
(1980) 02 GUJ CK 0002
In the Gujarat High Court

Dr. Amin Prakash V. Ors.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-02-1980

Acts Referred:

Constitution of India, 1950 — Article 16(3), 16(4), 16(5)
Gujarat University Act, 1949 — Section 39
Indian Medical Council Act, 1956 — Section 20

Citation : (1981) 22 GLR 41

Hon'ble Judges : S.H. Sheth, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—Seventy-four post-graduate students of B.J. Medical College, Ahmedabad, have filed this petition in which they challenge the reservation made by the State Government for Scheduled castes and Scheduled tribes and for socially and educationally backward classes for the posts of Registrar and Houseman at Post-Graduate Medical Centres in the State. On behalf of the petitioners, several contentions have been raised. They are as follows:

- (1) Admissions to post-graduate medical courses can be regulated by law made by Gujarat University to which B.J. Medical College is affiliated and not by the State Government.
- (2) Regulation of admissions to post-graduate medical courses by the State Government is in contravention of the law made by Medical Council.
- (3) Housemanship is a necessary concomitant of post-graduate medical education. Therefore, it is governed by the law or regulation made by Medical Council and it cannot be governed by the State Government Resolution.
- (4) Housemanship is not a service under the State but it is a device under which a post-graduate medical student earns and learns.
- (5) Assuming that the reservation for the scheduled castes Scheduled tribes and socially and socially and educationally backward class made by the State

Government is valid, its implementation with the roster system and carry-forward, rule offends the rule of reservation made by the State Government.

2. In order to appreciate the contentions which have been raised on behalf of the petitioners, it is necessary to refer to the Resolutions passed by the State Government in that behalf. On 29th October 1976, Government of Gujarat passed Resolution (Annexure "B") under which it amplified the orders issued under earlier Government Resolutions and specified that:

(i) 7% of the available posts of Housemen with the facilities for registration for post-graduate degree courses and same percentage of posts with facilities for registration for diploma courses should be reserved for the candidates belonging to Scheduled castes;

(ii) 13% of the available posts of Housemen with facilities for registration for postgraduate degree courses and same percentage of posts with facilities for registration for post-graduate diploma courses should be reserved for the candidates belonging to Scheduled tribes, Nomadic tribes and Denotified tribes; and

(iii) The rest of the candidates appointed against the open posts should be considered for the post-graduate degree and diploma courses according to their respective merit for such appointments.

3. So far as socially and educationally backward classes are concerned, the State Government passed on 2nd April 1979 a Resolution in which it is stated that "5% of the sanctioned posts should be reserved at the post-graduate level for Housemen for the candidates belonging to the 82 castes/classes and groups identified as socially and educationally backward classes" by the Baxi Commission appointed by the State Government.

4. The question which has arisen before us is whether this reservation is valid law.

5. The principal argument which has been advanced is that admissions to post-graduate medical courses fall within the exclusive jurisdiction of the Medical Council of India and that, therefore, the State Government cannot do anything in that field. In order to appreciate this argument, it is necessary to refer to a few Articles of the Constitution. Article 46 in Part IV which specifies Directive Principles of State Policy provides as follows:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

We are concerned in the instant case with the educational interest of Scheduled castes, Scheduled tribes and weaker sections of the people. We have no manner of doubt in our minds that Article 46 issues a Directive to the State to take

special care to promote the educational interests of the Scheduled castes and the Scheduled tribes and of the weaker section of our society. The object underlying Article 46 is highly laudable. It aims at promoting the educational level of the Scheduled castes and Scheduled tribes and of weaker sections of our people with the ultimate object of putting them on par with educated classes or sections of our society. When the directive laid down by Article 46 is fully implemented by the State, it will certainly go a long way in integrating different sections of our society, in removing different kinds of injustice meted out to educationally backward people and in ending all forms of exploitation.

6. We now turn to the specific provision which the Constitution makes in that behalf. Clause (2) of Article 29 provides as follows:

No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

A casual glance at Article 46 and Article 29(2) brings out an apparent contradiction between them. Whereas Article 46 directs the State to take special care to promote the educational interests of Scheduled castes, Scheduled tribes and weaker sections of our society, Article 29(2) rules out all considerations except merits in the matter of admission to our educational institutions which are either maintained by the State or which are receiving aid out of State funds. What appears to be an apparent contradiction in Article 46 and Article 29(2) appears to us to have been resolved by Clause (4) of Article 15 which is an express exception to Article 29(2). It reads as follows:

Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

A passing reference to the rest of Article 15 shows that Clause (1) provides in general terms that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. There is no doubt in our minds that Clause (4) of Article 15 operates as an exception to Clause (1). So far as Clause (2) is concerned, it deals with matters relating to access to shops, public restaurants, hotels and places of public entertainment and to the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. We are not concerned in this case with Clause (2) of Article 15. Clause (3) of Article 15 makes an exception to the rule in the matter of making any special provision for women and children. It is, therefore, clear that under Clause (4) of Article 15, the State has authority to implement the constitutional direction specified in Article 46. In the instant case, the two Resolutions to which we have referred have been passed by the State Government in exercise of the powers conferred upon it by Clause (4) of Article 15. The first-mentioned Resolution

orders reservation for the Scheduled castes and the Scheduled tribes who have been expressly, specified in Clause (4) of Article 15. The second-mentioned Resolution orders reservation for socially and educationally backward classes of people in Gujarat State. Who are socially and educationally backward classes of people have been identified by the Commission appointed by the State Government to which reference has been made in the Resolution.

7. Article 12 defines "the State" and provides that in Part III, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. This wide inclusive definition of the expression "State" given in Article 12 not only embraces within its sweep the State Government as it ought to but also statutorily established Universities, Gujarat University having been established under the Gujarat University Act, 1949. Therefore, under Clause (4) of Article 15 the reservation for the Scheduled castes and the Scheduled tribes as well as for socially and educationally backward classes of people could be ordered by the State Government in the whole of the State of Gujarat with its several Universities. Similarly, it could also be ordered by Gujarat University within the area of its Jurisdiction because it is an authority established under an enactment of State Legislature, *prima facie*, therefore, there is no element of invalidity in the two resolutions which have been challenged before us.

8. However, reference has been made to certain provisions of Gujarat University Act, 1949, and also to a Regulation made by the Medical Council of India. Section 35A to which reference has been made provides for approval of institutions such as institutions for specialized studies, laboratory work, internship, research or other academic work approved by the Academic Council under the guidance of a qualified teacher. The post-graduate medical centre at B.J. Medical College, Ahmedabad, has been approved by Gujarat University u/s 35A. Section 39 to which reference has been made provides: "Within the University area, all postgraduate instruction, teaching and training shall be conducted by the University or by such affiliated colleges or institutions and in such subjects as may be prescribed by the Statutes." There is no dispute about the fact that the post-graduate Medical Centre at B.J. Medical College, Ahmedabad, is situated within the University area. Obviously, therefore, it appears that the centre is conducted by the University. An argument has been raised on behalf of the petitioners that with this post-graduate Medical Centre at B.J. Medical College at Ahmedabad, the State Government has nothing to do because its conduct is the sole responsibility of Gujarat University. It is not necessary for us, for the purpose of this petition, to decide whether it is run by the State Government or by Gujarat University whether it is run in certain respects by the State Government and in certain other respects by Gujarat University. We are assuming in favour of the petitioners that the post-graduate Medical Centre at B.J. Medical College at Ahmedabad is run and conducted by Gujarat University and that the State Government has nothing to do with it. The argument which

