
(1990) 06 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3966 of 1989

Dr. (Ku.) Arifa Almas

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-06-1990

Acts Referred:

Constitution of India, 1950 — Article 162

Madhya Pradesh Selection for Post-Graduation Courses (Clinical, para-Clinical and Non-clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1984 — Rule 3

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 38

Citation : AIR 1991 MP 29 : (1991) JLJ 325 : (1991) 36 MPLJ 189 : (1991) MPLJ 189

Hon'ble Judges : P.C. Pathak, J; Faizanuddin, J

Bench : Division Bench

Advocate : J.P. Sanghi, for the Appellant; P.C. Naik, A.S. Jha, Government Advocate, Madan Tamaskar and C.L. Kotacha, for the Respondent

Judgement

Faizan Uddin, J.

The order passed in this petition will also govern the disposal of Misc. Petition No. 4037 of 1989 (Dr. (Smt.) Namrata Seth v. State of M. P. and others); Misc. Petition No. 5256 of 1989 (Dr. (Smt.) Namrata Seth v. State of M.P. and 2 others); Misc. Petition No. 29 of 1990 (Dr. (Ku.) Alka Gupta v. State of M. P. and 2 others) and Misc. Petition No. 210 of 1990 (Dr. Sanjay Kumar Mishra and another v. State of M. P. and 4 others), as common question of law and facts arise in all these five petitions which may be disposed of by a common order.

In all these five petitions filed under Article 226 of the Constitution of India, the controversy involved relates to the selection of candidates, distribution of seats and admission in post-graduate courses for the year 1989 in the Medical College, Jabalpur: The petitioner Dr. (Ku.) Arifa Almas in Misc. Petition No. 3966 of 1989, seeks quashing of the merit list of candidates who applied for M.D./ M.S. Courses (Annexure P-I), in so far as the inclusion of the names of respondents Nos. 5 and

6, namely, Dr. (Ku.) Namrata Shrivastava (now Dr. (Mrs.) Namrata Seth) and Dr. (Ku.) Sangeeta Katihar are concerned in the discipline of Surgery appearing at serial Nos. M and 6 of merit list (Annexure P-1); with a further direction that she be granted admission to the post-graduate courses in the discipline of Surgery by up grading her name at serial No. 5 in the said merit list (Annexure P-1). In Misc. Petition No. 4037 of 1989, (Dr. (Mrs.) Namrata Seth has challenged the decision taken by the Post-Graduate Council, Medical College, Jabal-pur, dated 8-8-1989 (Annexure A) declining to allot a seat to her in the Post-Graduate Diploma Course in Pathology on the ground that she had not completed her house job within the calendar year 1989. Dr. (Smt.) Namrata Seth has also filed a second petition, vide Misc. Petition No. 5256 of 1989, claiming a seat in the faculty of M.D. in Pathology out of the two seats which have reverted back to the institutional candidates out of the All India Quota. The petitioner Dr. (Ku.) Alka Gupta in Misc. Petition No. 29 of 1990 as well as two petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal, in Misc. Petition No. 210 of 1990, have made similar claims for allotment of seats in post-graduate courses in Pathology, out of the two seats reverted back to the institutional candidates from All India Quota in preference to all other candidates.

The brief facts leading to these petitions may be summarised thus: All the candidates in these five petitions including the intervener Dr. Harish Bajaj who are claiming admission in post-graduate courses in the respective disciplines belong to 1987 Batch, all of them having passed their M.B.B.S. Examination in August, 1987 and all of them completed their Internship in August, 1988. A merit list of candidates who had applied for house job, was prepared in the year 1988 by the Dean, Medical College Jabalpur, on the basis of the total number of effective marks obtained in M.B.B.S. examination, a copy whereof has been filed as Annexure P-2 in Misc. Petition No. 29 of 1990. In the said list, the name of Dr. (Ku.) Namrata Shrivastava (now Dr. (Smt.) Namrata Seth) appears at serial No. 23 in the order of merit and that of Dr. Sangeeta Katihar at serial No. 30 while the name of Dr. (Ku.) Arifa Almas appears at serial No. 47. The name of Dr. Harish Bajaj is placed at serial No. 53 and Dr. (Ku.) Alka Gupta at serial No. 56. The name of the petitioner Dr. Vishwajit Jaiswal appears at serial No. 58 and that of petitioner Dr. Sanjay Kumar Mishra at serial No. 75. The table below will show at a glance the respective positions of the candidates who are parties to these petitions in the order of their merit as per merit list (Annexure P-2), filed in Misc. Petition No. 29 of 1990:--

S. No.

Name of Candidate

Effective Marks obtained

Subjects allotted for House job

1

2

3

4

Dr. (Smt.) Namrata Seth petitioner in Misc. Petition NO. 4037/89; M.P. No. 5256/89 and also Respondent No. 4 in M. P. No. 210/90

1920(59.07%)

Surgery.

Dr. Sangeeta Katihar Respondent No. 2 in M.P. No. 3966/89

1867 (57.44%)

Surgery

Dr. Arifa Almas Petitioner in Misc. Petition No 3966/89.

1808(55.63%)

Surgery

Dr. Harish Bajaj Intervener in M. P. No. 4037/89, respondent No. 3 in M.P. No. 5256/89 and Respondent No. 5 in M.P. No. 210/90.

5 (54.63%)

Medicine.

Dr. (Ku.) Alka Gupta Petitioner in Misc. Petition No. 29/90.

1782 (53.90%)

Medicine.

Dr. V.K. Jaiswal Petitioner in Misc. Petition No. 210/90

1746 (53.69%)

No. House Job.

Dr. Sanjay Kumar Mishra Petitioner in Misc. Petition No. 210/90.

1665 (51.23%)

No. House Job.

Dr. (Smt.) Namrata Seth could not complete her House Job before the end of calendar year 1989. Dr. Sangeeta Katihar, though could not complete her house job by 15-8-1989, but she completed it before the close of calendar year 1989. Dr. (Ku.) Arifa Almas, Dr. Harish Bajaj and Dr. (Ku.) Alka Gupta also completed their House Job within the calendar year 1989. But Dr. Sanjay Kumar Mishra had not done any house job while Dr. Vishwajit Jaiswal joined the house job in

Surgery but abandoned it later and joined two years post-graduate Diploma Course in Pathology. Two seats were available for post-graduate Diploma Course in Pathology in 1988 quota. Dr. S. K. Mishra and Dr. V. K. Jaiswal (Petitioners in Misc. Petition No. 210/90) both had applied for the said two years Diploma Course in Pathology and both were given admission in D.C.P. accordingly and both are undergoing the said courses at present.

