
(1999) 11 SC CK 0004

In the Supreme Court Of India

Case No : C.A. No's. 5242-5243 of 1998 etc.

Dr. Narayan Sharma and Another etc.

APPELLANT

Vs

Dr. Pankaj Kr. Lehar and Others etc.

RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 1997 — Rule 4, 5, 7, 8
Constitution of India, 1950 — Article 14, 15(1), 15(4), 166, 226

Citation : AIR 2000 SC 72 : (1999) AIRSCW 4196 : (2000) 1 GLT 13 : (1999) 8 JT 612 : (1999) 7 SCALE 96 : (2000) 1 SCC 44 : (1999) 4 SCR 364 Supp : (1999) 9 Supreme 114

Hon'ble Judges : S.N. Phukan, J;M. Srinivasan, J;G. B. Pattanaik, J

Bench : Full Bench

Advocate : R.K. Goswami and Satvik Verma, for Kailash Vasdev, Adv Vijay Hansaria, Sunil Kumar Jain and Subharajyoti Borthakur, for Jain Hansaria and Co, for the Appellant;

Final Decision : Disposed Of

Judgement

M. Srinivasan, J.—These appeals are directed against the judgment of the Gauhati High Court in Civil Rule No. 3493/97 and 3544/97, both being writ petitions under Article 226 of the Constitution. Civil Rule No. 3493/97 was filed by respondents 1-25 in Civil Appeal Nos. 5242-43/98. Civil Rule No. 3544/ 97 was filed by respondents 26-42 in the said appeals. The appellants in the said appeals were not parties in either of the writ petitions in the High Court. Respondents 43, 43A, 44 and 45 in the said appeals were respondents 1-4 in Civil Rule No. 3493/97 and respondents 43, 43A and 44 were the respondents in Civil Rule No. 3544/97. We find it convenient to refer to the parties as arrayed in Civil Appeal Nos. 5242-5243/98.

2. The respondents 1-25 challenged in their writ petition the validity of Rules 4, 5 and 8 (vii) of the Assam Medical Colleges (Regulation of the Admission to the Post-Graduate Courses) Rules, 1997 (hereinafter referred to as the 'Rules') on

several grounds. Respondents 26-42 had on their writ petition prayed for a direction to allow them to appear in the entrance examination for the Session 1996-97 and that they should be admitted only on the basis of the performance and merit in the entrance examination. They prayed for issue of a writ quashing the corrigendum issued by the Director of Medical Education in the Educational Notice dated 11.7.1997 whereby the candidates referred to in Sub-rules (i), (ii), (iii), and (iv) of Rule 4 of the 'Rules' were exempted from appearing in the entrance examination.

3. The Government of Assam framed in February 1995 the Assam Medical Colleges (Regulation of Admission to Post-Graduate Courses) Rules, 1994 (hereinafter referred to as the '1994 Rules') under Article 166 of the Constitution of India regulating admissions to the Post-graduate Courses in the medical colleges of Assam. Rule 5 of the said Rules provided for eligibility for competitive examination. Rule 7 provided for scheme of selection and provisions were made for reservation. In 1997, the earlier Rules were superseded and the 'Rules' were framed. The 'Rules' came into force w.e.f. 1.7.1997. Rule 4 provides for reservation. Sub-rule (i) relates to All India quota seats being 25% of the total seats. Sub-rules (ii), (iii) and (iv) which are under challenge read as follows:

(4) Reservation in seats

(ii) N.E.C. quota seats: Two seats in degree and two seats in diploma courses shall be reserved for the candidates recommended by the North Eastern Council.

(iii) Teachers Quota seats: Six seats shall be reserved for those teachers who are appointed on a regular basis on the recommendation of the Commission, in any of the Medical Colleges of Assam and who had at least 3 years teaching experience after regular appointment in the subject/discipline for which the seat is available provided that the requirement of teaching experience may be relaxed by a maximum of 1 year in case of pre and para clinical subjects, by the Government.

(iv) State Health Service quota seats: Twenty seats shall be reserved for the doctors appointed in the State Health Service on a regular basis on the recommendation of the Commission and who have worked for at least five years on a regular basis in any Health Center/Institution which is not situated in a municipal area.

