

---

**(2014) 05 P&H CK 0554**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 7785 of 2014**

|                                     |            |
|-------------------------------------|------------|
| Dr. Guninder Singh Guron and Others | APPELLANT  |
| Vs                                  |            |
| State of Punjab and Others          | RESPONDENT |

---

**Date of Decision :** 27-05-2014

**Acts Referred:**

Constitution of India, 1950 — Article 142, 16(4), 16(4A), 19(1)(g), 25  
Indian Medical Council Act, 1956 — Section 10A, 19A(1)

**Citation :** (2014) 05 P&H CK 0554

**Hon'ble Judges :** Gurmeet Singh Sandhawalia, J

**Bench :** Single Bench

**Advocate :** Amit Rawal, Sr. Advocate and Mr. Vaneet Soni, Advocate for the Appellant; Anil Kumar Sharma, Addl. A.G., Punjab for Respondents Nos. 1 and 2, Mr. Gurminder Singh, Sr. Advocate, Mr. Yagyadeep, Advocate for Respondent No. 3, Mr. Manish Dadwal, Advocate for Respondent No. 4, Mr. R.K. Malik, Sr. Advocate and Mr. Samrat Malik, Advocate for Respondents Nos. 5 to 17, Advocate for the Respondent

**Final Decision :** Dismissed

---

## Judgement

G.S. Sandhawalia, J.—Initially, the present writ petition was filed praying for a direction that respondent no. 3-Medical Council of India (in short "MCI") should be directed to take a decision on the recommendation dated 14.03.2014 (Annexure P-3) submitted by respondent no. 1-State for relaxation of 5% marks in All India Post Graduate Medical Entrance Examination (AIPGMEE-2014) entrance test in respect of general category candidates belonging to the category of 60% quota candidates (PCMS in service Doctors) in terms of Provision to Clause 6 of the notification No. 5/33/2013-3HB-III/8618 dated 23.12.2013 on account of non-filling of the seats in the respective Government medical colleges. On notice of motion being issued, decision was taken by the Municipal Council on 07.05.2014 (Annexure P-5) which is now the subject matter of challenge in the amended writ petition which was filed thereafter. Vide the said order, respondent no. 3 has rejected the representation of the State by placing reliance upon the

Post Graduate Medical Regulations, 2000 (hereinafter referred to as "the Regulations") as amended vide Gazette notification dated 21.07.2009. Vide order dated 19.05.2014, it was agreed between the counsel for the parties that since the dispute was centered around the interpretation of the Regulations and there was no need to wait for replies since the cut off date was nearing i.e. 31.05.2014, resultantly, counsel for both the parties have addressed arguments.

2. The plea taken now in the amended writ petition is for quashing the said decision dated 07.05.2014 (Annexure P-5) on the ground that amendments had been made in the regulations on 17.11.2009, 21.12.2010 and 15.02.2012 (Annexures P-6 to P-8) respectively, which provided for relaxation to the in service candidates who are serving in remote/difficult areas and, therefore, further prayer was also made for issuance of a writ of mandamus directing respondent no. 3 to relax the marks.

3. The petitioners, who are MBBS Doctors, presently serving as Medical officers in the rural areas on account of being PCMS Doctors for the last more than 4-5 years, appeared in the AIPGMEE-2014 and scored less than 50% marks and got only marks between 45% to 49% in the said entrance test. As per Part-B of the prospectus issued for the admission to the Post Graduate courses by respondent no. 4 University i.e. Notification dated 23.12.2013, Clause 6 provided the eligibility criteria with minimum 50% marks being required in AIPGMEE-2014. Under clause no. 26, eligibility criteria was further provided for 60% quota candidates (PCMS in service Doctors). The petitioners applied for admission and in view of the recommendation dated 14.03.2014 and reminder dated 16.04.2014 made by the State Government granted no objection certificates. As noticed above, action was not taken by respondent no. 3. Resultantly, the writ petition was filed when the impugned order was passed. The respondents no. 5 to 17 got themselves impleaded on the ground that if the seats were not filled up by the eligible in-service candidates, the same would be converted into the 40% quota seats and offered to them, as they were fully eligible in the said quota having secured 70% marks in the entrance test.