has been raised in this context is that since the post-graduate Medical Centre at B. J. Medical College at Ahmedabad is the sole concern of Gujarat University, the State Government cannot make any reservation of seats. This argument suffers from two-fold fallacy. Facility for registration for post-graduate Medical courses at B.J. Medical College post-graduate Medical Centre indeed falls within the jurisdiction of Gujarat University. But, so far as the appointment to the post of a Houseman which carries the stipend is concerned, it falls within the power and authority of the State Government, firstly, because the appointment to the post of a Houseman attaches the person concerned to the Civil Hospital, Ahmedabad, which is financed and run by the State Government and, secondly, because a person appointed to that post is paid his stipend out of State funds. Where registration for post-graduate course is insuperably interlinked with appointment to the post of Housemanship as it is in this case, the Court has got to take into account who pays the person appointed to the post of a Houseman and from which institution he derives benefit. It is beyond controversy that a Houseman appointed in Civil Hospital, Ahmedabad, and registered as a post-graduate Medical students receives his stipend from the State Government and enjoys the facilities for education and training offered by Civil Hospital at Ahmedabad which, in its turn, is run and financed by the State Government.

9. The second fallacy from which the argument suffers is that it overlooks the provisions of Article 29(2) to which Clause (4) of Article 15 has been made an exception. Article 29(2) in terms refers to admissions to the educational institutions maintained by the State or receiving aid out of State funds. Gujarat University, constituted under a State enactment, is an institution maintained partly out of the funds of the State of Gujarat. We have on record an affidavit filed by the Registrar of Gujarat University to which are annexed the budget proposals for the year 1980- 81. They show that during 1978-79, the State Government had given to the University a grant of Rs. 39, 27, 671.27 P. During 1979-80, the sanctioned grant from the State Government amounted to Rs. 58, 66, 500/-. It is clear from these figures which are purely illustrative in character that Gujarat University receives out of State funds a sizeable amount for its maintenance and its activities. We may state that so far as the grants are concerned, there are three principal authorities from which it receives the grant. The first is the State Government, the second is the Central Government and the third is the University Grants Commission. It is beyond dispute that all these three bodies disburse public funds and make them available to Gujarat University. The funds which the University Grants Commission disburses also belong to the Central Government. Central Government disburses funds out of the Consolidated Fund of India. The State Government disburses funds out of the Consolidated Fund of the State.

10. Therefore, reading Article 29(2) with Article 15(4), we are of the opinion that since Gujarat University is an institution which receives financial aid, amongst others, from the State Government, it is open to the State Government to issue to it a direction to implement the constitutional provision which directs the State

to bring about the educational uplift of Scheduled castes and Scheduled tribes and socially and educationally backward sections of our society. It cannot be argued with logic that since Gujarat University is a statutory authority created by a State legislative enactment, it is so autonomous and independent that no direction can be issued to it by the State Government. In statutory matters, such a proposition may well be advanced with some justification. As for instance, the State Government, unless authorized by law, cannot issue an administrative direction to Gujarat University. In the instant case, the law which authorizes the State Government to implement a particular policy of philosophy is the supreme law of the land. All other laws are subject to it including Gujarat University Act, 1949. If the State Government takes an action with the object of implementing a constitutional provision, no exception can be taken to it by any one on the ground that it violates or infringes the autonomy of one to which the direction has been issued. All other authorities, institutions and individuals, like the State, are bound by Constitution which is the fundamental law of the land.

11. In this context, a bare reference may be made to Statute 121A made by Gujarat University. It lays down: "All post-graduate instructions in the Gujarat University area shall be imparted by the University or on behalf of the University at such centres as may be fixed by the Executive Council". The Statute carries into effect the principle laid down by Section 39 of the Gujarat University Act, 1949. Therefore, though Gujarat University, in our opinion, could have made such reservations directly under Clause (4) of Article 15, the State Government could also do it more particularly when the Gujarat University did not do it. Reference may also be made to P.G. Rule No. 36. It indeed lends some support to the argument which has been raised on behalf of the petitioners that imparting of post-graduate instruction and running of the post-graduate centres are matters which fall within the jurisdiction of Gujarat University. We have already referred to the fact that Gujarat University is receiving grants from the Central Government, the State Government and the University Grants Commission. Section 48 of the Gujarat University Act, 1949, which provides for establishment of the University Fund, inter alia, lays down that the Fund shall consist of any contribution or grant made by the State Government.

12. Reference has also been made to a Regulation made by the Medical Council of India. Medical Council of India has been established under Medical Council Act, 1956. Section 3 of that Act provides for constitution and composition of Medical Council. Section 6 provides for its incorporation and lays down that it shall be a body corporate known by the name of the Medical Council of India, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued. Section 10 provides for the constitution of the Executive Committee. Section 19A of that Act provides for matters relating to minimum standards of medical education. It, inter alia, provides that the Medical Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications other than post-graduate medical qualifications

by Universities or medical institutions in India. Section 20 provides for the constitution of Post graduate Medical Education Committee for assisting the Council in matters relating to post-graduate medical education. Sub-section (1) of Section 20, inter alia, provides that the Medical Council may prescribe standards of post-graduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India. It further provides that, for that purpose, the Central Government may constitute from among the members of the Council a Postgraduate Medical Education Committee. Section 32 confers upon the Central Government rule-making power. It empowers the Central Government to make rules to carry out the purposes of that Act. Section 33 empowers the Medical Council to make Regulations with the previous approval of the Central Government. Such regulations can be made by the Medical Council generally to carry out the purposes of that Act and also for specific matters indeed without prejudice to generality of that power. Clause (j) in Section 33 specifies the following subject: "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." Clause (k) specifies the following subjects: "the Standards of staff, equipment, accommodation, training and other facilities for medical education." Clause (1) specifies the following subjects: "the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations." With the previous approval of the Central Government, the Medical Council has made the following regulation in the matter of admissions to post-graduate courses.

Students for P.O. Training should be selected strictly on merit judged on the basis of academic record in Under-Graduate course. All selections for P. G. studies should be conducted by the University.

The executive Committee of the Medical Council in 1977 passed the following Resolution in implementation of the Regulation made by the Medical Council, quoted hereinabove.

The Executive Committee reiterated the earlier decision of the Council that admission to the Post-Graduate Medical Courses should be made on the basis of merits alone and that no reservations of seats for any category of candidates for admission to Post-Graduate Medical Courses is desirable. The Secretary of the M.C.I., New Delhi, had addressed letters to Universities on 2-8-1977 bearing Reference No. MCI/IS/1/77-MED/13298.

