

(2012) 04 RAJ CK 0135

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 2090 and 2533 of 2012

Dr. Naveen Agarwal and Others

APPELLANT

Vs

State and Others
 Dr. Ishita Gupta Vs RUHS and
Another

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2013) 1 CDR 335 : (2013) 2 SCT 535

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : R.N. Mathur, Mr. Rahul Kamwar in CWP-2518/2012, 2641/2012, Mr. Ashok Gaur, Mr. A.K. Jaiman in CWP-2533/2012, Mr. Anoop Dhand in CWP-3967/2012, Mr. Shashi Bhushan Gupta in CW-2090/2012 and Mr. Madhav Mitra for Dr. Vikas Agrawal and Ors. for Intervenor, for the Appellant; G.S. Bapna, Advocate General, Mr. Sarvesh Jain, Mrs. Shruti Dixit, Dy. Govt. Counsel for State, Mr. Sanjeev Pra. Sharma Mr. Ankit Sethi and Mr. S.S. Shekhawat for Respondents-3 to 14 in CW-2533/2012, Mr. R.A. Katta for University-RUHS and Mr. Rajendra Soni for Intervenor (Dr. Anita and Dr. Ranjana), for the Respondent

Judgement

Ajay Rastogi, J.—In a bunch of instant petitions, since common controversy is involved at joint request, were heard together and are being decided by present order. Instant petitions have been filed primarily with the grievance that Rajasthan Pre-Post Graduate Online Medical Entrance Examination ("Pre-PG Exam.") held on 11th & 14th February, 2012 be either cancelled and held afresh as the process of holding common entrance test on two different dates was not in conformity with Reg. 9 of Medical Council of India Regulations; or some other method be adopted taking note of level of difficulty of the Examination of common subject/paper held on 11th & 14th February, 2012.

2. The dispute basically arose when the Online Pre-PG Examination was notified by respondent-2 (Rajasthan University of Health Science) ("RUHS") for being held on 11/02/2012 on eight different Centres but because of some technical

fault in computer server at one Centre (Global Institute of Technology, Sitapura, Jaipur), students of that centre could not appear in Online Pre-PG Examination on 11/02/2012; however, respondent (RUHS) immediately after holding emergency meeting took decision to hold Pre-PG Examination of such students on 14/02/2012; but after result of Pre-PG Exam, held on 11th & 14th February, 2012 came to be declared, score marks awarded to the examinees of 14th February, 2012 were unexpectedly higher than that of 11th February, 2012, that became the basic cause having arisen for filing instant petitions.

3. Relevant facts in a very succinct manner are that total seats 676 are allocated for various MD/MS/Diploma course; 50% of which are notified for being filled in as per allocations made by the Director General of Health Services, Government of India, on the basis of the result of All India Competitive Entrance Examination for admission to PG courses on open merit, as per direction of the Apex Court.

4. Whereas for remaining 50% of total seats, the respondent (RUHS) notified 338 seats (being 50% of total 676 seats) available for admission in various MD/MS/Diploma Courses for being filled in on the basis of merit in Pre-PG Medical Online Entrance Examination-2012; out of these seats, allotment to In-service & Non-Service candidates would be as per Ord. 278-E & G of Rajasthan University as modified & adopted by respondent (RHUS) and distribution of seats shall be as per rules & regulations of MCI and directives of State Government and as per further allocation of seats, 50% of 338 seats (State quota viz. 169 seats) are reserved for In-service & balance 50% (169 seats) for non-service candidates to be filled on the basis of merit cum preference.

5. In Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, the apex Court has laid down a time-schedule for completion of the admission process for medical & dental courses. Relevant time Schedule for PG courses as notified under MCI Regulations runs ad infra:

6. As per guidelines provided by Apex Court (supra) entrance test for Postgraduate courses against State quota has to be conducted between Mid-Jan to Mid-February each year and result of the qualifying examination/entrance test has to be declared by 28th February and thereafter first counselling & admission has to be over by 25th April and finally last date of joining the allotted college & course shall be by 1st May; however, no 2nd counselling is permissible.