4. Senior counsel for the petitioner has submitted that the eligibility clause for in service candidates provides that they have to complete service in rural areas as per Clause 26 II (a), which they admittedly had done and even no objection certificates have been issued by the State. It was submitted that on the strength of the notification dated 17.11.2009, a proviso had been added in the regulations whereby weightage was to be given in the marks as an incentive at the rate of 10% marks obtained for each year of service in remote or difficult areas upto the maximum of 30% of the marks obtained in order to determine the merit. It is submitted that if the said weightage is given, the petitioners would become eligible and would get more than 50% marks. The second line of argument which was put forth by the senior counsel for the petitioners was that vide notification dated 21.12.2010 (Annexure P-7), the Medical Council of India had to consult the Central Government while taking a decision on lowering the minimum marks and

the said procedure had not been done and it was submitted that many seats were lying vacant and in view of Clause 27, in case of non-availability of candidates in the 60% quota, the vacant seats should be offered to the candidates from the open category belonging to the 40% quota and, therefore, the petitioners' right for consideration would be taken away.

5. Two questions that thus arise for consideration before this Court are whether the decision of the MCI was justified in rejecting the request of the State Government and whether the petitioners have any legal right for seeking a writ of mandamus praying for a direction to the respondents to relax the marks in view of the notifications Annexures P-6 to P-8.

6. A perusal of the prospectus would go on to show that as per Clauses 6 to 8 of the prospectus, admission is to be based on the rules and regulations of the notification as per the merit of the candidate determined on the basis of AIPGMEE-2014. Similarly, clause 2 provides the general eligibility conditions for admission to the Post Graduate courses which is to be as per the notification dated 23.12.2013. Clause 4.2 further provided that eligibility was to be determined by the said notification and by the Selection Committee at the time of counseling those not eligible as per Punjab Government notification were not to be considered for admission. Clause 4.2 reads thus:-

4.2 The candidate should read the eligibility condition carefully and just appearing in counselling does not entitle him/her for admission. Eligibility conditions for admissions are as per Punjab Government Notification (s). The eligibility shall be determined by the Selection Committee at the time of counseling. Those who are not eligible as per Punjab Government notification will not be considered for admission. The candidates will appear in counselling at their own risk & responsibility.

7. As per Clauses 2, 3 and 6, the admission was to be made on the basis of the merit as per the procedure laid down by the MCI. The said Clauses read thus:-

2. The Governor of Punjab is pleased to notify admissions to Post Graduate Degree/Diploma courses in the Health Sciences Educational Institutions (Medical) in the State of Punjab for the year 2014.

3. The Governor of Punjab is further pleased to authorize Baba Farid University of Health Sciences, Faridkot to conduct centralized counselling for admissions on the basis of merit obtained in All India Post Graduate Medical Entrance Examination (AIPGMEE)-2014 as per procedure laid down by MCI and notified under The Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act 2006.

4. xxx xxx xxx

5. xxx xxx xxx

6. In order to be eligible for admission to a Post Graduate course it shall be

necessary for a candidate to obtain minimum of 50% marks in AIPGMEE-2014. However, in respect of candidates belonging to scheduled caste, scheduled tribes, other backward classes, the minimum marks shall be at 40% or as notified by MCI. In respect of candidates with locomotor disability of lower limbs, the minimum marks shall be at 45%.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in AIPGMEE, Government in consultation with MCI, may at its discretion, lower the minimum marks required for candidates belonging to respective categories.