13. Relying upon this Regulation which appears to have been made under Medical Council Act, 1956, it has been argued on behalf of the petitioners that the Medical Council within whose exclusive jurisdiction matters relating to admissions to post-graduate medical institutions fall has laid down that no considerations other than pure merits shall prevail in the matter of admissions to post-graduate medical institutions. It has, therefore, been argued that since the

statutory body within whose jurisdiction admissions to post-graduate medical institutions fall has laid down the norm of pure merits-unadulterated by any other considerations-the impugned Government Resolutions cannot be given effect to because they impinge upon the statutory authority and statutory autonomy of Medical Council. What the State Government has done is not to issue a mere executive fiat. What it has done is to implement the constitutional policy of lifting Scheduled castes, scheduled tribes and socially and educationally backward classes from the depth of ignorance to the height of knowledge. The object underlying this policy can never be questioned because it is not only intended to bring about social integration of this country but also to make all sections of our people well-informed and educated.

14. There is no doubt in our minds that the regulation made by the Medical Council to which we have referred runs contrary to the two impugned resolutions passed by the State Government. The question, there fore, which has been raised for our consideration is this : Which shall hold the field?

15. We do not feel hesitation in stating that in case of reserved seats, the two impugned resolutions which implement the constitutional directive hold the field to the exclusion of what medical council has generally laid down. Whether Medical Council has statutory authority to prescribe standards for admission to post-graduate medical courses has not been argued before us. Since the State Government derives its authority and power from a constitutional provision?the supreme law of the land, to say that the State Government cannot order reservations under Article 15(4) is to nullify the constitutional provision or to deny its implementation to the State Government which otherwise is competent to do so under Article 15(4) read with Article 12.

16. Now, Medical Council, if it is otherwise competent to order reservations, will do so in respect of all medical institutions in the country. So far as State Governments are concerned, some may order reservations and some may not. Amongst those who order reservations, percentages may vary from State to State. It all depends upon how a particular State Government looks at the problem of uplifting the socially and education ally backward classes and Scheduled castes and Scheduled tribes residing within its territory. Therefore, since in a country like ours different polices are likely to be followed by different State Governments depending upon the local conditions in different States, the State Governments are better suited to order reservations in their respective States. The diversities in the policies adopted by the different State Governments are likely to be richer in content than the uniform rigidity which the Medical Council may introduce if it has the authority to do so. We say so because educational needs of different parts of our multi-lingual country are different. They cannot be met by a common yard-stick. Different yard-sticks depending upon different situations obtaining in different parts of the country have got to be adopted. In our opinion, therefore, the impugned Government Resolutions which derive their authority from Clauses (4) of Article 15 read with Article 46 of the

Constitution cannot be challenged on the ground that they are ultra vires the Resolution made by the Medical Council of India. The Regulation made by the Medical Council will, therefore, operate subject to the impugned Government Resolutions.

17. Before we part with this contention, we may refer to Sub-section (1) of Section 6 of the Gujarat University Act, 1949. It reads as follows:

No person shall be excluded from any office of the University or from membership of any of its authorities or from admission to any degree, diploma or other academic distinction or course or study on the sole ground of sex, race, creed, class, religious belief or political or other opinion:

Provided that the University may, subject to the previous sanction of the State Government, maintain, affiliate or recognize any institution exclusively for women or reserve for women or members of classes and communities which are educationally backward places for the purposes of admission as students in any institution maintained by the University.

Proviso to Sub-section (1) of Section 6 enables reservation in the context of Clause (4) of Article 15 in respect only of members of classes and communities which are educationally backward. Firstly, it does not make any provision for socially and educationally backward classes and Scheduled castes and Scheduled tribes to whom reference has been made in Clause (4) of Article 15. It has, therefore, been argued that since Sub-section (1) of Section 6 of the Gujarat University Act, 1949, provides for reservation only for educationally backward classes and communities, a further reservation for Scheduled castes and Scheduled tribes cannot be made. We are not impressed by this argument at all. Section 6 of the Gujarat University Act, 1949, is subject to the provisions of the Constitution and any step taken by the State Government in pursuance of the constitutional provision can supplement the section.

18. That an action under Clause (4) of Article 15 can be taken by issuing an executive order and not necessarily by a legislative enactment has been laid down by the Supreme Court in *M.R. Balaji and Others Vs. State of Mysore*, . In that case, an argument was raised that if a special provision was necessary to be made by the State under Article 15(4), it could be made not by an executive order but it could be made only by legislation. The Supreme Court turned down that argument and observed that under Article 12, the State includes the Government and the Legislature of each of the States and that, therefore, it would be unreasonable to suggest that the "State" must necessarily mean the Legislature and not the Government. Besides, where the constitution has intended that a certain action should be taken by legislation and not by an executive action, it has adopted suitable phraseology in that behalf. Article 16(3) and (5) were quoted as illustrations in point. Both these sub-clauses of Article 16 in terms refer to the making of the law by parliament. Similarly, Article 341(2) and Article 342(2) expressly refer to the making of a law by Parliament as

therein contemplated. Therefore, in the opinion of the Supreme Court, when Article 15(4) contemplates that the State can make the special provision in question, it is clear that the said action can be taken by an executive order. The controversy which has, therefore, been raised before us is concluded, amongst others, by this decision of the Supreme Court. An executive order made by the State Government, such as the impugned resolutions deriving their authority from the constitutional provision, therefore, must hold the field and supplement the legislative enactment.

19. Reference has been made to a few decisions of the Supreme Court in this behalf. It is necessary to make a brief reference to all those cases.

20. In *The State of Madras Vs. Srimathi Champakam Dorairajan*, , the Supreme Court examined the validity of Communal G.O. issued by the Government of Madras in light of Article 29(2) and Article 46 Clause (4) of Article 15 at that time did not exist. This decision furnishes background against which Clause (4) of Article 15 was inserted by the constitution (First Amendment) Act, 1951.

21. Next decision to which reference has been made is in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, . In that case, the question of reservation of seats for admission to Medical Colleges arose. In that case, the reservation was made other wise than under Clause (4) of Article 15 of the constitution. 23 seats were reserved in Maulana Azad Medical College at Delhi for certain categories by nomination, In that case, the Supreme Court held that the Central Government which has been bearing the financial burden of running the College could lay down the criteria for eligibility. From the very nature of things, admissions cannot be thrown open to students from all over the country. Therefore, the Government could not be denied the right to decide from what sources the admissions could be made. It was essentially a question of policy and depended, inter alia, on an over-all assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it was essential to provide facilities for medical education. If the sources were properly classified whether on territorial, geographical or other reasonable basis, it was not for the Courts to interfere with the manner and method of making the classification. This decision has no application to the facts of the instant case.

22. The next decision to which reference has been made is in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, . It was also a case where admissions to Mysore Medical Colleges under Mysore Medical Colleges (Selection for Admission) Rules, 1970, were challenged. One of the challenges which was raised was that the rules provided for something more than the minimum qualification laid down by the Universities in the State for eligibility for admission. It was, therefore, contended that the rules to that extent were invalid. The Supreme Court turned down that argument. The Supreme Court also held that reservation of 48 % of seats for Scheduled castes, Scheduled tribes and socially and educationally backward classes made under Mysore Medical Colleges (Selection for Admission) Rules, 1970, was valid and did not offend any

provision of the Constitution.