Sub-rule (v) and (vi) are in the following terms:

(v) Following percentages of the seats available after excluding the seats reserved as referred to in (i), (ii), (iii), and (iv) above shall be reserved for Scheduled Castes, Scheduled Tribes and Castes OBC/ MOBC candidates:

S.C. - 7% S.T.(P) - 10% S.T.(H) - 5% OBC/MOBC - 15%

(vi) On the date of commencement of these rules, the number of total seats in different disciplines in different colleges and their break up among the reserved

categories as mentioned in Sub-rule (i), (iv) and (v) above shall be as in Appendix-I. Changes, if any, in this regard shall be notified at the time of advertisement for admission by the Government.

Rule 5(i) and (ii) as corrected are as follows:

5. Entrance examination and eligibility thereof:

(i) An examination shall be conducted for the purpose of admission to the Post-graduate Degree and Diploma courses in the Medical Colleges of Assam by the Gauhati University as per the scheme given at Appendix-11. Provided that the candidates referred to in Sub-rule (i), (ii), (iii) and (iv) of Rule 4 shall not be required to appear in the Entrance Examination.

(ii) The University authorities shall prepare a merit list based on the sum total of the marks obtained in the Entrance Examination and the percentage of marks obtained in all the three MBBS examinations by each candidate and publish the same in the leading newspapers in the State.

Rule 8(vii) reads as follows:

8. Vacancies:

(vii) Any seat lying vacant under the category referred to Rule 4(i) shall be filled up by the Director, Medical Education, with approval of the Government in accordance, with the procedure of Rule 8(i) and 8(v) and after informing the Government of India of such vacancy.

Provided, if there is any demand for such vacant seats by North Eastern Council for allotment of the same to the candidate from North Eastern States other than Assam, the Govt. may allot the seats to North Eastern Council as first priority.

4. Respondents 1-25 challenged the validity of Rules mainly on the ground that for Post-graduate courses, there could be no reservation and that at any rate, the reservations provided under Sub-rules (ii), (iii) and (iv) of rule 4 are arbitrary and uncanalised. It was also their contention that there was no justification whatever for exempting the persons covered by those sub-rules from writing the entrance examination. The grievance of respondents 26-42 was that the doctors who are in service should not be exempted from writing the entrance examination. According to them, the merit of such candidates should be decided only on the basis of performance in entrance examination. They are doctors in service and they claimed to have completed more than five years service in rural areas. They challenged the Rule to the extent to which it exempted the in-service doctors from appearing in the entrance examination.

5. The State of Assam filed a counter affidavit in Civil Rule No. 34937 97 only. There is no counter-affidavit in the other writ petition filed by respondents 26-42. As pointed out by the High Court repeatedly in its judgment, even the counter-affidavit filed in Civil Rule No. 3493/97 was unsatisfactory as the State Government did not choose to deal with the contentions raised by the writ

petitioners properly and did not choose to place the relevant facts and particulars before the Court. In particular, the counter-affidavit filed by the State Government has not dealt with the contentions of the writ petitioners that the corrigendum issued by the Director, Medical Education was in contravention of the Rules of Executive Business. The State Government did not also set out the relevant particulars for justifying reservation for candidates recommended by the North-Eastern Council.

6. The High Court heard both the writ petitions and rendered a common judgment whereby it struck down Sub-rules (ii), (iii), & (iv) of Rule 4 as well as Rules 5(1) and 8 (vii). The High Court has opined that merit should be the sole criterion for admission to Post-graduate medical courses subject to the reservation permitted by the Constitution. Consequently, the High Court allowed both the writ petitions.

7. The appellants in Civil Appeal Nos. 5242-43/98 were not parties in either of the writ petitions. They are aggrieved by the judgment of the High Court as they are affected by the quashing of Rule 4(iii) of the Rules. They applied for permission to file SLP in this Court and the same was granted by order dated 27.10.1998 when leave was granted in all the Special Leave Petitions. The State of Assam has filed Civil Appeal Nos. 5244-45/98. The Petitioner Nos. 1-6, 9, 10, 12-14 in Civil Rule No. 3544/97 are the appellants in Civil appeal No. 5246/98 while the other writ petitioners are shown as respondents 4-9 in the said appeal.

