level of scoring, the narrower the difference, the greater the chances of convergence. This study, therefore, will not help the respondents in the present case because of the substantial difference in the qualifying marks for admission prescribed for the reserved category candidates as against the general category candidates; and the very low level of qualifying marks prescribed. Thirdly, at the post-graduate level the course of studies is relatively shorter and the course is designed to give high quality speciality education to the qualified doctors to enable them to excel in their chosen field of speciality. Therefore, unless there is a proper control at the stage of admission, on the different categories of the students who are admitted, and unless the differences are kept to a minimum, such differences will not disappear in the course of time if the course of study is a specialised course such as a post-graduate course.

Who should decide the qualifying marks and will it affect the standard of education:

Learned counsel for the States of Uttar Pradesh and Madhya Pradesh contend that it is for the States to decide the qualifying marks which should be prescribed for the reserved category candidates at the PGMEE. It is a matter of state policy. The Medical Council of India cannot have any say in prescribing the qualifying marks for the PGMEE. The two States have contended that it is the State which controls admissions to the post-graduate courses in medicine. It is for the State to decide whether to provide a common entrance examination or not. This examination may or may not have any minimum qualifying marks or it may have different qualifying marks for different categories of candidates. It is, therefore, not open to any other authority to interfere with the rules for admission to the post-graduate medical courses in each State. They have also contended that a common entrance examination is merely for the purpose of screening candidates and since all the candidates have passed the M.B.B.S. examination the standard is not affected even if no minimum marks are prescribed for passing the common entrance examination. The latter argument we have already examined and negatived. The other contention, however, relating to the power of the

State to control admissions to the post-graduate courses in medicine requires to be examined.

The legislative competence of the Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List-II gave to the States an exclusive power to legislate on "Education including universities subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List-III." Entry 11 of List-II was deleted and Entry 25 of List-III was amended with effect from 3.1.1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"Entry 25, List III: Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I: vocational and technical training of labour."

Entry 25 is subject, inter alia, to Entry 66 of List-I. Entry 66 of List-I is as follows:-

"Entry 66, List I: Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the

norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) The calibre of the teaching staff; (2) A proper syllabus designed to achieve a high level of education in the given span of time; (3) The student-teacher ratio; (4) The ratio between the students and the hospital beds available to each student; (5) The calibre of the students admitted to the institution; (6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges; (7) Adequate accommodation for the college and the attached hospital; and (8) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their post-graduate courses.

The respondents rely upon some observations in some of the judgments of this Court in support of their stand that it is for the State to lay down the rules and norms for admission; and that these do not have any bearing on the standard of education. In P. Rajendran v. State of Madras & Ors. ([1968] 2 SCR 786), a Constitution Bench of this Court considered the validity under Articles 14 and 15(1), of district- wise reservations made for seats in the medical colleges. In that case, the Act in question prescribed eligibility and qualifications of candidates for admission to the medical colleges. The Court observed, "So far as admission is concerned, it has to be made by those who are in control of the colleges - in this case, the Government. Because the medical colleges are Government colleges affiliated to the university. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it, subject to the rules of the university as to eligibility and qualifications. This was what was done in these cases and, therefore, the selection cannot be challenged on the ground that it was not in accordance with the University Act and the rules framed thereunder." This Court, therefore, upheld the additional criteria framed by the State for admission which were not

inconsistent with the norms for admission laid down by the University Act. Since these additional qualifications did not diminish the eligibility norms under the University Act, this Court upheld the additional criteria laid down by the state as not affecting the standards laid down by the University Act. The question of diluting the standards laid down, did not arise.

The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66, List I. At times, in some of the judgments, the words "eligibility" and "qualification" have been used interchangeably, and in some cases a distinction has been made between the two words ? "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central Statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central Statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

In Chitra Ghosh & Anr. v. Union of India & Ors. ([1970] 1 SCR 413), the Constitution Bench of this Court considered, inter alia, reservation of nine seats for the nominees of the Government of India in a Government Medical College under Article 14 of the Constitution. This Court upheld the reservation as a reasonable classification under Article 14 on the ground that the candidates for these seats had to be drawn from different sources and it would be difficult to have uniformity in the matter of selection from amongst them. The background and the course of studies undertaken by these candidates would be different and divergent and, therefore, the Central Government was the appropriate authority which could make a proper selection out of these categories. The questions before us, did not arise in that case.

In the State of Andhra Pradesh & Ors. v. Lavu Narendranath & Ors. etc. ([1971] 3 SCR 699), this Court considered the validity of a test held by the State Government for admission to medical colleges in the State of Andhra Pradesh. The Andhra University Act, 1926 prescribed the minimum qualification of passing HSC, PUC, I.S.C. etc. examinations for entry into a higher course of study. The Act, however, did not make it incumbent upon the Government to make their selection on the basis of the marks obtained by the candidates at these qualifying examinations. Since the seats for the MBBS course were limited, the Government, which ran the medical colleges, had a right to make a selection out of the large number of candidates who had passed the HSC, PUC or other prescribed examinations. For this purpose the State Government prescribed an entrance test of its own and also prescribed a minimum 50% of marks at the qualifying examination of HSC, ISC, PUC etc. for eligibility to appear at the entrance test. The Court said that merely because the Government supplemented the

eligibility rules by a written test in the subjects with which the candidates were already familiar, there was nothing unfair in the test prescribed. Nor did the test militate against the powers of Parliament under Entry 66 of List-I. Entry 66 List-I is not relatable to a screening test prescribed by the Government or by a university for selection of students from out of a large number applying for admission to a particular course of study.

Therefore, this Court considered the entrance test held by the State in that case as not violating Entry 66 of List-I because the statutory provisions of the Andhra University Act were also complied with and the test was not inconsistent with those provisions. Secondly, in that case the Court viewed the test as not in substitution of the HSC, PUC, ISC or other such examination, but in addition to it, for the purpose of proper selection from out of a large number of students who had applied.

This latter observation is relied upon by the State of Madhya Pradesh in support of its contention that the additional test which the State may prescribe is only for better selection. Therefore, it is not necessary to lay down minimum qualifying marks in the additional test. Lavu Narendranath (supra), however, does not lay down that it is permissible not to have minimum qualifying marks in the entrance test prescribed by the State; nor does it lay down that every test prescribed by the State must necessarily be viewed as only for the screening of candidates. On the facts before it, the Court viewed the test as only a screening test for proper selection from amongst a large number of candidates.

On the facts before us, the PGMEE is not just a screening test. Candidates who have qualified from different universities and in courses which are not necessarily identical, have to be assessed on the basis of their relative merit for the purpose of admission to a post-graduate course. It is for proper assessment of relative merit of candidates who have taken different examinations from different universities in the State that a uniform entrance test is prescribed. Such a test necessarily partakes of the character of an eligibility test as also a screening test. In such a situation, minimum qualifying marks are necessary. The question of minimum qualifying marks is not addressed at all in Levu Narendranath (supra) since it did not arise in that case.

In Dr. Ambesh Kumar v. Principal, L.L.R.M. Medical College, Meerut and Ors. ([1986] Supp. SCC 543), a State order prescribed 55% as minimum marks for admission to post-graduate medical courses. The Court considered the question whether the State can impose qualifications in addition to those laid down by the Medical Council of India and the Regulations framed by the Central Government. The Court said that any additional or further qualifications which the State may lay down would not be contrary to Entry 66 of List-I since additional qualifications are not in conflict with the Central Regulations but are designed to further the objective of the Central Regulation which is to promote proper standards. The Court said, (at page 552) "The State Government by laying down the eligibility qualification, namely, the obtaining of certain minimum marks in the M.B.B.S. examination by the candidates has not in any way encroached upon the Regulations made under the

Indian Medical Council Act nor does it infringe the central power provided in the Entry 66 of List-I of the Seventh Schedule to the Constitution. The order merely provides an additional eligibility qualification." None of these judgments lays down that any reduction in the eligibility criteria would not impinge on the standards covered by Entry 66 of List-I. All these judgments dealt with additional qualifications ? qualifications in addition to what was prescribed by the Central Regulations or Statutes.

There are, however, two cases where there are observations to the contrary. One is the case of the State of Madhya Pradesh & Anr. v. Kumari Nivedita Jain & Ors. ([1981] 4 SCC 296), a judgment of a Bench of three judges. In this case the Court dealt with admission to the M.B.B.S. course in the medical colleges of the State of Madhya Pradesh. The Rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks were prescribed as 40%. Later on, the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court observed, (paragraph 17) "That it was not in dispute and it could not be disputed that the order in question was in conflict with the provisions contained in Regulation 2 of the Regulations framed by the Indian Medical Council." But it held that Entry 66 of List-I would not apply to the selection of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation 2 of the Regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the Regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Although this judgment is referred to in the Constitution Bench judgment of Indra Sawhney & Ors. v. Union of India & Ors. (supra) the question of standards being lowered at the stage of post-graduate medical admissions was not before the court for consideration. The court merely said that since Article 16 was not applicable to the facts in Kumari Nivedita Jain's

case (supra), Article 335 was not considered there. Fort post- graduate medical education, where the "students" are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in Nivedita Jain is approved in all its aspects by Indra Sawhney v. Union of India.

The other case where a contrary view has been taken is Ajay Kumar Singh & Ors. v. State of Bihar & Ors. ([1994] 4 SCC 401) decided by a Bench of three Judges. It also held, following Kumari Nivedita Jain & Ors.(supra) (at page 417) that "Entry 66 in List-I does not take in the selection of candidates or regulation of admission to institutes of higher education. Because standards come into the picture after admissions are made." For reasons stated above we disagree with these findings.

In this connection, our attention is also drawn to the emphasis placed in some of the judgments on the fact that since all the candidates finally appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra) this Court, relying on Kumari Nivedita Jain (supra), said that everybody has to take the same post-graduate examination to qualify for a post-graduate degree. Therefore, the guarantee of quality lies in everybody passing the same final examination. The quality is guaranteed at the exit stage. Therefore, at the admission stage, even if students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in Post Graduate Institute of Medical Education & Research, Chandigarh & Ors. v. K.L. Narasimhan & Anr. (supra). This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If excellence is to be promoted at post- graduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs - calibre of students, calibre of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in Ajay Kumar Singh & Ors. v. Stage of Bihar & Ors. (supra) and Post Graduate Institute of Medical Education & Research, Chandigarh & Ors. v. K.L. Narasimhan & Anr. (supra).

The Indian Medical Council Act, 1956 and standards:

Has the Union Government, by Statute or Regulations laid down the standards at the post-graduate level in medicine in the exercise of its legislative powers under Entry 66, List I? the appellants/petitioners rely upon the Indian Medical Council Act, 1956 and the Regulations framed under it. The respondents contend that, in fact, no

standards have been laid down by the Medical Council of India. Also the standards laid down are only directory and not mandatory.

Now, one of the objects and reasons contained in the Statement of Objects and Reasons accompanying the Indian Medical Council Act of 1956 is:".....(d) to provide for the formation of a Committee of Post-Graduate Medical Education for the purpose of assisting the Medical Council of India in prescribing standards of post-graduate medical education for the guidance of universities and to advice universities in the matter of securing uniform standards of post-graduate medical education throughout India." Section 20 of the Indian Medical Council Act, 1956 deals with post-graduate medical education. The relevant provisions under Section 20 are as follows:-

"20. Postgraduate medical education committee for assisting council in matters relating to postgraduate medical education:-

(1) The Council may prescribe standards of postgraduate medical education for the guidance of universities, and advise universities in the matter of securing uniform standards for postgraduate medical education throughout India, and for this purpose the Central government may constitute from among the members of the council a postgraduate medical education committee (hereinafter referred to as the postgraduate medical education committee).

(2).....

(3).....

(4).....

(5) The views and recommendations of the postgraduate committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the postgraduate committee on any matter, the Council shall forward them together with its observations to the Central government for decision."

Section 33 of the Act gives to the Council the power to make regulations generally to carry out the purposes of the Act with the previous sanction of the Central Government. It provides that without prejudice to the generality of this power such Regulations may provide, under Section 33(j) for the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained in universities or medical institutions, for grant of recognised medical qualifications, and under Section 33(l) for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations.

Pursuant to its power to frame Regulations the Medical Council of India has framed Regulations on Post-Graduate Medical Education which have been approved by the Government of India under Section 33 of the Indian Medical Council Act, 1956. These regulations which have been framed on the

recommendations of the Post-Graduate Medical Education Committee prescribe in extenso the courses for post-graduate medical education, the facilities to be provided and the standards to be maintained. After setting out the various courses, both degree and diploma, available for post-graduate medical education, the Regulations contain certain general provisions/conditions some of which need to be noted. Condition 4 deals with the student-teacher ratio. It says:

"The student-teacher ratio should be such that the number of post-graduate teachers to the number of post-graduate students admitted per year, be maintained at one to one.

For the proper training of the post- graduate students there should be a limit to the number of students admitted per year. For this purpose every unit should consist of at least three full time post-graduate teachers and can admit not more than three students for post- graduate training per year. If the number of post-graduate teachers in the unit is more than three then the number of students can be increased proportionately. For this purpose, one student should associate with one post- graduate teacher".

Condition 5 says:

"The selection of post-graduates both for degree and diploma courses should be strictly on the basis of academic merit."

Condition 6 is as follows:-

"Condition 6: The training of post-graduates for degree should be of the residency pattern with patient care. Both the in-service candidates and the stipendaries should be given similar clinical responsibility..... ".

Under the heading "facilities for post-graduate students" clause (1) provides as follows:-

"Clause (1): There would be two types of post- graduate students:

(a) Those holding posts in the same Department like Resident, Registrar, Demonstrator etc. Adequate number of paid posts should be created for this purpose.

(b) Those receiving stipends. The stipends should normally be Rupees 300/- per month payable for the duration of the course."

Under the heading "criteria for the selection of candidates" Clause (a) is as follows:-

"(a) Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the under-graduate course. All selection for post-graduate studies should be conducted by the Universities."

Under the heading "Evaluation of merit" it is provided as follows:-

"The Post-graduate Committee was of the opinion that in order to determine the merit of a candidate for admission to post-graduate medical courses, (i) his performance at the M.B.B.S. examinations, (ii) his performance during the course of internship and housemanship for which a daily assessment chart be maintained and (iii) the report of the teachers which is to be submitted periodically may be considered.

Alternatively the authorities concerned may conduct competitive entrance examination to determine the merit of a candidate for admission to post-graduate medical courses."

Under the heading "Methods of training" it is, inter alia, provided:

".....The in-service training requires the candidate to be a resident in the campus and should be given graded responsibility in the management and treatment of patients entrusted to his care. Adequate number of post of clinical residents or tutors should be created for this purpose."

Mr. Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of post-graduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed Regulations which govern post-graduate medical education. These Regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List-III, make rules and regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for post- graduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List-I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List-III is subject to Entry 66 of List-I.

Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List-III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254.

In Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra), this Court examined the powers of the Indian Medical Council under Section 20 of the Indian Medical Council Act, 1956 and held that the power of the Council to prescribe standards of post-graduate medical education under Section 20 are only for the guidance of the universities.

Since Section 20 also refers to the power of the Council to advice universities in the matter of securing uniform standards for post-graduate medical education throughout India, the Court said that the entire power under Section 20 was purely advisory. Therefore, the power of the Indian Medical Council to prescribe the minimum standards of medical education at the post- graduate level was only advisory in nature and not of a binding character (page 415).

We do not agree with this interpretation put on Section 20 of the Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that the Council may prescribe standards of post-graduate medical education for the guidance of universities. The second part of sub-section(1) says that the Council may advise universities in the matter of securing uniform standards for post-graduate medical education throughout. The last part of sub- section (1) enables the Central Government to constitute from amongst the members of the Council, a post-graduate medical education committee. The first part of sub-section(1) empowers the Council to prescribe standards of post-graduate medical education for the guidance of universities. Therefore, the universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will be not be able to practice. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the Council. The post-graduate medical committee is also under Section 17, entitled to appoint medical inspectors to inspect any medical institution, college, hospital or other institution where medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any medical institution or university concerned in the manner provided in Section 19. Section 19A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than post-graduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of post-graduate medical education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. We, therefore, disagree with and overrule the finding given in Ajay Kumar Singh & Ors.
v. State of Bihar & Ors. (supra), to the effect that the standards of post-graduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed.

In State of Madhya Pradesh & Anr. v. Kumari Nivedita Jain & Ors. (supra), the provisions of Indian Medical Council Act and the regulations framed for under-graduate medical courses were considered by the Court. The Court said that while regulation 1 was mandatory, regulation 2 was only recommendatory and need not be followed. We do not agree with this line of reasoning for the reasons which we have set out above.