23. Reference has also been made to the decision of the Supreme Court in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . There also, the reservation was ordered de hors Article 15(4). The principle laid down in that decision has no application because the observations made in that decision refer to the rights of minorities. It has been argued on behalf of the petitioners, in the context of this decision, that the Supreme Court has held that the right to grant admission belongs to the institution which sets it up. It has, therefore, been argued that since the post-graduate medical centre at Ahmedabad has been set up by Gujarat University, Gujarat University alone can control or regulate admissions to it. This argument is not only misconceived but support is sought for it from the decision from which no support can be had for it. Even if Gujarat University has set up the post-graduate Medical Centre at Ahmedabad, since Gujarat University itself receives grant from the State Government, the State Government has the right to order reservations which, in their turn, find support in Clause (4) of Article 15. In case of minorities, such a situation does not arise.

24. Next argument which has been raised on behalf of the petitioners is that Clause (2) of Article 29 and Article 30 are similar in nature and that since no exception has been made in Clause (4) of Article 15 in regard to Article 30, it should be held that no exception has been made in Clause (4) of Article 15 in regard to Clause (2) of Article 29 of the Constitution. This is an absurd argument because Clause (4) of Article 15 specifically provides that it is an exception to Article 29(2).

25. Reference has also been made to the decision of the Supreme Court in *Lily Kurian Vs. Sr. Lewina and Others*, . It was a case under Kerala University Act and what was under challenge was Ordinance 33 framed under "Conditions of Service." The principles laid down and the observations made therein have no relevance to the present case at all.

26. Last decision to which reference has been made is in *State of Andhra Pradesh and Another Vs. P. Sagar*, . In that case, Government notification reserving seats for medical classes and medical institutions was challenged. The list of backward classes was based on considerations of castes. That list was struck down because when it was prepared it was ex facie based on castes or communities and was substantially similar to the list previously struck down. The caste is different from a class. Whereas a caste is an accident of birth and remains static and unchanged, a class is a varying phenomenon and its composition may go on changing from time to time.

27. These are all the decisions to which reference has been made.

28. In light of the reasons which we have given, the first two contentions raised by the petitioners, therefore, fail and are rejected. Since the first two contentions fail, the next two contentions must necessarily fail with greater force. Those

contentions challenge the reservations for Scheduled castes, Scheduled tribes and socially and educationally back ward classes of people in the posts of Housemanship. As observed above, stipends in respect of those posts are paid out of State treasury Secondly they are attached to the hospital which is run and financed by the State Government itself. Obviously, therefore, under Clause (4) of Article 16, the State Government has authority to make the impugned reservations. The third and the fourth contentions raised on behalf of the petitioners, therefore, fail and are rejected.

29. The remaining contentions which have been raised on behalf of the petitioners challenge the actual reservations made by the State Government by introducing the carry-forward rule and the roster system. Actual reservations made by the State Government under the impugned orders for Scheduled castes, Scheduled tribes and socially and educationally backward classes of people are to the extent of 25% which cannot be said to be unreasonable because in D.N. Chanchala's case (supra), the Supreme Court has upheld the validity of 48% of seats reserved for Scheduled castes, Scheduled tribes and socially and educationally backward classes. So far as the carry-forward rule is concerned, it has been stated that unutilized reservations shall be carried forward for a period of two years and that they shall not exceed 45 %. To carry forward unutilised reservations is by no stretch of imagination unreasonable, more particularly when they cannot exceed 45%. We find support for this view of ours from the decision of the Supreme Court in D.N. Chanchala's case (supra) and also from the decision of this Court in Afa K. Janardan and Ors. v. Union of India and Ors. 19 G.L.R. 879.

30. The last question which requires to be answered is whether the implementation of reservation, as expressed in the roster system, is valid. On behalf of the petitioners, our attention has been invited to Annexure "K" to the petition. Reservations in respect of different subjects in post graduate medical education have been shown. Our attention in particular has been invited that for Paediatrics, the reservation is to the extent of 60%, in Anaesthesiology and Radiology, there is a reservation of 100% each and in Tuberculosis and Skin & V.D. the reservation is to the extent of 66% each. It has been argued on behalf of the petitioners that these reservations exceed 45% and are therefore, invalid. We are not impressed by this argument for the following reasons. Total number of reservations ordered for post-graduate medical education have been artificially divided by the petitioners into 12 groups ostensibly representing 12 subjects. It cannot be done. Since the reservations have been made for the entire post-graduate medical education, we have got to examine the roster which has been prepared by the State in order to give effect to 25% of reservations, not necessarily with reference to any particular branch of post-graduate medical education but with reference to the entire post-graduate medical education.

31. Mr. J.R. Nanavaty who appears on behalf of the State Government has given us a copy of the roster which has been prepared by the State Government. The

first principle which the State Government has applied in the preparation of roster is that different subjects have been arranged alphabetically. It is a neutral criterion which the State Government has applied. If arrangement in alphabetical order of different subjects with which the post-graduate medical education is concerned causes some hardships here or there, it is purely accidental. If some one at some point of time gains a little more by that arrangement than what he should get it is also a pure accident, The arrangement of subjects in alphabetical order made by this State Government cannot be called in question on this ground.

32. We have examined the application of rule of reservation laid down by the State Government by the impugned orders with reference to the roster which has been given to us and we find that the rule has been applied reasonably and logically. If such an application of a rule produces some accidents, they are inevitable. With reference to roster which Mr. Nanavaty has shown to us, no particular vice has been pointed out to us on behalf of the petitioners. We are, therefore, of the opinion that the implementation of the rule of reservation in the roster shown to us is valid and beyond challenge.

33. After we heard this petition and dictated the judgment in open Court on 20th February 1980 but before we signed it, it was brought to our notice that the question relating to the impact of Entry 66 in the Union List read with Article 246(1) was required to be considered. This question was not argued when the petition was heard. However, since we found that the question which was raised was an important question, we set down this petition for further hearing on 26th February 1980. We heard all the parties concerned extensively on this aspect. We now express our opinion and insert these paragraphs (pages 37 to 78-pages 34 to 61 in the judgment which was already dictated on 20th February 1980.

34. Clause (1) of Article 246 provides as follows:

Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List"). Entry 66 in the Union List in Seventh Schedule reads as follows: "66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." The question which has been raised for our consideration is whether reservation of seats for the Scheduled castes, Scheduled tribes and socially and educationally backward classes falls within the scope and ambit of "co-ordination and determination of standards in institutions for higher education." There is no doubt about the fact that post-graduate medical education is, by all standards, higher education. If the impugned resolutions fall within the scope and ambit of "co-ordination and determination of standards in institutions of higher education", it will be a matter either for legislation by Parliament or for the exercise of executive power by the Central Government by virtue of Article 73, Clause (1) which provides as follows: "Subject to the provisions of this Constitution, the executive power of the Union

shall extend-

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-Clause (a) shall not save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

Therefore, if the impugned reservations fall within the scope and ambit of Entry 66, they will be ultra vires the power of Gujarat Government because provision can be made for them either by a parliamentary legislation or by an executive order made by Central Government, It is, therefore, necessary to discover the exact scope and ambit of the expression "co-ordination and determination of standards in institutions for higher education.

35. There are certain decisions on this subject to which our attention has been invited. Before we refer to them, it is necessary to state that all those decisions interpreted Entry 66 in the Union List in light of Entry 11 in the State List before it was deleted by Constitution (Forty Second Amendment) Act, 1976. Entry 11 in the State List before it was deleted read as follows:

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

Entry 25 in List III read as follows:

Vocational and technical training of labour." The State List reserves subjects exclusively for legislation by the States. The Union List reserves subjects for legislation exclusively by Parliament. When, therefore, education was a State subject and "co-ordination and determination of standards in institutions for higher education" was the Central subject, controversy arose as to how to reconcile the two Entries. The situation has thereafter changed. With effect from 3rd January 1977, Entry 11 in the State List has been deleted and with effect from the same date, Entry 25 in the Concurrent List has been amended. The amended Entry 25 reads as follows:

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.