7. Initially respondent (RUHS) notified online Examination date of 29/01/2012 but because of some administrative reasons, it was postponed to 11th February 2012 and scheduled to be held on 8 different centres but at one centre there was some technical problem of server at GIT Sitapura Jaipur, online Pre-PG examination could not be conducted on 11/02/2012 for which an emergent meeting was convened wherein decision was taken to hold online Pre-PG Examination for such Centre on 14/02/2012 and students of that Centre were asked to appear on that date vide notice published in all news papers dt. 12/02/2012 (Ann. R/1) and taking note of numerous grievances, the Core

committee adopted all safeguards and held online Pre-PG examination on 14/02/2012.

8. In all, 2533 students took up the online Pre-PG examination held on 11th & 14th February, 2012; out of which 2161 appeared on 11/02/2012 at seven centres while 372 on 14/02/2012 at Arya Engg. College Kukus (Jaipur). Result of Pre-PG examination of 11th & 14th February, 2012 was declared on 14/02/2012.

9. Number of candidates feeling aggrieved by the result approached respondent (RUHS) and the Core Committee also in its meeting held on 17/02/2012 decided to invite grievances from the candidates upto 18/02/2012 and taking note thereof further decided to take assistance of an Expert for his opinion to explore possibilities of reasonableness in reference to equalizing the marks obtained by both the sets of candidates of 11th & 14th February, 2012 Pre-PG Examination.

10. It is relevant to record that no such grievance was raised or complaint made regarding corruption/favouritism/nepotism or use of unfair means/cheating or paper leakage or impersonation as such the demand raised by candidates for cancellation of online Pre-PG examination held on two different dates while it being required to be held as alleged on one date U/Reg. 9 of MCI Regulations, was ruled out.

11. During arguments, prospectus of the PG Institute of Medical Education & Research Chandigarh issued for academic session beginning from July, 2012, has been placed for perusal - as regards method of selection (for MD/MS courses), procedure for selection of candidates reads ad infra:

b) Merit list based on the percentile obtained by the candidates in the theory examination will be prepared for each category of candidates. Candidates of various categories who secure percentile in the theory as mentioned against each category will qualify for admission:

12. Medical Council of India vide amendment notification dt. 15/02/2012 published in official gazette of 17/02/2012 made certain amendment in PG medical education Regulations; and Cl. 9 sub-clause III under the heading "selection of Post Graduate Students" as amended vide notification dt. 21/12/2010, it was substituted ad infra:

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

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

Amendment is applicable from the academic year commencing from 2013-14 and as per amendment (supra) in order to be eligible for admission to any PG course in a particular academic year, it is necessary for a candidate to obtain minimum of marks at 50th percentile in eligibility cum entrance test for PG courses held for academic year. Selection will be made on the basis of statistical equivalence percentile procedure for admission to PG course.

13. Result analysis of online Pre-PG Examination 2012 of such candidates having appeared on 11/02/2012 comprising of one Group-A and those having appeared on 14/02/2012 of another Group-B including In-service & non-service category has been placed on record - perusal of which discloses startling result; and such a situation was never anticipated by the respondents.

14. A comparative chart made available to the Court indicates that in such like competitive qualifying examination, students appeared on 14/02/2012 (Group-B) ranked upto 200, majority of such candidates are placed in order of merit and got a march over candidate who appeared on 11/02/2012, that appears to be one of basic cause for the Core Committee constituted by respondent-University in taking decision for assistance from expert and a man of repute who could explore possibility of reasonableness and find out the way by which marks obtained by both the sets of Group-A & B appeared on 11th & 14th February, 2012 could be equalized.