In the case of Medical Council of India v. State of Karnataka & Ors. ([1998] 6 SCC 131) a bench of three judges of this Court has distinguished the observations made in Kumari Nivedita Jain (supra). It has also disagreed with Ajay Kumar Singh & Ors. v. State of Bihar & Ors (supra) and has come to the conclusion that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with admissions to the M.B.B.S. course and the Regulations framed by the Indian Medical Council relating to admission to the M.B.B.S. course. The Court took note of the observations in State of Kerala v. Kumari T.P. Roshana & Anr. ([1979] 1 SCC 572 at page 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to post-graduate medical courses. We are in respectful agreement with this reasoning.

The Regulations governing post-graduate medical education already referred to earlier, provide for admission on the basis of merit. The Regulations, however, have not clearly spelt out whether there can or cannot be, any reservations for Scheduled Castes, Scheduled Tribes and/or backward class candidates at the stage of post-graduate medical admissions. Whether such a reservation would impinge on the standards or not would depend upon the manner in which such reservation is made, and whether the minimum qualifying marks for the reserved categories are properly fixed or not. It is for the Medical Council of India to lay down proper norms in this area and to prescribe whether the minimum qualifying marks for the admission of students in the reserved category can be less than the minimum qualifying marks for the general category students at the post-graduate level; and if so, to what extent. Even if we accept the contention of the respondents that for the reserved category candidates also, their inter se merit is the criterion for selection, although for the reserved category of candidates lower minimum qualifying marks are prescribed, the merit which is envisaged under the Indian Medical Council Act or its Regulations is comparative merit for all categories of candidates. For admission to a post-graduate course in medicine, the merit criterion cannot be so diluted by the State as to affect the standards of post-graduate medical education as prescribed under the Regulations framed by the Indian Medical Council. It is for the Indian Medical Council to consider whether lower minimum qualifying marks can be prescribed at the post-graduate level for the reserved category candidates. We have already

opined that the minimum qualifying marks of 20% as compared to 45% for the general category candidates appear to be too low. This would make it difficult for the reserved category candidates to bring their performance on a par with general category candidates in the course of post-graduate studies and before they qualify in the post-graduate examination. It is also necessary in public interest to ensure that the candidates at the post- graduate level have not just passed the examination, but they have profited from their studies in a manner which makes them capable of making their own contribution, that they are capable of diagnosing difficult medical conditions with a certain degree of expertise, and are capable of rendering to the ill, specialised services of a certain acceptable standard expected of doctors with specialised training.

The States of U.P. and Madhya Pradesh have contended that if the minimum qualifying marks are raised in the case of the reserved category candidates, they will not be able to fill all the seats which are reserved for them. The purpose, however, of higher medical education is not to fill the seats which are available by lowering standards; nor is the purpose of reservation at the stage of post-graduate medical education merely to fill the seats with the reserved category candidates. The purpose of reservation, if permissible at this level, is to ensure that the reserved category candidates having the requisite training and calibre to benefit from post-graduate medical education and rise to the standards which are expected of persons possessing post-graduate medical qualification, are not denied this opportunity by competing with general category candidates. The general category candidates do not have any social disabilities which prevent them from giving of their best. The special opportunity which is provided by reservation cannot, however, be made available to those who are substantially below the levels prescribed for the general category candidates. It will not be possible for such candidates to fully benefit from the very limited and specialised post-graduate training opportunities which are designed to produce high calibre well trained professionals for the benefit of the public. Article 15(4) and the spirit of reason which permeates it, do not permit lowering of minimum qualifying marks at the post-graduate level to 20% for the reserved category as against 45% for the general category candidates. It will be for the Medical Council of India to decide whether such lowering is permissible and if so to what extent. But in the meanwhile at least the norms which are prescribed for admission to the M.B.B.S. courses ought not to be lowered at the post-graduate level. The lowering of minimum qualifying marks for admission to the M.B.B.S. courses has been permitted by the Indian Medical Council upto 35% for the reserved category as against 45% for the general category. The marks cannot be lowered further for admission to the post-graduate medical courses, especially when at the super speciality level it is the unanimous view of all the judgments of this Court that there should be no reservations. This would also imply that there can be no lowering of minimum qualifying marks for any category of candidates at the level of admission to the super-specialities courses.

In Mohan Bir Singh Chawla v. Punjab University, Chandigarh & Anr. (supra) also this Court has taken the view that the higher you go the less should be the extent of reservation or weightage and it would be dangerous to

depreciate merit and excellence at the highest levels. In S. Vinod Kumar & Anr. v. Union of India & Ors. ([1996] 6 SCC 580) this Court while considering Articles 16(4) and 335 held that for the purpose of promotion lower qualifying marks for the reserved category candidates were not permissible. Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. (supra) has rightly prescribed minimum qualifying marks for the common entrance examination for post-graduate medical courses. The Court left open the question whether there could be any reservation at the post- graduation level and to what extent lesser qualifying marks could be prescribed, assuming the reservations can be made. As we have said earlier, these are matters essentially of laying down appropriate standards and hence to be decided by the Medical Council of India. However, the disparity in the minimum qualifying marks cannot be substantial.

In Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. ([1997] 6 SCC 283) there are observations to the effect that the reservation of seats at the post-graduate and doctoral courses in medicine would not lead to loss of efficiency and would be permissible under Article 15(4). There are also observations to the effect that since all appear for the same final examination, there is no downgrading of excellence. These observations, in our view, cannot be accepted for reasons set out earlier. The judgment of the Court in Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. (supra) in so far as it lays down these propositions is overruled.

In the premises, we agree with the reasoning and conclusion in Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. (supra) and we overrule the reasoning and conclusions in Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra) and Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. (supra). To conclude:

1. We have not examined the question whether reservations are permissible at the post-graduate level of medical education;

2. A common entrance examination envisaged under the Regulations framed by the Medical Council of India for post-graduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.

3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of medical education is a question which must be decided by the Medical Council of India since it affects standards of post-graduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the post-graduate level and contrary to public interest.

4. At the level of admission to the super speciality courses, no special provisions are permissible, they being contrary to national interest. Merit alone can be the basis of selection.

In the premises, the impugned Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1997 and G.O. dated 7.6.1997 of the State of Madhya Pradesh are set aside. However, students who have already taken admission and are pursuing courses of post-graduate medical study under the impugned Act/G.O. will not be affected. Our judgment will have prospective application. Further, pending consideration of this question by the Medical Council of India, the two States may follow the norms laid down by the Medical Council of India for lowering of marks for admission to the under-graduate M.B.B.S. medical courses, at the post-graduate level also as a temporary measure until the norms are laid down. This, however, will not be treated as our having held that such lowering of marks will not lead to a lowering of standards at the post- graduate level of medical education. Standards cannot be lowered at this level in public interest. This is a matter to be decided by an expert body such as the Medical Council of India assisted by its Post- Graduate Medical Education Committee in accordance with law.

I.A. No.2 in WP(C) No.679 of 1995, Writ Petition Nos.290 of 1997, 300 of 1997, C.A. No.....of 1999 (Arising out of SLP(C) No.12231 of 1997) and Writ Petition (C) No.350 of 1998 are disposed of accordingly.

Review Petition Nos.2371-72 of 1997 in CA Nos.3176-77/97

Normally the power to review is used by us sparingly to correct errors apparent on the face of the record. In the judgment sought to be reviewed, however, there are observations which are so widely worded that they may create mischief or national detriment. We would, therefore, like to clarify the position regarding admissions to the super specialities in medicine. In Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. ([1997] 6 SCC 283), which is the judgment in question, it was, inter alia, held that there could be reservation of seats for the Scheduled Castes and Scheduled Tribes at post-graduate levels or doctoral levels in medicine and that such reservations would not lead to a loss of efficiency and are permissible under Article 15(4).

In the group of civil appeals decided by Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. (supra), the appeal of the present petitioners had challenged an Admission Notice No.15/90 issued in the Indian Express of 25.11.1990, under which six seats for the super speciality courses of D.M./M.C.H. were kept reserved for the Scheduled Caste and the Scheduled Tribe candidates. The petitioners rightly contend that at the super speciality level there cannot be any relaxation in favour of any category of candidates. Admissions should be entirely on the basis of open merit.

The ambit of special provisions under Article 15(4) has already been considered by us. While the object of

Article 15(4) is to advance the equality principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and be able to compete equally with others more fortunate, one cannot also ignore the wider interests of society while devising such special provisions. Undoubtedly, protective discrimination in favour of the backward, including scheduled castes and scheduled tribes is as much in the interest of society as the protected groups. At the same time, there may be other national interests, such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to society, which have also to be borne in mind. Special provisions must strike a reasonable balance between these diverse national interests.

In the case of Dr. Jagdish Saran & Ors. v. Union of India (supra) this Court observed that at the highest scales of speciality, the best skill or talent must be hand-picked by selection according to capability. Losing a potential great scientist or technologist would be a national loss. That is why the Court observed that the higher the level of education the lesser should be the reservation. There are similar observations in Dr. Pradeep Jain & Ors. v. Union of India & Ors. (supra). Undoubtedly, Dr. Pradeep Jain & Ors. v. Union of India & Ors. (supra) did not deal with reservation in favour of the Scheduled Castes and the Scheduled Tribes. It dealt with reservation in favour of residents and students of the same university. Nevertheless it correctly extended the principle laid down in Dr. Jagdish Saran & Ors. v. Union of India (supra) to these kinds of reservation also, holding that at the highest levels of medical education excellence cannot be compromised to the detriment of the nation. Admissions to the highest available medical courses in the country at the super-speciality levels, where even the facilities for training are limited, must be given only on the basis of competitive merit. There can be no relaxation at this level.

Indra Sawhney & Ors. v. Union of India & Ors. (supra) has also observed that in certain positions at the highest level merit alone counts. In specialities and super-specialities in medicine, merit alone must prevail and there should not be any reservation of posts. The observations in Indra Sawhney & Ors. v. Union of India & Ors.(supra) were in respect of posts in the specialities and super-specialities in medicine. Nevertheless, the same principle applies to seats in the specialities and super-specialities in medicine. Moreover, study and training at the level of specialities and super-specialities in medicine involve discharging the duties attached to certain specified medical posts in the hospitals attached to the medical institutions giving education in specialities and super-specialities. Even where no specific posts are created or kept for the doctors studying for the super-specialities or specialities, the work which they are required to do in the hospitals attached to these institutions is equivalent to the work done by the occupants of such posts in that hospital. In this sense also, some of the considerations under Article 16(4) read with Article 335 rub off on admissions of candidates who are given seats for speciality and super-speciality courses in medicine. Even otherwise under Article 15(4) the special provisions which are made at this level of education have to be consistent

with the national interest in promoting the highest levels of efficiency, skill and knowledge amongst the best in the country so that they can contribute to national progress and enhance the prestige of the nation. The same view has been upheld in Dr. Fazal Ghafoor v. Union of India & Ors. ([1988] Supp. SCC 794) and Mohan Bir Singh Chawla v. Punjab University, Chandigarh, & Anr. ([1997] 2 SCC 171).

The Post-graduate Institute of Medical Education and Research, Chandigarh, has been set up as an institution of national importance. The Post-graduate Institute of Medical Education and Research, Chandigarh Act, 1966, under Section 2 provides that the object of the said institution is to make the institution one of national importance. Section 12 sets out the objects of the Institute. These are as follows:-

"Objects of Institute:

The objects of the Institute shall be -

(a) to develop patterns of teaching in under- graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education;

(b) to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and

(c) to attain self-sufficiency in post- graduate medical education to meet the country's needs for specialists and medical teachers."

Under Section 13 the functions of the Institute include providing both under-graduate and post-graduate teaching, inter alia, in medicine as also facilities for research, conducting experiments in new methods of medical education both under-graduate and post-graduate, in order to arrive at satisfactory standards of such education, prescribe courses and curricula for both under-graduate and post-graduate study and to establish and maintain one or more medical colleges equipped to undertake not only under-graduate but also post-graduate medical education in the subject.

Under Section 32 of the said Act, the Post-graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 have been framed. Regulation 27 provides for 20% of the seats in every course of study in the Institute to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes or other categories of persons in accordance with the general orders issued by the Central Government from time to time. Regulation 27, however, cannot have any application at the highest level of super-specialities as this would defeat the very object of imparting the best possible training to select meritorious candidates who can contribute to the advancement of knowledge in the fields of medical research and its

applications. Since no relaxation is permissible at the highest levels in the medical institutions, the petitioners are right when they contend that the reservations made for the Scheduled Caste and the Scheduled Tribe candidates for admission to D.M. and M.C.H. courses which are super-speciality courses, is not consistent with the constitutional mandate under Articles 15(4) and 16(4). Regulation 27 would not apply at the level of admissions to D.M. and M.C.H. courses.

We, therefore, hold that the judgment of this Court in Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. (supra) cannot be read as holding that any type of relaxation is permissible at the super-specialities level. The review petitions are disposed of accordingly.

All the interlocutory applications also stand disposed of.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.444 OF 2015

Dr. Sandeep s/o Sadashivrao Kansurkar ... Petitioner(s)
and Others

Versus

Union of India and Others ... Respondent(s)

J U D G M E N T

Dipak Misra, J.

The gravamen of grievance and the substratum of discontent of the petitioners in this writ petition, preferred under Article 32 of the Constitution of India, is that though the primary eligibility criteria for appearing in the super-specialty entrance examination conducted in different States in India for admission to D.M. (Doctorate of Medicine) and M.Ch. (Masters of Chirurgiae) course regard being had to the purpose that it endows the students an excellent opportunity to prosecute super specialty subjects and to

108

fulfill their aspirations for a bright and vibrant career as well as to serve the society in the institutes recognized by the Medical Council of India (MCI) and most of the States, namely, Maharashtra, Uttar Pradesh, Gujarat, Rajasthan, Delhi, Karnataka, Kerala, West Bengal, Bihar and Haryana, conduct the entrance examination for the eligible candidates from All Over India and permit them to appear in the entrance examination, yet the States like, Andhra Pradesh, Telangana and Tamil Nadu, confine the eligibility only to the candidates having domicile in their respective States. The fall out of the restriction is that candidates having the domicile in the said States can appear in other States' entrance examination without any restriction and compete with other candidates, and the said situation creates a clear disparity, and further a state of inequality has been allowed to reign in the aforesaid three States. The dissatisfaction is further accentuated by asserting that the institutes with super-specialty courses are distributed all over India in a heterogeneous manner and the States like, Punjab, Madhya Prades, Chhatisgarh, Manipur, Arunachal Pradesh, Nagaland, Mizoram, Tripura, Sikkim, Uttarakhand are not

109

having any government institutes offering super-specialty courses and the candidates from the said States have to depend on the other States' entrance examinations to seek a career in the discipline they are interested, but for the restriction imposed by the States like, Andhra Pradesh, Telangana and Tamil Nadu, they are deprived of the opportunity to participate in the entrance examination and that invites the frown of Articles 14 and 16 of the Constitution of India.

2. It is urged in the writ petition that the restraint imposed by the aforesaid three States amounts to reservation in respect of the post-graduate level; and as far as the super-specialty courses are concerned, the question of reservation based on residence or institutional preference is totally impermissible, for merit cannot be compromised by making reservation on the consideration, like residential requirement, as that would be absolutely against the national interest and plays foul of equality clause engrafted in the Constitution. It is put forth that the States of Andhra Pradesh and Telangana have drawn support from the Presidential order, namely, Andhra Pradesh Educational

110

Institutions (Regulations and Admissions) order 1974 (for short "the Presidential Order") issued under Article 371-D of the Constitution and G.O.P. No.646 dated 10th July, 1979 issued by the State of Andhra Pradesh (for short, 'the 1979 circular'), which are really not applicable to the super-specialty courses, for the legal system which prevails throughout the territory of India is a singular and indivisible one and Article 14 lays a clear postulate for conferment of equal opportunity throughout the nation. It is asseverated that the reservations made by the States of Andhra Pradesh, Telangana and Tamil Nadu, ushers in a state of inequality by putting the residents of the said States in one class solely on the foundation of domicile and others in a different category altogether without any rationale and, therefore, the entire action smacks of arbitrariness and unreasonableness.

3. On the basis of aforesaid assertions prayers have been made to issue a command to the Respondent Nos.1 and 6 i.e. the Secretary, Ministry of Health and Family Welfare, Union of India and the Medical Council of India, respectively, to allow the petitioners to appear in the entrance examination conducted by the respondent Nos.3 to

111

5 i.e. the States of Tamil Nadu, Andhra Pradesh and Telangana for the year 2015-2016 for the super-specialty courses and further to issue a writ of mandamus directing the respondent Nos.1 and 6, as well as the respondent No.2, the Director General of Health Services of the Union of India, to conduct a common entrance test for admission to super-specialty courses, like DM/M.Ch. at All India Level, and for certain other ancillary reliefs.