8. Mr. P.K. Goswami, learned Senior Counsel appeared for the appellants in C.A. Nos. 5242-43/98 and supported the reservation for teachers and exemption for them from appearing in the entrance examination. He submitted that there was no challenge in the writ petition to the validity of Sub-rule (iii) of Rule 4 and that no teacher was impleaded as a party to the writ petition. We suggested to the counsel not to rely much on such technical contentions but to argue the matter on merits. Mr. Vijay Hansaria, learned Counsel for the State of Assam argued in support of the provisions in the impugned rules.

9. Mr. Rajiv Mehta, learned Counsel appearing for the appellants in Civil Appeal No. 5246/98 contended that the High Court has committed an error in issuing a writ quashing the reservation for the in-service doctors and what all they prayed for in their writ petition was only to quash the provision exempting such doctors from writing the entrance examination.

10. Mr. G.L. Sanghi, learned Senior Counsel for the respondents, supported the judgment of the High Court by contending that there was no necessity for any reservation whatever for the three categories of candidates mentioned in sub rules (ii) to (iv) of Rule 4. He argued vehemently that the provisions in the Constitution have been violated by the State Government by framing such rules and that too, under Executive Business. He submitted that reservation could be made only in accordance with Article 15(4) of the Constitution of India.

11. Counsel on both sides cited decisions of this Court in support of their

respective contentions. We heard learned Counsel at length and also permitted them to file written submissions. We have gone through the same.

12. We shall now discuss the law enshrined in the Constitution as interpreted by the decisions of this Court on the subject. Article 15(1) prohibits discrimination against any citizen on grounds only of religion, race, caste, sex or place of birth or any of them. Article 29(2) is to the effect that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Article 15(4) was introduced by the Constitution First Amendment Act, 1951 which reads as follows:

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

13. Thus; Article 15(4) provides an exception to Article 15(1) and 29(2) enabling the State to make a special provision for the advancement of socially and educationally backward classes or for the Scheduled Castes and the Scheduled Tribes. A Constitution Bench of this Court considered the scope of Article 15(4) in *M.R. Balaji and Others Vs. State of Mysore*, . After tracing the history of the said provision, the Bench categorically laid down that the backwardness under Article 15(4) must be social and educational and it is not either social or educational but it is both social and educational. While dealing with the extent of the special provision which it could be competent to the State to make under Article 15(4), the Bench observed that the provision is a special provision and not one exclusive in character so that in looking after the advancement of the classes mentioned in the provision, the State would be justified in excluding altogether the advancement of the rest of the society. The Bench pointed out that it is because the interest of the society at large would be served by promoting the advancement of the weaker sections in the society, that Article 15(4) authorizes special provision to be made and that if a provision which is in the nature of an exception completely excludes the rest of the society that is clearly outside the scope of the Article. Referring to the reservation of seats in professional and technical colleges, the Bench said:

If an admission to professional and technical colleges is unduly liberalised it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted: reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centers to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits.

In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Article 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements the extent of the problem must be weighed, the requirement of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations.

14. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, , another Constitution Bench held that there could be reasonable classification based on intelligible differentia for the purpose of Articles 15(1) and 15(4) as well as Article 29(2). In that case, special provisions were made for sons/daughters of residents of Union Territories specified therein, sons/daughters of Central Government servants posted in Indian Missions abroad, etc. The Court held that there was no discrimination against the appellants on grounds only of religion, race, caste, language, sex or place of birth and the classification made by the Central Government was reasonable and based on intelligible differentia. While referring to the class of sons/daughters of residents of Union Territories mentioned therein, the Bench pointed out that the areas in those territories were well-known to be comparatively backward and with the exception of Himachal Pradesh they did not have any medical college of their own. The Bench observed that it was necessary that persons desirous of receiving medical education from those areas should be provided some facility for doing so.

15. In *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, , a Bench of three Judges struck down a special provision for persons belonging to rural areas while upholding the provision relating to hill areas and Uttarakhand. The Bench held that provision for rural areas as such could not be sustained on the ground that the rural areas represented socially and educationally backward class citizens. The Bench said that rural element did not make it a class.