8. Clause 26, on which counsel placed reliance to submit that he was eligible for the 60% quota candidates for in service Doctors reads thus:-

26. Seat distribution in Govt. Institutions (Govt. Medical College, Amritsar & Patiala, GGS Medical College, Faridkot.)

I. In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at all India level through AIPGMEE-2014. The remaining seats shall be filled through AIPGMEE-2014 at the state level from amongst the candidates having Punjab Resident status. Out of State quota seats 60% seats shall be filled up from amongst the eligible PCMS in service doctors & 40% seats shall be open to all eligible medical graduates. There shall be separate merit list for in-service 60% quota candidates for Medical Colleges and a separate merit list for those who are not covered under the category of in-service candidates.

II. For 60% quota candidates (PCMS in service doctors).

(a) The Eligibility requirements are as under:

i. Regular PCMS employee

ii. Has completed 4 years service in very difficult (Category-D) area or 6 years service in difficult (Category C) area or an appropriate combination of both. In case of candidates who have completed 5 years of service as on 01.01.2012, they should have completed 2 years of service in most difficult areas or 3 years of service in difficult areas.

iii. RMO's once they are selected in PCMS, will be given benefits of rural service rendered by them as RMO's under Zila Parishad.

iv. Has cleared the probation period

v. Has Good service record

vi. Has no vigilance/departmental/disciplinary inquiry pending against him/her.

vii. Will have 10 years of service left after completion of the course

(b) The period of rural service shall be computed as on March 31st 2014.

(c) Adhoc service rendered in respective category will be counted for the purpose

of computing the stipulated period.

(d) Weightage of 1 mark for each year of service in difficult area & 1.5 marks for most difficult area over & above the eligibility of rural service shall be given, subject to a maximum of 5 marks.

(e) PCMS in service candidates will submit along with the application a certificate regarding length of service, length of rural service, number of years of service left after completion of PG course & that no department/vigilance inquiry is pending against the candidate.

(f) All PCMS doctors who are selected for admission to post graduate courses shall have to produce a No Objection Certificate from the Govt. of Punjab, Department of Health & Family Welfare.

(g) All in service doctors shall have to submit a bond of Rs. 40 lakh to serve the Punjab Government for a period of 10 years after completion of post graduate course. If the candidate fails to do so he/she shall have to deposit the bond money with the government.

9. Thus, a perusal of the above said clauses of the prospectus would go on to show that the admission was to be on the basis of the merit obtained in the said AIPGMEE-2014 and as per the procedure laid down by the MCI and as per clause 6, the minimum of 50% marks were required in the said test for candidates belonging to general category. As per the proviso, the Government in its wisdom, made the request dated 14.03.2014 asking for relaxation of 5% marks for the general category to bring it down to 45% and similarly, for handicapped candidates, was sought to be brought down to 40% and for SC/OBCs to 35%. The said request was made in anticipation of the seats falling vacant for the in service quota which would be clear from the perusal of the requests wherein, it was mentioned "that only if there are seats vacant". Even in the reminder dated 16.04.2014, similar request was made which was conditional. Thus, it is apparent that request which was filed by the State was not in consonance firstly with proviso of Clause 6. The said proviso very clearly provided that only when sufficient number of candidates in the respective category fail to secure the minimum marks as prescribed in the test, the Government in consultation with the MCI, may in its discretion, lower the minimum marks required for the candidates. No such exercise was carried out by the State firstly to make request as per the clause since the purpose of the clause is very clear that only if sufficient number of candidates failed to make the grade and there were large number of seats vacant, it was in such circumstances, the request had to be forwarded. The request, however, has been validly rejected by the Medical Council of India by placing reliance upon the regulations. Clause 9 of the Regulations provide that the selection of Post Graduate students is to be done on the basis of their academic merit, which reads thus:-

**Selection of Postgraduate Students**

1. Students for Postgraduate medical courses shall be selected strictly on the basis of their academic merit.

2. For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses:-

(i) On the basis of merit as determined by the competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same state; or

(ii) On the basis of merit as determined by a centralized competitive test held at the national level; or

(iii) On the basis of the individual cumulative performance at the first, second and their MBBS examination, if such examination have been passed from the same university; or

(iv) Combination of (i) and (iii); Provided that wherever entrance test for Postgraduate admission is held by the State Government or a university or any other authorised examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty per cent for general category candidates and 40 per cent for the candidate belonging to Scheduled Castes, Scheduled Tribes and other Backward classes.