The Dean Medical College, Jabalpur, on 7-3-1989 also published a final merit list of candidates who had applied for post-graduate, M.D./M.S. courses in the Clinical subjects for the year 1989, worked out on the basis of effective percentage of marks obtained by the candidates in the M.B.B.S. examination as aforesaid, a copy whereof has been filed as Annexure P-I in Misc. Petition No. 3966/89. Annexure P-I filed in Misc. Petition No. 3966/89, is the merit list of selected candidates for admission in postgraduate courses, showing the names of each candidate in the respective disciplines in the order of merit. In the merit list (Annexure P-I) in the discipline of Surgery, the name of Dr. (Smt.) Namrata Seth is shown at serial No. 4 and that of Dr. (Ku.) Sangeeta Katihar at serial No. 6. The name of the petitioner Dr. (Ku.) Arifa Almas is shown at serial No. 7. In the year 1989, no seats in M.D. Pathology were available for the institutional candidates as the same were reserved for Demonstrators/ Residents. But, there were three seats available for admission of the institutional candidates in post-graduate Diploma Courses in Pathology (D.C.P.) in the quota of 1989 based on merit and, therefore, in pursuance of the placement of the petitioner Dr. (Ku.) Arifa Almas in the merit list, she was selected for admission in D.C.P. along with Dr. (Ku.) Savita Agrawal and Dr. Harish Bajaj, as the two candidates Dr. (Smt.) Namrata Seth and Dr. (Ku.) Sangeeta Katihar who were above the name of Dr. (Ku.) Arifa Almas being more meritorious as shown in the table above, were already selected for admission in M.S. Dr. (Smt.) Namrata Seth had also applied for her admission in post-graduate Diploma Course in Pathology. But as she had not completed her house job within the calendar year 1989, she was disqualified for admission in M.S. as well as in D.C.P. which action she has challenged in Misc. Petition No. 4037 of 1989. As Dr. (Ku.) Savita Agarwal was later selected in M.D. Medicine, she left D.C.P. course and joined M.D. Medicine. One D.C.P. seat out of 1989 quota became available for allotment to institutional candidate based on merit. Dr. (Ku.) Arifa Almas (Petitioner in Misc. Petition No. 3966/89) did not join D.C.P. because she was given provisional admission in M.S. (Surgery) as a consequence to interim order of this Court dated 13-12-1989 passed in Misc. Petition No. 3966/89. In the discipline of Surgery in the post-graduate courses, there were only five seats available for admission to the institutional candidates.

The case of the petitioner Dr. (Ku.) Arifa Almas is that since Dr. (Smt.) Namrata Seth and Dr. (Ku.) Sangeeta Katihar, both had not completed their one year house job, they were not eligible to be selected for admission to the post-graduate courses in Surgery and, therefore, she filed her objections dated 12-7-1989 (Annexure P-2) objecting the placement of Dr. (Smt.) Namrata Seth and Dr. (Ku.) Sangeeta Katihar at serial Nos. 4 and 6 respectively in Annexure 1

and has stated that on correct placement of names of the candidates in the merit list (Annexure P-I) in the discipline of Surgery, her name should have been placed at serial No. 5 and that being so, it is she who is entitled to be selected and allotted the seat in the postgraduate courses in the discipline of Surgery. On these facts, the petitioner Dr. (Ku.) Arifa Almas seeks quashing of the merit list in so far as the inclusion of the names of Dr. Namrata Seth and Dr. Sangeeta Katihar in the merit list (Annexure P-I) is concerned and has prayed for issuance of a writ of mandamus commanding the respondents Nos. 1 to 4 to admit her in post graduate course in discipline of Surgery. It may, however, be mentioned here that as Dr. (Smt.) Namrata Seth was not interested in her admission in M.S. Course as per her application dated 31-7-1989 and as such her name was not considered for admission in the post graduate courses in the discipline of Surgery. Dr. Seth however, applied for her admission in D.C.P. courses but as said earlier, she was not found eligible for admission in D.C.P. course also as according to the post graduate Council of Medical College, she had not completed her house job during the calendar year 1989.

The grievances of Dr. (Smt.) Namrata Seth, petitioner in Misc. Petition No. 4037 of 1989, are that her application for admission in D.C.P. was wrongly rejected on 8-8-1989 by the Post Graduate Council of Medical College, Jabalpur, by the impugned order dated 10-8-1989 (Annexure-A). It has been stated that she had joined the house job on 18th August, 1988 for a period of one year in the faculty of General Surgery, but due to pregnancy, she absented herself with effect from 12-10-1988 and remained absent for a total period of 230 days. The case of the petitioner Dr. (Smt.) Namrata Seth is that being a meritorious candidate, she cannot be deprived of her legal right to claim the seat at least in Diploma course in Pathology, simply because she could not complete her house job within the calendar year because of pregnancy and delivery of a child. The denial of maternity/medical leave to a female medical student amounts to compelling the female medical student not to have any child which amounts to interference with and diversion of an inordinate course of human nature. In such circumstances, the refusal to admit the petitioner in D.C.P. is an open insult to an Indian Womenhood which is the most sacrosanct and cherished institution and, therefore, the impugned decision of the Post Graduate Council of Medical College, Jabalpur, dated 8-8-1989, is manifestly unreasonable and arbitrary. The petitioner Dr. (Smt.) Namrata Seth, therefore, seeks quashing of the decision dated 8-8-1989 (Annexure-A) taken by the Post Graduate Council Medical College, Jabalpur, declining to admit her in D.C.P.; with a further relief directing the respondents to admit her in D.C.P.

In Misc. Petition No. 4037 of 1989 the petition filed by Dr. (Smt.) Namrata Seth, this Court had passed an interim order dated 16-8-1989 to the effect that "one seat in Pathology in Medical College, Jabalpur, shall be kept vacant". But, as said earlier the Post Graduate Council Medical College, Jabalpur, had already selected three candidates, namely, Dr. (Ku.) Savita Agarwal, Dr. (Ku.) Arifa Almas and Dr. Harish Bajaj, for admission in Diploma courses in Pathology on the basis of merit.