16. In *Dr. Jagdish Saran and Others Vs. Union of India (UOI)*, , a medical graduate from Madras University had to seek admission in post-graduate degree course in Delhi University as his father was transferred to Delhi. Though he qualified in the entrance examination, he was rejected because of a rule reserving 70% of the seats at the post-graduate level to Delhi University graduates. He challenged the validity of the rule by filing a writ petition. While dismissing the writ petition, the Court gave two directions by one of which he was directed to be admitted to the degree course that year if the register of attendances etc. did not stand in the way and the Medical Council made an exception by agreeing to addition of one seat as a special case for that year. While referring to post-graduate courses, Justice Krishna Iyer, speaking for himself and Justice O. Chinnappa Reddy said thus:

23. Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality

where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.D., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-makings is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk. The Indian Medical Council has rightly emphasised that playing with merit for pampering local feeling will boomerang. Midgetry, where summitry is the desideratum, is a dangerous art. We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration:

Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the universities. (pp,778-779). Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or postdoctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral.(p.786).

17. In *Suman Gupta and Others Vs. State of Jammu & Kashmir and Others*, , the question pertained to the right of certain States to nominate candidates to seats reserved in Medical Colleges of other states on reciprocal basis. The Bench held that the selection of candidates of such nomination shall not be within the unlimited discretion and uncontrolled choice of the State Government. The Court observed that it was desirable for the Medical Council of India to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in medical colleges outside the State.

18. The question of reservation of seats for residents of the State or students of the same University came up for consideration in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, . After referring to the earlier case law including *Jagdish Saran and (Pradip Tandon)* (supra), the Bench said that considerations for admission to the post-graduate courses such as M.D. and the like for reservation based on residence requirements within the State or institutional preference were different from those for admission to the MBBS course. The Bench emphatically said that excellence cannot be allowed to be compromised by any other considerations because that would be detrimental to the interest of the nation. In the case of admission to the postgraduate courses the Bench quoted

Justice Krishna Iyer in Jagdish Saran in extenso and observed as follows:

We are therefore of the view that so far as admissions to postgraduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But even in regard to admissions to the post-graduate course, we would direct that so far as super specialities such as neuron-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis. (pp.692-693).

19. In *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, , the Court emphasised the need for entrance examination in order to judge the candidates by uniform standard. The Bench pointed out that the candidates are not to be selected on the basis of the marks obtained by them at the qualifying examination held by different States and/or Universities, as the standard of judging at these different qualifying examinations cannot by its very nature be uniform. It was observed that some universities may be very liberal in their marking while some others may be strict. There would be no comparable standards on the basis of which the relative merits of the students can be judged. The Bench said that it would be wholly unjust to grant admissions to students by assessing their relative merits with reference to the marks obtained by them, not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or universities where the Standard of judging would necessarily vary and not be the same. The Bench pointed out that it would be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution. The Bench had earlier directed the Indian Medical Council to come forward with a positive scheme in regard to the holding of entrance examinations and kept the writ petition pending without finally disposing of the same. The final directions were given by a Bench of two Hon'ble Judges who were parties to the 3 Judge Bench by order dated July 21, 1986. That judgment is reported as *Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and*

Others, . In that judgment, the Bench also explained some of the observations contained in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , and ultimately approved the schemes of examination for admission to MBBS/BDS course and post-graduate courses submitted by the Government of India subject to the modifications discussed and formulated in the judgment. While doing so, the Bench rejected the suggestion made by the Government of India that for admission to post-graduate courses a weightage equivalent to 15% of the total marks obtained by a (student at) the All-India Entrance Examination should be given after he had put in a minimum of three years of rural service. While recognising the desirability of giving some incentives to the doctors to go to the rural areas, the Bench held that such incentives should not go to the length of giving weightage of 15% of the total marks obtained by a candidate. After setting out the reasons for rejecting the suggestion made by the Government, the Bench observed:

We are of the view that when selection of candidates is being made for admission on an all-India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. We must remember that what we are regulating, are admissions to post-graduate courses and if we want to produce doctors who are MD or MS, particularly surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merit. Moreover we are extremely doubtful if a candidate who had rendered three years rural service for the purpose of getting a weightage of 15 per cent would go back to the rural area after he has got MD or MS degree. We are, therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-graduate courses are concerned. Even if an undertaking is taken from such a candidate that after obtaining MD or MS degree he will settle down in a rural area and serve the rural masses, it would in all probability serve no useful purpose because in the absence of the requisite facilities such as hospital, medical and surgical equipment, nursing etc. it would not be possible for him to give the advantage of his higher medical education to the rural masses and the higher medical education received by him would not be of service to the community. (p.741).