4. A counter affidavit has been filed by the State of Andhra Pradesh contending, *inter alia*, that the claim of the petitioners to appear in the entrance test conducted by the State of Andhra Pradesh for admission into the medical super-specialty courses is contrary to the scheme of the Presidential Order and the 1979 circular. It is set forth in the counter affidavit that the two categories of institutions, namely, State wide educational Institutions and Non-State wide educational Institutions (Local Institutions) existed in the State of undivided Andhra Pradesh as per the Presidential Order and further clarified by 1979 circular all professional under-graduate and post-graduate courses are covered under the aforesaid two categories of institutions. It

112

is contended that the erstwhile State of Andhra Pradesh was divided into three local areas that came under Andhra University, Osmania University and Sri Venkateswara University for the purpose of admission into the educational institutions. Subsequent to the bifurcation of the State, the Andhra University area and Sri Venkateswara University area have come under the territory of State of Andhra Pradesh and the Osmania University area has come under the State of Telangana and 85% of the seats are reserved for the local candidates in each University area and the said system is to remain in vogue for a period of ten years. A reference has been made to paragraph 3 of the Presidential Order, indicating the division of the local areas. There is also reference to paragraphs 5 and 7 of the Presidential Order, which indicate that the reservations are available for the local candidates in the University areas in Non-State-wide educational institutions and State-wide educational institutions. Placing reliance on the same it is asserted that admissions upto 85% of Non-State-wide seats shall be reserved in favour of the local areas as per procedure specified in the 1979 circular as amended from

113

time to time and remaining 15% seats are to be treated as unreserved seats for the Non-State candidates who have qualified in the Entrance Test. Elaborating the same, it is contended that admission upto 85% State-wide seats shall be reserved in favour of Andhra and Nagarjuna University, Osmania and Kakatiya University and Sri Venkateswara University in the ratio 42:36:22 respectively as per the procedure specified as per the 1979 circular. It is highlighted that paragraph 4 of the Presidential Order, defines the local candidate in reference to a local area and how the remaining 15% unreserved seats have to be dealt with. In essence, it is the stand of the State of Andhra Pradesh that according to Six Point Formula of the Constitution of India, as amended by 32nd Amendment, inserting Article 371-D, special provisions have been made in respect of the State of Andhra Pradesh which provide equal opportunities in different parts of the State in the matter of public employment and education. To bolster the stand that there is no provision for admission to the candidates of other States except the candidates belonging to the State of Andhra Pradesh, emphasis is laid on the

114

schematic context of the Presidential Order and the 1979 circular and further it is reiterated that in view of the special status conferred on the State by the constitutional norms of equality which has been assiduously attempted to build is sans substance as per the Presidential Order read with 1979 circular.

5. The State of Telangana has also filed a counter affidavit wherein it has been stressed that the Presidential Order, as well as the 1979 circular are protective in nature and a distinction has been drawn between the local candidates and reservation for local candidates; and the candidates who are eligible to apply for admission in respect of the remaining 15% of the unreserved seats. It is urged that the 15% of unreserved seats as per the Presidential Order and the circular issued by the State Government in 1979, do not include the candidates from other States. The other grounds which have been put forth in the counter affidavit need not be stated because they are in a way repetition of the stand taken by the State of Andhra Pradesh.

115

6. The State of Tamil Nadu has also filed a counter affidavit, but we shall not refer to the same *in praesenti*. At the very outset, we would like to make it absolutely clear that when we reserved the matter, we had mentioned in our order that the controversy relating to the State of Tamil Nadu shall be taken up after the judgment is pronounced in respect of the States of Andhra Pradesh and Telangana.

7. We have heard Ms. Indu Malhotra and Mr. B.H. Marlapalle, learned senior counsel for the petitioners, Mr. Mukul Rohatgi, learned Attorney General for Union of India, Mr. H.P. Raval, learned senior counsel, along with Mr. S. Udaya Kumar Sagar, learned counsel for the State of Telangana, Mr. Guntur Prabhakar, learned counsel for the State of Andhra Pradesh and Mr. Gaurav Sharma, learned counsel for the Medical Council of India.

8. It is submitted by Ms. Indu Malhotra, learned senior counsel appearing for the petitioners that though Article 371-D of the Constitution of India makes special provisions for the State, yet that would not extend to cover reservations as regards the super-specialty courses where merit alone matters as has been held by the Constitution Bench in ***Dr.***

116

Preeti Srivastava and Another vs. State of M.P. and Others[1]. It is urged by her that equality before law and equal protection of the law serve the purpose of excellence and if merit is compromised on the bedrock of geographical boundary, the basic normative principle of equality would be marred. Learned senior counsel would further contend that the residential requirement or institutional preference should not be allowed to have any room in this category of admissions in view of the pronouncements in ***Nikhil Himthani vs. State of Uttarakhand[2]*** and ***Vishal Goel vs. State of Karnataka[3].*** It is astutely canvassed by her that the principle pertaining to domicile was laid down more than a decade back in ***Saurabh Chaudri vs. Union of India[4]***, but both the States, namely, Andhra Pradesh and Telangana have flagrantly violated the said principle and given an indecent burial to the guidelines issued by the Medical Council of India.

9. Mr. B.H. Marlapalle, learned senior counsel appearing for the impleaded petitioners would submit that Rule 9 of the Medical Council of India Postgraduate Medical

[1] (1999) 7 SCC 120
[2] (2013) 10 SCC 237
[3] (2014) 11 SCC 456
[4] (2003) 11 SCC 146

117

Education Regulations, 2000, as amended on 21st December, 2010, deals with the selection of post-graduate students by all the medical educational institutions all over the country and these Regulations are indubitably binding on all the universities in both the States and they cannot be allowed to violate the same. It is his further submission that the Presidential Order, issued under Article 371-D of the Constitution is primarily aimed at removing disparities between the three different regions of Andhra Pradesh, namely, Andhra, Rayalaseema and Telangana, as prevailing at the time of its formation of the State of Andhra Pradesh consequent upon the States Reorganization Act, 1956, in respect of employment and education and the term "education" as finds place in Clause 2(1)(a) of the Presidential Order, defines the term "available seats", which means number of seats in a course for admission at any time after excluding those reserved for candidates from outside the State. Learned senior counsel has referred to Clause 3 of the Presidential Order and highlighted that whatever manner the interpretation is placed on those clauses, 15% has to be demarcated as non-local quota or

118

available for the candidates who are not residents of the State. He has emphatically argued that clause 2(1)(a) of the 1979 circular, is only a clarifactory one and hence, it cannot convey that the candidates who have passed the examination from any State other than Andhra Pradesh/Telangana, do not fall in the category of candidates from outside the State. That apart, it is urged that in the name of clarification it cannot place an erroneous interpretation on the Presidential Order, for that will make the said Order unworkable, and also would cause violence to the language employed in the Presidential Order.

10. Mr. Marlapalle has referred to paragraph 11 of the 1979 circular to buttress his stand that the procedure of implementation of reservation is clear to the extent that 15% reservation will be meant for non-local candidates. He has given an example by stating that if there are 12 seats available for a particular super-specialty course in a university, the available seats will be arrived at by deducting the national quota, that may be 2 seats, and from the remaining 10 available seats, 85% will be earmarked for the local candidates and remaining 15% for those who are listed

119

in Clause 2 of the Presidential Order would go to non-local quota. He has placed reliance on the prospectus issued for the academic year 2015-2016 by Dr. N.T.R. University of Health Sciences, Andhra Pradesh, especially on Clause 3.8 to 3.8.6. Learned senior counsel has also drawn inspiration from Rule 2(2) of the Rules for Admission to Post Graduate Courses in the Medical Colleges in the State of Andhra Pradesh, 1983. Learned senior counsel has criticized that the prospectus of the academic year 2015-2016 of the universities, namely, Dr. N.T.R. University of Health Sciences, Andhra Pradesh and Nizam's Institute of Medical Sciences, which do not provide for All India quota and only provide for the "available seats" and, in that backdrop it is suggested that the Medical Council of India should issue appropriate directions under the approval of the Government of India to earmark national quota outside the State of Andhra Pradesh and Telangana in the super-specialty post-graduate medical courses; and for the current academic year, the Medical Council of India should be directed to consider to create additional seats for

120

national quota in respect of these two States so that the Presidential Order is properly implemented.

11. Mr. Marlapalle has submitted that to understand the controversy in the proper perspective of the Presidential Order and how the States have worked it out, the examination of certain Acts, Rules and Regulations, namely. (i) A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983; (ii) Rules for Admission to Post Graduate Courses in the Medical Colleges in the State of Andhra Pradesh, 1983; (iii) The Andhra Pradesh Regulation of Admission to Super Specialties in the Medical Colleges Rules, 1983; (iv) Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses), Rules 1997, as modified from time to time and (v) Medical Council of India Postgraduate Medical Education Regulations, 2000, as amended from time to time are necessary . We must immediately state that their relevance shall depend upon our eventual analysis of the constitutional provision, the Presidential Order and the 1979 circular issued by the State of Andhra Pradesh.

121

12. Mr. Mukul Rohatgi, learned Attorney General appearing for the Union of India, would contend that Article 371-D of the Constitution enables the President of India to issue certain category of orders and in exercise of that **power** the Presidential Order had been issued in relation to the State of Andhra Pradesh which pertains to the field of education and that covers the super-specialty courses; and further the 1979 circular issued by the State Government is not an amendment to the Presidential Order, but only postulates the manner and method of implementation. It is canvassed by him that there can be no cavil that merit is the rule in case of super-specialty courses and there cannot be any reservation, as has been held in ***Preeti Srivastava*** *(supra)* and subsequent judgments, but this Court has consistently held that as far as the State of Andhra Pradesh is concerned, the super-specialty courses would fall beyond the said concept. It is propounded by Mr. Rohatgi that the submission that 15% would go to the students who have no domicile in the State, should go to candidates of other States, is absolutely incorrect in view of the procedure for implementation of the Presidential Order, which has been

122

elaborately determined by the State of Andhra Pradesh in 1979. He has commended us to the decisions in ***Dr. Pradeep Jain and Others vs. Union of India and Others***[5], ***Reita Nirankari vs. Union of India***[6], ***Dr. Dinesh Kumar vs. Motilal Nehru Medical College***[7], ***C. Surekha vs. Union of India***[8] and ***Dr. Fazal Ghafoor vs. Union of India and Others***[9]. Needless to say, the learned Attorney General has submitted that the principles stated in the said authorities shall apply on all fours to the State of Telangana.

13. Mr. Harin P. Raval, learned senior counsel, along with Mr. S. Udaya Kumar Sagar, learned counsel, appearing for the State of Telangana have adopted the submissions advanced by the learned Attorney General.

14. To appreciate the controversy raised in this writ petition it is necessary to reflect upon the language employed in Article 371-D of the Constitution and the interpretation placed by this Court on the said provision. That apart, it would also be essential to understand the

---

[5] (1984) 3 SCC 654
[6] (1984) 3 SCC 706
[7] (1986) 3 SCC 727
[8] (1988) 4 SCC 526
[9] (1988) Supp SCC 794

123

1979 circular issued by the State of Andhra Pradesh in the year 1979 and how this Court has perceived the ambit and scope of the same and further also consider the concept of non-applicability of reservation in respect of the super speciality courses. Having stated so, we may reproduce Clauses 1 and 2 of Article 371-D of the Constitution, which are relevant for the present purpose, They read as follows:-

> "371-D. Special provisions with respect to the State of Andhra Pradesh or the State of Telangana.- (1) The President may by order made with respect to the State of Andhra Pradesh or the State of Telangana, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the States.
>
> (2) An order made under clause (1) may, in particular,-
>
> (a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organized;
>
> (b) specify any part or parts of the State which shall be regarded as the local area –

124

(i) for direct recruitment to posts in any local cadre (whether organized in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made –

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order,

to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be."

15. At this stage we think it appropriate to refer to the relevant clauses of the Presidential Order. The pertinent clauses, we are inclined to think, are:-

"(2) It extends to the whole of the State of Andhra Pradesh.

125

(3) It shall come into force on the 1st day of July, 1974.

2. Interpretation:- (1) In this Order, unless the context otherwise requires:-

(a) "available seats" in relation to any course of study, means the number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State.

(b) "Local area", in respect of any University or other educational institution, means the local area specified in paragraph 3 of this Order for the purposes of admission to such University or other educational institution.

(c) "Local candidate", in relation to any local area, means a candidate who qualifies under paragraph 4 of this Order as a local candidate in relation to such local area:

(d) "State Government" means the Government of Andhra Pradesh.

(e) "State-wide educational institution" means an educational institution or a department of an educational institution specified in the Schedule of this Order.

(f) "State-wide University" means the Andhra Pradesh Agricultural University constituted under the Andhra Pradesh Agricultural University Act, 1963 (Andhra Pradesh Act 24 of 1963), or the Jawaharlal Nehru Technological University constituted under the Jawaharlal Nehru Technological University Act, 1972 (Andhra Pradesh Act 16 of 1972).

126

(2) Any reference to any District in this Order shall be construed as a reference to the area comprised in that District on the 1st day of July, 1974.

(3) The General clauses Act, 1897(10 of 1897) applies for the interpretation of this order as it applies for the interpretation of a Central Act.

3. Local area:- (1) The part of the State comprising the district of Srikakulam, Visakhapatnam, West Godavari, East Godavari, Krishna, Guntur and Prakasam shall be regarded as the local area for the purposes of admission to the Andhra University, (the Nagarjuna University) and to any other educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

(2) The part of the State comprising the districts of Adilabad, Hyderabad, Karimnagar, Khammam, Mahaboobnagar, Medak, Nalgonda, Nizamabad and Warangal shall be regarded as the local area for the purposes of admission to the Osmania University, (the Kakatiya University) and to any other educational institution(other than a State-wide University or State-wide Educational institution) which is subject to the control of the State Government and is situated in that part.

(3) The part of the State comprising the districts of Anantapur, cuddapah, Kurnool, Chitoor and Nellore shall be regarded as the local area for the purposes of admission to Sri Venkateswara University and to any other educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

127

4. Local candidates:- (1) A Candidate for admission to any course of study shall be regarded as a local candidate in relation to a local area

(a) if he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination; or.

(b) Where during the whole of any part of the four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in any educational institution. If he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination in which he appeared or as the case may be first appeared.

(2) A candidate for admission to any course of study who is not regarded as a local candidate under sub-paragraph (1) in relation to any local area shall.

(a) if he has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, be regarded as a local candidate in relation to.

(i) such local are where he has studied for the maximum period out of the said period of seven years; or.

(ii) Where the periods of his study in two or more local areas are equal, such local area where he has studied last in such equal periods; or.

128

(b) if during the whole or any part of the seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in the educational institution in any local area, but has resided in the State during the whole of the said period of seven years be regarded as a local candidate in relation to.

(i) such local area where he has resided for the maximum period out of the said period of seven years, or.

(ii) Where the period of "his residence in two or more local areas are equal, such local area where he has resided last in such equal periods".]

Explanation – For the purpose of this paragraph.

(i) "Educational institution" means a University or any educational institution recognized by the State Government a University or other competent authority;

(ii) "relevant qualifying examination" in relation to admission to any course of study, means the examination, a pass in which is the minimum educational qualification for admission to such course of study;

(iii) in reckoning the consecutive academic years during which a candidate has studied,-

(a) any period of interruption of his study by reason of his failure to pass any examination; and

(b) any period of his study in a State-wide University or a State wide educational institution, shall be disregarded.

129

(iv) the question whether any candidate for admission to any course of study has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his parent or other guardian.]

5. Reservation in non-State-wide Universities and educational Institutions:- (1) Admissions to eighty-five percent of the available seats in every course of study provided by the *(Andhra University, the Nagarjuna University, the Osmania University.** the Kakatiya University or Sri Venkateswara University) or by any other educational institution (other than a State-wide University or a Statewide educational institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one:

Provided that there shall be at least one unreserved seat.

6. Reservation in Statewide Universities and State-wide educational institutions (1) Admissions to eighty five percent of the available seats in every course of study provided by a State-wide University or a State-wide educational institution shall be reserved in favour of and allocated among the local candidates I relation, to the *(Local areas specified in sub-paragraph(1), sub-paragraph(2) and sub-paragraph(3) of paragraph 3, in the ratio of 42:36:22 respectively:

Provided that this sub-paragraph shall not apply in relation to any course of study in which the

130

total number of available seats does not exceed three.