Dr. Harish Bajaj, therefore, entered appearance as an inter-vener and filed an application in Misc. Petition No. 4037 of 1989 for permission to intervene, opposing the petition filed by Dr. (Smt.) Namrata Seth contending that according to the rules for Diploma course, she had not completed her one year house job and, therefore, she was not entitled for admission in Post Graduate Diploma course in Pathology. Dr. Harish Bajaj putforth his case by contending that he had passed the final M.B.B.S. examination in 1987 and completed his internship in August, 1988 whereafter he applied for admission for house job. He was selected for admission to house job. He joined the house job on 19-8-1988 and completed one year course of house manship on 18-8-1989. He then applied for post graduate Diploma course and in the order of preference, he offered for Pathology, Diploma in Anaesthesia and Diploma in Radiology as the disciplines of his studies. The intervener Dr. Harish Bajaj was selected for post graduate diploma course in Pathology as said above. He has, therefore, prayed for dismissal of the petition filed by Dr. (Smt.) Namrata Seth. He also made an application for vacating the interim order passed by this Court dated 16-8-1989 referred to above. After hearing the parties on the interim order, this Court by order dated 31-12-1989 modified the earlier order by directing the respondents to allow the petitioner Dr. (Smt.) Namrata Seth and the intervener Dr. Harish Bajaj to attend and work in D.C.P. until further order. It is how the petitioner Dr. (Smt.) Namrata Seth and the Intervener Dr. Harish Bajaj are still attending the courses of study in D.C.P. It appears that as a consequence of the aforesaid interim order passed by this Court, the Post Graduate Council Medical College, Jabalpur, in its meeting held on 15-1-1990 passed an order (Annexure-PI1) (filed in Misc. Petition No. 210/90), provisionally selecting Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj for admission to post graduate M.D. course in Pathology against unutilised seats for All India Candidates, 1989.

It may be mentioned here that out of the total number of seats available for admission in different disciplines in the Medical College, Jabalpur, 25 per cent scats were allocated for admission of the candidates on the basis of All India Competative Entrance Examination in Post Graduate courses in different subject but all the seats reserved for All India Quota in the disciplines of Pathology could not be filled up as the successful candidates in entrance examination from All India Quota, did not turn up to join Department of Pathology in Medical College, Jabalpur. Three seats in the disciplines of Pathology in the Post Graduate Courses out of All India Quota, therefore, fell vacant. The Director of All India Institute of Medical Science by his letter dated 4-12-1989 released these seats to the State Government to be filled in by the institutional and other eligible candidates out of the merit list. Out of all these three seats, the Director General of Medical Education, Bhopal, allocated one seat for Assistant grade and two seats for institutional and other meritorious candidates. After the two seats in M.D. Pathology were available which had fallen vacant out of the All India Quota. The petitioner Dr. (Smt.) Namrata Seth again advanced her claim but it was not accepted and hence she filed a fresh petition being Misc. Petition No. 5256 of

1989, claiming her admission in M.D. Pathology out of the aforesaid two seats reiterating the same grounds,

Release of the two seats for institutional candidates out of the All India Quota also gave rise to the filing of the other two petitions that is to say. Misc. Petition No. 29 of 1990 filed by the petitioner Dr. (Ku.) Alka Gupta and Misc. Petition No. 210 of 1990 filed by the two petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal.

The case of the petitioner Dr. (Ku.) Alka Gupta is that in the merit list (Annexure-P2), she was placed at serial No. 56 as shown in the table in paragraph No. 3 above. After the vacancy of seats under the All India Quota was notified, the petitioner Dr. (Ku.) Alka Gupta made request to the Dean Medical College Jabalpur, to grant her admission in M.D. Pathology, but she has not been so admitted and, therefore, has filed the petition for a writ of mandamus commanding the respondents to admit her in M.D. Pathology.

The case of the two petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal, in Misc. Petition No. 210/90, is that the respondent No. 4 Dr. (Smt.) Namrata Seth and respondent No. 5 Dr. Harish Bajaj had all completed their rotary internship on 15-8-1988 and they all became eligible to choose their disciplines for house job for post graduation and the choice so given is final. It has been stated that since the two post graduate degree seats in Pathology were reserved for the successful candidates in the All India Entrance Examination, the same were not available to the petitioners. Consequently, the petitioners were given admission in Post Graduate Diploma Course to two years (D.C.P.) It has been stated that the Pathology is para clinical subject for which no house job is prescribed. The petitioners were given admission in Post Graduate Diploma course in Pathology where they joined on 12-10-1988.

The case of the two petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal, in Misc. Petition No. 210 of 1990, is that the Medical Council of India has made recommendations which have been adopted as Regulations u/s 33 of the Indian Medical Council Act, 1956, which have the binding effect. According to these petitioners, Pathology is a basic science and Para-clinical subject. Regulations lay down criteria for selection of candidates for post graduation according to which house job is made compulsory. Further case of these two petitioners is that Dr. (Smt.) Namrata Seth had not completed her house job within the calendar year 1989 and Dr. Harish Bajaj had done his house job in Medicine and not in Pathology and, therefore, both are not eligible for being considered for admission in M.D. Pathology out of the two seats of All India Quota which reverted back to institutional candidates. They assert that as both the petitioners were admitted in D.C.P. on 12-10-88 and by now they have completed more than one year in Pathology which is equivalent to house job in Pathology and as such they should get preference over Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj, respondents Nos. 4 and 5, and, therefore, provisional admission given to Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj in M.D.

Pathology by impugned order dated 15-1-1990 is illegal and be quashed. Instead, the two petitioners be admitted in M.D. Pathology in two seats of All India Quota which have fallen vacant and reverted back to institutional candidates.

After having summarised the salient facts of the respective cases of the petitioners, we shall now proceed to deal with the individual cases on merits on the basis of the respective contentions advanced on behalf of the petitioners. We shall first deal with the case of Dr. (Ku.) Arifa Almas, who is the petitioner in Misc. Petition No. 3966 of 1929, who has challenged the inclusion of the names of the respondents Nos. 5 and 6, namely, Dr. (Smt.) Namrata Seth and Dr. (Ku.) Sangeeta Katihar in the merit list (Annexure-PI) for admission in the post graduate courses in the discipline of Surgery. The contention of Shri J.P. Sanghi, learned counsel appearing for the petitioner Dr. (Ku.) Arifa Almas, was that no candidate can be admitted to post graduate course unless he/she completed one year house job within the calendar year as provided in the rules and as both the respondents Nos. 5 and 6 Dr. (Smt.) Namrata Seth and Dr. Sangeeta Katihar, had not completed their house job within the calendar year ending on 15th August, 1989, their names could not be included in the merit list for registration in post graduate courses. In support of this submission, the petitioner and respondents have placed on record the documents relating to the attendance of both the above named respondents Nos. 5 and 6 to show that they have not completed their house job within the calendar year.

