

(1997) 05 AHC CK 0171
In the Allahabad High Court
Case No : C.M.W.P. No. 24962 of 1996

Dr. Deepak Kumar Singh and Another	APPELLANT
Vs	
Vice-Chancellor, Banaras Hindu University and Others	RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

All India Institute of Medical Sciences Rules, 1958 — Rule 4A, 5
Constitution of India, 1950 — Article 14, 15

Citation : (1997) AWC 281 Supp

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Faujdar Rai and Chandra Kumar Rai, for the Appellant; V.K. Upadhyaya, A.P. Sahi and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Sudhir Narain, J.—The core question in this petition is whether the reservation of 75 per cent seats of post-graduate course to the students of M.B.B.S. of Institute of Medical Sciences, Banaras Hindu University, Varanasi, (in short "the institute") leaving 25 per cent to the general candidates is valid in law and on facts.

2. The concept of reservation implies classification of two distinct classes. The classification has been held to be valid provided it satisfies two tests, namely:

(i) that there is an intelligible differentia which distinguishes persons or things that are grouped together from those left out of the group; and

(ii) that there is rational nexus to the object sought to be achieved by the impugned rules. The one group is of those candidates who had passed M.B.B.S. course from their own University and the other group is of those candidates who had passed M.B.B.S. examination from other Universities. The question is what object is sought to be achieved by making such classification and giving preference or making reservation to certain seats to the students who had passed the examination of M.B.B.S. from their own University.

3. In *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , wherein the rule regarding giving of preference to the students of their own University was challenged. The preference given to such students was upheld for reasons as mentioned in the judgment:

Since the Universities are set up for satisfying the educational needs of different areas where they are set up and Medical Colleges are established in those areas, it can safely be presumed that they are also so set up to satisfy the needs of medical training to those attached to those Universities. In our view, there is nothing undesirable in ensuring that those attached to such Universities have their ambitions to have training in specialised subjects like medicine specified through colleges affiliated to their own Universities.

Candidates passing through the qualifying examination held by University from a class by themselves as distinguished from those passing through such examination from the other two 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 Universities to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14.

4. The reasonableness of classification again came up for consideration in *Dr. Jagdish Saran and Others Vs. Union of India (UOI)*, , wherein 70 per cent of the seats at the post-graduate level were made to Delhi graduates and remaining 30 per cent were open to all including graduates of Delhi. Justice Krishna Aiyer held that primary imperative of Articles 14 and 15 is equal opportunity for all across the nation to attain excellence but preference to the students who have passed M.B.B.S. examination from their own University was justified.

The Courts have found certain reasons for making this classification and holding that the reservation or preference be given to the students who have passed examination from their own University. The classification on the ground that if the State maintains a Medical College or a Medical College is situated within a certain region, the Medical College situate in that State or region can give preference to the persons who reside therein as they may settle in the State and will cater the need of that region. It was observed as under:

Again, if the State finds that only students from the backward regions, when given medical graduation, will care to serve in that area, drawn towards it by a sense of belonging, and those from outside will, on graduation, leave for the cities or their own regions, it may evolve a policy of preference or reservation for students of that University. That strategy ensures the probability of their serving the backward people for whose benefit the medical courses were opened. Such measures which make for equality of opportunity for medical education and medical service for backward human sectors may be constitutionalised even by Articles 14 and 15.

Justice R. S. Pathak (as he then was) gave a different reason for upholding the reservations of certain seats to the students of the University from where they passed M.B.B.S. examination. It was on the basis/principle of continuity of the study, convenience, stability and familiarity with the educational environment in which he had gone through. The reason given was as under:

In my opinion, there is sufficient validity in that consideration. It is not beyond reason that a student who enters a Medical College for his graduate studies and pursues them for the requisite period of years should prefer on graduation to continue in the same institution for his postgraduate studies, there is the strong argument of convenience, of stability and familiarity with an educational environment which in different parts of the country is subject to varying economic and psychological pressures. But much more than convenience is involved. There are all the advantages of a continuing frame of educational experience in the same educational institution. It must be remembered that it is not an entirely different course of studies which is contemplated; it is a specialised and deeper experience in what has gone before. The student has become familiar with the teaching techniques and standards of scholarship and has adjusted his responses and reactions accordingly. The continuity of studies ensures a higher degree of competence in the assimilation of knowledge and experience. Not infrequently some of the same staff of Professors and Readers may lecture to the post-graduate classes also. Over the under-graduate years the teacher has come to understand the particular needs of the students, where he excels and where he needs an especial encouragement in the removal of deficiencies. In my judgment, there is good reason in an educational institution extending a certain degree of preference to its graduates for admission to its post-graduate classes. The preference is based on a reasonable classification and bear a just relationship to the object of the education provided in the post-graduate classes. The concept of equality codified in our constitutional system is not violated.

5. In *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , Justice P. N. Bhagwati (as he then was) justified concept of giving preference to the students who had passed M.B.B.S. examination from their own University. It was tested on the ground of equality which means if one is unequal due to certain reasons, try to make him equal with others by giving him such preference as may be legally Justified. The following three reasons were indicated justifying so called "institutional preference":

(i) Students from backward States or regions will hardly be able to compete with those from advanced States or regions because though possessing an intelligent mind they would have had no adequate opportunities for development so as to be in a position to compete with others.

(ii) The Universities are set up for satisfying the regional needs of different areas where they are set up and Medical Colleges are established in those areas, it can be presumed that they were set up to satisfy the needs of medical training of

those attached to those Universities.

(iii) Different Universities have different standards in the examination held by them. A preference to one attached to one University in its own institution for post-graduate or technical training is not wrong;

and concluded that certain percentage of reservation on the basis of residents requirement which may legitimately be made in order to equalise opportunities for medical education on broader basis and to bring out real equality should be given to the students who passed examination from their own University. The institutional preference was upheld. In *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, , the Chief Justice Bhagwati, again reiterated that the institutional preference be given because of considerable amount of hardship and inconvenience which would be caused to the students residing in the region of a particular University as they will be compelled to move to the region of another University for medical education which they might have to do if selection for admission to the Medical Colleges :m the entire State were to be based on merit without any reservation or the preference regionwise.

6. All these cases dealing with question of institutional preference were considered in *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, , wherein constitutional validity of Rules 4A and 5 of the rules framed by the Bombay Municipal Corporation for admission to post-graduate degree and diploma courses in its Medical Colleges, providing for collegewise institutional preference for admission to M.D. course were considered. The rule provided that while selecting from amongst the eligible candidates, for admission to post-graduate courses, preference would be given to the students of that college i.e.. who passed their final M.B.B.S. examination from their own college. This rule was held as unconstitutional. The earlier cases decided by the Hon''ble Supreme Court were distinguished on the ground that those cases were not of collegewise institutional preference. In such classification of collegewise institutional preference, merit is sacrificed when the University is the same for all the colleges, the syllabus, the standard of examination and even the examiners are the same. Any preference given by the college to its own students amounts to sacrificing merit without any Justification.

7. This collegewise preference was again held unconstitutional in *State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others*, . The Ordinance provided for addition of five per cent of marks to the students applying for admission to the post-graduate course in any of the five Medical Colleges, all affiliated to the Rajasthan University provided the student had passed his final M.B.B.S. examination from the college to which admission in post-graduate course was sought. It was found that it is inequality to give preference when the course and the syllabus in each college governed by the same University are the same.

8. In *P.K. Goel and others Vs. U.P. Medical Council and others*, , the same

principle was applied that no collegewise preference can be given. In this case it was contended that the State of U.P. is running seven Medical Colleges. Rule G (ii) of the guidelines of Lucknow University for entrance examination provided separate merit list for each college. It was struck down on the ground that all the seven Medical Colleges are maintained by the State of U.P. The entrance examination is one and there was no justification to prepare merit list college-wise.