(2) While determining under sub-paragraph(1) the number of seats to be reserved in favour of the local candidates, any fraction of a seat shall be counted as one.

Provided that there shall be at least one unreserved seat.

(3) While allocating under sub-paragraph(1) the reserved seats among the local candidates in relation to the different local areas, fractions of a seat shall be adjusted by counting the greatest fraction as one and, if necessary, also the greater of the remaining fractions as another; and, where the fraction to be so counted cannot be selected by reason of the fractions being equal, the selection shall be by lot.

Provided that there shall be at least one seat allocated for the local candidate in respect of each local area.

7. Filling of reserved vacant seats.- If a local candidate in respect of a local area is not available to fill any seat reserved or allocated in favour of local candidate in respect of that local area, such seat shall be filled as if it had not been reserved.

8. Power to authorise issue of directions. – (1) the president may, by order, require the State Government to issue such directions as may be necessary or expedient for the purpose of giving effect to this Order to any University or to any other educational institution subject to the control of the State Government; and the University or other educational institution shall comply with such directions.

131

> (2) The State Government may, for the purpose of issuing any directions under sub-paragraph (1) or for satisfying itself that any directions issued under that sub-paragraph have been complied with require, by order in writing, any University or any other educational institution subject to the Control of the State Government to furnish them such information, report or particulars as may be specified in the order; and the University or other educational institution shall comply with such order."

16. The State Government issued the circular in 1979. The relevant paragraphs of the circular deserve to be reproduced. They read as follows:-

> "2. The Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 provides for reservation of seats in favour of local candidates in courses of study provided by the Universities and other educational institutions subject to the Control of the State Government. Paragraph 9 of the order lays down that the provisions of that order shall have effect notwithstanding anything contained in any statute ordinance, rule, regulation or other order(whether made before or after the commencement of the Order) in respect of admissions to any University or any other educational institutions subject to the control of the State Government. Paragraph 10 of the said Order, however, declares that nothing in the Order shall affect the operation of any provisions made by the State Government or other competent authority (whether before or after the commencement of the Order) in respect of reservations in the matter of admission to any University or other education Institution in favor or women, socially and educationally backward classes of citizens, the Scheduled Castes and the

132

Scheduled Tribes in so far as such provisions are not inconsistent with the Order.

3. After the coming into force of the above Presidential Order, with effect from 1-7-1974, admissions to the educational institutions in the entire State are to be made in the light of the provisions of the said order. According to Paragraph 4 of the Order a candidate for admission to any course of study shall be regarded as a local candidate in relation to the local area, -

(a) If he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in relevant qualifying examination; or

(b) where during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in any educational institution, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination in which he appeared, or, as the case may be, first appeared.

4. It must be noted that para 4(a) as extracted above covers the cases of those candidates who studied in an educational institution or educational institutions for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination, while para 4 (b) applies to the case of other candidates. For purposes of

133

para 4(a) educational institution has been defined as a University or any educational institution recognized by the State Government, a University or other competent authority. The eligibility of a candidate who has studied during any part of the four years period in an unrecognized institution will have to be dealt with the under para 4(b). While considering the eligibility of a candidate to be regarded as a local candidate, under paragraph 4(a) of the Order by virtue of four consecutive years of Study in a local area, it should be noted that in reckoning the consecutive academic years of study, any interruption in the period of his study ,by reason of his failure to pass any examination shall be disregarded. For instance, a candidate who has studied in the IXth and Xth Classes and the Junior and Senior Intermediate Classes in institutions of the sale local area with a break of one year after the Xth class on account of failure to pass the Xth Class examination at the first attempt, shall be regarded as a local candidate in relation to that local area for admission to a degree course in any institution in that area.

5. The above definition of the local candidate (as it stood until it was amended with effect from 25-11-1976) had given rise to certain situations wherein some of the candidates belonging to the State of Andhra Pradesh who have studied or resided throughout within the State came to be regarded as non-local candidates in all the local areas within the State. In order to avoid such a situation, the Government of India have since issued the Andhra Pradesh Educational Institutions (Regulation of Admission) Second Amendment Order, 1976 amplifying the said definition in paragraph 4 of the Order

6. The Andhra Pradesh Educational Institutions (Regulation of Admissions) Second Amendment Order, 1976 inserts a new sub-paragraph in the

134

said 1974 Order-viz., sub-paragraph (2) to Paragraph 4 thereby making provision for considering the claims of persons, who under the old definition would have become non-local in relation to all local areas in the State. According to sub-para (2) (a) of Para 4, after amendment, if such a candidate has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared on, as the case may be, first appeared for the relevant qualifying examination, he shall be regarded as a local candidate in relation to that local area where he had studied for the longest period out of the said period of seven years. In the event of the periods of study in two or more local areas being equal he shall be regarded as local candidate in relation to that local area where he studied during the last of the said equal periods. Clause (b) to sub-para (2) applies to a candidate who, during the whole or any part of the seven consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant qualifying examination has not studied in educational institutions in any local area, but has resided in the State during the whole of the said seven years, the candidate shall be regarded as a local candidate in relation to that local area where he has resided for the longest period out of the said seven year period. This residence test will be applies to candidates in whose cases there is a gap in study, occasioned otherwise than by reason of failure to pass in an examination, in the prescribed full term of seven years immediately preceding the relevant qualifying examination. It has also been provided that where the periods of residence in two or more local areas are equal, such a candidate shall be regarded as a local candidate in relation to the local area where he resided last in such equal periods. The application of the liberalized

135

definitions made through the Second Amendment Order are illustrated by the examples given in the Annexure – I.

xxxxx xxxxx

9. The Government have directed that for the purpose of admission into educational institutions, those who claim to be local candidates with reference to para 4(1) (a) or para 4(2) (a) of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 should produce evidence in the form of study certificates issued by the heads of the educational institutions concerned indicating the details of the year or years in which the candidate has studied in an educational institution or institutions in such local area for a period of not less that four or seven consecutive academic years ending with academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination. Those who do not qualify as local candidates under para 4(1) (a) or 4(2) (a) but claim to qualify by virtue of residence under para 4(1)(b) or para 4
(2) (b) of the said order should produce a certificate issued by an Officer of the Revenue Department not below the rank of Tahsildar in the form annexed vide Annexure – II.

xxxxx xxxxx

11. As clarifications were being sought on the question as to who should be considered eligible to apply as candidates belonging to the State of Andhra Pradesh for the purpose of admission to courses of studies offered by educational institutions, subject to the control of the State Government against 15% of the available seats kept unreserved in terms of Andhra Pradesh Educational Institutions (Regulations of

136

Admissions) Order, 1974 the Government after careful consideration have directed that the following categories of candidates may be treated as eligible to apply for admissions to educational institutions in the State subject to the control of the State Government, as candidates belonging to the State of Andhra Pradesh against the 15% of the available seats left unreserved in terms of the Presidential Order:

(i) All local candidates defined in the Presidential Order.

(ii) Candidates who have resided in the State for a total period of ten years excluding periods of study outside the State; or either of whose parents have resided in the State for a total period of ten years excluding periods of employment outside the state;

(iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector corporation, Local Bodies, Universities and other similar quasi-public institutions within the State; and

(iv) Candidates who are spouses of those in the employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and educational institutions recognized by the Government a University or other competent authority and similar other quasi-Government institutions within the State.

12. It has been decided that persons in the employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and other similar Quasi-Public Institutions, within the State may be treated as eligible to apply for admission to the part-time

137

> course of study offered by the educational institutions in the State subject to the control of the state government as candidates belonging to the State of Andhra Pradesh.
>
> 13. The Government consider that in the large majority of cases falling under the above categories, "nativity" may not be in doubt. The Heads of Educational Institutions or other admission authorities may call for appropriate certificates of study/residence or employment in cases of doubt."

We shall, as we are obliged to in the instant case, proceed to deal with the purport of the said circular on the bedrock of the Presidential Order. Be it clarified, we are not called upon to decide upon the constitutional validity of the circular, but to understand the purport of the same through the interpretative purpose.

17. In ***Chief Justice of A.P. vs. L.V.A. Dixitulu***[10], the question arose before the Constitution Bench of this Court as to whether Clause 3 of Article 371-D of the Constitution that deals with civil services of the State would include the staff of the High Court or of the Sub-ordinate judiciary. The Constitution Bench held that the statements and objects of reasons do not indicate that there was any intention whatsoever on the part of the legislature to impair or

[10] (1979) 2 SCC 34

138

derogate from the scheme of securing independence of the judiciary as enshrined in Articles 229 and 225; and indeed the amendment or abridgment of this basic scheme was never an issue of debate in Parliament. The Constitution Bench while commenting on the Article 371-D had to say this:-

> "73. It will be seen from the above extract, that the primary purpose of enacting Article 371-D was two fold: (*i*) To promote "accelerated development of the backward areas of the State of Andhra so as to secure the balanced development of the State as a whole", and (*ii*) to provide "equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service".
>
> 74. To achieve this primary object, clause (1) of Article 371-D empowers the President to provide by order, "for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education". Clause (2) of the article is complementary to clause (1). It particularises the matters which an order made under clause (1) may provide. For instance, its sub-clause (*c*)(*i*) enables the President to specify in his Order, "the extent to which, the manner in which and the conditions subject to which", preference or reservation shall be given or made in the matter of direct recruitment to posts in any local cadre under the State Government or under any local authority. Sub-clause (*c*) further makes it clear that residence for a specified period in the local area, can be made a condition for recruitment to any

139

> such local cadre. Thus, clause (4) also is directly designed to achieve the primary object of the legislation."

18. After so stating the Constitution Bench has ruled that the evil that was sought to be remedied pertained to inequitable opportunities and facilities for the people belonging to different parts of the State of Andhra Pradesh in matters of public employment and in the matter of education and had no causal nexus whatever to the independence of the High Court and subordinate judiciary which the Founding Fathers have with solemn concern vouchsafed in Articles 229 and 235 of the Constitution. The Court also opined that the public agitation which led to the enactment of Article 371-D did not have any grievance against the basic scheme of Chapters V and VI in Part VI of the Constitution. The Court interpreting the Article in entirety eventually expressed the view that the Parliament never had intended to confer a wide, liberal interpretation which will defeat or render otiose the scheme of Chapters IV and V, Part VI particularized in Articles 229 and 235 of the Constitution.

140

19. In ***Dr. Pradeep Jain*** (supra), a three-Judge Bench was dealing with admissions to medical colleges, both at the undergraduate and at the post-graduate levels. The question that arose for consideration was whether regard being had to the constitutional values, admission to medical colleges or any other institution of higher learning situated in a State can be confined to those who have their domicile within the State or who are residents within the State for a specified number of years or can any reservation in admissions be made for them so as to given the precedence over those who do not possess domicile or residential qualification within the State, irrespective of merit. After referring to various aspects in the Constitution and authorities rendered in ***N. Vasundara v. State of Mysore***[11], ***Jagdish Saran v. Union of India***[12] and various other authorities the three-Judge Bench came to hold thus:-

> "We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional

[11] (1971) 2 SCC 22
[12] (1980) 2 SCC 768

141

> continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis."

20. After the said judgment was delivered, the said three-Judge Bench passed a clarificatory order in ***Reita Nirankari*** (supra) wherein the Court considered three aspects one of which is relevant for the present case. We reproduce the same:-

> "We may make it clear that the judgment will not apply to the States of Andhra Pradesh and Jammu and Kashmir because at the time of

142

> hearing of the main writ petitions, it was pointed out to us by the learned advocates appearing on behalf of those States that there were special constitutional provisions in regard to them which would need independent consideration by this Court."

21. The aforesaid clarificatory order has its own significance, for it undeniably excludes the applicability of the domicile test stated in ***Dr. Pradeep Jain*** (supra) in respect of the State of Andhra Pradesh. At this stage, it would be appropriate to refer to the case of ***C. Surekha*** (supra). The said case arose from Osmania University in Andhra Pradesh. The petitioner therein had passed from the said University and he intended to take the All India Entrance Examination for admission to P.G. medical course in 1988. He had challenged the constitutional validity of Article 371-D(2) (b) (iii) and C (ii) of the Constitution as well as the Presidential Order as a consequence of which the students of Andhra Pradesh have been excluded for competing in the aforesaid examination. The two-Judge Bench referred to the decisions in ***Dr. Pradeep Jain*** (supra), ***Reita Nirankari*** (supra), noted the stand of the Union of India and the Andhra Pradesh in their respective counter affidavits that had asserted that institutions in the

143

State of Andhra Pradesh were kept out of from the purview of the scheme in view of the decision rendered in the case of ***Dr. Pradeep Jain*** (supra). The Court also took note of the fact that the issue was kept open in ***Reita Nirankari*** (supra), referred to the pronouncements in ***P. Sambamurthy v. State of Andhra Pradesh***[13], ***Minerva Mills Ltd. v. Union of India***[14], ***P. Sampath Kumar v. Union of India***[15] and reiterated the principle that Article 371-D(3) was valid because clause (10) of the Article 371-D provides as follows:-

> "The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force."

22. As has been stated earlier, Clause 5 of the Article 371-D was declared ultra vires earlier with which we are not concerned with in this case. Thereafter, the Court posed the question whether within the Presidential Order, the Scheme in ***Dr. Pradeep Jain*** (supra) can be worked out. After so stating, the Court noted thus:-

---

[13] (1987) 1 SCC 362
[14] (1980) 3 SCC 625
[15] (1985) 4 SCC 458

144

5. ....."The Presidential Order of 1974 defines "available seats" and "local area" as also "statewide educational institutions" in sub-clauses (*a*), (*b*) and (*e*) of clause 2. Clause 3 describes the three local areas. Clause 9 gives overriding effect to the Presidential Order. Under the Presidential Order, admission to the educational institutions is limited only to local and nonlocal candidates. It does not contemplate of admission into educational institutions otherwise. The contention of Mr Choudhary that if the Presidential Order has got to be given effect to in its true spirit, the scheme in *Dr Pradeep Jain case* cannot, consistently with the Presidential Order, be implemented cannot be brushed aside and bears serious examination on certain important aspects. If the 15 per cent seats are not treated as reserved in terms of the Presidential Order and are intended to go to those who qualify at the All India Entrance Examination it is a statable possibility that the Presidential Order might be diluted. It may be doubtful if, in ascertaining the import of 'available seats', it would be permissible to deduct the 15 per cent seats for non-locals applying the formula of *Dr Pradeep Jain case*. We are inclined to think that the contention advanced by Mr Choudhary on behalf of the respondent-State that within the ambit of the Presidential Order, the scheme adopted by this Court in *Dr Pradeep Jain case* is eminently arguable and raises certain important issues. It is, however, not necessary to pronounce on this question finally as the petitioner, admittedly, has already been provided admission in one of the Medical Colleges.

6. Before we part with the case we would, however, like to indicate that the Scheme in *Dr Pradeep Jain case* is, in the opinion of this Court, in national interest as also in the interest of the States. Competition at the national level is bound

145

> to add to and improve quality. Andhra Pradesh students on the whole are not at all backward and we are of the opinion that they would stand well on comparative basis. It is for the State and the Central Governments, apart from the legal issues involved to decide whether in the general interest of the State, the scheme in the Presidential Order should either be so understood as to permit and assimilate the *Pradeep Jain* principle or should be explained, if necessary, by an appropriate amendment of the Presidential Order. We would, however, leave it to the respondents to take their decision in the matter. We would not like, therefore, to pronounce on the legal question finally in this case.

23. Relying on the said passages, it is submitted by Mr. Marlapalle, learned senior counsel that the observations made in 1988, despite expiry of two decades and seven years, has not been taken note of by the authorities which indicates an apathetic attitude. Learned senior counsel would contend that the State of Andhra Pradesh by no stretch of imagination can be regarded as an educationally backward region compared to rest of the country. It is also contended by him that the Presidential Order was issued at a stage feeling the need of the State but the same is not the condition after passage of more than 40 years. In fact, submits Mr. Marlapalle, renouncing the merit criteria on the

146

domicile basis especially in respect of post graduate and super speciality courses would tantamount to denouncing the concept of merit which has been enshrined commencing from ***Dr. Pradeep Jain*** (supra) to many a judgment rendered thereafter in respect of the medical education. The protective affirmation meant for the State of Andhra Pradesh by the Presidential Order issued in 1974 has to be interpreted in such a manner so that the 50% which has been demarcated should go to otherwise meritorious candidates who have taken All India Entrance Examination for super speciality courses. The concept of continuity of education, its progress and the rise in time, submits Mr. Marlapalle, requires this Court to give a broader interpretation to the 15% quota and not to be guided by the 1979 clarificatory circular which is otherwise indefensible in law.