With a view to appreciate the above mentioned argument, it would be relevant to look into the Rules and Regulations in this connection. In exercise of an executive power of the State, the Government of Madhya Pradesh has made rules for selection of candidates for post graduate courses which are known as "Madhya Pradesh Selection for Post Graduation Courses (Clinical, Para-Clinical and Non-Clinical Courses) in Medical College of Madhya Pradesh Rules, 1984 (hereinafter referred to as the "State Rules")". It cannot be disputed that under Article 162 of the Constitution of India, the Executive power of a State extends to the matters with respect to which the Legislature of the State has power to make laws, As there is no legislation covering the field of selection of candidates for admission to Medical Colleges in the State, the State Government was, therefore, competent to make the said Rules in exercise of its executive powers which may be treated as Executive Instructions and the same shall hold field so long there is no legislation in this regard. In taking this view, we are supported by the decision rendered by their Lordships of the Supreme Court in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, This view was again reiterated in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*,

The Medical Council of India constituted u/s 3 of the Indian Medical Council Act, 1956 (hereinafter referred to as the "Act"), has made recommendations on post graduate medical education which are approved as "Regulations" by Government

of India u/s 33 of the Act. According to Regulation 5 under the heading "General", the selection of post graduates both for degree and diploma course should be strictly on the basis of academic merit. Similarly, Rule 3 of 1984 State Rules also provide that the post graduate courses shall be open to merit candidates graduating from Medical Colleges in Madhya Pradesh. Apart from the aforesaid recommendations of the Council and Rule 3 of the State Rules referred to above, Rule 8.1 to Rule 8.4 of the State Rules deal with the selection of merit candidates for admission to post graduate courses which for ready reference are reproduced hereunder :? -

"Selection of Merit Candidates.

1 Merit candidates in clinical subjects shall be selected from out of those who are completing their house jobs within that calendar year.

2 Candidates u/s I shall be selected by the Dean of the Medical College, strictly on the basis of merit from amongst the students passing from that college, on the recommendation of the College and Hospital Council or the P.O. Committee of the College.

3 The merit list of candidates under 8.1 and 8.2 would be prepared by each Dean of the College every year and notified on the College Notice Board. Any objection or representation received within 10 days of notification would be considered by the Dean of the College who shall make notifications, if necessary, after placing the objection or representation before the College and Hospital Council or P.O. Committee.

4 Candidates under 8,1 shall lose their eligibility for admission if they do not complete the house job, or are guilty of misconduct or any act of gross indiscipline, which in the opinion of the Dean, renders them liable to such punishment, or who after finishing their regular house job, take up service outside the State."

Admittedly, the discipline of Surgery for which the petitioner and the respondents Nos. 5 and 6, namely, Dr. (Smt.) Namrata Seth and Dr. (Ku.) Sangeeta Katihar, had originally applied for, is a clinical subject. It is also an admitted fact that a merit list of candidates (Annexure-P2) (filed in Misc. Petition No. 29/90) who had applied for house job was prepared by the Dean, Medical College, Jabatpur, in the year, 1988 on the basis of total number of effective marks obtained by each candidate in the under graduate examination. The Dean Medical College, Jabalpur, also published a final merit list of candidates who had applied for M.D./ M.S. courses in the Clinical subjects for the year, 1989 on the basis of effective percentage of marks obtained by the candidates in M.B.B.S. examination vide (Annexure-PI) in Misc. Petition No. 3966 of 1989. This list shows the names of candidates in the respective discipline in the order of merit. Admittedly, in the year, 1989 there were only five seats available in the discipline of Surgery for admission in the post graduate M.D./ M.S. courses. The names of the respondents Nos. 5 and 6 appeared at serial Nos. 4 and 6 respectively and that

of petitioner Dr. (Ku.) Arifa Almas at serial No. 7 in the said merit list in discipline of Surgery. According to Rule 8.1 of the State Rules, a merit candidate in Clinical subjects like Surgery shall be selected from out of those who are completing their house jobs within the calendar year. Shri J. P. Sanghi learned counsel for the petitioner, contended that the meaning of words "Calendar Year" occurring in Rule 8.1 of the State Rules would be one complete year from the date of joining the house job according to gregorian calendar. But, we are unable to concede to this line of arguments. According to the long practice so far followed for all content and purposes the calendar year of selection of the merit candidates for admission to clinical subjects in the post graduate courses. The requirement of this rule would be fully complied with if the candidate had completed or would be completing his or her house job within the calendar year of selection. In other words, on or before 31st December of the selection year and not necessarily within one complete year from the date of joining the house job. In the present case, the selection year was 1989. The question for our determination, therefore, arises whether the respondents Nos. 5 and 6, namely, Dr. (Smt.) Namrata Seth and Dr. (Ku.) Sangeeta Kathihar, both had completed or were likely to complete their house job in the discipline of Surgery within the calendar year, 1989. A perusal of attendance record and other documents relating to the attendance of Dr. (Smt.) Namrata Seth as well as on her own showing in her petition (M.P. No. 4037/89), admittedly she did not complete her house job within the calendar year, 1989, Dr. (Smt.) Namrata Seth joined her house job on 16-8-1988 but she absented from 12-10-1988 on the ground of pregnancy. Thereafter, she resumed her house job again on 29-6-1989. Thus assuming, she attended her house job from 18-8-1988 to 11-10-1988 and from 29-6-1989 till 31-12-1989 even then in no case, she could have completed one year house job within the calendar year 1989. She completed her house job some times in April, 1990 that is year next to the calendar year. She was, therefore, not eligible for admission to post graduate course in discipline of Surgery by virtue of Rule 8.1 and she had lost her eligibility for such an admission by virtue of the provision contained in Rule 8.4 of the State Rules.

In this connection are ference to Rule 10 of 1984 State Rules be also made with advantage which is yet another impediment in the way of Dr. (Smt.) Namrata Seth in her admission in post graduate M.S. Course in 1990 when she completed her house job because of the bar in carry forward rule. Rule 10 of 1984 State runs as follows :--

"Rule 10. The seats available in any particular year will be filled up in that year. No candidates will be admitted against seats remaining vacant from previous years."