20. In Dr. Snehelata Patnaik and Others Vs. State of Orissa and Others, , a Bench of three Judges explained the observations in Dr. Dinesh Kumar (supra) and proceeded to suggest that the concerned authorities might well consider giving weightage upto a maximum of 5 per cent of marks in favour of in-service candidates who had done rural service for five years or more and said that the actual percentage would certainly have to be left to the authorities. The Bench hastened to clarify that the suggestion did not in any way confer any legal right on in-service candidates who had done rural service.

21. In Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the Constitution Bench dealt at length with admissions to medical and engineering courses in private unaided/aided recognised/affiliated educational

institutions and the extent to which they were subject to conditions and regulations of the State. The Bench held that aided institutions had to abide by all the regulations as may be framed by the Government and in the matter of admission of students, they have to follow the rule of merit and merit alone subject to any reservations made under Article 15 of the Constitution. It was also held that while granting recognition/affiliation to private education institution running professional-courses, the State was obliged to impose conditions for maintaining standards and ensuring fairness inter alia in respect of fees chargeable on the admissions. Following the judgment in that case, a Bench of two Judges held in *State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others*, that the discontinuation by the Government of the reservation of seats for donor's nominees was valid and the earlier arrangement between the Government and the donor was contrary to the decision in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, and therefore it could be terminated without adhering to the rule of audi alterant partem. A three Judges Bench rendered a similar judgment in *Thapar Institute of Engineering and Technology and Others Vs. State of Punjab and Another*, by striking down reservation of seats for wards of employees of such institution or of company which founded such institution.

22. The importance of holding entrance examination for admission to medical colleges was stressed in *Chander Chinar Bada Akhara Udasin Society and Others and Yasar Shaff and Others etc. Vs. State of J. and K. and Others etc.*, and directions were issued for holding an entrance examination after a fresh advertisement inviting applications. It was also held that the admissions should be in accordance with the judgment of this Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, . A similar judgment was rendered in *Dr. Sadhna Devi and others Vs. State of U.P. and others*, , wherein the Court quashed a circular of the Government directing that there shall be no minimum qualifying marks for Scheduled Castes/Scheduled Tribes/Other Backward Class candidates in the . written examination for admission to post-graduate and diploma courses. The Bench expressed a serious doubt as to whether any reservation could at all be made for post-graduate courses. The Bench held that if the candidates belonging to those classes failed to secure even the minimum qualifying marks, then the seats reserved for them should be made available to the candidates belonging to general category. In another judgment rendered on the same lines in *Ravindra Kumar Rai Vs. State of Maharashtra and Others*, , a Bench of three Judges rejected the contentions of the State that conducting entrance examination would delay the admission process or that it would be extremely difficult to conduct the examination. The Bench pointed out that even before 1997, when the regulations made by the Medical Council came into force some of the States were conducting entrance examination jointly for engineering and medical students.

23. Recently, a Constitution Bench reiterated the need for entrance examination and maintenance of high-standards for admissions to postgraduate courses in *Dr*

Preeti Srivastava and Another Vs. State of M.P. and Others, . While rejecting the contentions of the State of Madhya Pradesh that there was no need to prescribe any minimum qualifying marks in the common entrance examination as already candidates had passed the MBBS examination which was an essential pre-requisite to post-graduate medical courses, the Bench said thus:

This argument ignores the reasons underlying the need for a common entrance examination for post-graduate medical courses in a State. There may be several universities in a State which conduct MBBS Courses. The courses of audio may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the MBBS examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the MBBS examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the MBBS examination; while it may also be easier for candidates to secure marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the MBBS examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the MBBS examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the MBBS examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialised education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialised education and the need to provide for some room for the backward even "at the stage of Specialised post-graduate education which is one step below the super specialities. (p. 516-517)

The Bench however, left open the question whether reservation could be made for the classes of persons mentioned in Article 15(4) of the Constitution in the matter of admission to post-graduate courses.