Broadly speaking, by the Constitution (Forty-Second Amendment) Act, 1976, Entry 11 in the State List and Entry 25 in the Concurrent List have been combined together and made the subject-matter of Entry 25 in the Concurrent List. One of the effects of this amendment, in our opinion, is that education and Universities which were exclusively within the jurisdiction of the States, subject indeed to the provisions of Entries 63, 64, 65 and 66 of List I, have now been

made concurrent subjects in respect of which both the Parliament as well as the Legislature of a State are competent to legislate.

36. Now, we turn to the decisions which have bearing upon the interpretation of Entry 66 in the Union List in light of Entry 11 in the State List before it was deleted.

37. The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, is the first decision on the point. The question of interpreting Entry 66 in the Union List and discovering its exact ambit and scope arose in the context of certain provisions of Gujarat University Act (Bombay Act 50 of 1949) under which Gujarat University had laid down that Gujarati or Hindi or both should be the exclusive media of instruction and examination. Statutes 207 and 209 were framed by Senate in pursuance of that power. Two questions which were raised before the Supreme Court were as follows : (i) Whether under the Gujarat University Act, 1949, it was open to The University to prescribe Gujarati or Hindi or both as an exclusive medium or media of instruction and examination in the affiliated Colleges and (ii) whether legislation authorizing the University to impose such media infringed Entry 66 in the Union List. It is the answer to the second contention which is material for the purpose of this case. While answering the second contention, the Supreme Court observed as follows:

38. Gujarat University Act was enacted under Entry 17 of the Government of India Act, 1935, List II in the Seventh Schedule. It read as follows: "Education including Universities other than those specified in paragraph 13 of List I." Gujarat University did not fall in paragraph 13 of List I. The expression "education" is of wide import and includes all matters relating to imparting and controlling education. Therefore, a provincial Legislature could enact legislation prescribing either a federal or a regional language as an exclusive medium for subjects selected by the University. If by Section 4(27) of Gujarat University Act, 1949, power to select federal or regional language as an exclusive medium of instruction was entrusted by the Legislature to the University, the validity of the impugned Statutes 207 and 209 could not be challenged. The Constitution has introduced a vital change in this behalf. The pattern of distribution of legislative power relating to education between the Union Parliament and the State Legislatures discloses a different scheme by virtue of Entry 11 in the State List in the Seventh Schedule to the Constitution. The State Legislature had power to legislate in respect of "education including Universities subject to the provisions of Entries 63, 64, 65 and 66 in List I and Entry 25 in List III. By Entry 66 in the Union List, power is entrusted to Parliament to legislate on "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." It was, therefore, manifest that the extensive power vested in the Provincial Legislature to legislate with respect to higher education under the Government of India Act was, under the Constitution, controlled by certain entries in the Union List including Entry 66 and Entry 25 in the Concurrent List. The use of the expression "subject to" in Entry 11 in the

State List clearly indicated that legislation in respect of excluded matters could not be undertaken by the State Legislatures. Power of the State to legislate in respect of education including the Universities must to the extent to which it was entrusted to the Union Parliament, whether such power was exercised or not, be deemed to be restricted. Therefore, if a subject of legislation was covered by Entries 63 to 66 even if it otherwise fell within the larger field of "education including Universities", power to legislate on that subject must lie with the Parliament. Having thus observed, the Supreme Court turned down the plea raised on behalf of the Gujarat University and the State of Gujarat that the legislation prescribing the medium or media in which instruction should be imparted in institutions of higher education and in other institutions always fall within item 11 in the State List. That argument was turned down because the acceptance of that argument could have led to startling results. If power to legislate in respect of medium of instruction fell only within the competence of the State Legislature and not in the excluded field even in respect of institutions mentioned in Entries 63 to 65 of the Union List, power to legislate on medium of instruction would rest with the State, whereas legislation in other respects for excluded subjects would fall within the competence of the Union Parliament. Such an interpretation would lead to some what startling result that even in respect of" national institutions or Universities of national importance, power to legislate on the medium of Instruction would vest in the Legislature of the States within which they are situate even though the State Legislature would have no other power in respect of those institutions. The Supreme Court, therefore, proceeded to harmoniously construe Entry 11 in the State List and Entry 66 in the Union List. In that context, it was observed as follows:

The two entries undoubtedly overlap: but to the extent of overlapping, the power conferred by item 66 List I must prevail over the power of the State under item 11 of List II. It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour. The power to legislate in respect of primary or secondary education is exclusively vested in the States by item No. 11 of List 11, and power to legislate on medium of instruction in institutions of primary or secondary education must therefore rest with the State Legislatures. Power to legislate in respect of medium of instruction is, however, not distinct legislative head; it resides with the State Legislatures in which the power to legislate on education is vested, unless it is taken away by necessary intendment to the contrary, Under items 63 to 65 the power to legislate in respect of medium of instruction having regard to the width of those items, must be deemed to vest in the Union. Power to legislate in respect of medium of instruction, in so far it has a direct bearing and impact upon the legislative head of coordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by item 66 List I to be vested in the Union.

39. Proceeding further, the Supreme Court observed as follows:

The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the co-ordination of such standards either on an all India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlap is inevitable. It is not possible to lay down any general test which would afford a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is, to ensure maintenance or improvement of standards. The fact that the Union has not legislated or refrained from legislating to the full extent of its power does not invest the State with the power to legislate in respect of a matter assigned, by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 in List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Article 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid.

40. Entry 66 in the Union List is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in item 66 or elsewhere in the Constitution which supports the submission that the expression "co-ordination" must mean in the context in which it is used merely evaluation; co-ordination in its normal connotation means harmonising or bringing into

proper relation in which all the things co-ordinated participate in a common pattern of action. In the opinion of the Supreme Court, therefore, the power to co-ordinate is not a mere power to evaluate but it is a power to harmonise or secure relationship for concerted action. Power conferred by Entry 66 is not conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power.

41. There is nothing in Entry 66 in the Union List which indicates that the power to legislate on co-ordination of standards in institutions of higher education does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. That power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. It implies therein a power to coordinate, and of necessity, the power to prevent what would make coordination impossible or difficult. That power is absolute and unconditional and, in absence of any controlling reasons, it must be given full effect according to its plain and expressed intention.

42. 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 necessarily fall within Entry 66 of List I and would be deemed to be excluded to that extent from the amplitude of the power conferred by Entry 11 in the State List.

43. This decision is an authority for the proposition that if a particular aspect of higher education fell within the scope and ambit of Entry 66 of the Union List, the State could not exercise any power in relation here to. Secondly, it is also an authority for the proposition that the power conferred upon the Union Parliament under Entry 66 in the Union List meant that what the State Legislatures did in the field of education which was then within their exclusive field did not impair the standards of education or render the co-ordination of such standards either on an All India or other basis impossible or even difficult. Whenever there is an overlapping between an Entry in the State List and an Entry in the Union List, they must be harmoniously construed. In other words, the State action in the field of higher education must not prejudicially affect the "coordination" and "determination" of standards which is within the exclusive jurisdiction of Union Parliament.