A plain reading of the Rule 10 will go to show that the words "filled up in that year" employed in the rule distinctly imply that the vacancy of seat cannot be carried over to the next academic year or years. This interpretation is further reinforced by the later part of Rule 10 which lays down an absolute bar in the

carry forward of the seat to the next or succeeding academic year. What is implicit in the first part of Rule 10 is made explicit in the second part of it. If any authority is needed in support of this interpretation, a reference may be made to *Ajay Pradhan Vs. State of Madhya Pradesh and Others*,

As there were only five seats available for admission to post graduate courses in the discipline of Surgery, the petitioner Dr. (Ku.) Arifa Almas succeeds only if she is able to show that besides Dr. (Smt.) Namrata Seth, Dr. (Ku.) Sangeeta Katihar was also ineligible for being selected to the post graduate course because the name of the petitioner in the merit list of candidate of Surgery appears at serial No. 7. We shall, therefore, examine whether Dr. (Ku.) Sangeeta Katihar completed or did not complete her house job within the calendar year, 1989. Dr. (Ku.) Sangeeta Katihar joined her house job in Surgery on 16-8-1988 and worked in the department till 31-8-1988 when she proceeded on maternity leave with effect from 1-9-1988 to 29-12-1988 during which she had undergone a caesarean operation. She resumed house job with effect from 30-12-1988. It is true that Dr. (Ku.) Sangeeta Katihar joined her house job on 16-8-1988 and the period of one year would end on 15-8-89, but her selection to the post graduate course would be valid under Rule 8.1 of the State Rules, if she is able to complete her house job by repeating the period of absence within the calendar year, 1989, itself. Dr. (Ku.) Sangeeta Katihar as said above was absent with effect from 1-9-1988 to 29-12-1988 that is for a period of four months (short of a day) only. That being so, by repeating the period of four months, she could in any case complete her house job by the end of December, 1989, that is to say within the calendar year, 1989. That being so, Dr. (Ku.) Sangeeta Katihar cannot be disqualified as she had completed her house job within the calendar year which is also supported by the Dean Medical College, Jabalpur. We, therefore, see no reason to hold that the respondent Dr. (Ku.) Sangeeta Katihar was disqualified for being selected to the post graduate course. As said earlier, there were only five seats in the discipline of Surgery and, therefore, even if the respondent Dr. (Smt.) Namrata Seth is disqualified, the petitioner Dr. (Ku.) Arifa Almas does not get a seat in the discipline of Surgery in the post graduate course on the disqualification of Dr. Namrata Seth as the petitioner would be shifted from serial No. 7 to Serial No. 6. In this view of the matter, the interim order dated 13-12-1989 directing that the petitioner to be permitted to work and attend M.S. post graduate course in Surgery, became infructuous as it was made clear in the said order itself that this interim order shall not entitle the petitioner to claim the seat by virtue of the said interim order which shall be subject to the final decision of the petition. However, the question whether the petitioner and the respondent No. 5 Dr. (Smt.) Namrata Seth would be entitled to admission to post graduate M.D. or Diploma courses in Pathology, would be examined and dealt with hereinafter while considering the cases of other petitioners.

Now coming to Misc. Petition No. 4037 of 1989 filed by the petitioner Dr. (Smt.) Namrata Seth challenging the decision of the post graduate Council of Medical College, Jabalpur, dated 8-6-1989 (Annexure-A) whereby the petitioner's

application to join post graduate diploma course in Pathology was also rejected while Dr. (Ku.) Savita Agarwal, Dr. (Ku.) Arifa Almas and Dr. Harish Bajaj were selected to the post graduate diploma course for three seats available to the institutional candidates in the quota of 1989. The petitioner Dr. (Smt.) Namrata Seth has alleged that she had passed her M.B.B.S. examination in 1987 and thereafter, completed her internship for one year from 16-8-1987 to 15-8-1988. She was also selected for house job in the discipline of Surgery for post graduate course on the basis of her academic record in the under graduate course, but she could not complete her house job within the calendar year as in the mean while, she was married, became pregnant and delivered a child. She, therefore, became ineligible for admission to M.S. She then applied for post graduate diploma course in Pathology but her application was not considered by the post graduate council of Medical College on the same ground that she had not completed her house job within the calendar year. Shri Tamaskar, learned counsel for the petitioner Dr. (Smt.) Namrata Seth in Misc. Petition No. 4037/89 besides other cases mainly relying on the decision in the case of AIR India Vs. Nergesh Meerza and Others, strenuously urged that the petitioner Dr. (Smt.) Namrata Seth had secured 59.07% of marks in the under graduate course which is a percentage much above the percentage secured by Dr. (Ku.) Arifa Almas and Dr. Harish Bajaj and that she had also completed her one year rotating internship and, therefore, she had a preference over Dr. (Ku.) Arifa Almas and Dr. Harish Bajaj for admission to the post graduate diploma course in Pathology in accordance with the criteria laid down in the recommendation/regulations adopted by the Medical Council of India. It was also submitted that so far as the absence of the petitioner Dr. (Smt.) Namrata Seth in not completing her house job within the calendar year is concerned, it was totally an involuntary act, not within the power and control of the petitioner but a genuine need as she was physically disabled due to pregnancy and delivery of child. It was further alleged that the provision of completing housemanship or alternative thereof as contained in Clause (c) of the criteria for the selection of candidates in the regulations made by Medical Council is only directory, advisory, recommendatory and not mandatory. According to the learned counsel, if plausible and genuine reasons can be shown for the absence and non-completion of the house job within the calendar year a deviation from the said rule requiring completion of housemanship for the selection of candidates for post graduate diploma course may be permissible. After hearing the counsel for the parties at length on the submissions made above and on a careful examination of the criteria for the selection of candidates for post graduate Diploma courses and State Government Rules, we regret to say that the submissions are devoid of any force and as such cannot be accepted.

As regards, the question of the directory or mandatory nature of the recommendations/regulations made by the Medical Council, the same is not of any consequences in the case of Dr. (Smt.) Namrata Seth as besides the Recommendations/Regulations of the Council, the State Rules 8.1 to 8.4 discussed above are very specific and clear. However, it may be pointed out that

their Lordships of the Supreme Court in the case of Government of Andhra Pradesh and Another Vs. Dr. R. Murali Babu Rao and Another, which was the case of recruitment to the posts of Professors, Readers and Lecturers observed that the recommendations made by the Council or the Regulations framed by it are only recommendatory and not mandatory. But, the instant case is not a case for recruitment to the posts of Professors, Readers, Lecturers etc. The observations have to be read in the context, they are made in the facts and circumstances of a particular case. In the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, the following observations were made in paragraphs 18 and 19:-

"By virtue of the authority conferred by the Medical Council Act, the Medical Council may prescribe the eligibility of a candidate who may seek to get admitted into a Medical College for obtaining recognised medical qualifications. But as to how the selection has to be made out of the eligible candidates for admission into the Medical College necessarily depends on circumstances and conditions prevailing in particular States and does not come within the purview of the Council."