10. The said clause was substituted vide notification dated 21.07.2009 which also provided that the minimum percentage marks for eligibility for admission in Post Graduate Medical courses would be 50% for general category candidates. The relevant portion reads thus:-

(1) (a) Students for Post Graduate medical courses shall be selected strictly on the basis of their inter-se Academic Merit.

(b) 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas.

2. For determining the Academic Merit", the University/Institution may adopt the following methodology:-

(a) On the basis of merit as determined by the "Competitive Test" conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same state; or

(b) On the basis of merit as determined by a centralized competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise;

or

(d) Combination of (a) and (c);

Provided that wherever Entrance Test for Postgraduate admission is held by the State Government or a university or any other authorised examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be 50% for general category candidates and 40 per cent for the candidate belonging to Scheduled Caste, Scheduled Tribes and Other Backward classes.

11. Vide amendment dated 17.11.2009, weightage was further provided by adding a proviso for the service done in rural areas. The said proviso reads thus:-

Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks may be given as an incentive at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto the maximum of 30% of the marks obtained.

12. Thereafter, vide notification dated 21.10.2010, clause 9 was substituted whereby National Eligibility-cum-Entrance Examination was sought to be provided and in the proviso of sub-clause 9, there was a provision which gave discretion to the Central Government in consultation with the MCI to lower the minimum marks. The said proviso reads thus:-

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

13. Similarly by 15.12.2012, notification of minimum of 50 percentile marks were required in the National Eligibility-cum-Entrance. As per the proviso, Central Government in consultation with the MCI would also lower the minimum marks. The relevant portion reads thus:-

In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test for Postgraduate courses" held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause 9(II) above with locomotory disability of lower limbs, the minimum marks shall be at 45h percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in "National Eligibility-cum-Entrance Test" for Postgraduate courses:

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test

held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

14. On the strength of the said amendments, senior counsel for the petitioners has thus pressed his arguments that proper procedure was not followed and the order is not sustainable.

15. The question of reducing the eligibility criteria has always been a subject matter of debate time and again. In *State of Punjab Vs. Dayanand Medical College and Hospital and Others*, , vide notification dated 05.01.2001, the State Government reduced the minimum eligibility marks lower than prescribed by regulation 9 framed by the MCI, as reproduced above. The said notification was challenged successfully before this Court and it was directed to hold fresh counseling and admit the students as per the merit in accordance with the regulations framed by the MCI. The State went up in appeal and the decision of this Court was upheld by placing reliance upon the judgment of the Apex Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, and other cases by holding that it was not open to the university or the Government to dilute the standard by fixing marks lower than what is set out by the MCI. Accordingly, it was directed that students who had secured less than 50%, their admission has to be cancelled and appropriate directions were issued to select other candidates.

16. Similarly, in *Harish Verma and Others Vs. Ajay Srivastava and Another*, , the in service Doctors, challenged the first proviso of the Regulations whereby, it was provided that 50% marks are required for being eligible for admission to Post Graduate Medical Courses. The said Doctors had failed to secure the minimum marks. The writ petition was dismissed by the Single Judge but in appeal, the matter was referred to the Full Bench and the State Government was granted permission to go ahead with the admission of in-service candidates to the postgraduate courses on the basis of such percentage of qualifying marks which may be lower than 50% but not below 40%, which was the minimum eligibility percentage prescribed for the reserved category candidates. The Apex Court relied upon the judgment in *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, wherein, it was observed that in-service candidates had been taken away from academics and theory on account of being in-service and it may require a departure from the standards laid down by the MCI but the requirement of minimum qualifying marks cannot be altered or lowered contrary to the MCI regulations. Accordingly, the appeal was allowed and the judgment of the Single Judge was restored. The relevant observations read thus:-