9. In *Sanjai Ahlawat v. Maharshi Dayanand University, Rohtak and Ors.* (1992) 2 SCC 762, an addition of ten per cent marks to the local students/candidates for entrance examination to M.B.B.S. and post-graduate courses was upheld on the ground that there was only one existing Medical College in the State of Haryana at Rohtak and it was necessary to make service of the doctors available in the State in view of dearth of medical facilities there. It was expected that the residents of Haryana, after obtaining Medical Degrees, will remain in Haryana and their services will be available to the people of the State. The addition of five per cent marks was upheld in *Mohanbir Singh Chawla v. Punjab University, Chandigarh and Ors.* 1997 (1) SC332, holding that the Universitywise preference is permissible provided it is relevant and reasonable.

10. Much emphasis has been laid by learned Counsel for the Petitioner on a Division Bench decision of Delhi High Court in *Dr. Chanemouga Soundaram and Ors. v. All India Institute of Medical Sciences and Ors.* AIR 1996 Del 291, wherein 33 per cent reservation in All India Institute of Medical Sciences (in short A.I.M.S.) for admission to the post-graduate course was held discriminatory and violative of Article 14 of the Constitution of India. The Court examining the scheme of provisions of All India Institute of Medical Sciences Act, 1956 and the nature and object of the A.I.M.S. established under this Act. came to the conclusion that the institutional preference cannot be granted to the students of the A.I.M.S. The Court, after considering the various decisions, held that the institutional preference is to be given only when a regional consideration is relevant in respect of an institution or University but where the A.I.M.S. is one of the national importance, the merit alone should be taken into consideration. The reasons given were summarised as follows:

It will be noticed that the All India Character of A.I.M.S. as per the Act, together with the fact that in M.B.B.S., the 40-45 students who join A.I.M.S. after a common examination, are themselves drawn from all over India, shows that the 33% reservation for A.I.M.S. students at post-graduate level cannot be justified on a regional requirement basis. Nor is it a case of postgraduate students from A.I.M.S. being expected to settle down in Delhi. It might be that A.I.M.S., treated as an institution which confers degrees, could be treated as on par with a University but even so because of the object and purposes for which it is established and particularly that it is to be a high model institution for education, teaching and research for the entire country, there can be no reservation of seats on a University based preference, catering to regional needs. We hold on Point 1

accordingly.

The Court in A.I.M.S. case, found that the desirability of the institutional quota on the basis of institutional continuity in post-graduate courses has been deviated in the later decision of the Supreme Court, namely, *State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others*, ; *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, and *P.K. Goel and others Vs. U.P. Medical Council and others*, . In these cases, the Supreme Court was considering the collegewise preference of the same institution or institutions maintained by the same Authority. In *Thukral Anjali's* case (supra), Justice Dutta, in paragraph 5 of the judgment made clear that *Pradeep Jain's* case was distinguishable as it did not relate to collegewise institutional preference.

11. Learned Counsel for the Petitioner urged that basically there is no difference when the classification is on the basis of collegewise preference or it may be called regionwise institutions. The syllabus in all the Medical Colleges are almost the same. They are governed by the Directives given by the Medical Council of India in the matter of education and if that preference is not to be accepted on the ground of convenience, stability and continuity, there is no justification that the preference on these grounds should be given to the other Medical Colleges which are situate in any State. The argument of learned Counsel for the Petitioner seems to have force but this aspect has to be examined after examining the education which is provided in each of the Medical Colleges as well as the basis of admissions made in those colleges. As the Supreme Court has taken the view that the institutional preference should be given to the students of the same Medical College where the student had passed M.B.B.S. examination and as long as the concept of the institutional preference is not completely rejected, the students who had passed M.B.B.S., examination from their own University or College are to be given some preference.

12. In *Mohanbir Singh Chawla v. Punjab University, Chandigarh* 1997 SC 332, the Supreme Court laid down that some institutional preference should be given to the students who had passed M.B.B.S. examination from their own University and following principles were laid down:

6. From the decided cases, following principles emerge:

(1) College-wise preference is not permissible in any event.