Further in paragraph 20 of the report, following observations have been made :

"Under Section 33 of the Act, the Council is empowered to make regulations with the previous sanction of the Central Government generally to carry out the purposes of the Act."

As said earlier, the State Government in exercise of its executive power under Article 162 of the Constitution of India, has made similar Rules for admission to the post graduate Diploma courses. So long as there do not exist any statutory rules, the rule so made by the State Government in exercise of its executive power under Article 162 of the Constitution of India hold the field and if the said rules are applied to the case of the petitioner Dr. (Smt.) Namrata Seth, we find no infirmity in the decision taken by the Post Graduate Council of Medical College, Jabalpur, by not selecting her.

Here, a reference to Sub-rule (i) of Rule 1.1 of the State Government Rules for Post Graduate Diploma Courses in Medical Colleges in Madhya Pradesh be also made with advantage which lays down that "for Diploma in forensic Medicine (D.F.M.) and Clinical Pathology (D.C.P.) candidates having done house job in Medicine or Surgery would be preferred". In the present case, as discussed earlier, the petitioner Dr. (Smt.) Namrata Seth had not completed her house job in Surgery whereas Dr. (Ku.) Arifa Almas completed her house job in Surgery and Dr. Harish Bajaj in Medicine. That being so, both Dr. (Ku.) Arifa Almas and Dr. Harish Bajaj will have preference over Dr. Namrata Seth by virtue of the provisions contained in the rule referred to above.

Further Rule 3.1 of the Diploma Rules provides that the criteria for selection of diploma candidates would be the same as laid down for post graduate course both for merit candidates as well as for Assistant Surgeon. Consequently, the

provisions of Rules 8.1 to 8.4 of the 1984 State Rules reproduced above in paragraph No. 15, will be fully attracted. Rule 8.3 of the said Rules provide that the Dean of the College will prepare the merit list of the candidates and notify on the College Notice Board and any objection/ representation received within 10 days of notification would be duly considered and make necessary notification, if necessary, after considering the said objection/ representation. In the present case, the petitioner Dr. (Smt.) Namrata Seth has made no assertion that after Dr. (Ku.) Savita Agarwal, Dr. (Ku.) Arifa Almas and Dr. Harish Bajaj were selected by Post Graduate Council of Medical College, Jabalpur, as per Annexure-A under challenge and their names were notified by the Dean, on the College Notice Board, she made any objection/representation thereto. In the absence of such an objection/representation being made, the petitioner Dr. (Smt.) Namrata Seth cannot raise the objection for the first time in the writ petition under Article 226 of the Constitution of India, without first raising the same before the Dean concerned as contemplated by Rule 8.3. For these reasons, in our considered opinion, no case is made out for any interference in the impugned decision dated 8-8-1989 (Annexure-A) taken by the Post Graduate Council of Medical College, Jabalpur and therefore, the petition Misc. Petition No. 4037/89, has to be dismissed. The question, however, remains to be considered whether Dr. (Smt.) Namrata Seth would be entitled to a seat in M.D. Pathology out of the two All India seats which fell vacant and reverted back to the institutional candidates and this question shall be considered along with the cases of the other claimants in Misc. Petition Nos. 29 of 1990 and 210 of 1990.

As regards, the decision in the case of AIR India Vs. Nergesh Meerza and Others, (supra) relied on by the learned counsel for the petitioner Dr. (Smt.) Namrata Seth, we find that it has no application to the facts of the present case for the reasons that it was a case wherein the constitutional validity of Regulation 46(i) (c) of Air India Employees Service Regulations was challenged which provided that the normal age of retirement of Air Hostess as 36 years or on marriage if it takes place within four years of service, or on first pregnancy whichever occurs earlier. Their Lordships maintained the earlier part of the regulations which imposed the condition of retirement of an Air Hostess if she married herself within four years of service but the condition of retirement on first pregnancy was struck down as unconstitutional on the ground that it was unreasonable and arbitrary. It was observed that regulation does not prohibit marriage after four years and if Air Hostess having fulfilled first condition and becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. While taking the aforesaid view, their Lordships observed that having taken the Air Hostess in service and after having utilised her services for four years, to terminate her service if she became pregnant amounts to compelling the poor Air Hostess not to have any children and thus interfere with and divert the ordinary course of human nature. It is further observed that it seems to us that the termination of the services of an Air Hostess under such circumstances is not only a callous and cruel Act but an open insult to Indian Womanhood -- the

most sacrosanct and cherished institution. But the aforesaid view taken and observations made by their Lordships of the Supreme Court are in a different context and same do not have any application nor advance the case of the petitioner Dr. (Smt.) Namrata Seth, particularly because of the State Government Rules for admission to Post Graduate courses discussed above. Similarly, the decision in *Abhijit Vs. Dean, Government Medical College, Aurangabad* and *Another*, also has no application to the facts of this case.

This brings us to the case of Dr. (Ku.) Alka Gupta -- Petitioner in Misc. Petition No. 29 of 1990, in which Dr. Sanjay Kumar Mishra appeared as intervener through Shri Rajendra Tiwari, Advocate, as well as the case of Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal, petitioners in Misc. Petition No. 210 of 1990. The petitioner Dr. (Ku.) Alka Gupta claims one seat in M.D. Pathology out of the seats which have reverted back to the institutional candidates out of the All India Quota while the two petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal have opposed the claim of petitioner Dr. (Ku.) Alka Gupta and have claimed the said two seats of M.D. Pathology for themselves. The petitioner Dr. (Ku.) Alka Gupta had passed M.B.B.S. Examination in 1987. After completing her internship and house job in Medicine, she applied for admission to the Post Graduate Diploma Course in discipline of Medicine in 1989. But because of limited number of seats and her rank being lower in the merit list, she could not be selected for admission to Post Graduate Diploma Course in Pathology for which the petitioner filed her application. She then applied for D.C.P. in Anaesthesia in 1989 as her second choice which was accepted and she joined D.C.P. in Anaesthesiology on 16-2-1989. Now, Dr. (Ku.) Alka Gupta claims one seat in M.D. Pathology out of the two seats which had fallen vacant out of the All India Quota. Similar is the claim advanced by the two petitioners, namely Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal in Misc. Petition No. 210 of 1990 who are represented by Shri Rajendra Tiwari, Advocate, which is opposed by the State of Madhya Pradesh as well as by Director Medical Education and Dean Medical College, Jabal-pur, on the ground that the said two seats will have to be allotted to the candidates who are better placed in the merit list than Dr. (Ku.) Alka Gupta and the other two petitioners named above.