17. The issue arising for decision before the Full Bench of Rajasthan High Court, arose for decisions in a very similar background in *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, . Dealing with the question of why a common entrance test is necessary and why an exception cannot be carved out



in favour of in-service candidates by lowering the standards below the ones permitted by the Medical Council of India, this Court, following Dr. Preeti Srivastava's case, opined as under:

A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum marks and a person who qualifies with high Marks. If excellence is to be promoted at the postgraduate level, the candidates qualifying should be able to secure goods marks while qualifying. Attaining minimum qualifying marks has direct relation with the standards of education. Prescription of qualifying marks is for assessment of the calibre of students chosen for admission. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. The assemblage of students in a particular class should be within a reasonable range of variable calibre and intelligence, else the students will not be able to move along with each other as a common class. Hence the need for a common entrance test and minimum qualifying marks as determined by experts in the field of medical education.

It was held that the selection of students who had secured marks less than the minimum marks prescribed by the Medical Council of India's Regulation on account of reduction in the minimum marks in the entrance examination made by the State Government, was liable to be struck down and ignored. If the State has a case for making a departure from the standards laid down by the Medical Council of India or for carving out of exception in favour of any identifiable class of persons, then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of Justification before the Medical Council of India.

27. The in-service candidates may have been away from academics and theories because of being in service. Still, they need to be assessed as eligible for entrance in P.G. for taking up such examination, they must either keep updating themselves regularly or concentrate on studies preparatory to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services.

18. Out of the several conclusions summed up by the Court the one relevant for the purpose of the present case is:

36. (2) There can be only one common entrance test for determining eligibility for post graduation or in-service candidates and those not in service. The requirement of minimum qualifying marks cannot be lowered or relaxed contrary to the Medical Council of India regulations framed in this behalf.

19. The Court has observed that subject to securing the minimum qualifying marks if the in-service candidates formulate a class by themselves for whom a separate channel of entry has been carved out then within the group there may be scope for assigning weightage for rural service rendered for the purpose of determining order of merit inter se, but such weightage cannot be utilized for the purpose of relaxing the condition as to minimum qualifying marks as prescribed by the Medical Council of India.

20. The decision of the Full Bench of the High Court, having been rendered in ignorance of the binding law laid down by the majority opinion in the Constitution Bench decision of this Court in Dr. Preeti Srivastava and Anr., (supra) and also being inconsistent with the decision of this Court in the case of Gopal D. Tirthani & Ors. (supra), is liable to be set aside. The appeal is allowed. The impugned judgment of the Full Bench of the High Court of Rajasthan is set aside and the judgment given by the learned single Judge is restored.

17. Thus, the underlying principle throughout has always been that it is for the MCI to take into account whether the eligibility criteria is to be dropped below the prescribed minimum marks in the facts and circumstances. There is no denying the fact that out of the 50% of the seats which are available in the State quota, 60% seats are already reserved for the in-service Doctors and, therefore the submission of counsel for the petitioner that because they have been kept away from academics being in service, does not cut much ice since a large percentage of seats already stand earmarked for their category. It is within their category that they have to compete amongst similarly situated candidates but before this competition, as per the criteria provided under Clause 26, the bare minimum eligibility of having secured 50% marks have necessarily to be obtained. The argument of the council that the criteria provided under Clause 26 was the eligibility criteria and that the benefit of weightage had to be provided as per the notification dated 17.11.2009 regarding the length of service is without any basis in view of the observations made in para no. 19 of Harish Verma's case (supra).