(2) Universitywise preference is permissible provided it is relevant and reasonable. Seventy to eighty per cent reservation has been sustained, even where students from different Universities appear at a common entrance test. The trend, however, is towards reducing the reservations and providing greater weight to merit. The practice all over the country today, as a result of the decisions of this Court, is to make fifteen per cent of the seats in M.B.B.S. course and twenty five per cent of the seats in postgraduate medical courses in all the Government Medical Colleges in the country (except Andhra Pradesh and Jammu

and Kashmir) available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an All India test conducted by the designated authority.

(3) The rule of preference on the basis of domicile/requirement of residence is not bad provided it is within reasonable limits, i.e., it does not result in reserving more than eighty five per cent seats in graduate courses and more than seventy five per cent seats in post-graduate courses. But district wise reservations are an anathema.

(4) Where the students from different Universities appear at a common entrance test/examination (on the basis of which admissions are made) the rule of University wise preference too must shed some of its relevance. The explanation of difference in evaluation, standards of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, the right of the State Governments (which have established and maintained these institutions) to regulate the process of admission and their desire to provide for their own students should also be accorded due difference.

(5) The fair and proper rule is : the higher you go, in any discipline, lesser should be the reservations of whatever kind. It is for this reason that it was said in Dr. Pradeep Jain that there should be no reservations in the matter of admission to super-specialities, though in the recent decision in Rajib Gopinath Bhatt, a different view appears to have been taken while affirming the principle of merit, at the same time. In the larger interest of the nation, it is dangerous to depreciate merit and excellence in any field.

13. The next question is as to what extent the institutional preference should be given to a candidate. There are two modes—one by awarding additional marks to each of the students who had passed the examination from the University and when the competition takes place, they will be put to in an advantageous position than the other candidates who had not passed the examination from the same University. The other mode is to make reservation of certain seats for the students of the same University. The Banaras Hindu University, Varanasi (in short B.H.U.) has accepted the second mode of giving preference to its own candidates. This mode of giving preference has not been challenged in this petition. The only contention is that there should be no reservation for giving any institutional preference to the students of the Institute.

14. It has now to be examined as to what extent the reservation shall be reasonable on the principle that a student of the University should be given institutional preference. This question has always been a vexed question. In Jagdish Saran's case (supra), Justice Krishna Aiyer cautioned that the reservation must be kept in check by the demands of competence. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy like disadvantage. The Delhi University had reserved 70 per cent of the seats for its own students and 30 per cent for the students of other

Universities. The argument raised was that the reservation was excessive. Justice R. S. Pathak made the following observation:

We have travelled through the record, I agree with my learned brother that the material is so scanty, fragmentary and unsatisfactory that we are prevented from expressing any definite decision on the point. Although we gave sufficient opportunity to the parties, the requisite material has not been forthcoming. Whether or not a reservation of 70 per cent was called for has not been established conclusively.

The University was directed to appoint a time-bound Committee to investigate in depth the justification for and the quantum of reservation at the postgraduate level from the angle of equality of opportunity for every Indian.

15. In Pradeep Jain's case wherein reservation was sought to be made in the M.B.B.S./B.D.S. course in the University, it was held that the reservation should not exceed outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservation and for admission to the post-graduate courses, it should not exceed 50 per cent but in regard to admission in super specialities such as neurosurgery and cardiology there should be no reservation at all even on the basis of institutional preference and admission should be granted purely on merits on all India basis. The outer limit of 70 per cent reservation of open seats for M.B.B.S. courses and 50 per cent for post-graduate courses was fixed by the Supreme Court but it was cautioned that this outer limit should be reduced gradually over years. It was observed:

We are of the opinion that this outer limit fixed by us must gradually over years progressively reduce but that is a task which should have to be performed by the Indian Medical Council.

16. In Nidamarti Maheshkumar Vs. State of Maharashtra and Others, , following the decision in Pradeep Jain's case, 70 per cent of the total number of open seats in the Medical College or Colleges situate within the area of jurisdiction of particular University for M.B.B.S. course was held to be valid. These decisions, however, were again reconsidered in Dr. Dinesh Kumar's case AIR 1986 SC 1877, various State Governments made representation that the reservation was less to cater the State need and it was held that 85 per cent of the open seats for admission to M.B.B.S. course should be reserved for the Medical Colleges/ Universities to the students of their own region and 15 per cent of the total number of the seats should be made available for being filled up on the basis of All India Entrance Examination and as regards post-graduate studies, it was 75 per cent for the students who had passed examination from their own University and 25 per cent on the basis of All India Entrance Examination.