24. It is apt to note here that Mr. Marlapalle has commended us to the authority in ***Dr. Dinesh Kumar*** (supra), but we need not refer to the same as it dealt with the reservation on the domicile basis, regard being had to the principle stated in ***Dr. Pradeep Jain*** (supra) and as far

147

as the State of Andhra Pradesh (undivided) is concerned, the said authority was not made applicable as stated in ***Reita Nirankari*** (supra).

25. At this juncture, it is absolutely necessitous to refer to a three-Judge Bench decision in ***NTR University of Health Sciences v. G. Babu Rajendra Prasad and Anr.***[16] In the said case, the question that was posed was whether the Government of Andhra Pradesh while framing the 1979 circular in terms of Presidential Order issued in 1974 under Article 371-D of the Constitution of India was bound to provide reservation for 15% of non-local seats, although reservation in terms of the policy decision had been taken in respect of the seats available for local candidates. It is worth mentioning here that the controversy had travelled to this Court questioning the validity of the policy of the State of Andhra Pradesh as regards the non-reservation of scheduled castes, scheduled tribes and backward classes within 15% that has been separately demarcated. The learned Single Judge of the High Court had directed to reserve 15% seats reserved for the reserved category. The

Division Bench in Letters Patent appeal noted the conflict of

[16] (2003) 5 SCC 350

148

views in earlier Division Bench judgments and referred the matter to the Full Bench on the issue whether the reservations in terms of Article 15(4) of the Constitution of India in favour of scheduled castes, scheduled tribes and backward classes could be provided in respect of 15% of the unreserved seats under the Presidential Order, 1974. The Full Bench analyzing the law in the field dismissed the appeals. This Court dealing with the controversy referred to Article 371-D of the Constitution, the Presidential Order, reproduced various paragraphs from the same, took note of the 1979 circular issued by the Government of Andhra Pradesh, noted the submissions of the learned counsel for the parties, took into consideration the formation of Universities by the undivided State of Andhra Pradesh after the Presidential Order and stated thus:-

> "10. A bare perusal of the definition of local area read with paras 3, 4 and 5 of the Presidential Order, as referred to hereinbefore, it would be evident that 85% of the seats are reserved for local candidates in relation to local areas. So far as a university area is concerned, a local candidate in one particular university area would be a non-local one in another. The criteria for admission of a candidate in the superspeciality courses in the university on the ground of being local or non-local is, therefore directly referable to

149

> the university area and not the boundaries of the State of Andhra Pradesh.
>
> 11. ..... In the matter of admission, the Health University had followed the procedure provided in Annexure III of GOP No. 646 dated 10-7-1979 having regard to the fact that by reason of the Presidential Order, 1974 only 85% of the seats are reserved in favour of the local candidates which are required to be confined to the university area only. We, thus, do not find any legal infirmity in the action of the appellants herein in directing that 15% reserved for candidates of non-local area may be filled up only on merit.
>
> 12. Article 371-D of the Constitution of India contains a special provision applicable to the State of Andhra Pradesh only. 54% of seats are required to be filled up from open categories and 46% of seats are to be filled up from the reserved category candidates in each of the three regions from the medical colleges and engineering colleges. Having regard to the reservations made regionwise, indisputably 85% of seats are to be filled up from amongst local candidates whereas only 15% of seats are to be filled up from amongst outside candidates."
>
> [Emphasis Supplied]

26. Be it noted, it was contended on behalf of the appellant therein that the High Court had committed a manifest error by directing for reservation of seats for reserved category from 15% open seats also on the ground that such a reservation would exceed 50% which is not permissible.

The Court referred to the Presidential Order and eventually opined thus:-

> "In the event, the ratio of the impugned judgment of the High Court is given effect to having regard to the limited number of seats available by providing reservation of an additional seat, principle of reservation to the extent is 50% would be violated. Furthermore, it is not for the High Court to say as to the efficacy or otherwise of the policy of the State as regards providing for reservation for the reserved category candidates and in that view of the matter the High Court, in our opinion must be held to have committed a manifest error in issuing the impugned directions, as a result whereof percentage of reservation would exceed 46%. Such a direction by the High Court is not contemplated in law."

27. Though the said authority had understood local area and the boundaries of the State, it was instructive to refer to the said passage. It is clear that it was addressing the controversy as regards the 15% but dealing with the reservation of scheduled castes, scheduled tribes and other backward classes within the said 15% percentage in the context of instructions/circular of 1979 issued by the State Government. The aforesaid decision makes it graphically clear that the 85% reservation has been in respect of local areas and non-locals area is directly referable to the University area. One has to bear in mind that the local

151

areas and local candidates have been defined in the Presidential Order and it also empowers the State Government to issue appropriate directions for the purpose of giving effect to the Presidential Order. In pursuance of the power conferred in the said Presidential Order, the State Government has issued the Circular in 1979. The Circular, as is manifest, reiterates the definitions of "local area" and "local candidates" and simultaneously it also lays the postulate the manner of implementation of reservation of local candidates as stipulated in the Presidential Order. As far as 15% of the available seats which are kept unreserved in terms of Presidential Order, the State Government relies on the power conferred on it that the 15% of the available seats are kept unreserved subject to the control of the State Government. The State Government has clarified the position about the local candidates in respect of 15% as provided in the Presidential Order. It covers certain categories but the cavil does not relate to the same. In fact, on a keen scrutiny, it is demonstrable that it engulfs certain categories which takes within its umbrella such candidates who are working in the State of Andhra Pradesh in certain

152

State Government or Central Government or other public undertakings or the candidates whose spouses are in the employment of the State or Central Government or public sector corporation, etc. It does not refer to candidates who are from outside. That is the only interpretation which can be placed on the circular. It is the situation in vogue in the State of Andhra Pradesh since 1979 and in the absence of any challenge to the circular, there is no need to get into it. Therefore, reference to the other Acts, Rules, Regulations which have been so done by Mr. Marlapalle do not require to be dwelt upon.

28. One aspect that has been highlighted by Mr. Marlapalle that almost 27 years back, this Court in ***C. Surekha*** (supra) had expressed the view that the scheme indicated in ***Dr. Pradeep Jain*** (supra) is in national interest and competition at the national level is bound to add to and improve quality and Ahdra Pradesh students on the whole are not at all backward and they would stand well on the comparative basis. The need for assimilation of the principles stated in ***Dr. Pradeep Jain*** (supra) was felt and it was observed that there should be an appropriate

153

amendment of the Presidential Order. However, as the Court cannot do it, it left to the competent authorities.

29. In this context, the decisions that have been cited by the learned counsel for the petitioner become relevant. In ***Preeti Srivastava*** *(supra)*, the Constitution Bench expressed that the object of Article 15(4) is to advance the equality of principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and may be able to compete equally with others more fortunate, but simultaneously one cannot ignore the wider interests of society while devising such special provisions. The Court highlighted on the concept of national interest such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to society which are also to be borne in mind. Analysing further, the majority stated thus:-

> "In the case of *Dr Jagadish Saran* v. *Union of India* this Court observed that at the highest scales of speciality, the best skill or talent must be hand-picked by selection according to capability. Losing a potential great scientist or technologist would be a national loss. That is why the Court observed that the higher the level of education the lesser should be the reservation.

154

> There are similar observations in *Dr Pradeep Jain* v. *Union of India*. Undoubtedly, *Dr Pradeep Jain* v. *Union of India* did not deal with reservation in favour of the Scheduled Castes and the Scheduled Tribes. It dealt with reservation in favour of residents and students of the same University. Nevertheless it correctly extended the principle laid down in *Dr Jagadish Saran* v. *Union of India* to these kinds of reservation also, holding that at the highest levels of medical education excellence cannot be compromised to the detriment of the nation. Admissions to the highest available medical courses in the country at the superspeciality levels, where even the facilities for training are limited, must be given only on the basis of competitive merit. There can be no relaxation at this level."

30. In ***Saurabh Chaudri*** (supra), the core question that arose for consideration centered around the constitutional validity of reservation whether based on domicile or institution in the matter of admission into post-graduate courses in Government run medical colleges. In the said case, the court referred to the writ petition filed by the candidates who were residents of Delhi. They had joined various medical colleges within Delhi for undertaking their MBBS courses against the 15% all-India quota on being qualified in the All-India Entrance Examination. They intended to join medical colleges in Delhi for their post-graduate medical courses. They were issued

155

admission forms regard being had to the decision in ***Parag Gupta (Dr.) v. University of Delhi***[17]. The University also informed them that the candidates would be entitled to admission in the post-graduate courses subject to the decision in the matter pending before this Court in ***Magan Mehrotra v. Union of India***[18].

31. In ***Magan Mehrotra*** (supra) a three-Judge Bench of this Court held that reservation by way of institutional preference be maintained but also directed certain States to follow the pattern of institutional preferences as has been indicated in ***Dr. Pradeep Jain*** (supra). Delhi University issued a notification on the basis of the judgment rendered in ***Magan Mehrotra*** (supra). The writ petitioners assailed the notification issued by the Delhi University as reservation was made by way of institutional preference for admission to post graduate courses. After the decision was rendered in ***Magan Mehrotra*** (supra), a two-Judge Bench referred the matter to a three-Judge Bench which ultimately directed it to be placed before a five-Judge Bench. The reservation of any kind, namely, residence or institutional preference in

[17] (2000) 5 SCC 684
[18] (2003) 11 SCC 186

156

the constitutional backdrop was the subject matter of assail. The first question posed for consideration was whether the reservation on the basis of a domicile is permissible in terms of Clause 1 of Article 15 of the Constitution of India. The Court referred to the decision in ***D.P. Joshi v. State of Madhya Bharat***[19] and ***State of U.P. v. Pradip Tandon***[20], and answered the issue in the negative. The second issue that the Court addressed was whether reservation by way of institutional preference comes within the suspected classification warranting strict scrutiny test. The Court referred to ***Ram Krishna Dalmia v. Justice S.R. Tendolkar***[21] and various other authorities and opined that no case had been made out for invoking the doctrine of strict construction or intermediate construction. The third issue that the Court dwelled upon was whether the reservation by institutional preference is valid. The Court referred to the authorities in ***Jagadish Saran*** (supra), ***Dr. D.P. Joshi*** (supra), ***Chitra Ghosh v. Union of India***[22] and various other decisions including that of ***Dr. Pradeep Jain*** (supra) and opined that in ***Dr. Pradeep Jain***

[19] (1955) 1 SCR 1215 = AIR 1955 SC 334
[20] (1975) 1 SCC 267
[21] AIR 1958 SC 538
[22] (1969) 2 SCC 228

157

(supra) a distinction was made between the undergraduate course i.e. MBBS course and post-graduate medical course as also super specialist courses and, therefore, the said authority sought to strike a balance of rights and interests of concerned. The Constitution Bench took note of the fact that the percentage of seats to be allotted on all-India basis, however, came to be modified in ***Dr. Dinesh Kumar*** (supra). It also took note of the fact that the directions issued from time to time regulating the admissions in different courses of study in the said case, the deviation of the said dicta by the two-Judge Bench in ***Dr. Parag Gupta*** (supra) wherein it created reservation on domicile which was forbidden in ***Dr. Pradeep Jain*** (supra). The larger Bench also referred to the authority in ***AIIMS Students' Union v AIIMS***[23], ***T.M. Pai Foundation v. State of Karnataka***[24] and eventually held as follows:-

> **70.** We, therefore, do not find any reason to depart from the ratio laid down by this Court in *Dr Pradeep Jain*. The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.

[23] (2002) 1 SCC 428
[24] (2002) 8 SCC 481

158

> **71.** However, the test to uphold the validity of a statute on equality must be judged on the touchstone of reasonableness. It was noticed in *Dr Pradeep Jain case* that reservation to the extent of 50% was held to be reasonable. Although subsequently, in *Dr Dinesh Kumar (II) case*[25] it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time produced a large number of postgraduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

32. In ***Nikhil Himthani*** (supra), the Court was dealing with the grievance that related to equality in the matter of admissions to post-graduate medical course in the medical college in the State of Uttarakahand guaranteed by Article 14 of the Constitution which was violated by the respondents. After noting the contentions of the learned counsel for the parties, the Court referred to the Constitution Bench judgment in ***Saurabh Chaudri*** (supra) and the pronouncements in ***Jagadish Saran*** (supra) and ***Dr. Pradeep Jain*** (supra) and came to hold thus:-

> "We now come to Clauses 2 and 3 of the eligibility criteria in the Information Bulletin. Under Clauses 2 and 3, a domicile of Uttarakhand who

[25] (1986) 3 SCC 727

159

> has passed MBBS from a medical college of some other State having been admitted either through the 15% all-India quota or through the pre-medical test conducted by the State Government concerned has been made eligible for admission to a postgraduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to the postgraduate course under Clauses 2 and 3 of the eligibility criteria. Preference, therefore is given only on the basis of residence or domicile in the State of Uttarakhand under Clauses 2 and 3 of the eligibility criteria and such preference on the basis of residence or domicile within a State has been held to be violative of Article 14 of the Constitution in *Pradeep Jain* v. *Union of India* and *Magan Mehrotra* v. *Union of India*.

33. In ***Vishal Goel*** (supra), the two-Judge Bench reiterated the principle laid down in ***Nikhil Himthani*** (supra).

34. At this juncture, we may also refer to the Constitution Bench decision in ***Faculty Association of All India Institute of Medical Sciences v. Union of India***[26]. In the said case issue arose about the applicability of reservation in respect of speciality and super speciality faculty posts in all-India Institute of Medical Sciences. The matter was referred to a larger Bench by the three-Judge Bench in view of the decisions rendered in ***Jagadish Saran*** (supra), ***Dr.***

[26] (2013) 11 SCC 246

160

Pradeep Jain (supra) and ***Indra Sawhney v. Union of India***[27]. The Constitution Bench after noting various contentions ruled that:-

> **"22.** Although the matter has been argued at some length, the main issue raised regarding reservation at the superspeciality level has already been considered in *Indra Sawhney case* by a nine-Judge Bench of this Court. Having regard to such decision, we are not inclined to take any view other than the view expressed by the nine-Judge Bench on the issue. Apart from the decisions rendered by this Court in *Jagadish Saran case* and *Pradeep Jain case*, the issue also fell for consideration in *Preeti Srivastava case* which was also decided by a Bench of five Judges. While in *Jagadish Saran case* and in *Pradeep Jain case* it was categorically held that there could be no compromise with merit at the superspeciality stage, the same sentiments were also expressed in *Preeti Srivastava case* as well.
>
> **23.** In *Preeti Srivastava case*, the Constitution Bench had an occasion to consider Regulation 27 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, whereby 20% of seats in every course of study in the institute was to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes or other categories of persons, in accordance with the general rules of the Central Government promulgated from time to time. The Constitution Bench came to the conclusion that Regulation 27 could not have any application at the highest level of superspeciality as this would defeat the very object of imparting the best possible training to selected meritorious candidates, who could

[27] (1992) Supp (3) 217

161

> contribute to the advancement of knowledge in the field of medical research and its applications. Their Lordships ultimately went on to hold that there could not be any type of relaxation at the superspeciality level."

35. Be it noted, the Court laid immense emphasis on paragraph 836 of ***Indra Sawhney*** (supra) wherein the nine-Judge Bench has observed:-

> "...that there were certain services and posts where either on account of the nature of duties attached to them or the level in the hierarchy at which they stood, merit alone counts. In such situations, it cannot be advised to provide for reservations. In the paragraph following, the position was made even more clear when Their Lordships observed that they were of the opinion that in certain services in respect of certain posts, application of rule of reservation may not be advisable in regard to various technical posts including posts in superspeciality in medicine, engineering and other scientific and technical posts."

36. Thereafter, the Court proceeded to state further:-

> "We cannot take a different view, even though it has been suggested that such an observation was not binding, being obiter in nature. We cannot ascribe to such a view since the very concept of reservation implies mediocrity and we will have to take note of the caution indicated in *Indra Sawhney case*. While reiterating the views expressed by the nine-Judge Bench in *Indra Sawhney case*, we dispose of the two civil appeals in the light of the said views, which were also expressed in *Jagadish Saran case*, *Pradeep Jain*

162

> *case*, *Preeti Srivastava case*. We impress upon the Central and State Governments to take appropriate steps in accordance with the views expressed in *Indra Sawhney case* and in this case, as also the other decisions referred to above, keeping in mind the provisions of Article 335 of the Constitution."