18. The said issue was also subject matter of discussion by the Apex Court in Satyabrata Sahoo and Others Vs. State of Orissa and Others, . In the said case, the State had in the notification for admission in the academic year 2012, provided that the benefit of service in remote or difficult areas was incorporated in the prospectus in Clause 11.2. By virtue of the said clause, in-service candidates who applied against the direct category quota, were entitled to the benefit of service rendered in rural areas subject to the maximum of 30% of marks secured in the entrance examination. The appellants who were direct candidates took the plea that the said clause provided an additional weightage for candidates who are in-service and the said clause was an encroachment and appropriation of the seats earmarked for the direct category candidates, which were to be filled up on merit. The plea was repelled by the Single Judge of the High Court and by the Division Bench. However, the Apex Court allowed the

appeals by noticing that 50% seats have already been earmarked for in-service candidates and the right of the said candidates would be dependent upon the inter se merit after complying with other eligibility criterias. It was observed that the weightage which is to be given to the in service candidates is only when they compete for admission from the in-service category for whom the seats are earmarked and there can be no encroachment from one category to the other. Accordingly, the proviso in Clause 11.2 of the prospectus was quashed. The relevant observations made in paras 25 and 27 read as under:-

25. The purpose and object for giving weightage to in-service candidates who have rendered rural/tribal service is laudable and their interest has been taken care of by the Medical Council of India as well as the prospectus issued for admission to the various medical colleges in State of Odisha but they have to come through the proper channel i.e. the channel exclusively earmarked for inservice candidates and not through the channel earmarked for candidates in the open category. The in-service candidates are also free to compete through the open category just like any other who fall under that category. Further, it is also relevant to note those who get admission in post graduate courses through the open category have to execute a bond stating that they would serve rural/tribal areas after completion of their post-graduation. In fact, weightage is given to those candidates who have rendered service in rural/tribal areas when they compete for admission to PG (Medical) Courses in in-service category for whom 50% seats are earmarked.

26. xxx xxx xxx

27. We notice that the seats earmarked for the open category by way of merit are few in number and encroachment by the in-service candidates into that open category would violate clause 9(1)(a) of the MCI regulations, which says students for PG medical courses shall be selected strictly on the basis of the inter se academic merit i.e. On the basis of the merit determined by the competent test. Direct category or open category is a homogeneous class which consists of all categories of candidates who are fresh from college, who have rendered service after MBBS in Government or private hospitals in remote and difficult areas like hilly areas, tribal and rural areas and so on. All of them have to complete on merit being in the direct candidate category, subject to rules of reservation and eligibility. But there can be no encroachment from one category to another. Candidates of in-service category cannot encroach upon the open category, so also vice-versa.

19. Reliance upon the notification dated 21.12.2010 (Annexure P-7) to submit that the Central Government was not consulted was objected to by the counsel for the MCI by placing reliance upon the judgment of the Apex Court in *Christian Medical College Vellore and Others Vs. Union of India and Others*, by pointing out that the notification dated 21.12.2010, which provided that the Central Government was to be consulted, stood quashed. The relevant observations read thus:-

161. In the light of our aforesaid discussions and the views expressed in the various decisions cited, we have no hesitation in holding that the "Regulations on Graduate Medical Education (Amendment) 2010 (Part II)" and the "Post Graduate Medical Education (Amendment) Regulation, 2010 (Part II)", whereby the Medical Council of India introduced the single National Eligibility-cum-Entrance Test and the corresponding amendments in the Dentists Act, 1948, are ultra vires the provisions of Articles 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run Universities and all medical colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their M.B.B.S., B.D.S. and Postgraduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in the T.M.A. Pai Foundation case (supra), to be an integral facet of the right to administer. In our view, the role attributed to and the powers conferred on the MCI and the DCI under the provisions of the Indian Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. The role assigned to the MCI under Sections 10A and 19A(1) of the 1956 Act vindicates such a conclusion.

162. As an offshoot of the above, we also have no hesitation in holding that the Medical Council of India is not empowered under the 1956 Act to actually conduct the NEET.