15. To obtain expert opinion, assistance of eminent Professor Dr. V. Natarajan was solicited on the methodology of statistical equivalence percentile procedure be examined to equalize the score marks of the students appeared on 11th & 14th February, 2012. It was suggested by Dr. Natarajan that using statistical equivalence percentile procedure in the result of such competitive/common entrance tests is universally acceptable and accordingly the score marks of candidates appeared on 11th & 14th February, 2012 can be equalized by adopting percentile method. However, the Academic Council, Core Committee and Grievance committee consisted of experts considered all the grievances of individual candidate relating to their apprehension of inequality of question papers for one & the same entrance test & allocation of marks thereof; and after due deliberations & interactions on the issues and the expert opinion solicited from Dr. V. Natarajan and taking note of methodology & process of applying statistical equivalence percentile (for short, "SEP") procedure finally approved the same for determination of merit of the candidates appeared on two dates 11th & 14th February, 2012 at eight centres, and to avoid advantage & disadvantage to

any of the candidates, keeping in view fairness & transparency in the revised result so prepared based on experts report.

16. From the expert's opinion made available for perusal of the Court, it depicts that equating is a statistical process to make test scores across different forms of the same test interchangeable and this methodology of equating is being used in numerous standardized assessments/tests like GRE, GMAT, SAT, and further by Indian Exam bodies/Exams like CAT, SCC, LSAT, NMAT & ICAR. However, for outcome of process, after equating of marks, all scores are placed on the same scale and any given equated score has the same meaning across any of the test forms that were equated. Equating is used where many examinations are often held in batches and equi-percentile equating is one of the tested methods for applying statistical equivalence percentile procedure.

17. In the reply filed by respondent-State, it was averred that after suggestions made by expert Dr. Natarajan taking note of grievances of candidates and to avoid advantage & disadvantage to any candidate and keeping in view the fairness & transparency in its decision making process, it was finally approved by respondents for revising the result in question; but that was not a situation while Filing the petitions.

18. This Court taking note of reply filed by respondent (RUHS) directed the respondent vide order dt. 19/03/2012 to keep the material and record - reference of which has been made in the reply. Dr. Natarajan as an Expert also appeared in Court and demonstrated percentile method which could be adopted to rationalize Pre-PG examination, 2012.

19. But, before the matter could further go ahead, this Court considered it appropriate that let the method which the respondent-State wants to adopt after taking assistance of expert opinion, be explained to respective lawyers in course of arguments and thereafter the matter was taken up in 2nd half. However, Counsel appearing for petitioners particularly those appeared in Pre-PG Exam, held on 11/02/2012, they were satisfied after the formula being explained and it was acceptable to them.

20. But on that date of hearing (21/03/2012) Shri Sanjev Prakash Sharma, Senior Counsel appearing for private respondents was not present in Court and did not participate in deliberations having taken place that day. Again the matter came up on 27/03/2012, when Prof. Natarajan appeared in person who demonstrated as to how statistical equivalence percentile method could be adopted to rationalize percentage of score marks secured in Pre-PG examination held on 11th & 14th February, 2012.

21. This Court after percentile formula being demonstrated in details directed the Government Counsel to file an affidavit to indicate the percentile method (SEP), which they intend to adopt for alleged rationalizing percentage of score marks and pursuant to which, affidavit was filed alongwith method being adopted. Raw score marks of candidates having appeared on 14/02/2012; and their percentile

ranking alongwith inter-se merit have been placed on record as Ann. AP/R/1 to R/4).

22. What could be the outcome of percentile method on being adopted has not been made known to the parties. Question for consideration before the Court is as to whether the third alternative percentile method adopted by the University is well-balanced, harmonious and reasonable to examine merit after adopting SEP method in the facts of given case or is such which is not acceptable even to a man of ordinary prudence and is arbitrary or without application of mind, warranting interference.

23. In a given situation, there were three options available for the respondents while keeping in view the scheme of examination which postulates that there shall be one common entrance test to be held on one date. But because of some technical problem, at one centre, the examination could not have been held and the decision was taken to hold the examination for that respective centre on 14/02/2012. But, admittedly there was no complaint from any corner regarding unfair means or impersonation or nepotism/favouritism in process of examination held on 11th & 14th February 2012. First Option available for the University was either to cancel the Examination of 11th & 14th February, 2012 and to hold it afresh as demanded by majority of students. Second option was to proceed with process of the result of examination which was declared in respect of candidates appeared on 11th & 14th February, 2012 and, that result indicates that those appeared on 14th February, 2012, percentage of candidates having fallen in first 150 rank was extremely higher than those appeared on 11th February, 2012 as is evident from chart (supra).