17. In the counter-affidavit the Respondent has taken the stand that 75 per cent of the total seats in the post-graduate course have been reserved to the students of the Institute of Medical Sciences, B.H.U. The reservation to certain seats for its own students by a University has to be made on a certain basis. In Dinesh

Kumar's case (supra), the court was considering the reservation for the students who sought admission in M.B.B.S. in a college run by the State. The State was making the reservation to the M.B.B.S. course for the persons who were residents of the State and the Supreme Court considered that this reservation was valid as it will cater the need of the people of the region. The reservation was at the stage of admission to M.B.B.S. course and it was on the ground that the Supreme Court was fixing the outer limit for making the reservation. In case, however, the regional basis does not exist at the time of admission to the M.B.B.S./B.D.S. course, the principle on the basis of which the outer limit was fixed by the Supreme Court will not be very relevant. The percentage of reservation has to be examined keeping in view the fact as to whether the University caters the need of a particular region and with this view the extent of the reservation for admission to the M.B.B.S. course is to be fixed. This particularly makes the classification of two kinds of Medical Colleges/Universities, one which has the regional character or the State character and the other which is of national importance.

18. Institute of Medical Sciences, B.H.U., has not made any reservation for admission on any regional basis or State basis for the candidates who apply for admission to M.B.B.S. course. In the counter-affidavit, it has been stated that there is no reservation regional or statewise in pre-medical test for students of M.B.B.S. in Banaras Hindu University, Varanasi. There are 50 M.B.B.S. seats in the Institute of Medical Sciences and for these 50 per cent seats ordinarily more than 40,000 candidates from all over India appear in the test and they are selected on the basis of merit. The outer limit of reservation which was the basis on which the percentage of reservation was fixed in Dinesh Kumar's case, is not applicable in the case of Banaras Hindu University. The Institute of Medical Sciences, B.H.U. is of national character and is not confined to cater the need of any State or region. There does not seem to be any Justification for making the reservation of 75 per cent seats to the post-graduate studies in Medical Sciences to the students who had passed M.B.B.S., examination from the Institute.

19. There is one more startling fact. In the Institute, as stated in paragraph 7 of the counter-affidavit of the University, there are 50 seats for M.B.B.S. course and for the post-graduate course at the Institute, there are 83 seats. This figure shows that the students who pass M.B.B.S. examination from the Institute, their seats in the post-graduate course are guaranteed. None of the students have to appear for entrance test. On the other hand, those students who might have failed earlier and if they secure passing marks in next examination, they are also entitled for admission to the post-graduate course. In case any student has been admitted to M.B.B.S. course in the Institute, his seat for post-graduate course stands reserved from the date of his admission to M.B.B.S. course provided he secures passing marks in M.B.B.S. examination. He is not to think of any competition to appear in post-graduate entrance examination which is being conducted for those students who seek admission to post-graduate studies on the basis of All India Entrance Examination.

20. The reservation can be made on the principle of institutional continuity to a certain extent and not that all the students who have been admitted to Medical Course in the Institute should be permitted as a matter of right to continue the studies in the same University. The institutional preference is given only on the basis that the students may have stability and continuity but this preference cannot be granted to all the students who had joined M.B.B.S. course in the Institute. The Institute which has a national character in the beginning at the time of admission to M.B.B.S. course does not lose its character when it admits candidates to post-graduate courses. The students who had taken admission after having passed the entrance test on All India basis, after having completed the course of more than five years in the University should again compete with other candidates who have also passed M.B.B.S. course from other Universities. There is no reason that other students who had passed M.B.B.S. examination from other Universities, and they are prepared to appear for entrance examination on All India basis, the students who had passed M.B.B.S. course from the Institute of B.H.U., should not compete in such examination merely on the ground that they had passed M.B.B.S. examination from the Institute.