24. The following principles emerge from the above rulings:

- (a) A provision for reservation must be within reasonable limits.
- (b) There can be a reasonable classification based on intelligible differentia for the purpose of Articles 15(1), 15(4) and 29(2).
- (c) There can be reservation for persons belonging to areas which are socially and educationally backward.
- (d) A rural area is not a class by itself and cannot be considered to be socially and educationally backward merely because it is a rural area.
- (e) Admission to post-graduate courses should be strictly based on merit.
- (f) The merits of the candidates seeking admission to higher educational courses shall be judged by uniform standard and for that purpose holding an entrance examination is the best method.
- (g) There shall be no dilution of standards in higher educational courses and in particular, post-graduate courses.

25. In the light of the aforesaid principles, we shall now proceed to consider the validity of the provisions contained in rules 4(ii) 4(iii) and 4(iv) of the Rule. Rule 5(i) provides that the candidates referred to in the aforesaid sub-rules shall not be required to appear in the entrance examination. The challenge in the writ petitions filed before the High Court was both with regard to the reservation and with reference to the exemption of those candidates from appearing in the entrance examination. The High Court has quashed both the provisions. In our opinion, the two aspects of the matter have to be considered separately as different considerations arise. -They are not inter-dependent. In fact, in the latest judgment of the Constitution Bench referred to above, namely, Dr. Preeti Srivastava (*supra*), the question of reservation was left open while the Bench dealt with only the question of prescription of qualifying marks in the common entrance examination. In the circumstances, we propose to consider the two questions one relating to exempt from appearance in entrance examination and the other relating to reservation separately with regard to each of categories mentioned in the three sub-rules.

26. Reservation is provided in Rule 4. Sub-rule (i) pertains to All India quota seats. That is not in dispute in the present case. Sub-rule (ii) provides for NEC, quota seats. Under that Sub-rule, 2 seats in Degree and 2 seats in Diploma courses shall be reserved for the candidates recommended by the NEC. The provision as it reads, does not contain any guidelines on the basis of which recommendation could be made by NEC. Obviously, the matter is left entirely to the discretion of the NEC. On the face of it, the provision appears to be arbitrary and unconstitutional. The contention of the State Government is that the NEC is a statutory body created under the North Eastern Council Act, 1971 to oversee the coordinated development of 7 States in the North Eastern region of the

country. The Council consists of the Governors and Chief Ministers of 7 States in the North Eastern region, namely, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The Council is an advisory body which discusses and makes recommendations with regard to matters of common interest in the field of economic and social planning of the said States. The Council has taken up various developmental schemes for improving 3 medical colleges in the State of Assam at Dibrugarh, Gauhati and Silchar. Apart from the 3 colleges, there is only one medical college in Manipur and other States in the North Eastern region do not have any medical college. The quota is meant for 5 States, namely, State of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura which do not have any medical college. As such, students of these States are handicapped in getting medical education. The contention of the State Government is that the students of the said States form a class by themselves and it is a valid classification.

27. In the writ petition before the High Court, the petitioners had challenged reservation under the sub-rule expressly alleging that it is a device just to keep seats in the hands of the Executive to be allotted arbitrarily and whimsically. In the counter-affidavit filed by the State Government in the writ petition, no attempt was made to place relevant particulars before the Court in justification of the said reservation. Excepting a vague statement in paragraph 18 of the counter-affidavit that the State of Assam has the responsibility to provide assistance to the neighbouring States in the development of their medical manpower, there is nothing in the counter affidavit which could enable the Court to uphold the reservation. Having been utterly negligent before the High Court, the State Government has made an attempt in this Court by setting out certain particulars in the grounds of appeal. In ground (C) in the Special Leave petition, it is stated that 5 of the 7 States in the North Eastern region do not have medical colleges and only Assam has got 3 medical colleges apart from 1 in Manipur and, therefore, the provision for reservation is justified. It is unfortunate that the State Government has not chosen to help the Court by placing the relevant particulars in support of the reservation. It is, however clear from the available materials that the present case is similar to the one dealt with in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, wherein the Constitution Bench pointed out that provision for sons/daughters of Union Territories of Himachal Pradesh, Tripura, Manipur, Naga Hills, N.E.F.A. and Andaman was a valid classification in view of the fact that the Union Territories referred to above were backward areas with the exception of Himachal Pradesh as they do not have medical college of their own. A perusal of the North Eastern Council Act, 1971 shows that the functions of the Council include making of recommendations with regard to any matter of common interest in the field of economic and social planning. There is absolutely no doubt that the candidates belonging to the 5 States of North Eastern region where there is no medical college form a separate class and a reasonable provision for them reserving a few seats in the medical courses is not violative of any of the provisions of the

Constitution. Hence we uphold the reservation of 4 seats under N.E.C. quota.