24. However, cancellation of examination could otherwise was not possible since time schedule of holding the process as laid down by MCI - result was to be declared by 28th February, and counselling has to take place in the month of April and with the last date of joining the course by 1st May. Hence the cancellation of examination, was to make it "zero year" and to continue with result being declared of candidates appeared on 14th February, 2012 and that apparently indicates disparity among candidates (Group-B) appeared on 14/02/2012 having fallen within 1st 150 ranks and those (Group-A) appeared on 11/02/2012 - total number of such Group-A candidate is 2161 as against 372 Group-B candidates appeared on 14/02/2012 who finally qualified for admission on the basis of merit cum preference.

25. Taking note of theory of proportionality respondents after taking expert opinion of Prof. Nataranjan on being completely satisfied for applying process of SEP method, got the same finally approved but even oh its approval, the result could not be carried out because of pendency of litigation herein.

26. It is relevant to record that before the examination could be held on 14th February, 2012, writ petition (2090/2012 - Dr. Ishita Gupta vs. RUHS) came to be filed on 13/02/2012 and it was prayed that examination announced to be held

on 14th February, 2012 may be cancelled in terms of MCI Regulations and the Pre-PG examination 2012 be held afresh. That petition came up for consideration on 13/02/2012. Taking note of given situation, while calling upon respondents to file written counter, interim order came to be passed on 13/02/2012 holding that the examination may be held on 14/02/2012 but it would remain subject to final outcome of the writ petition. But immediately after the result of candidates appeared on 11th & 14th February, came to be declared, another set of writ petitions came to be jointly filed by candidates of 11th February Examination, with the prayer that whole Pre-PG Examination, 2012 be cancelled and respondent University be directed to hold fresh Examination in terms of MCI guidelines.

27. But, the changes took place after the reply being filed by respondents and it has been averred that the proposal of three options were available with the respondents. But after seeking expert opinion of Prof. Natarajan who made a power point presentation on the methodology & process of applying SEP method, detailed deliberations took place among members of Academic Council, Core Committee & Grievance Committee, and all of them were fully satisfied and were of the view that let the result of Pre-PG Examination held on 11th & 14th February, 2012 may be revised after applying SEP method and modified result be declared.

28. At that point of time, those writ petitioners appeared on 11th February, 2012 had a meeting with expert Prof. Natarajan under the directions of the Court given on 21/03/2012 and they got recorded their satisfaction that the SEP method intended to be adopted by the respondents in revising the result of Pre-PG Examination held on 11th & 14th February, 2012 can be the only via media by which time schedule laid down as per MCI guidelines could further be followed and this would certainly take note of the grievance of the majority of candidates appeared on 11/02/2012 and are in zone of merit against available seats for admission on the basis of merit cum preference and it may not result in rendering injustice to the class as such appeared in Pre-PG examination 2012 on 11th & 14th February, 2012.

29. Shri Ashok Gaur & Shri RN Mathur Senior Counsel appearing for such of students who being in the merit list and could be considered for admission against available seats on the basis of merit cum preference, are fully satisfied and supporting SEP method for being adopted and further submit that they are in agreement with the expert opinion expressed, by Prof. Natarajan which the respondent - University intended to adopt introducing SEP method in revising the result and merit list of the candidates appeared in Pre-PG Examination, 2012.

30. At this point of time, another writ petitions (CW-3967/2012-Dr. Vijay Pal vs. RUMS) came to be filed through Shri Anoop Dhand; and Shri Rajendra Soni, Advocates and both jointly submit that since Pre-PG examination, 2012 has been held on two different dates and the options which the respondents intended to adopt, being not in conformity with Scheme of MCI, should be cancelled and the

respondents should be asked to hold fresh Examination. After both the Counsel made submissions, this Court called upon them to inform about merit position of writ petitioners to whom they are representing.