As stated earlier by our interim order dated 13-12-1989 passed in Misc. Petition No. 4037 of 1989, it was directed that Dr. (Smt.) Namrata Seth and the intervener Dr. Harish Bajaj shall be allowed to attend and work in D.C.P. until further orders; the Dean Medical College by his order dated 15-1-1990 (Annexure-P11) filed in Misc. Petition No. 210/90 on the basis of decision of Post Graduate Council, selected Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj provisionally for admission to Post Graduate M.D. Course in Pathology against the two unutilised seats of All India Quota 1989 which had reverted back to institutional candidates and other eligible candidates in December, 1989. It is this order which has been challenged by the two petitioners in Misc. Petition No. 210 of 1990, by claiming the said two seats to themselves.

Shri Rajendra Tiwari, learned counsel for the petitioner in Misc. Petition No. 210 of 1990, contended with great vehemence that the admission given to Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj in M.D. Pathology is arbitrary and illegal. He projected that Dr. Harish Bajaj had completed his house job in Medicine and not in Pathology and similarly Dr. (Smt.) Namrata Seth attended house job in Surgery for about three months only and that too not in Pathology and, therefore, they could not have been given admission in M.D. Pathology by order dated 15-1-1990 (An-nexure-PI1). According to him, Pathology is a basic science and the eligibility for admission to M.D. Pathology, has to be determined in accordance with Clause (c) of the criteria laid down for selection of candidates in An-nexure-P9, the recommendations/regulations made by the Medical Council of India and according to the requirement laid down in Clause (c), the completion of one year house job was a condition precedent for admission to post graduate course. It was submitted that both the petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal, were admitted in D.C.P. with effect from 12-10-1988 which is a course of two years duration and they have already completed first year of D.C.P. as full time post graduate students in Pathology and are still continuing in second year which shall be completing on 12-10-1990. It was, therefore, contended that the two seats in M.D. Pathology, out of All India Quota which reverted back to the institutional candidates by Memo of the Director General dated 4-12-1989 should have been allotted to the two petitioners, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal as they are fully qualified and had a better claim over all other candidates who were not so qualified. Learned counsel asserted with great force that according to the recommendation/regulations made by Medical Council of India as contained in Clause (c) thereof, a candidate must have done one year housemanship prior to admission to post graduate degree or diploma course preferably for one year in the same subjects or at least six months in the same department and the remaining six months in an allied department. If that is not done then in the alternative the candidate must have worked as full time post graduate student in a manner equivalent to housemanship requirement in the department concerned before taking of the post graduate courses. But according to the learned counsel, Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj had not done one year house job in Pathology nor worked as full time post graduate student in a manner equivalent to housemanship requirement in the department concerned. It was, therefore, submitted that the impugned order dated 15-1-1990 (Annexure-PII) selecting Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj for M.D. Course in Pathology was unjustified and contrary to the regulations of the Council. He went on to contend that Rani Durgawati Vishwa Vidya-laya, Jabalpur, has also made Ordinance No. 57 in respect of M.D./M.S. Courses and Ordinance No. 58 in respect of Post Graduate Diploma Courses; u/s 38 of the Madhya Pradesh Vishwa Vidyalaya Adhiniyam, 1973 (hereinafter called as the "Adhiniyam") which will have the overriding effect on the State Rules for admission to post graduate courses which are executive instructions, issued under Article 162 of the Constitution of India. The admission of Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj are made

contrary to the eligibility requirement contained in the said Ordinances. On these premises, Shri Rajendra Tiwari learned counsel for the petitioner assailed the order dated 15-1-1990 (Annexure-P11) selecting Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj for admission to M.D. Pathology out of the two seats of the All India Quota.

We shall now examine the merits of the aforementioned arguments advanced by Shri Rajendra Tiwari learned counsel for the two petitioners, which shall equally apply to the case of Dr. (Ku.) Alka Gupta petitioner in Misc. Petition No. 29 of 1990. Here, we may again refer to the case of Government of Andhra Pradesh and Another Vs. Dr. R. Murali Babu Rao and Another, (supra), wherein their Lordships of the Supreme Court observed in paragraph 16 of the report that Indian Medical Council is only a recommendatory body. The Court has in a series of decisions, defined the precise functions and duties of Medical Council of India. The Medical Council is an expert body intended and meant to control the minimum standard of Medical Education and to regulate their observance. The recommendations made by the council or the Regulations framed by it are only recommendatory and not mandatory. That being so, the State Government would be within its rights in making rules laying down the process of selection of candidates for admission to post graduate courses and on that basis it can well be said that the rules of the State Government prescribing eligibility qualifications for admission to post graduate courses in exercise of its power under Article 162 of the Constitution of India, in the absence of any statutory rules, cannot be said to be without authority or in contravention of any regulations/recommendations made by the Medical Council of India. On the contrary, in our opinion even otherwise the State Rules are not contradictory but supplementary to the aims and objects pointed out by the Medical Council in their recommendations. The contention of the learned counsel based on the Ordinances Nos. 57 and 58 is also without any merit as the said Ordinances relate to the eligibility for admission of a candidate to the examination for post graduate degree in Medicine and Surgery or Diploma courses in Medicine. The said Ordinances are not relating to the selection of the candidates for admission to post graduate course. The arguments, therefore, that the Ordinance regulate the admission of candidates to post graduate courses or that the admissions have to be made strictly in accordance with, are wholly misconceived and not tenable in law.

As regards, the arguments based on Clause (c) of the criteria for selection of candidates (Annexure-P9) which are the recommendations of the Medical Council, it may be pointed out that according to Clause (a) of said criteria, students for post graduate training should be selected strictly on merit judged on the basis of academic record in the under graduate course and according to Clause (b), the candidate should have obtained full registration that is to say, they must have completed satisfactorily one year of compulsory rotating internship after passing the final M.B.B.S. Examination and must have full registration with State Medical Council. The requirement of Clause (c) that is one

year's housemanship prior to admission to post graduate degree or diploma courses is the requirement where such a housemanship is a must and a condition precedent to the admission of a candidate to post graduate courses. But, admittedly, it is not necessary for a candidate seeking admission in post graduate degree or diploma course in any Medical Colleges of Madhya Pradesh in the discipline of Pathology to have first completed one year's housemanship prior to such admission and, therefore, the requirement of Clause (c) would not be applicable in the instant case. For the same reason, the alternate provision contained in Clause (c)(i) also cannot be attracted which provide that the candidate must have worked as a full time post graduate student in a manner equivalent to housemanship requirement. It may be pointed out that the two petitioners in Misc. Petition No. 210 of 1990 have themselves asserted in para No. 9 at page 6 of their petition that Pathology is a Para-clinical subject and in this subject there is no house job. The question of completing house job in Pathology before seeking admission in M.D. Pathology does not arise. The main criteria for selection of candidates either for post graduate degree or diploma course is that the candidate should be selected purely on merit judged by the academic record in the record under graduate course. As said earlier, the two petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal are ranking lowest in the merit list as given in the table in para 3 of this order, and therefore, they cannot get precedent over more meritorious candidates, namely, Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj whose admissions, they have challenged in their petition. In our opinion, the admission given to Dr. (Smt.) Namrata Seth in M.D. Pathology is fully justified in accordance with the State Rules. But, the admission of Dr. Harish Bajaj in M.D. Pathology has to be considered vis-a-vis the case of Dr. (Ku.) Arifa Almas who is more meritorious than Dr. Harish Bajaj.