28. Sub-rule (iii) of Rule 4 provides for 6 seats to be reserved for those teachers who are appointed on regular basis on the recommendation of the Commission in any of the medical colleges of Assam who had at least 3 years' teaching experience after regular appointment in the subject/discipline for which the seat is available provided that the requirement of teaching experience is relaxed by a maximum of one year in case of pre and para clinical subjects by the Government. In the writ petition, this sub-rule was challenged in paragraph 32-A on the ground that there are no guidelines in regard to the reservation. It is also alleged that in the 1994 Rules, 6 seats reserved for teachers quota were shown separately but in the 'Rules' the seats reserved for teachers quota are included in general seats whereby some genuine and eligible candidates of general stream will be deprived of getting seats. In the counter affidavit filed by the State Government, it was stated that the demand in respect of upgrading the skills of the teachers of the medical colleges varied in the matter of medical discipline concerned from year to year and that it was difficult to reserve seats in particular discipline and, therefore, the teachers quota was included in the general category and at the time of selection, the State Government could finalise the subjects in which it was necessary to provide seats for the teachers of the medical colleges. Here again, the contents of the counter-affidavit were not sufficient to justify the reservation. In the grounds of appeal in this Court, it is stated in ground (E) that as per the norms prescribed by Medical Council of India, Post-graduate qualification is mandatory for appointment of candidate to the rank of Assistant Professor and above and in some departments like Cardiology, Nephrology, Neuro Surgery etc., training in super-specialty is required along with M.D. or M.S. degree for the post of Assistant Professor or above. It is stated that the recruitment of the teaching faculty is done in the rank of Demonstrator and Registrar etc. for which only MBBS degree is necessary, acquiring of P.G. degree is a must for the teaching faculty in the interest of the institute and the students. It is further stated that there is dearth of qualified doctors for promotion to the rank of Assistant Professors and above in the para clinical and non-clinical subjects like Anatomy, Pharmacology, SPM & F&SM, Micro-Biology etc., for which several posts could not be filled up in the medical colleges of Assam. As a result, the academic interest of the institutions was badly hampered. Thus the reservation is justified on the ground of institutional requirements. There cannot be any doubt that the teachers form a class by themselves and the classification is based on intelligible differentia having rational nexus to the object of the Rule. Hence we uphold the reservation of 6 seats under the Teachers quota.

29. Under Sub-rule (iv), reservation of 20 seats is made for doctors appointed in the State Health Services on a regular basis on the recommendation of the Commission and who have worked at least 5 years on regular basis in any health center/institution which is not situated in the municipal area. The High Court has rightly pointed out that the Rule is worded in negative terms and not in positive terms. In the 1994 Rules, the relevant provision was in the following terms:

The seat may be reserved in the discipline specified below against each for those doctors who have completed 5 (five) years or more in rural/hills/char areas as follows.

10 disciplines were mentioned in the sub-rule. Thus, the earlier rule was in positive terms that the concerned doctor should have served in rural/hills/char areas. That was different from the present rule which provides for reservation for doctors who have worked in any health center/institution which is not situated in a municipal area. No justification has been made by the State Government for changing the wording of the Rule or increasing the quota from 10 to 20. As rightly pointed out by the High Court, any place just outside a municipal town is one which is not situated in a municipal area and which will fall within the scope of sub-rule. The doctor working in an institution situated in a place immediately adjacent to but outside a municipal town will get the benefit of the rule while in practice, he will also get all the benefits available in the urban areas situated within the municipal limits. The rule does not require the doctor to serve in a remote rural area for getting the benefit of the rule. Even if the rule had provided for service in a rural area, it has been held, that the classification is not a valid one. We have already referred to the judgment of this Court in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, where it was held that rural element did not make it a class and provision for rural areas could not be sustained on the ground that the rural areas represented socially and educationally backward class of citizens. The reasons given by this Court in *Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others*, in the passage quoted by us in para 19 supra are also applicable here. In the circumstances, we are in agreement with the view taken by the High Court and we uphold the quashing of Sub-rule (iv) of Rule 4.