31. Shri Anoop Dhand, Counsel for petitioner has made a feeble attempt that it has been pleaded in paras 9 & 10 of CWP-3967/2012 that unfair means has been used at the centre (Arya Eng. College, Kukus, Jaipur) on 14/02/2012 and that is the reason that out of 160 rankers in the merit list, 139 candidates appeared from that centre, have qualified in written examination and only 22 candidates from seven different centres appeared on 11/02/2012 got their rank against 160 seats.

32. However, in the opinion of this Court, the fact of total candidates qualified in the Pre-PG examination, 2012 is a matter of record but there is no factual foundation on record to substantiate as to what has been alleged by petitioner of using unfair means at the examination centre on 14/02/2012 appears to be their own perception and creation for cancellation of the examination is wholly without substance & deserves outright rejection.

33. However, as per MCI guidelines, such of candidates having secured atleast 50% marks (40% in case of natural born SC/ST, OBC/SBC non-creamy & 45% in case of loco motors disabled candidates) in Pre-PG Medical Entrance Test, 2012 are eligible for admission to MD/MS/Diploma courses; but admissions are to be made on the basis of merit cum preference determined from qualifying marks scored in Pre-PG examination. Thus such of the candidates those who fell within 200 rank taking note of their respective category against number of available seats based on marks scored in qualifying examination alone; remain aspirant and such of them who are not within 225 ranks are not even remotely going to achieve goal in seeking admission to PG courses merely based on the qualifying marks in Pre-PG Examination and are such of them who are sitting on the fence with zero stakes. Thus their common voice would be to cancel Pre-PG Examination, 2012, which is their only interest, obviously for the reason that if fresh examination is to be held, they may have further chance to try once again in fresh examination; and with that apprehension all candidates appeared on 14th February, 2012 have filed an application for impleading them as party respondent in CWP-2533/2012, that came to be allowed and they were permitted to address the Court on the issue regarding the decision taken by respondents for revising merit list based on SEP method is reasonable and proportionate.

34. Such of afore applicants are represented by Shri Sanjeev Prakash Sharma, Senior Counsel who has serious objection to the third alternative option and so also the method of SEP formula intended to be adopted by respondents, in revising the merit list. Counsel submits that this SEP method is not in conformity with MCI guidelines which clearly provides that 50% marks is the qualifying marks, i.e. Such score marks secured for admission to PG courses and that cannot be altered by respondent by adopting different method in finalizing the merit list. Counsel further submits that Pre-PG examination might have been

held on 11th & 14th February, 2012 but is a qualifying test based on common subject and merely because majority of candidates appeared on 14th February, 2012 has qualified and fallen within 160 ranks in their category (In-service/non-service) is not available for alteration for the reason as alleged that question papers of 14th Feb., 2012 were either easier or question papers of 11th February, 2012 were slightly tough.

35. Counsel further submits that these are only the personal perceptions of candidates appearing in the Examination but once result of score marks having been declared by respondent-University and made known to the candidates, that cannot be now altered resulting in causing prejudice to individual candidate since after declaration of the result one has got legitimate expectation of his/her admission to PG courses obviously against available seats in their respective category (In-service/non-service) on the basis of merit cum preference and any interference in the result declared by respondent University is otherwise beyond their competence & authority and the third option proposed of adopting percentile method deserves to be set aside and the University be directed to go ahead with process of admission to PG course based on result declared of Pre-PG examination, 2012.

36. In support, Shri Sharma, placed reliance on the decisions of Apex Court in *Anamica Mishra and Others Vs. U.P. Public Service Commission, Allahabad and Others*, ; *A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others*, & *Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another*, . Taking aid of these decisions, Counsel submits that after merit list being declared, there appears no justification to cancel it and that is not in the interest of justice. Counsel further submits that as regards SEP formula, Apex Court in *AIIMS Students' Union vs. AIIMS (supra)*, has declared such percentile method ultra vires to the Constitution.

37. Shri Sharma further relied upon judgment of Bombay High Court in *Francisco D. Luis vs. Director Board of Secondary & Hr. Secondary Education Maharashtra*, (Public Interest Litigation No. 94 of 2008 decided on 26/09/2008) where there was difference of opinion of Division Bench and the matter was referred to another Bench and finally it was held that method of equalization or normalization through the method of percentile system is in violation of Art. 14 of the Constitution.