163. The Transferred Cases and the Writ Petitions are, therefore, allowed and the impugned Notifications Nos. MCI-31(1)/2010-MED/49068, and MCI18(1)/2010-MED/49070, both dated 21st December, 2010, published by the Medical Council of India along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India and the amended Regulations sought to be implemented thereunder along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India, are hereby quashed. This will not, however, invalidate actions so far taken under the amended Regulations, including the admissions already given on the basis of the NEET conducted by the Medical Council of India, the Dental Council of India and other private medical institutions, and the same shall be valid for all purposes.

20. Accordingly, keeping in view the observations, no reliance can be placed upon Annexure P-7 on the argument that the Central Government had to be consulted for reducing the eligibility criteria since the same already stands quashed.

21. The legal position regarding the right of the petitioner to seek a writ of mandamus for reducing the eligibility criteria also stands against the petitioners. It has been time and again held that a mandamus can only be issued where there is a legal right under the Statute to enforce its performance. Reference can be made to the judgment of the Apex Court in Rai Shivendra Bahadur Vs. The

Governing Body of the Nalanda College, and Ajit Singh and Others Vs. The State of Punjab and Others, wherein, in para no. 32, it was observed as under:-

32. Learned senior counsel for the reserved candidates, Sri K. Parasaran however contended that Article 16(4) and Article 16(4A) confer a power coupled with a duty and that it would be permissible to enforce such a duty by issuing a writ of mandamus. Reliance for that purpose was placed upon Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, and also on Julius vs. Lord Bishop (1880) 5 AC 214 which case was followed by this Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . We are unable to agree with the above contention. As pointed out earlier, the Constitution Bench of this Court in C.A. Rajendran Vs. Union of India (UOI) and Others, held that Article 16(4) conferred a discretion and did not create any constitutional duty or obligation. In fact, in that case, a mandamus was sought to direct the Government of India to provide for reservation under Article 16(4) in certain Class I and Class II services. The Government stated that in the context of Article 335 and in the interests of efficiency of administration at those levels, it was of the view that there should be no reservation. The said opinion of the Government was accepted by this Court as reasonable and mandamus was refused. Even in M.R. Balaji's case, the Constitution Bench declared that Article 16(4) conferred only a discretion. It is true that in Jagannathan's case, the three Judge Bench issued a mandamus, after referring to Article 142, that the Government must add 25 marks to SC/ST candidates who had taken the S.A.S. Examination for promotion as Sections Officers and also that, in future, a reduced minimum marks must be provided and announced before the examination. The Court also observed that the Department had not passed orders as per a general O.M. of the Government dated 21.9.1977. But the attention of the Court was not drawn to the judgment of the Constitution Bench in CA. Rajendran's case and other cases to which we have referred earlier. Further, if the State is of the opinion that in the interests of efficiency of administration, reservation or relaxation in marks is not appropriate, then it will not be permissible for the Court to issue a mandamus to provide for reservation or relaxation. We also note that in Superintending Engineer, Public Health, U.T. Chandigarh and others Vs. Kuldeep Singh and others, , Jagannathan's case was followed and reference was made to Article 16(4) and Article 16(4A) and to the principle that where a power is coupled with a duty as in Julius Vs. Lord Bishop and Commissioner of Police Vs. Gordhandas Bhanji, the same could be enforced by the Court. But we may point out that even in Kuldeep Singh's case, no reference was made to CA. Rajendran and other cases. We, accordingly, hold that the view in Jagannathan and Kuldeep Singh's cases that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be said to be laying down the correct law.

22. Thus, a conjoint reading of the regulations issued by the MCI would go on to show that the minimum requirement is 50% for general category candidates and

the said bar cannot be dropped in the absence of any legal right and the decision taken by the MCI suffers from no illegality or infirmity and is not liable to be interfered with.

23. For the reasons given above, the writ petition is without any merit and the same is accordingly dismissed.