21. In All India Institute of Medical Sciences case AIR 1996 Del 291, the Division Bench of the Delhi High Court has taken the view that once the students are admitted in All India Institute of Medical Sciences, Delhi on the basis of selection from all parts of India, there was no justification for granting them the institutional preference. In any case, even if the institutional preference is granted, it cannot be granted to all the students who had passed M.B.B.S. course from the Institute of Medical Sciences, B.H.U.

22. It is next contended on behalf of the Respondents that the students who have passed M.B.B.S. examination are not entitled to appear to the extent of 75 per cent seats in the various State Medical Colleges and to that extent, the students of the Institute should get reservation. This argument is not acceptable in the cases of students who had taken admission in the Institute of Medical Sciences, B.H.U. In the various States, the admissions are made on the basis of their domicile in that State. The admission in the Institute of Medical Sciences, B.H.U. was never restricted on the basis of place of residence. The admission was on the basis of all over India entrance test. If a student Joins the Institute which has no regional character and the admission in the Institute is based purely on merit, he having passed the M.B.B.S. examination from such Institute cannot turn and place his claim that he should get reservation of certain seats in that Institute on the basis that he had passed examination from that Institute. Once he made efforts and secured admission in M.B.B.S. in All India Entrance Test, he should be competent enough with the passage of time after having studied in the institute to be at par with the other students who are seeking admission to post-graduate course on the basis of competitive examination. The students from other Universities/Medical Colleges had also passed M.B.B.S. examination either on the basis of certain seats reserved for the students on the basis of the residence or belonging to other categories and if they are prepared

to compete in the entrance test, there does not seem to be any justification that the students who had passed M.B.B.S. examination from the Institute of Medical Sciences, B.H.U., should not dare to compete with other students/candidates who are seeking admission in post-graduate medical course in the Institute of Medical Sciences, B.H.U.

23. The Petitioner has filed the list of names of the students and the marks secured by them in M.B.B.S. examination conducted by the Institute of Medical Sciences, B.H.U. The candidate at serial No. 61 has failed in 17 subjects but he has been also granted admission to post-graduate course. The candidate shown at serial No. 60 has failed in 13 subjects, the candidate shown at serial No. 56 has failed in 12 subjects, but they too have been granted admission to post-graduate courses on the basis of reservation of seats upto 75 per cent. Without going into the controversy as to whether these figures are correct, it is apparently clear that the spirit of the competition is lost when all the seats for post-graduate courses are reserved for the students who secure passing marks in M.B.B.S. examination, and the students who may be lacking in merit in comparison to other brighter candidates, are given admission merely on the basis of institutional preference.

24. Learned Counsel for the Respondents submitted that the University is following the guidelines and the directions issued by the Medical Council of India in respect of admission to the post-graduate course in the Institute. He has referred to para IV-A of the "Recommendations on Post Graduate Education by Medical Council of India" which reads as under:

A. Selection of post-graduate students. Students for post-graduate training shall be selected strictly on the basis of their academic merit.

For determining the academic merit, the University/Institution may adopt any one of the following procedure both for degree and diploma courses:

(i) On the basis of merit as determined by a competitive test conducted by the University/Group of Universities.

(ii) On the basis of their performance at the M.B.B.S. examinations provided they all come from the one University.

(iv) Combination of (i) and (iii),

Note.--If there is more than one University, there shall be combined test by these Universities. No weightage shall be given for admission to Degree courses for holding a Diploma, or any other experience. There should be no necessity for the diploma being prerequisite qualification for admission to post-graduate courses.

There shall be no reservation for admission to post graduate medical degree/diploma course under any category.

(Emphasis supplied)

Para A provides the manner in which the academic merit of the students for selection to the post-graduate training shall be determined. There is note attached to it that there shall be no reservation for admission to post-graduate medical degree/diploma course under any category. The recommendation of the Medical Council lays emphasis that admission to post-graduate medical degree/diploma course shall not be on the basis of any reservation. In this case, it is not necessary to decide the mode adopted by the Institute for the admission of its internal students to the post-graduate course, i.e., whether it should be by competitive test or by the marks which they have obtained in the M.B.B.S. examination.