38. Before this Court proceeds further, it is relevant to take note of judgments cited by Shri Sharma, for private respondents. Judgment in *Anamika Mishra vs. UP PSC*, (supra) is of no assistance in the facts of instant case. It was a case where complaint was made that on account of improper feeding into the computer, some of candidates had a better performance in the examination and higher meritorious candidates were left out, while lesser meritorious candidates were called for interview rather finally selected. However, UPSC took the decision to re-hold recruitment examination because of complaints. The Apex Court observed that when there was no defect pointed out in written examination, sole

objection was confined to exclusion of successful candidates in the examination and there appears no justification for cancellation; and in such situation, cancellation of the entire recruitment could not have been proper and asking for fresh interview of eligible candidates on the basis of written examination would have sufficed.

39. In *AIIMS Students' Union vs. AIIMS*, (supra) it was a case for admission to PG course of AIIMS' students and 1/3rd seats were reserved for in-service candidates and each candidate was to opt for two specialties/courses of MD/MS and only 33% seats were reserved for in-house candidates but practically, figure of 33% for in-house candidates was statistically so arrived at as to secure 100% reservation for AIIMS' students and by nature of reservation being provided, whole of available seats practically could be reserved for AIIMS' students. Apart from 33% quota and 50% quota discipline wise subject to an over all 33% quota for AIIMS students, there has been additional percentile method adopted. The Apex Court while examining the reservation quota set aside institutional reservation for AIIMS' students being ultra vires to the constitution & struck down.

40. The consideration before Apex Court was as to whether such nature of institutional reservation provided for AIIMS students was valid or justified and that was the primary question for consideration examined by Apex Court in *AIIMS Students Union vs. AIIMS*, (supra).

41. As regards judgment of Bombay High Court in public interest litigation (*Francisco D. Luis vs. Board of Secondary & Hr. Sec. Education Maharashtra*, (supra), it was basically a case where formula of percentile was introduced to apply method of normalization or equalization of scored marks from different Education Boards such as CBSE or ICSE as they could secure major admissions in their preferred colleges leaving students of SSC Board high & dry while securing admission to such colleges and to meet out grievance statistical method aimed for equalization or normalization of percentage of marks which may operate equally to all of students was not held to be justified. However, it was not the reason that the formula was bad or it could not have been introduced in given situation.

42. However, after examining the matter, it was observed by Bombay High Court that the basis on which the State issued Circular is hypothetical & without any foundation and that too being taken in a hurried manner, the Court further observed that it was expected from the State to have conducted survey as regards alleged injustice being suffered by SSC students and after scientific analysis of so called public sentiments that students of SSC Board are placed in an disadvantageous position and after due deliberations with expected responsibility, the decision ought to have been taken.

43. In *Sanjay Singh vs. UP PSC* (supra) relied by Shri Sharma was a case where the Apex Court set aside statistical scaling formula adopted by PSC holding it to

be arbitrary and irrational. It may not be of any assistance for the reason that statistical scaling system adopted by UP PSC has no application in the facts of instant case.

44. In the light of what has been taken note of (*supra*), submission made by Senior Counsel (Shri Sharma) for respondents-3 to 14 does not hold good for the reason that declaration of the result may not confer any indefeasible right and before initiation of process for admission, if complaints have been made and respondents found some reasonable justification, that can always be looked into; however, in the instant case, before SEP method intended by respondents, could be carried out as third available option, material has been placed and made available on record during arguments while demonstrating the method adopted in the presence of counsel for respective parties with a view to achieve the uniform evaluation of the merit of the students appeared on two sets of dates (11th & 14th Feb. 2012) and that being so, correction/revision could be made in the result if required for the reasons indicated above.