37. We have referred to the aforesaid judgments in extenso as learned counsel appearing for the petitioners have laid immense emphasis that there cannot be reservation of any kind in respect of post-graduate or super speciality courses regard being had to the law laid down by many a judgment of this Court. It is urged that the State of Andhra Pradesh and Telangana cannot apply the domicile test only to admit its own students and that too also in respect of 15% quota meant for non-local candidates. We have already analysed the factual score and the legal position. The undivided State of Andhra Pradesh enjoys a special privilege granted to it under Article 371-D of the Constitution and the Presidential Order. The judgments of the larger Bench do not refer to the said Article nor do they refer to the Presidential Order, for the said issue did not arise in the said cases. A scheme has been laid down in the case of ***Dr. Pradeep Jain*** (supra) and the concept of percentage had

163

undergone certain changes. In ***Reita Nirankari*** (supra), the same three-Judge Bench clarified the position which we have already reproduced hereinbefore. However, in ***C. Surekha*** (supra), the Court had expressed its view about the amendment of the Presidential Order regard being had to the passage of time and the advancement in the State of Andhra Pradesh. It has been vehemently urged by Mr. Marlapalle that despite 27 years having been elapsed, the situation remains the same. We take note of the said submission and we are also inclined to echo the observation that was made in the case of ***Fazal Ghafoor*** (supra) wherein it has been stated thus:-

> "In *Dr Pradeep Jain case* this Court has observed that in Super Specialities there should really be no reservation. This is so in the general interest of the country and for improving the standard of higher education and thereby improving the quality of available medical services to the people of India. We hope and trust that the Government of India and the State Governments shall seriously consider this aspect of the matter without delay and appropriate guidelines shall be evolved by the Indian Medical Council so as to keep the Super Specialities in medical education unreserved, open and free."

38. The fond hope has remained in the sphere of hope though there has been a progressive change. The said

164

privilege remains unchanged, as if to compete with eternity. Therefore, we echo the same feeling and reiterate the aspirations of others so that authorities can objectively assess and approach the situation so that the national interest can become paramount. We do not intend to add anything in this regard.

39. Consequently, the writ petition as far as it pertains to the State of Andhra Pradesh and Telangana, is dismissed. As regards State of Tamil Nadu, the matter be listed on November 4, 2015 for hearing.

.....J.
[Dipak Misra]

....., J.
[Prafulla C. Pant]

New Delhi
October 27, 2015

165

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO. 53 OF 2022

DR. N. KARTHIKEYAN AND ORS. ...PETITIONER(S)

VERSUS

THE STATE OF TAMIL NADU AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2066 OF 2022
[Arising out of SLP(C) No.2514 of 2022]

CIVIL APPEAL NO. 2065 OF 2022
[Arising out of SLP(C) No.13557 of 2020]

WRIT PETITION (CIVIL) NO. 1299 OF 2020

CIVIL APPEAL NO. 3840 OF 2020

CIVIL APPEAL NOS. 3841-3843 OF 2020

O R D E R

B.R. GAVAI, J.

1. Leave granted in all the Special Leave Petitions.

2. Rule granted in the Writ Petitions.

3. Writ Petition (Civil) No.53 of 2022 challenges the validity of G.O. (Ms.) No. 462 dated 7th November, 2020, issued by the Health and Family Welfare (MCA-1) Department of the Government of Tamil Nadu (hereinafter referred to as "the said G.O."). The basic contention of the writ petitioners is that the reservation of 50% Super Specialty seats (DM/M.Ch.) for in- service candidates in Government Medical Colleges in the State of Tamil Nadu is not permissible in law.

4. Civil Appeal arising out of Special Leave Petition (Civil) No. 2514 of 2022 challenges the judgment and order of the learned Single Judge of the High Court of Judicature at Madras dated 12th January, 2022, vide which, the said High Court has issued a direction to the Director of Medical Education, Kilpauk, Chennai to implement the said G.O. for the academic year 2021-2022 itself, if there is no legal impediment to do the same.

5. This Court vide interim order dated 27th November, 2020, passed in Civil Appeal No. 3840 of 2020[1] had directed that the counselling for admission to Super Specialty Medical Courses for the academic year 2020-2021 shall proceed without providing for reservations to in-service doctors.

6. The writ petitioners as well as the appellants in the present case have urged this Court to continue the aforesaid interim order of this Court dated 27th November, 2020 (supra), even for the academic year 2021-2022.

7. Per contra, this request made by the writ petitioners/appellants is vehemently opposed by the learned counsels appearing on behalf of the State as well as the in- service candidates.

8. We have, therefore, heard the learned counsels for the parties on the limited question, as to whether the interim protection, which was granted for the academic year 2020-

1 **[Dr. Prerit Sharma & Ors. Versus Dr. Bilu B.S. & Ors.]**

2021, vide order dated 27th November, 2020 (supra), should also be continued for the academic year 2021-2022 or not.

9. We have heard Shri Dushyant Dave, Shri Shyam Divan and Shri Gopal Sankaranarayanan, learned Senior Counsel appearing on behalf of the writ petitioners/appellants as well as Ms. Aishwarya Bhati, learned Additional Solicitor General ("ASG") appearing for the Union of India.

10. Shri C.S. Vaidyanathan, learned Senior Counsel and Shri Amit Anand Tiwari, learned Additional Advocate General ("AAG") have made submissions on behalf of the State of Tamil Nadu and Shri P. Wilson, learned Senior Counsel has argued on behalf of the in-service doctors.

11. The learned Senior Counsel appearing on behalf of the writ petitioners/appellants submitted that the nine-judge Constitution Bench of this Court in the case of ***Indra Sawhney & Ors. vs. Union of India & Ors.***[2] as well as Constitution Bench of this Court in the case of ***Dr. Preeti Srivastava and***

2 1992 Supp. (3) SCC 217

another vs. State of M.P. and others[3] have specifically held that there cannot be any reservation for admission in Super Specialty courses. It is submitted that NEET-SS 2021 Information Bulletin (hereinafter referred to as "NEET Bulletin"), in clause 10.10, specifically states that, as per judgment of the Constitution Bench of this Court in Writ Petition (C) No.350 of 1998, there is no reservation of seats for Super Specialty (DM/M.Ch.) courses. It is submitted that the

case of ***Dr. Sweety Bhartiya vs. State of M.P. & Ors.***, which is referred to in the NEET Bulletin, is a case which was a part of the batch of cases disposed of by this Court in the case of ***Dr. Preeti Srivastava*** (supra).

12. The learned Senior Counsel further submitted that since the matters regarding co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions are squarely covered by Item 66 in List-I of the Seventh Schedule to the Constitution of

India, it is the Regulation issued by the Medical Council of

3 (1999) 7 SCC 120

India, which would prevail over the said G.O. It is submitted that the State will have no power to provide reservation of seats in Super Specialty courses, in view of the stipulation contained in clause 10.10 of the NEET Bulletin.

13. Shri Dave and Shri Divan further submitted that the finding of the Constitution Bench of this Court in the case of ***Tamil Nadu Medical Officers Association and others vs. Union of India and others***[4] to the effect that the States have legislative competence and authority to provide reservation for in-service candidates does not lay down a correct proposition of law. It is submitted that, in view of the judgments of this Court in the cases of ***Indra Sawhney*** (supra), ***Dr. Preeti Srivastava*** (supra) and other cases, it is not at all permissible to provide reservation for Super Specialty courses. It is submitted that it is only merit and merit alone which shall weigh while giving admissions in the Super Specialty courses.

4 (2021) 6 SCC 568

14. It is also submitted by Shri Dave and Shri Divan that the judgment of this Court in the case of ***Tamil Nadu Medical Officers Association*** (supra) is restricted only to postgraduate degree/diploma courses and cannot be made applicable to Super Specialty courses. It is, therefore, urged that the interim order dated 27th November, 2020 (supra), which was passed by this Court for the academic year 2020-2021, should also be continued for the academic year 2021-2022.

15. Ms. Aishwarya Bhati, learned ASG appearing for the Union of India supported the request made by the writ petitioners/appellants and submitted that the stand of the Union of India was also to continue the interim protection, which was granted by this Court, vide order dated 27th November, 2020 (supra), for the academic year 2020-2021.

16. Shri C.S. Vaidyanathan, learned Senior Counsel appearing on behalf of the State of Tamil Nadu, submitted that this Bench, consisting of two Judges, is bound by the law laid down by the Constitution Bench in the case of ***Tamil Nadu***

Medical Officers Association (supra). It is submitted that the Constitution Bench in the case of ***Tamil Nadu Medical Officers Association*** (supra) has specifically held that the State is within its competence to provide reservation for in- service candidates. It is submitted that the Constitution Bench has specifically held that the State is empowered to provide for a separate source of entry or reservation for in-service candidates seeking admission to postgraduate degree/diploma courses, in view of Schedule VII List III Entry 25 of the Constitution of India. It is submitted that, it has been held by this Court that the policy for such a reservation must provide that, subsequent to obtaining the postgraduate degree by the in-service doctors concerned through such separate channel, they must serve the State in the rural, tribal and hilly areas for a certain amount of years and execute bonds for such sum as the respective State may consider fit and proper.

17. Shri Vaidyanathan further submitted that on account of non-availability of the candidates having degree in super

specialization, as many as 49 vacancies for the posts of Professors/Associate Professors and 58 vacancies for the posts of Assistant Professors could not be filled. It is submitted that the channel for admission for in-service candidates/categories is provided so that in-service candidates would serve the State Government and that they could be appointed on the vacant posts of Assistant/Associate Professors and Professors. It is submitted that if this is not done, there is a danger of a large number of Super Specialty seats being reduced on account of non-availability of the requisite number of faculty.

18. It is further submitted that all the candidates selected through in-service channels for the Super Specialty courses at the time of joining are required to execute a bond that they will serve the Government till their superannuation. It is, therefore, submitted that, in-service reservation is provided with an avowed object of getting services of such candidates till their superannuation. It is submitted that, per contra, if all the seats are filled in through open channel, prior experience would

show that all such candidates would leave after a bond period of two years or even prior to that by paying the bond money. It is, therefore, submitted that this will lead to a very dangerous situation wherein the faculty members would not be available for Super Specialty seats and the number of such seats would drastically reduce.

19. Shri Amit Anand Tiwari, learned AAG, submitted that the stand taken by the Union of India is inconsistent, inasmuch as the Government of India was already providing separate entrance examination for postgraduate and Super Specialty seats and was providing for separate entry for in-service candidates in the name of 'sponsored candidates' (service candidates of various Government Institutions). He, therefore, submitted that the Union of India cannot be permitted to take a contrary view and oppose the separate channel provided for in- service candidates by the State of Tamil Nadu.

20. We clarify that we are passing the present order for the limited purpose of considering, as to whether the interim order

dated 27th November, 2020 (supra), which was granted for the academic year 2020-2021, should also be continued for the academic year 2021-2022 or not. We further clarify that the present order is being passed only on *prima facie* considerations.

21. No doubt that this Court has passed the interim order dated 27th November, 2020 (supra), thereby directing that counselling for admission to Super Specialty medical courses for the academic year 2020-2021 shall proceed without providing for reservation to in-service candidates/doctors. It is relevant to note that this Court in the interim order dated 27th November, 2020 (supra), has specifically observed that the process for admissions to Super Specialty medical courses started on 3rd August, 2020, and it was made clear to all the competing candidates that there shall be no reservation to Super Specialty medical courses. This Court further notes that the said G.O. was issued on 7th November, 2020, i.e., after the admission process had begun. It could thus be seen that what

weighed with this Court while passing the interim order dated 27th November, 2020 (supra) was that the rules of the game were changed after the admission process had begun. However, in the penultimate para, this Court has specifically clarified that it had not expressed any opinion on the validity of said G.O. This Court also reiterated that the said direction would be operative only for the academic year 2020-2021.

22. Insofar as academic year 2021-2022 is concerned, undisputedly, the said G.O. was notified prior to the commencement of the admission process for the said academic year.

23. The Constitution Bench in the case of ***Tamil Nadu Medical Officers Association*** (supra) has specifically held that the State is empowered to provide a separate channel/source of entry or reservation for admission to postgraduate degree/diploma medical courses insofar as in-service candidates are concerned.

24. It will not be out of place to mention that this Bench is sitting in a combination of two Judges. Strong reliance has been placed on behalf of the writ petitioners/appellants on the Constitution Bench judgment in the case of ***Dr. Preeti Srivastava*** (supra). With equal vehemence, reliance is placed by the State of Tamil Nadu and the in-service candidates/doctors on the Constitution Bench judgment in the case of ***Tamil Nadu Medical Officers Association*** (supra). As such, we are faced with a challenge as to which of these two Constitution Bench judgments should guide us while considering the question, as to whether the interim protection as was granted for the academic year 2020-2021 also needs to be continued or not for the academic year 2021-2022.

25. In the case of ***Dr. Preeti Srivastava*** (supra), the question that fell for consideration before the Constitution Bench was, as to whether any type of relaxation would be permissible at the Super Specialty level. In the said case, the minimum qualifying marks for the general category candidates were 45%. However,

the minimum qualifying marks for the reserved category candidates were lowered down to 20%. In this situation, this Court found that this would make it difficult for the reserved category candidates to bring their performance on par with the general category candidates in the course of postgraduate studies.

This Court, therefore, found that lowering the qualifying criteria for reserved category candidates, thereby resulting in great disparity of qualifying marks between a general category candidate on one hand and a reserved category candidate on the other hand, was not permissible.

26. However, in the case of ***Tamil Nadu Medical Officers Association*** (supra), the question, as to whether the States have legislative competence to provide for a separate source of entry or reservation for in-service candidates seeking admission to postgraduate degree/diploma medical courses, directly fell for consideration before the Constitution Bench. The conclusions in the judgment of M.R. Shah, **J.** in the said case are as under:

*"**Conclusions***

23. The sum and substance of the above discussion and conjoint reading of the decisions referred to and discussed hereinabove, our conclusions are as under:

23.1. That List I Entry 66 is a specific entry having a very limited scope.

23.2. It deals with "coordination and determination of standards" in higher education.

23.3. The words "coordination and determination of standards would mean laying down the said standards.

23.4. The Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of powers under List I Entry 66 and has no power to make any provision for reservation, more particularly, for in-service candidates by the States concerned, in exercise of powers under List III Entry 25.

23.5. That Regulation 9 of the MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the States concerned to make reservation and/or make special provision

like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the States concerned to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under List III Entry 25.

23.6. If it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under List I Entry 66.

23.7. Regulation 9 of the MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in- service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India.

23.8. That the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under List III Entry 25. However, it is observed that the policy must

provide that subsequent to obtaining the postgraduate degree by the in-service doctors concerned obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper.

23.9. It is specifically observed and clarified that the present decision shall operate prospectively and any admissions given earlier taking a contrary view shall not be affected by this judgment."

27. The conclusions in the judgment of Aniruddha Bose, J. in the said case read thus:

"**95.** Because of these reasons, we hold that there is no bar in Regulation 9 of the MCI Postgraduate Medical Education Regulations, 2000 as it prevailed on 15-2-2012 and subsequently amended on 5-4-2018 on individual States in providing for reservation of in-service doctors for admission into postgraduate medical degree courses. But to take benefit of such separate entry channel, the aspiring in- service doctors must clear NEET examination with the minimum prescribed

marks as stipulated in the 2000 Regulations.

96. We respectfully differ from the views expressed by the Bench of three Hon'ble Judges of this Court in *State of U.P.* v. *Dinesh Singh Chauhan* [*State of U.P.* v. *Dinesh Singh Chauhan*, (2016) 9 SCC 749 : 8 SCEC 219] to the extent it has been held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of the 2000 Regulations. In our opinion, that is not the correct view under the Constitution. The reference is answered accordingly.

97. We also expect that the statutory instruments of the respective State Governments providing for such separate channel of entry should make a minimum service in rural or remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree. On completion of the course, to ensure the successful candidates serve in such areas, the State shall formulate a policy of making the in- service doctors who obtain entry in postgraduate medical degree courses through independent in-service channel execute bonds for such sum the respective States may consider fit and proper."

28. The question that is required to be decided in the present batch of cases is, as to whether the said G.O. which provided for 50% reservation for admission in Super Specialty courses/seats is permissible in law or not.

29. The Constitution Bench in the case of ***Tamil Nadu Medical Officers Association*** (supra) clearly holds that it is within the competence of the State Legislature to provide separate channel/source of entry or reservation for in-service candidates seeking admission to postgraduate degree/diploma medical courses. Though, it is sought to be urged on behalf of the writ petitioners/appellants that the judgment of the Constitution Bench in the case of ***Tamil Nadu Medical Officers Association*** (supra) deals only with the postgraduate degree/diploma medical courses and cannot be made applicable to Super Specialty courses, and that the present cases would be governed by the Constitution Bench judgment in the case of ***Dr. Preeti Srivastava*** (supra); we find it, at least

prima facie, difficult to accept the said proposition made on behalf of the writ petitioners/appellants.