It may again be mentioned that 25 per cent seats were allocated to the All India Quota out of the total quota for the year 1989 for admission to post graduate courses, but the three candidates who were successful in All India Entrance Examination, did not join in M.D. course in Medical College, Jabalpur, in the department of Pathology. By memo of the Director General dated 4-12-1989, the said three seats reverted back and made available to the institutional candidates out of which one seat was allocated to the Assistant Surgeon and two seats to the General candidates for which applications were invited. Various petitioners and candidates who are respondents in these petitions, were aspirant for admission to post graduate course in Pathology whose entitlement shall be considered hereinafter.

From the above discussion, it is distinctly clear that if those two seats which reverted back to the institutional candidates out of All India Quota, were originally available for admission to the institutional candidates in the quota of 1989 then in that event there cannot be any dispute that according to Rules 8.1 to 8.4 of the State Rules as also under Regulations of the council only the meritorious candidates would have been allotted the two seats on the basis of

merit judged by the academic record in the under graduate course, that is to say, M.B.B.S. Examination. Simply because, those two seats fell vacant later and ultimately reverted back to the institutional candidates, there is no valid reason to depart from the normal rule of selection and not to apply the same yard stick and criteria, that is say, to allot the same to the candidates selected strictly on basis of merit from amongst students passing in the M.B.B.S. Examination. The two petitioners, namely, Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal who had applied for D.C.P. and were admitted accordingly with effect from 12-10-1988, were much lower in the merit list and there is no justifiable reason, to select them by sacrificing the claims of the candidates who are more meritorious. The two petitioners Dr. Sanjay Kumar Mishra and Dr. Vishwajit Jaiswal were given admission in D.C.P. out of 1988 quota and if ignoring the claims of meritorious and rightful claimants, they are given admission in M.D. Pathology out of 1989 quota then besides injustice to the meritorious candidates, two seats of D.C.P. for the year 1988 would be just wasted. For the same reasons, Dr. (Ku.) Alka Gupta petitioner in Misc. Petition No. 29 of 1990 also does not deserve a seat in M.D. Pathology in preference to more meritorious candidates, namely, Dr. (Smt.) Namrata Seth, Dr. (Ku.) Arifa Almas and Dr. Harish Bajaj. In the facts and circumstances discussed above, there is no merit in these two petitions (Misc. Petition No. 29 of 1990 Dr. (Ku.) Alka Gupta v. State of M.P. and others) and Misc. Petition No. 210 of 1990 (Dr. Sanjay Kumar Mishra and another v. State of M.P. and others).

As a consequence of the conclusions recorded above, we may point out that in 1989 quota, three seats in D.C.P. were allotted on, the basis of merit to the following candidates:

- (a) Dr. (Ku.) Savita Agarwal.
- (b) Dr. (Ku.) Arifa Almas; and
- (c) Dr. Harish Bajaj.

As Dr. (Ku.) Savita Agarwal was selected for admission in M.D. (Medicine), she did not join her seat in D.C.P. which could have been available to Dr. (Ku.) Alka Gupta as she was an aspirant for admission in post graduate discipline in Pathology, having completed her internship and house job; but she was given admission in D.C.P. Anaesthesiology as her second choice. Dr. (Ku.) Arifa Almas is second in the order of merit to those candidates who desired admission in post graduate course in Pathology as a second choice. According to the State Rules, she has a better claim for admission in M.D. Pathology than Dr. Harish Bajaj who is lower in rank in the merit list. That being so, if Dr. (Ku.) Arifa Almas prefers to be admitted in M.D. Pathology, she should be given admission in M.D. Pathology instead of Dr. Harish Bajaj who may be admitted in D.C.P. Similarly, Dr. (Ku.) Alka Gupta, if she so desired, may be given admission in D.C.P. Pathology out of ;1989 quota in place of Dr. (Ku.) Savita Agarwal, who has shifted to M.D. (Medicine) or in the vacancy created by Dr. (Ku.) Arifa Almas if she chooses to

opt for M.D. Pathology instead of D.C.P. which was allotted to her originally. If Dr. (Ku.) Arifa Almas and Dr. (Ku.) Alka Gupta prefer to join M.D. Pathology and D.C.P. respectively, the period of study spent by Dr. (Ku.) Arifa Almas and Dr. (Ku.) Alka Gupta in discipline of Surgery and Anaesthesiology respectively, be treated as period spent in the discipline of Pathology and the same shall be 1 counted against the period prescribed for their respective courses in M.D. Pathology and D.C.P. In the light of the view taken above, the impugned order dated 15-1-90 (Annexure-PI1) filed in (Misc. Petition No. 210 of 1990) giving provisional admission to Dr. (Smt.) Namrata Seth and Dr. Harish Bajaj in M.D. Pathology out of the two All India Quota seats, shall stand modified only in so far as it relates to Dr. Harish Bajaj. So far as the admission of Dr. (Smt.) Namrata Seth in M.D. Pathology out of these two seats is concerned, the said order is maintained.

In the result, Misc. Petition No. 4037 of 1989 (Dr. (Smt.) Namrata Seth v. State of M.P. and others) and Misc. Petition No. 210 of 1990 (Dr. Sanjay Kumar Mishra and another v. State of M.P. and 4 others) fail and are hereby dismissed. As regard, Misc. Petition No. 3966/89 (Dr. (Ku.) Arifa Almas v. State of M.P. and 5 others); Misc. Petition No. 5256 of 1989 (Dr. (Smt.) Namrata Seth v. State of M.P. and 2 others) and Misc. Petition No. 29 of 1990 (Dr. (Ku.) Alka Gupta v. State of M.P. and 2 others) succeed to the extent indicated in paragraph No. 31 above. We make no order as to costs in any of the petitions.