44. The next decision to which our attention has been invited is in *R. Chitralakha and Another Vs. State of Mysore and Others*, . It was a case in which the power of the State Government to prescribe machinery and criteria for admission to Medical and Engineering Colleges was challenged on the ground that it was ultra vires Entry 66 in the Union List. It was contended before the Supreme Court in that case that Mysore Government had no power to appoint a selection committee for admitting students to colleges on the basis of higher or different

qualifications then those prescribed by the University and that therefore, the orders made by the Government in respect of admissions were illegal. The first argument which was raised was that "co-ordination and determination of standards" in a university is a Union subject and that, therefore, the State Legislature had no constitutional competency to make a law for maintaining the standards of university education. So far as the State Government's executive power was concerned, it extended to matters with respect to which the Legislature of the State had power to make laws. Therefore, it was argued that the Government of Mysore could not make an order or issue directions for maintaining the standards in the University. It was also argued in that connection that prescribing higher marks for admission to a college was for the purpose of maintaining the standards of University education and that therefore the State Government was not empowered to do it. Reliance was placed in that case upon the decision of the Supreme Court in the case of *Gujarat University v. Shri Krishna* (supra). After having referred to the decision of the Supreme Court in the case of *Gujarat University* (supra), the Supreme Court observed as follows: A State law which makes co-ordination and determination of standards in institutions for higher education impossible or difficult in so far as the exercise of legislative power by Parliament in that behalf is concerned, the State law will be bad. However, such a question can not be decided on speculative or hypothetical reasoning. If the impact of the State law providing for such standards on Entry 66 in the Union List is so heavy and devastating as to wipe out or appreciably abridge the Central field, it will be struck down. It can not be said that if a State Legislature makes a law prescribing a higher percentage of marks for extracurricular activities in the matter of admission to colleges, it will be directly encroaching on the field covered by Entry 66 in the Union List. The Supreme Court, therefore, observed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action did not contravene any other law. We may state that the last-mentioned observation is a very important observation for the purpose of this case. The next important observation which has been made by the Supreme Court in that decision is that a State Government which runs medical and engineering colleges cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. Every private body which runs a college cannot be denied that powers.

45. The combined reading of these two decisions brings to the fore two principles. Firstly, a State Government is within its rights to prescribe qualifications for admission to colleges so long as it does not contravene any law. Secondly, like the private owner of a college, the Government which runs its own colleges can not be denied the power to admit such qualified students as pass the reasonable tests laid down by it. We may state in this context that in the last-mentioned case, there was a reservation made by the Government of Mysore of 30% of seats for backward classes and 18% of seats for Scheduled castes and Scheduled tribes in professional and technical colleges and institutions.

46. The next decision to which our attention has been invited is in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, . The question of testing the validity of the admission rules on the anvil of Entry 66 in the Union List did not arise in that case. It, has been observed in that decision that the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided, of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. District-wise selection or unit-wise selection was, in the opinion of the Supreme Court not arbitrary and could not be challenged under Article 14. Candidates passing the qualifying examination held by a University form a class by themselves as distinguished from those passing such examination from the other universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. Since it was the Government which bore the financial burden of running the Government colleges, it was entitled to lay down the criteria for eligibility. Similarly, the Government could not be denied the right to decide the sources from which admissions should be made. On account" of paucity of institutions imparting training in technical studies and seeking admissions therein, there is obviously need for classification to enable fair" and equitable distribution of available seats.

47. The Last decision to which our attention has been invited is in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, . It was a case in which a written entrance test prescribed by the Government of Andhra Pradesh for admission to medical colleges was challenged on the ground that it was ultra vires Entry 66 in the Union List. It was also challenged on the ground that it was ultra vires certain provisions of Andhra University Act (2 of 1926). In that connection, it was observed by the Supreme Court that the Government which ran the colleges had the right to make a selection out of a large number of candidates and for that purpose to prescribe a test of their own was not against any law. Merely because the Government tried to supplement the eligibility rule by a written test in subjects with which the candidates were already familiar, their action could not be impeached nor was there anything unfair in the test prescribed. 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 was ipso facto to be entitled to admission to such courses of study. If a number of candidates far exceeded the number of seats available, the University could 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 thought fit to prescribe another test for admission, no objection could be taken thereto. What the University could do in the matter of admissions to the degree courses could certainly be done by the Government

in the matter of admissions to the M.B.B.S. course. Such a test did not in anyway militate against the power of Parliament under Entry 66 in the Union List. With reference to this Entry, the Supreme Court has observed that it 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 coordinated. It has no relation to the test prescribed by a Government or by a University for selection 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.

48. A close perusal of the last-mentioned decision leaves an impression on our minds that Entry 66 which specifies the legislative head "co-ordination and determination of standards in institutions for higher education or research" has nothing to do with admission to institutions of higher education or research. Educational standards in such institutions are to be maintained only after the students have been admitted to such institutions. Whereas admission to an institution of higher education precedes the imparting of higher education, question of co-ordination and determination of standards follows the admission of a student to higher education. In our opinion, therefore, the expression "co-ordination and determination of standards" used in Entry 66 in the Union List means fixation and maintenance of standards of education and learning in institutions of higher education and removal of disparities where they exist. Entry 66 in the Union List has application to what happens in an institution of higher education after the students have been admitted. It has nothing to do before they are admitted to such an institution, nor has it got anything to do with their admissions to such institutions. To illustrate, it will be within the exclusive jurisdiction of the Union Parliament to determine the standards of passing a particular examination in the field of higher education. Having passed that examination, a student becomes eligible for admission to higher courses of study. The standard of passing the M.B.B.S. Examination, as for example, is the same for all students including those who belong to Scheduled castes, Scheduled tribes and socially and educationally backward classes. Similarly, the standard of passing the post-graduate examination-say M.D. Examination-is the same in a giver University for all students including those students belonging to Scheduled castes, Scheduled tribes and socially and educationally backward classes. If a student who had failed at the qualifying examination was sought to be made eligible for admission to higher courses of study by making an exception under Article 15(4), the question of co-ordinating and determining the standards within the meaning of Entry 66 of the Union List would arise. The question of co-ordinating and determining the standards amongst those who have passed the qualifying examination does not arise in the matter of their admission to higher studies. If there are enough seats to satisfy the needs of all eligible students, all would be admitted. Admission to some is refused because in relation to the demand for admission to post-graduate medical courses, there is a paucity of seats. Taking into account the hiatus which exists between the seats which are available to students for admission to institutions of higher education and the

demand by eligible students for admission, what is sought to be done is to reserve a certain percentage of seats for Scheduled castes, Scheduled tribes and socially and educationally backward classes, indeed under Article 15(4) of the Constitution. Such a reservation does not impinge upon the standard of eligibility nor does it impair the standard of learning and education and passing the post-graduate examination after the students have been admitted to the post-graduate institutions. In our opinion, therefore, the expression "co-ordination and determination of standards in institutions for higher education or research" has nothing to do with admission of students to institutions of higher education or research which necessarily falls within the scope and ambit of Entry 25 in the Concurrent List. If from among the eligible students some students with comparatively lower percentage of marks are admitted to institutions of higher learning on account of reservations made for them under Article 15(4), it does not, in our opinion, contravene Entry 66 in the Union List because it is not a matter which falls within its ambit and scope.