30. As to what is *ratio decidendi* has been succinctly explained by this Court in the case of ***Regional Manager and Another vs. Pawan Kumar Dubey***[5] as under:

> "7.....Indeed, we do not think that the principles of law declared and applied so often have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

5 (1976) 3 SCC 334

31. It would also be relevant to refer to the following observations of this Court in the case of ***Union of India and Others vs. Dhanwanti Devi and Others***[6]:

> "9**.....** It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi.* According to the wellsettled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since

6 (1996) 6 SCC 44

the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract *ratio decidendi,* ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis.* It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi."*

32. At the cost of repetition, we may state that the issue involved in the case of ***Dr. Preeti Srivastava*** (supra) was, as to whether a relaxation can be provided insofar as minimum qualifying marks are concerned to the reserved category candidates, resulting in a huge disparity of qualifying marks for the reserved category candidates as against the general category candidates. The question, as to whether a reservation or a separate channel for admission can be provided to the in- service candidates did not fall for consideration in the case of ***Dr. Preeti Srivastava*** (supra).

33. As against this, in the case of ***Tamil Nadu Medical Officers Association*** (supra), a direct question, as to whether the State was competent to provide reservation by a separate channel for in-service candidates seeking admission to postgraduate degree/diploma medical courses was permissible or not, fell for consideration before the Constitution Bench. The Constitution Bench in the case of ***Tamil Nadu Medical Officers Association*** (supra) has held that insofar as

admission to postgraduate courses are concerned, it is within the competence of the State Legislature to do so.

34. As such, we find that the facts in the present case are much nearer to the facts that fell for consideration in the case of ***Tamil Nadu Medical Officers Association*** (supra). We are also of the *prima facie* view that the facts that fell for consideration in the case of ***Dr. Preeti Srivastava*** (supra) were distinct from the facts that fall for consideration in the present case. We are, therefore, of the considered view that taking into consideration the principles of judicial discipline and judicial propriety, we should be guided by the judgment of the Constitution Bench in the case of ***Tamil Nadu Medical Officers Association*** (supra) rather than the judgment of the Constitution Bench in the case of ***Dr. Preeti Srivastava*** (supra).

35. We are, therefore, of the view that no case is made out for continuing the interim protection which was granted for the academic year 2020-2021 vide interim order dated 27th

November, 2020 (supra) and thus, we reject the prayer in that regard. Needless to say that the State of Tamil Nadu would be at liberty to continue the counselling for academic year 2021- 2022 by taking into consideration the reservation provided by it as per the said G.O.

36. List the matters for hearing after vacations.

...J.
[L. NAGESWARA RAO]

...J.
[B.R. GAVAI]

NEW DELHI;
MARCH 16, 2022

2025 INSC 125

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 9289 OF 2019

DR. TANVI BEHL **APPELLANT(S)**

VERSUS

SHREY GOEL & ORS. **RESPONDENT(S)**

W I T H

CIVIL APPEAL NO.9290 OF 2019

CIVIL APPEAL NO.9291 OF 2019

AND

WRIT PETITION (C) NO.1183/2020

J U D G M E N T

SUDHANSHU DHULIA, J.

1. The question before this Court is whether residence-based reservation in Post Graduate (PG) Medical Courses by a State is constitutionally valid? On this the precise questions formulated by the Division Bench of this Court, which have now come up for determination before this Court, are as follows:

> *"**1.** As to whether providing for domicile/residence-based reservation in admission to "PG Medical Courses" within the State Quota is constitutionally invalid and is impermissible?*
>
> ***2. (a)** If answer to the first question is in the negative and if domicile/residence-based reservation in admission to "PG Medical Courses" is permissible, what should be the extent and manner of providing such domicile/residence-based reservation for admission to "PG Medical Courses" within the State Quota seats?*
>
> ***2.(b)** Again, if domicile/residence-based reservation in admission to "PG Medical Courses" is permissible, considering that all the admissions are to be based on the merit and rank obtained in NEET, what should be the modality of providing such domicile/residence-based reservation in relation to the State/UT having only one Medical College?*
>
> ***3.** If answer to the first question is in the affirmative and if domicile/residence-based reservation in admission to "PG Medical Courses" is impermissible, as to how the State Quota seats, other than the permissible institutional preference seats, are to be filled up?*

2. Before we come to answer these questions, we must state the facts first in order to get a perspective of the case before us. The case is from the Union Territory of Chandigarh which has just one Medical College called 'The Government Medical College and Hospital, Chandigarh' (hereinafter referred to as the 'Medical College'). On 28.03.2019, the process of admissions to PG Medical Course in the

said Medical College had started. The Medical College had 64 PG Medical seats in its State Quota and the relevant clause of the prospectus, which was challenged before the High Court of Punjab and Haryana, distributed these seats as follows:

> "**2. State Quota:** 64 seats. In compliance of the decision of Hon'ble Punjab and Haryana High Court, distribution of 50% State Quota seats are as below:

	Category	Total no. of seats	Reserved (SC) 15%	General
1.	Institutional Preference Pool (IP)	32	5	27
2.	UT, Chandigarh Pool	32	5	27
	Total	64	10	54

> **A. Institutional Preference Pool (IP):** Candidates who have passed their MBBS examination from Govt. Medical College & Hospital Chandigarh
> **B. UT Chandigarh Pool:** Candidate who fulfil eligibility criteria as below: This category will include candidates with background of Chandigarh. To be eligible for this category candidate should fulfil any of the following criteria:
> i. Studied for a period of 5 years in the Union Territory of Chandigarh at any time prior to the last date of the submission of the application.
> ii. Candidates whose parents have resided in Union Territory of Chandigarh for a period of at least 5 years at any time prior to the last date of the submission of the application either in pursuit of a profession or holding a job.
> iii. Children of persons who have held/hold immovable property in Union Territory of Chandigarh for a period of five years at any time

prior to the last date of the submission of 11 the application. The property should be in the name of the parents or the candidate himself/herself.

Important Note:

a) To be eligible for UT Chandigarh Pool under B(i), the candidate must submit a certificate to the effect from Principal of School/College located within the territory of UT Chandigarh

b) To be eligible under B (ii), the candidate should submit a certificate issued by the D.C of UT Chandigarh to the effect that the candidate or his parents have been residing/have resided in Chandigarh at least for 5 years

c) To be eligible under B (iii), the candidate must submit a certificate issued by D.C-cum-Estate Officer/Tehsildar stating that the candidate/parents of the candidate have held/are holding immovable property in UT Chandigarh for at least for 5 years prior to the submission of application."

As it is clear, for the 64 seats falling under the State quota all are reserved either for the 'residents' of Chandigarh or for those who have done their MBBS from the same Medical College in Chandigarh.

3. Petitions were filed before the Punjab and Haryana High Court challenging the above provision as it gave reservation on the basis of residence, which resulted in all 64 seats being filled either by the residents of Chandigarh or by students who had done their MBBS from the same Medical College under institutional preference. The

petitioners therein had argued that the above provision was in direct conflict with various decisions of the Supreme Court including ***Jagadish Saran*** *v.* ***Union of India (1980) 2 SCC 768, Dr. Pradeep Jain*** *v.* ***Union of India (1984) 3 SCC 654*** and ***Saurabh Chaudri*** *v.* ***Union of India (2003) 11 SCC 146.*** The High Court in its well-considered decision, after taking note of the long line of decisions of this Court, but primarily the three above-cited decisions, came to the conclusion that the reservation made for the PG Medical Course in the Medical College was on the basis of a long-discarded principle of domicile or residence, was bad, and had allowed the petitions cancelling the admission of such students.

4. The eligibilities stated in the prospectus for being a 'resident' of Chandigarh are very wide and have no rationale to the objects sought to be achieved. These even include a person who studied in Chandigarh at any time for 5 years or the children of parents who had property in Chandigarh for a period of 5 years at any point of time!

Be that as it may, the High Court held that there has been a violation of Article 14 of the Constitution of India in granting such reservations. Consequently, the clause 2B (i), (ii) and (iii) were declared invalid and unconstitutional and all admissions which

were made by placing reliance on the above provision were held to be bad. It was directed that the Medical College should now fill these seats according to the merit position of candidates which they have obtained in their NEET Examination.

The decision of the High Court was challenged before this Court and the following interim order was passed by this Court on 09.05.2019:

> *"Permission to file special leave petitions is granted.*
>
> *Application for exemption from filing certified copy of the impugned order is allowed.*
>
> *Permission to file additional documents is granted.*
>
> *Issue notice, returnable on 2nd July, 2019.*
>
> *Dasti, in addition, is permitted.*
>
> *Counsel appearing for Medical Council of India waives notice.*
>
> *Liberty to the petitioner(s) to implead the students already admitted to the post-graduate course for the academic session 2019-2020.*
>
> *There shall be ad-interim stay of the impugned order till the next date of hearing.*
>
> *It is, however, made clear that the admission process already done on the basis of the stated provisions governing domicile reservation will be subject to the outcome of these petitions."*

5. Now, the Division Bench after framing of questions stated above, referred the matter to this larger Bench. Let us straight away answer the questions first: So far as question no. 1, which is whether providing for domicile/residence-based reservation in

admission to "PG Medical Courses" within the State quota is constitutionally invalid and impermissible is concerned, our answer is in the affirmative. Yes, it is constitutionally invalid. In other words, providing for domicile or residence-based reservation in PG Medical Courses is constitutionally impermissible and cannot be done. Now, since our answer to the first question is in the affirmative, we need not answer the next two questions i.e., 2(a) and 2(b). We will answer the third question towards the end of this judgment.

6. There are three judgments of this Court which have a significant bearing on the question before us. The three judgments, in the order of the year when they were delivered, are as follows:

(a) Jagadish Saran *v.* ***Union of India, (1980) 2 SCC 768***

(b) Dr. Pradeep Jain *v.* ***Union of India, (1984) 3 SCC 654***

(c) Saurabh Chaudri *v.* ***Union of India, (2003) 11 SCC 146***

Whereas ***Jagadish Saran*** and ***Pradeep Jain*** are three judge Bench decisions, ***Saurabh Chaudri*** is a Constitution Bench judgment of five judges.

7. In ***Jagadish Saran***, essentially the question before this Court was whether institution-based reservation in PG Medical Courses is constitutionally valid and permissible. The answer which was given

by the Court was that it is permissible to a reasonable extent as it only creates reasonable classification which has a nexus with the object sought to be achieved and hence it is not violative of Article 14 of the Constitution of India. Although the question in ***Jagadish Saran*** was not directly related to residence-based or domicile-based reservation, yet while answering the main question Justice Krishna Iyer in his inimitable manner did touch upon various other aspects, including residence and its importance, and most of all the importance of having merit-based reservation in Post Graduate Medical studies.

8. In ***Pradeep Jain***, the question before this Court was directly relating to residence-based reservation in PG Medical courses and whether that is permissible in law, and the answer given by this Court was that though institution-based reservation is permissible, as held in ***Jagadish Saran***, but reservation made in PG Medical seats on the basis of residence is impermissible and would be violative of Article 14 of the Constitution of India. This line of reasoning and ultimately, the law laid down in ***Pradeep Jain*** was followed by the Constitution Bench of ***Saurabh Chaudri***.

9. Now, once the Five Judge Constitution Bench *(**Saurabh Chaudri**)*, has answered the question in affirmative, which is that residence-

based or domicile-based reservation in PG Medical courses is impermissible and constitutionally invalid, we did wonder initially why these questions were framed at all in this case and referred to us. One possible reason why this was done perhaps was that ***Saurabh Chaudri*** has to be deciphered as it was dealing with complex issues and while relying heavily on ***Pradeep Jain***, which in turn, relies on ***Jagadish Saran***, it becomes difficult to demarcate where ***Saurabh Chaudri*** ends and ***Pradeep Jain*** or ***Jagadish Saran*** begins. But then a closer look at ***Saurabh Chaudri***, leaves one with no doubt that it has followed ***Pradeep Jain*** entirely and therefore what has been held in ***Saurabh Chaudri*** is the same what was earlier held in ***Pradeep Jain***, which is that residence-based reservation is not permissible in PG Medical Courses.

10. We first have to see the question before the Court in ***Saurabh Chaudri*** and who were the petitioners before the Court? In ***Saurabh Chaudri***, the petitioners (52 in number), were residents of Delhi, who had joined various medical colleges outside Delhi for their MBBS under an All-India quota, and after completing their MBBS from outside now wanted to join medical colleges in Delhi for their PG Medical Course. Their claim for admission was based on the fact that they are 'residents of Delhi' and therefore they should be granted admission under the residential quota which was otherwise reserved only for

students who had done their MBBS from Delhi. This Court, however, declined to grant them relief and their petition was dismissed for the reason that residence-based reservation is impermissible. The Court while dismissing their claim in ***Saurabh Chaudri*** followed the reasoning given in a recently decided case of Supreme Court in ***Magan Mehrotra & Ors.*** *v.* ***Union of India & Ors. (2003) 11 SCC 186,*** which had relied totally on ***Pradeep Jain*** and held that apart from institutional preferences, no other preferences including reservation on the basis of residence is envisaged in the Constitution.

11. Interestingly the appellants before this Court too rely on ***Saurabh Chaudri*** and would argue that in ***Saurabh Chaudri*** this Court had held that residence-based reservation is not barred under Article 15 of the Constitution. It is true that ***Saurabh Chaudri*** does say that, which is indeed the correct position in law. But this would not be a complete reading of ***Saurabh Chaudri***!

12. The question in ***Saurabh Chaudri*** was the validity of institutional preference/reservation as well as reservation based on residence. The precise questions before the Court, in its own words are as follows: (SCC p. 155, para 10)

> *"10. The question which was initially raised in the writ petition was as to whether reservation*

made by way of institutional preference is ultra vires Articles 14 and 15 of the Constitution of India; but during hearing a larger issue viz. as to whether any reservation, be it on residence or institutional preference, is constitutionally permissible, was raised at the Bar."

It answered in the affirmative for institutional preference and held that to be a reasonable classification permissible under Article 14 of the Constitution of India.

13. While doing so ***Saurabh Chaudri*** relies heavily on both ***Pradeep Jain*** and ***Jagadish Saran***. Passages after passages have been quoted from both ***Jagadish Saran*** and ***Pradeep Jain*** with approval. At this stage we must also remember that to a reasonable degree residence-based reservation in a State is permissible for MBBS Courses *(**Pradeep Jain**),* but the same reservation for PG Courses is not permissible by a long line of decisions of this Court, including ***Pradeep Jain.***

14. The difference in the logic in making reservations on the basis of residence in UG level or MBBS level, and PG level (i.e. MD or MS) was explained in ***Jagadish Saran*** as well as ***Pradeep Jain***. It was held that at PG level merit cannot be compromised, although residence- based reservation can be permissible to a certain degree in UG or MBBS course. While coming down heavily on residence-

based reservation in PG medical courses, it referred to the opinion of the Medical Education Review Committee [relied upon in ***Saurabh Chaudri*** (SCC p. 168, para 48)], which are as follows :- (SCC p. 690, para 22)

> *"22. …'all admissions to the postgraduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located'."*

15. Why residence-based reservation is impermissible is for the reason that such reservation runs counter to the idea of citizenship and equality under the Constitution. It was said as under in ***Pradeep Jain*** :- (SCC p. 672, para 10)

> *"**10.** … Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in Jagadish Saran (Dr) v. Union of India [(1980) 2 SCC 768 : AIR 1980 SC 820] 'this has burning relevance to our times when the country is gradually being "broken up into fragments by narrow domestic walls" by surrender to narrow parochial loyalties'. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter*

> *to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides."*

The above passage from ***Pradeep Jain*** was relied upon in ***Saurabh Chaudri*** (SCC p. 166, para 46), while coming to the same conclusion.

16. There is no doubt that ***Saurabh Chaudri*** though holds institutional preference or reservations to a reasonable extent permissible under the Constitution in PG courses, yet holds reservation in PG Medical Courses and other higher learning courses, on the basis of 'residence' in the State as violative of Article 14 of the Constitution of India.

17. Article 14 of the Constitution of India speaks of Right to equality and declares that *"the State shall not deny to any person equality before the law or the equal protection of law within the territory of*

India". Other Articles such as Article 15, 16, 17 and 18 are only different facets of Right to equality.