30. We shall now advert to rule 5(i) which exempts the candidates referred to in Sub-rules (i), (ii), (iii) and (iv) of Rule 4 from appearing in the entrance examination. We are not concerned with Sub-rule (i) of Rule 4 as stated already. With reference to the candidates referred to in Sub-rule (ii) of Rule 4, there is no justification for exempting them from appearing in the entrance examination. As has been repeatedly held by this Court, the selection of candidates for Post-graduate courses should be based only on merit and it cannot be left to the arbitrary discretion of any administrative body. Though we have upheld reservation of 4 seats under NEC quota, we are of the opinion that such reservation can be provided only on the basis of merit which can be assessed by the performance of the candidates in the entrance examination. The NEC cannot choose any candidate according to its whims and fancies. The NEC has to recommend candidates only in accordance with the rank secured in the entrance examination.

Hence, the provision in Rule 5(i) exempting the candidates referred to in Sub-rule (ii) of Rule 4 from appearing in the entrance examination has been rightly struck down by the High Court and we uphold the same.

31. As regards the teachers, there is no need for them to participate in the entrance examination as they have been constantly in touch with the subject/discipline for which reservation is made. The concept of entrance examination was evolved for the purpose of prescribing uniform standard for judging all the candidates. It has also been repeatedly emphasised by this Court that merit should be the criterion for admission to Post-graduate courses. Both the tests will be satisfied in the case of teachers who have been working in the medical colleges of Assam for the required number of years. Hence, there is no necessity for them to appear in the entrance examination. The rule in so far as it exempts the teachers from appearing in the entrance examination is valid. We differ from the view taken by the High Court and propose to allow the appeal in that regard.

32. In so far as the candidates referred to in Sub-rule (iv) of Rule 4 are concerned, we have expressed our opinion that reservation for them is not valid. Consequently, the question of exempting them from appearing in the entrance examination does not arise. However, we wish to make it clear that even if for any reason, the reservation of seats under Sub-rule (iv) of the State Health Service quota is upheld, the exemption of the candidates referred to in that sub-rule from appearing in the entrance examination is not valid. There is no earthly reason for exempting them from appearing in the entrance examination. In order to maintain the high standards required for admission to Post-graduate courses, those candidates should also be made to appear in the entrance examination and admission must be made only on the basis of merit.

33. What remains to be considered in Rule 8(vii) of the Rules. The High Court has struck down the entire rule overlooking that the challenge is only to the proviso to the Rule and not the main part of the Rule. The reasons which we have given already for upholding the reservation of seats for ? candidates referred to in Sub-rule (ii) of Rule 4, will hold good for upholding the proviso to Sub-rule (vii) of Rule 8. The proviso is only discretionary and not mandatory. Further it only provides for first priority being given to NEC. In the circumstances, we differ from the High Court and uphold the sub-rule.

34. In the view we Have expressed above, it is unnecessary for us to consider the contention raised by the contesting respondents that the reservation under Sub-rules (ii) to (iv) taken along with the reservation under Sub-rule (v) of Rule 4 exceed 50% of the total number of seats after excluding the 25% under All India quota. Here again, the State Government has not come forward with a clear answer to the contention raised by the contesting respondents but we are not dealing with that question as it is unnecessary for the purpose of this case.

35. In fine, the following are the conclusions arrived at by us:

- (1) Sub-rules (ii) and (iii) of Rule 4 of the Rules are valid and constitutional.
- (2) Sub-rule (iv) is unconstitutional and void.
- (3) Rule 5(i) is unconstitutional and not valid in so far as it exempts the

candidates referred to in Sub-rules (ii) and (iv) of Rule 4 from appearing in the entrance examination.

(4) Rule 8(vii) and the proviso are valid.

36. The appeals are allowed to the extent indicated and the judgment of the High Court is accordingly set aside to that extent. The writ petitions filed in the High Court are allowed to the extent indicated. The parties will bear their respective costs.