49. In the instant case, the State Government by passing the two impugned resolutions has acted under Article 15(4). Its action does not violate Entry 66 in the Union List because Entry 66 in the Union List has no application to reservation of seats for Scheduled castes, Scheduled tribes and socially and educationally backward classes, indeed in so far as eligible students belonging to those sections of our society are concerned.

50. On behalf of the petitioners, the first argument which has been raised is that the decisions of the Supreme Court, referred to above, in the context of Entry 66 in the Union List read with Entry 11 in the State List (before it was deleted) do not have application to the present case which has got to be decided under Entry 66 in the Union List read with Entry 25 in the Concurrent List. It has been argued that education which was within the exclusive field reserved for the States has now been placed in the Concurrent List and that, therefore, both the States as well as the Union Parliament have legislative power in respect thereof. It is true that Entry 11 in the State List has been omitted and has been, in an amplified form, transferred to Entry 25 in the Concurrent List. The result is that Entry 25 in the Concurrent List as it originally was and Entry 11 in the State List in its amplified form have now been combined in the amended Entry 25 in the Concurrent List. What is the difference which this amendment, made by Constitution (Forty-Second Amendment) Act, 1976, makes? "Co-ordination and determination of standards in institutions for higher education or research" still remains within the exclusive Jurisdiction of the Union Parliament. The scope and ambit of Entry 66 in the Union List as determined by the Supreme Court in the decisions to which we have referred does not necessarily lose its value merely because Entry 11 in the State List has been transferred to Concurrent List. It is, however true that Entry 66 received the interpretation which has been placed upon it by the Supreme Court in light of the fact that education was a subject reserved exclusively for the States under the State List. With the transfer of "education" from the State List to the Concurrent List, the only difference which,

in our opinion, has been made is that whereas prior to the deletion of Entry 11 in the State List and amendment to Entry 25 in the Concurrent List, State alone could deal with matters falling within the scope and ambit of "education", indeed subject, inter alia to Entry 66 in the Union List; now, both the States as well as the Union can legislate upon that subject. We do not have any parliamentary legislation on this subject under which the two impugned resolutions passed by the State Government can be challenged except Medical Council Act, 1956, which is a parliamentary legislation and to which we are referring shortly.

51. In relation to an Entry in the Concurrent List (Entry 25 in the present case), the extent of the executive power of State has been laid down by Article 162 in the following terms:

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Article 73(1) specifies the extent of executive power of the Union. It provides as follows:

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-Clause (a) shall not. Save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

The expression "...the Legislature of the State has also power to make laws" used in proviso to Clause (1) of Article 73 necessarily refers to subjects specified in the Concurrent List. Therefore, unless the Constitution provides otherwise or unless any law made by Parliament has authorized the Central Government to do so, the executive power of the Central Government does not extend to matters in respect of subjects specified in the Concurrent List.

52. So far as the present case is concerned, the combined effect of reading Entry 25 in the Concurrent List with Article 246(2), proviso to Article 162 and proviso to Article 73(I) is that in matters relating to education, in absence of any parliamentary legislation on the subject, the State Government has the

jurisdiction to act and to make executive orders. In the instant case, we do not have parliamentary legislation barring Medical Council Act, 1956, to which we are shortly referring. Therefore, no impact is produced upon the two impugned resolutions of the State Government by the deletion of Entry 11 in the State List and amendment of Entry 25 in the Concurrent List. Therefore, we are unable to uphold the argument raised on behalf of the petitioners that Entry 25 in the Concurrent List in its present form disables the State Government from exercising its executive power in relation to matters falling under Entry 25 in the Concurrent List as amended. For the reasons stated above, we are also unable to uphold the argument raised on behalf of the petitioners that the two impugned resolutions passed by the State Government trench up on Entry 66 in the Union List in so far as it empowers Union Parliament to co-ordinate and determine standards in institutions for higher education or research because, in our opinion, reservation of seats for Scheduled castes, Scheduled tribes and socially and educationally backward classes for admission to institutions of higher education does not fall within the scope and ambit of Entry 66 in the Union List.

53. The last argument which requires to be dealt with relates to certain provisions of Medical Council Act, 1956. It has been argued that Medical Council Act, 1956, which is a parliamentary legislation, holds the field and that therefore, any action in the matter of admissions to institutions of higher education taken by the State Government even under Entry 25 in the Concurrent List is ousted. Before we refer to the arguments based on certain provisions of Medical Council Act, 1956, it is necessary to note that Medical Council Act, 1956, was enacted when Entry 66 in the Union List and Entry 11 in the State List held the field. It is also necessary to note that provisions of Medical Council Act, 1956, derive their validity partly from Entry 26 in the Concurrent List and Entry 66 in the Union List. Entry 26 in the Concurrent List reads as follows: "Legal, medical and other professions." A casual glance at the provisions of Medical Council Act, 1956, makes it clear that it, inter alia, deals with matters relating to medical profession. It also cannot be gainsaid that it deals with matters relating to post-graduate medical education. Section 20 is one of such sections. Sub-section (1) of Section 20 which is material for the present purpose provides as follows: "The Council may prescribe standards of post-graduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Post-graduate Medical Education Committee (hereinafter referred to as the Post-graduate Committee.)." The remaining sub-sections deal with matters incidental to the constitution of Post-graduate Committee. This sub-section confers upon the Medical Council substantive power in respect of two matters: (i) prescription of standards of postgraduate medical education, and (ii) securing uniform standards for post-graduate medical education throughout India. Section 33 confers upon the Medical Council power to make regulations. It specifies matters which are incorporated in Clauses (a) to (n). We shall be

shortly referring to Clauses (j) and (k) of Section 33. However, Section 33 opens with the following words: "The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for

Therefore, apart from specific matters specified in Clauses (a) to (n) of Section 33, the Council has the power to make Regulations, with previous sanction of the Central Government, generally to carry out the purposes of the said Act. It cannot be gainsaid, therefore, that, under the substantive power conferred upon the Council by Section 20(1), Regulations can be made by it in respect of them even though Clauses (a) to (n) do not specifically provide for making such Regulations.

54. Let us, therefore, examine the concept of "standards of post-graduate medical education and the concept of securing uniform standards for post-graduate medical education throughout India" incorporated in Section 20.

55. The question which has been raised for our consideration is whether power to prescribe standards of post-graduate medical education and power to secure uniform standards for post-graduate medical education through out India include or embrace within their sweep the power to provide for standards of admission apart from the eligibility of a candidate to be admitted to a post-graduate course. The eligibility of candidate for admission to post-graduate medical course is directly linked with his having passed the qualifying examination. Those for whom seats are reserved by the two impugned resolutions of the Government of Gujarat can be denied admission if they have not passed the qualifying examination for being eligible to be admitted to post-graduate medical course. The question of reservation of seats arises only amongst those who have passed the qualifying examination and have otherwise become eligible for being admitted to post-graduate medical course. If, therefore, amongst those who have been qualified or who have become eligible for admission to post-graduate medical course certain seats are reserved for a certain section of candidates, can it be said that such a provision militates against maintenance of standards of graduate medical educations?