18. Article 15 as it existed in the original Constitution declares that the State shall not discriminate on the grounds of religion, race, caste, sex or place of birth, though clause 3 is in the nature of a proviso leaving it open for the State to make any special provision for women and children. Later, clauses 4, 5 and 6 were added by way of amendments to Article 15, creating similar enabling provisions for other classes of citizens such as socially and educationally backward classes, Scheduled Castes, Scheduled Tribes and Economically Weaker Section of citizens in educational institutions. We are primarily concerned here with Articles 14 and 15 of the Constitution of India and we have to determine whether these provisions prohibit residence-based reservations in PG Medical courses. But before we do that, we must settle one question, which is the concept of 'domicile', and domicile being equated to residence or permanent residence, by the State machinery or by educational institutions in a loose/casual manner. These concepts needs to be clarified.

19. Domicile in normal parlance denotes 'the place of living' or permanent residence. The legal concept is, however, different.

Domicile as stated in Halsbury's Laws of England[1] is "*the legal system which invokes that system as his personal law*". The purpose for which domicile is used by Governments is like a substitute for 'permanent residence' or a 'permanent home'. Yet 'domicile' is primarily a legal concept for the purposes of determining what is the 'personal law' applicable to an individual. Therefore, even if an individual has no permanent residence or permanent home, he is still invested with a 'domicile' albeit by law or implication of law. Consequently, the concept of domicile acquires importance only when within a country there are different laws or more precisely different systems of law operating. But this is not the case in India. Each citizen of this country carries with him or her, one single domicile which is the 'Domicile of India'. The concept of regional or provincial domicile is alien to the Indian legal system. The seminal decision on this subject is ***Pradeep Jain***. The aspect of domicile is fully explained and elaborated, and needs to be referred to here. Firstly, paragraph 8 of the said judgment would be relevant, which reads as follows: (SCC p.668 para 8)

> *"8. Now it is clear on a reading of the Constitution that it recognises only one domicile, namely, domicile in India. Article 5 of the Constitution is clear and explicit on this point and it refers only*

[1] HALSBURY'S LAWS OF ENGLAND (4th ed.), Vol-8, para 421.

to one domicile, namely, "domicile in the territory of India." Moreover, it must be remembered that India is not a federal State in the traditional sense of that term. It is not a compact of sovereign States which have come together to form a federation by ceding a part of their sovereignty to the federal State. It has undoubtedly certain federal features but it is still not a federal State and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends througout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system which prevails throughout the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at the apex of the hierarchy, which lays down the law for the entire country. It is true that with respect to subjects set out in List II of the Seventh Schedule to the Constitution, the States have the power to make laws and subject to the overriding power of Parliament, the State can also make laws with respect to subjects enumerated in List III of the Seventh Schedule to the Constitution, but the legal system under the rubric of which such laws are made by the States is a single legal system which may truly be described as the Indian legal system. It would be absurd to suggest that the legal system varies from State to State or that the legal system of a State is different from the legal system of the Union of India, merely because with respect to the subjects within their legislative competence, the State have power to make laws. The concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one State or another forming part of the Union of India. The domicile which he has is only one domicile,

> *namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change : he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. We think it highly detrimental to the concept of unity or integrity of India to think in terms of State domicile..."*

20. This Court also took note of the common misconception with the State Governments on domicile and had observed that it is not uncommon for the State Governments to use the term 'domicile' when what they actually intend to mean is 'permanent residence', or even 'residence'.

21. In ***Pradeep Jain***, the argument that domiciliary requirement for admission to medical colleges and other colleges situated within the State territory is used not in its legal sense but in a popular sense denoting residence or an intention to reside permanently, was also discussed, and this practice of wrongly using the nomenclature 'domicile' was condemned. This is what was said: (SCC p.669 para 8)

> *"8...We think it is dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. When we use a word which has come to represent a concept or idea for conveying a different concept or idea, it is easy for the mind to slide into an assumption*

that the verbal identity is accompanied in all its sequences by identity or meaning. The concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country. We would, therefore, strongly urge upon the State Governments to exercise this wrong use of the expression 'domicile' from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions."

The judgment at another place speaks as under: (SCC pp.664-665 para 3, 4)

"3… Now if India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamilnadu or speaking Tamil language can be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language be regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka as the case may be. To regard him as an outsider would be to deny him his constitutional rights and to derecognize the

essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent states.

4. But, unfortunately, we find that in the last few years, owing to the emergence of narrow parochial loyalties fostered by interested parties with a view to gaining advantage for themselves, a serious threat has developed to the unity and integrity of the nation and the very concept of India as a nation is in peril. The treat is obtrusive at some places while at others it is still silent and is masquerading under the guise of apparently innocuous and rather attractive clap-trap. The reason is that when the Constitution came into operation, we took the spirit of nationhood for granted and paid little attention to nourish it, unmindful of the fact that it was a hardwon concept. We allowed 'sons of the soil' demands to develop claiming special treatment on the basis of residence in the concerned State, because recognizing and conceding such demands had a populist appeal. The result is that 'sons of the soil' claims, though not altogether illegitimate if confined within reasonable bounds, are breaking as under the unity and integrityof the nation by fostering and strengthening narrow parochial loyalties based on language and residence within a State. Today unfortunately, a citizen who has his permanent residence in a State entertains the feeling that he must have a preferential claim to be appointed to an office or post in the State or to be admitted to an educational institution within the State vis-à-vis a citizen who has his permanent residence in another State, because the latter is an outsider and must yield place to a citizen who is a permanent resident of the State, irrespective of merit. This, in our opinion, is a dangerous feeling which, if allowed to grow, indiscriminately, might one day break up the country into fragments..."

22. Much before ***Pradeep Jain***, a full bench of the Bombay High Court had an occasion to examine the concept of domicile. In this judgment, delivered by Chief Justice M.C. Chagla in ***The State*** *v.* ***Narayandas Mangilal Dayame*** reported in ***AIR 1958 Bombay 68 (FB)***, the Full Bench stated as under:

> *"7. Now in our opinion, it is a total misapprehension of the position in law in our country to talk of a person being domiciled in a province or in a State. A person can only be domiciled in India as a whole. That is the only country that can be considered in the context of the expression "domicile" and the only system of law by which a person is governed in India is the system of law which prevails in the whole country and not any system of law which prevails in any province or State. It is hardly necessary to emphasize that unlike the United States of America, India has a single citizenship. It has a single system of Courts of law and a single judiciary and we do not have in India the problem of duality that often arises in the American Law, the problem which arises because of a federal citizenship and a State citizenship. Therefore, in India we have one citizenship, the citizenship of India. We have one domicile—the domicile in India and we have one legal system - the system that prevails in the whole country. The most that one can say about a person in a State is that he is permanently resident in a particular State. But as Halsbury points out, to which we have just made reference, the mere fact that a man's home maybe fixed at a particular spot within the country does not make him domiciled in that spot but makes him domiciled in the whole country, and therefore, whether a man permanently resides in Bombay or Madras or Bengal or anywhere does not make him*

> *domiciled in Bombay, Madreas or Bengal but makes him domiciled in India; Bombay, Madras and Bengal being particular spots in India as a country."*

23. In the same judgment it was also explained that merely because a State legislature makes laws on certain subject matters, it will not *ipso facto* mean that persons residing in that State have a provincial domicile:

> *"8…The competence of the Legislature is not limited to passing of laws which would only apply to persons domiciled within the State. Any law passed by a State Legislature can be applied to any person within the State, and therefore the expression 'domicile' has no relevancy whatever in constructing the competency of the State Legislature. If the State Legislature is legislating on a topic within its competence, that law can be made applicable to anyone in the State of Bombay whether he is a resident or not or even if he is a foreigner passing through the State of Bombay. Therefore, it is fallacious to suggest that the doctrine of domicile is introduced in our law by person of the fact that the State or the Provincial Legislature has been given the power to legislate with regard to certain subject-matters within its territorial ambit. It, therefore, seems to us that the expression 'domicile' used in any State or Provincial law is a misnomer and it does not carry with the implications which that expression has when used in the context of international law…"*

24. In short, the very concept of a provincial or state domicile in India is a misconception. There is only one domicile in India, which we

refer to as domicile in the territory of India as given under Article 5[2]. All Indians have only one domicile, which is the Domicile of India.

25. Permanent residence or residence have a meaning which is different from that of 'domicile'. Article 15 speaks of 'place of birth', whereas Article 16 states that no citizen shall be discriminated, *inter alia*, on the ground of 'residence'. State cannot grant reservation in public employment on the basis of residence in that State. The exception carved out under Clause 3 of Article 16, enables only the Parliament to make a law prescribing a requirement of residence for State employment. And there is a reason behind it.

26. During the Constituent Assembly debates a question arose whether residence in a State should be a criterion for appointment in government service of that State. The overwhelming opinion was that it should not. Since there is one citizenship, a citizen should have a right to reside anywhere in the country and similarly seek a job anywhere in the country, this was the dominant feeling. For those who had doubts on this, Dr. Ambedkar had a solution, which he explained as follows:

---

[2] **Citizenship at the commencement of the Constitution**: At the commencement of this Constitution, every person who has his domicile in the territory of India and—
(a) who was born in the territory of India; or
(b) either of whose parents was born in the territory of India; or
(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

"It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument. At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore

> *felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if that object is to be achieved, viz., that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving it to the local units, whether provinces or States. That is the underlying purpose of this amendment putting down residence as a qualification."*[3]

27. It was ultimately decided that residence cannot be a ground for discrimination in matters relating to employment, but in situations which necessarily demand prescription of residence within any State or UT as an essential qualification, it should be the Parliament (and not State legislatures) which should be empowered to make a law for that purpose, so that there is a uniformity throughout India on this.

28. But all this was again on Article 16, which deals with the matters of service and employment under a State. As compared to Article 16, Article 15 is a general provision having a wider application (including the issue of reservation to college admissions), and it does not contain 'residence' as one of the prohibitory grounds, and apparently one can say that Article 15 does not bar the State from making 'residence' as a requirement, for admission in medical

[3] CONSTITUENT ASSEMBLY DEBATES, VOL-VII, pgs.700-701.

colleges or like matters. We must, however, remember that both Article 15 and Article 16 are different facets of the concept of equality, embodied in Article 14 and therefore, a legislation can still be struck down if it creates an unjustifiable classification, such as between residents of a State and all others. Article 15 does not speak of 'residence', it only speaks of 'place of birth' and the two concepts are different (***D.P. Joshi*** *v.* ***State of Madhya Pradesh AIR 1955 SC 334***). Article 16 does speak of residence but then it is in the context of employment under a State, with which we are presently not concerned. Yet the residence requirement has still to pass muster Article 14 of the Constitution of India.

29. It is now necessary to refer to the detail reasoning given in ***Pradeep Jain*** as to why residence-based reservation in PG Medical courses is violative of Article 14 of the Constitution of India, though to maintain a balance and for consideration of local needs such reservation may be permissible in MBBS courses. The reasoning given was that it is the State which spends money on creating the infrastructures and bears the expenses for running a medical college, and therefore some reservation at the basic level of a medical course i.e. MBBS can be permissible for the residents of that State. The classification between residents and others here can be justified

as the classification seeks to maintain a balance as it considers local needs, backwardness of the area, the expense borne by the State in creating the infrastructure, etc.

The reason as to why residence-based reservation is permissible for MBBS Course and not for higher courses i.e. starting from PG Course in medicine, is given in ***Jagadish Saran*** as well as ***Pradeep Jain.*** It is extremely well articulated by Justice Krishna Iyer in ***Jagadish Saran***. Therefore the reasoning given for this classification must be reproduced in order to get a better understanding as to why it was done. Firstly, the fundamental reason as to why reservation must be given in educational institution was stated as follows :- (SCC p. 785 para 40)

> *"40. … The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage. The quantum of reservation should not be excessive or societally injurious, measured by the overall competency of the end-product viz. degree-holders. A host of variables influence the quantification of the reservation. But one factor deserves great emphasis. The higher the level of the speciality the lesser the role of reservation. Such being the pragmatics and dynamics of social justice and equal rights, let us apply the tests to the case on hand."*

For this reason, reservations at MBBS level was justified :- (SCC p. 785 para 42)

> *"42. MBBS is a basic medical degree and insistence on the highest talent may be relaxed by promotion of backward groups, institution-wise chosen, without injury to public welfare. It produces equal opportunity on a broader basis and gives hope to neglected geographical or human areas of getting a chance to rise. Moreover, the better chances of candidates from institutions in neglected regions setting down for practice in these very regions also warrants institutional preference because that policy helps the supply of medical services to these backward areas. After all, it is quite on the cards that some out of these candidates with lesser marks may prove their real mettle and blossom into great doctors. Again, merit is not measured by marks alone but by human sympathies. The heart is as much a factor as the head in assessing the social value of a member of the profession. Dr Samuel Johnson put this thought with telling effect when he said:*
>
> > *"Want of tenderness is want of parts, and is no less a proof of stupidity than of depravity."*
>
> *We have no doubt that where the human region from which the alumni of an institution are largely drawn is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a high ratio of reservation hardly militates against the equality mandate viewed in the perspective of social justice."*

But then the same principle will not be applicable when we talk of higher level of education like PG Medical Courses and the reason given in ***Jagadish Saran*** is in para 23 :- (SCC pp. 778-79, para 23)

> *"The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk. The Indian Medical Council has rightly emphasised that playing with merit for pampering local feeling will boomerang. Midgetry, where summitry is the desideratum, is a dangerous art. We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration:*
>
> *Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the under-graduate course. All selection for post-graduate studies should be conducted by the universities."*

30. It was reiterated further : (SCC p. 785 para 39)

> *"39. If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must*

be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

These findings in ***Jagadish Saran*** have been approved and followed in ***Saurabh Chaudri*** (SCC p.168 para 48).

31. We are all domiciled in the territory of India. We are all residents of India. Our common bond as citizens and residents of one country gives us the right not only to choose our residence anywhere in

India, but also gives us the right to carry on trade & business or a profession anywhere in India. It also gives us the right to seek admission in educational institutions across India. The benefit of 'reservation' in educational institutions including medical colleges to those who reside in a particular State can be given to a certain degree only in MBBS courses, for which we have assigned reasons in the preceding paragraphs. But considering the importance of specialists doctors' in PG Medical Course, reservation at the higher level on the basis of 'residence' would be violative of Article 14 of the Constitution of India. This has been explained with pronounced clarity both in ***Jagadish Saran*** and ***Pradeep Jain***. If such a reservation is permitted then it would be an invasion on the fundamental rights of several students, who are being treated unequally simply for the reasons that they belong to a different State in the Union! This would be a violation of the equality clause in Article 14 of the Constitution and would amount to a denial of equality before the law.

32. The law laid down in ***Jagadish Saran*** and ***Pradeep Jain*** has been followed by this Court in a number of decisions including the Constitution Bench decision in ***Saurabh Chaudri***. We may also refer here judgments such as ***Magan Mehrotra and Ors***. *v.* ***Union***

of India (UOI) and Ors. (2003) 11 SCC 186, Nikhil Himthani *vs.* ***State of Uttarakhand and Others (2013) 10 SCC 237, Vishal Goyal and Others*** *v.* ***State of Karnataka and Others (2014) 11 SCC 456*** and ***Neil Aurelio Nunes (OBC Reservation) and Others*** *v.* ***Union of India and Others (2022) 4 SCC 1,*** which have all followed ***Pradeep Jain***. Thus, residence-based reservations are not permissible in PG medical courses.

33. Having made the above determination that residence-based reservation is impermissible in PG Medical courses, the State quota seats, apart from a reasonable number of institution-based reservations, have to be filled strictly on the basis of merit in the All-India examination. Thus, out of 64 seats which were to be filled by the State in its quota 32 could have been filled on the basis of institutional preference, and these are valid. But the other 32 seats earmarked as U.T. Chandigarh pool were wrongly filled on the basis of residence, and we uphold the findings of the High Court on this crucial aspect.

34. We make it clear though that our declaration of impermissibility of residence-based reservation in PG Medical courses will not affect such reservations already granted, and students are undergoing PG courses or have already passed out in the present case, from

Government Medical College, Chandigarh. We do this simply because now there is an equity in favour of such students who must have already completed the course. Logically, therefore, the present appellants who were granted admission under the residence category and were undergoing their course, & also by virtue of the interim order of this Court dated 09.05.2019, will not be affected by our judgment.

35. The present appeal stands disposed of in the above terms. The connected appeals and writ petition stand decided in the light of our order in the present case.

36. Pending application(s), if any, stand(s) disposed of.

.....J.
[HRISHIKESH ROY]

.....J.
[SUDHANSHU DHULIA]

.....J.
[S.V.N. BHATTI]

New Delhi.
January 29, 2025.