25. The learned Counsel for the B.H.U., submitted that the Medical Council of India should have been impleaded as a party in the writ petition. In *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, , it has been held that the regulations framed by the Medical Council of India laying down certain conditions for admission to post graduate course is only advisory in nature. The Petitioner, has not challenged any regulation framed by the Medical Council of India. In these circumstances, it was not necessary to implead Medical Council of India as one of the Respondents in the writ petition.

26. Considering the entire aspects, in my view the institutional preference can be given only to the extent of 50 per cent of the total seats of the M.B.B.S. course which may be fixed in the Institute of Medical Sciences, B.H.U., and the proportion of reservation to the post-graduate studies should be fixed accordingly. In case there are fifty seats for M.B.B.S course, the outer limit of the institutional preference can be up to twenty five seats for postgraduate courses and not fifty per cent of total seats of post-graduate course.

27. The percentage of 50 per cent should be further reduced with the passage of time as observed in *Pradeep Jain's* case (supra) Every University and Medical College should with the passage of time give -admission to more meritorious students and the students who passed M.B.B.S. examination from their own University should take the challenge of appearing in the competitive entrance test. For this purpose, an Expert Committee may be appointed by the University and after every three years, it may examine as up to what extent it can reduce the percentage of reservation for admission to the post-graduate course in the Institute of Medical Sciences, B.H.U.

28. The next question is whether institutional preference can be given in admission to super specialities in the Institute. In *Pradeep Jain's* case Justice Bhagwati held that there should be no reservation at all even on the basis of institutional preference to super specialities. In *Jagdish Saran's* case, this principle was sounded in the following words:

Secondly, and more importantly it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or post-doctoral course in specialised subject. There is no substitute for sheer flair, for creative talent, for

fine-tune performance at the difficult heights of some discipline where the best alone is likely to blossom as the best.

29. In *Gujarat University Vs. Rajiv Gopinath Bhatt and Others*, , the Gujarat University invited applications for admission to two years super speciality course providing that the first preference should be given to the students of its own University. The grant of this preference was challenged and the Supreme Court held that if the preference for admission in super specialities to the students of the University in question is granted per se, it cannot be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution. On facts, it was found that the Court taking into consideration the regional requirements held that such preference can be given. The reasons given by the Court may be noted as under:

But from time to time this Court taking into consideration the local and regional compulsions have been making efforts to direct a balance so that the students who have pursued the studies in a particular State and have been admitted in the Medical Colleges of that State are not suddenly thrown out on the street when question of their admission in super speciality courses arises in which the seats are limited in number.

30. As the Institute of B.H.U. has no regional character, there does not seem to be any justification for giving any institutional preference to any student, who has passed M.B.B.S. examination, in super speciality/courses. The reason is that the best talent should be produced by inviting the best talent at the national level. It will be a national loss if the best talents are denied admissions where a student comes to the University for seeking admission to such super speciality courses.

31. In view of the discussions made above, the reservation of seventy five per cent of seats to the post-graduate course in Institute of Medical Sciences, Banaras Hindu University, Varanasi, are held as invalid. The reservation can be only to the extent of fifty per cent of the students who had passed M.B.B.S. course and the proportion of the reservation should be fixed accordingly to the post-graduate course in the University. As regards super speciality courses, the Banaras Hindu University, should not give institutional preference to any one.

32. As Petitioner No. 1 has already joined M.B.B.S. course in the Institute of Medical Sciences, B.H.U. in the year 1994 which is almost going to be completed, he cannot now be permitted to opt for any other course of his choice on the basis of merit. Petitioner No. 2 appeared in post-graduate entrance examination on All-India basis entrance examination conducted by the Banaras Hindu University, Varanasi, but the admission has been done on the basis of the reservation as was then prevailing and session has already commenced six months ago, it is not feasible to give any, direction to the Respondents to admit him. The University shall, however, make admissions according to the directions/ observations made above from the next academic year.

33. The writ petition is disposed of finally with the directions given above.