56. In our opinion standards of post-graduate medical education have a reference to post-graduate education which is imparted after a candidate is admitted. It has nothing to do with selection for admission. In other words, imparting of post-graduate education or, for that matter, imparting of education, commences where the admissions end. Therefore admission of a student to an educational course is something which precedes the imparting of education and maintenance of standards in imparting education and declaring successful later those who attended such a course. Bearing in mind the principles laid down by the Supreme Court in the decisions to which we have referred, we think, this is the most feasible construction which can be placed upon the expressions "standards of post graduate medical education" and securing uniform standards

for post graduate medical education." Therefore, standards of post-graduate medical education inter alia have a reference to syllabi, curricula, medium of instruction, method of imparting education, availability of practical training and standard for passing the post-graduate degree examination. It is in these respects that substantive power has been conferred by Section 20 upon the Medical Council.

57. From another point of view also, the view which we have expressed appears to be justified. In 1956, when the Medical Council Act, 1956, was enacted by Parliament, Entry 11 in the State List was very much there. Parliament could not have at that time trenched upon the field which was exclusively earmarked for the State legislatures and which did not fall within the scope and ambit of Entry 66 in the Union List. Therefore, it is quite apposite to think that when Parliament enacted Sec. 20 of the Medical Council Act, 1956, it did so with the object of effectuating the provisions of Entry 66 in the Union List and did not think of doing any thing more which would be ultra vires its legislative power. Entry 66 has been interpreted by the Supreme Court in several decisions to which we have referred. Therefore, reading the language of Section 20 of Medical Council Act, 1956, in light of Entry 66 in the Union List as interpreted by the Supreme Court in several decisions to which we have referred it can be said without any fear of contradiction that the expression "standards of post-graduate medical education" and the expression "securing uniform standards for post-graduate medical education" mean nothing more than what Entry 66 of the Union List connotes and, therefore, mean ; nothing more than imparting of post-graduate medical education after a student is admitted and prescribing the passing standards for the postgraduate medical degree. We are, therefore, of the opinion that these two expressions used in Sub-section (1) of Section 20 of the Medical Council Act, 1956 do not embrace within their sweep selection of students for admission from amongst those who are eligible to be admitted to post-graduate medical course.

58. Therefore, even in pursuance of the general power conferred upon the Council by Section 33, the Council could not have made the Regulation which has been reproduced in the earlier parts of this judgment laying down the criteria for admission to post-graduate medical course. In other words, it was beyond the jurisdiction of the Medical Council to prescribe the mode or method of selection of students to post-graduate medical course. The Executive Committee of the Medical Council adumbrated the Regulation in its resolution in its full width.

59. Let us now turn to Clauses (j) and (k) of Section 33 which are the only clauses which may have, if any, reference to the question with which we are dealing. Clause (j) specifies the following subject:

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.

Clause (k) specifies the following subjects:

the standards of staff, equipment, accommodation, training and other facilities for medical education.

These two clauses do not empower the medical Council to lay down the standards for admission of eligible graduates to post-graduate medical course. They, in their turn, expressly deal with matters which follow in the wake of admission of students. Therefore, reference in these two clauses has been made to courses of study, period of study, courses of practical training, the subject of examination and the standards of proficiency therein to be obtained. The standard of proficiency has reference to the eligibility for conferment of the post-graduate medical degree after the candidate has been admitted to postgraduate medical course and has received instruction for the purpose of a postgraduate medical degree. Similarly, standards of equipment, standards of accommodation, standards of training and other facilities for medical education have also reference to what is required to be done in the wake of and after the admission of an eligible graduate to post graduate medical course.

60. It is clear, therefore, that neither Section 20 of Medical Council Act nor any other provision in that Act empowers the Medical Council to lay down the method of selection from amongst the eligible medical graduates for admission to post-graduate medical course. As stated earlier, in 1956, when Entry 11 in the State List held the field, it could not have been done. Indeed with the transfer of Entry 11 in the State List to Entry 25 f in the Concurrent List, it can now be done by Parliament. But there is a big gap between what the Parliament can do and what the Parliament has done. We are interpreting the statute in order to find out what the Parliament has done and not to find out what the Parliament can do, Parliament can do in a particular field one thousand and one things. However, Parliament may not do many of those things. It all depends upon conditions and circumstances obtaining in the country and needs of the society. Therefore, it is difficult to take the view that Section 20 of the Medical Council Act, 1956, when it is read with Entry 25 in the Concurrent List, as amended, confers upon the Medical Council power to prescribe standards of selection from amongst medical graduates to post-graduate medical courses. Therefore, the Regulation which the Medical Council has made and which provides that all students who apply for "P.-G. training should be selected strictly on merit judged on the basis of academic record in under-graduate course," is ultra vires its power under Medical Council Act, 1956. So also was beyond its power the resolution of the Executive Committee which amplified that Regulation. In our opinion, therefore, both the Regulation as well as the resolution being ultra vires the power of the Medical Council under Medical Council Act, 1956, cannot be enforced and must be declared to be void. We order accordingly.

61. The new contention which was permitted to be urged at the rehearing, therefore, fails and is rejected. These are all the contentions which have been raised on behalf of the petitioners. Nothing more has been argued. Since all the

contentions fail, the petition fails and is dismissed. Rule is discharged with no order as to costs.

62. Mr. B.P. Tanna who appears on behalf of the petitioners applies for a certificate of fitness under Article 132 and Article 133(1) of the Constitution to appeal against this decision to the Supreme Court. We have interpreted in this decision Article 12, Article 15(4), Article 29(2), Article 73, Article 162, Article 246, Entry 66 in Union List and Entry 25 in Concurrent List in light of the deletion of Entry 11 in the State List. Therefore, the questions which have been raised are all substantial questions of law of general public importance and the interpretation of the Constitution is also involved. In our opinion, therefore, the petitioners are entitled to the certificate as prayed for. Accordingly, we grant them the certificate under Article 132 and Article 133(1) of the Constitution and state that this is a fit case for appeal to the Supreme Court.

63. Mr. B.P. Tanna who appears on behalf of the petitioners makes an oral application for continuing the interim order for some more time in order to enable the petitioners to obtain an appropriate interim order from the Supreme Court. After hearing Mr. K.G. Vakharia who appears on behalf of respondents Nos. 6 to 10, Mr. S.N. Shelat who appears on behalf of the University-Respondent No. 4 and Mr. J.R. Nanavaty who appears on behalf of respondents Nos. 1 to 3, it is ordered as follows:

64. The registration for post-graduate medical education already accorded to Dr. B.G. Pandya, Dr. V.R. Kathairiya, Kum. B.A. Bhavsar Kum. S.M. Patel and Dr. R.R. Patel who are some of the petitioners, shall not be cancelled until 3rd March 1980, after which it shall abide by any interim order which the Supreme Court may make in this behalf. It is further ordered that if respondents Nos. 6 to 10 apply for registration for post-graduate medical course (whose registration has been held up on account of the registration granted to the above named petitioners), if they are otherwise eligible, they shall be registered for post graduate medical education. This direction shall also remain in operation till 3rd March 1980 after which it shall abide by any interim order which the Supreme Court may make in this behalf. We issue no interim direction in regard to the Housemanship given to the abovenamed petitioners.