45. In the instant case, the facts have come on record that admissions are made on the basis of merit cum preference and mere qualifying the examination is not the touchstone for admission and looking to the number of seats available against in-service or non-service category, those candidates who got rank beyond 200 in their respective merit, have no chance of their consideration for admission. However, it may exceed upto 25 more ranks if candidates for one reason or the other, may not turn up but atleast those beyond 225 ranks will have no remotest chance of their admission. A comparative analysis for students appeared on 11th & 14th February, 2012 and if their rank could be within 200 is looked into then majority of them are coming from examinees of 14/02/2012 - against whom prime grievance is raised herein. This Court finds reasonable justification in their grievance as well and if examination of common subject if held on two different dates and such a result could not be anticipated and is startling rather method of percentile (SEP) method is one of universally acceptable to meet out such contingencies and being adopted in various competitions; even the MCI in its regulations has made, an amendment making it effective from academic session 2013-14 and the admissions will be made on the basis of percentile method.

46. Such like situation came up for consideration before Apex Court in *Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others*, where there is a major number of candidates having appeared in written test held at various centres out of which 2690 were called for physical efficiency test (PET) and verification of their original certificates. During verification, it came to the notice of the authority that there were certain mal-practice being adopted in written examination and candidates were indulged in mass copying at some centres including leakage of question papers and impersonation of certain candidates; and after preliminary inquiry, it revealed that there was leakage of question papers and mass copying and impersonation in written tests and after

examining the matter in details in view of malpractice/irregularities involved, the Board decided that candidates securing minimum qualifying marks may be subjected to another written examination and those who have failed in the examination they may not be allowed to appear in written examination afresh. Such a decision of the Board came up for consideration; however, the Tribunal found no illegality in conducting a retest confining to such of candidates who secured qualifying marks but the High Court further observed that the decision of the Board in confining to hold re-examination of such of candidates who obtained qualifying marks is unreasonable and in violation of Art. 14 & 16 of the Constitution.

47. In that case, the High Court further observed that since there were only 62 candidates against whom serious allegations of impersonation were made but applying Wednesbury principle of unreasonableness, hold that the decision of the Board was illegal and directed the Board to finalise selection based on first written test and to issue appointments to the candidates except 62 against whom there were allegations of impersonation.

48. However, the matter travelled to the Apex Court. The question arose whether principle of Wednesbury has to be followed or principle of proportionality. The Apex Court observed:

36. Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the Courts to "assess the balance or equation" struck by the decision maker.

Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

37. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent Court

may indulge in a merit review and if the Court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the Court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

With the application of principle of Wednesbury and proportionality, Apex Court examined that when there were three alternatives available to the decision maker and infirmities were pointed out in conducting first written test, the best alternative which the Board could have accepted applying the test of wednesbury unreasonableness or the decision taken by the Board to conduct a retest so unreasonable that no reasonable authority could ever have decided so and observed that if the decision of authority is proportionate i.e., well balanced and harmonious such decision was not required to be interfered with in its limited scope of judicial review.

49. In the light of what has been observed by Apex Court in K. Shyam Kumar (supra), question arises for consideration as to whether the decision of respondents in adopting SEP method for revising merit list is so unreasonable that no reasonable authority could ever have decided so and whether the respondents before reaching such conclusion had taken into account such material which they ought to have taken note of or had refused to take note of the matters which they ought to have taken note of.

50. Statistical equivalence percentile ("SEP") method is to achieve uniform evaluation of the merit of the students who have passed in the qualifying examination. As taken note of (supra), it was not the case where there is any allegation of unfair means, impersonation, favoritism or nepotism in holding Pre-PG Exam., 2012 on two different dates. There was no reasonable basis for cancellation of examination and Reg. 9 of MCI Regulations postulates to hold written test but in the present exigency because of technical fault in computer server at the centre (GIT, Sitapura) on scheduled date 11th February, 2012 on which date, it could not have been conducted but was changed due to exigency beyond control and held on 14/02/2012, that cannot be said to be in contravention of MCI Regulations and time schedule laid down by Apex Court which the respondent authority is expected to adhere to and the counselling has to take place by last week of April, 2012; in such circumstances, if respondents have taken the third alternative decision to adopt SEP method and to rationalize result of candidates appeared on 11th & 14th February, 2012, such decision of the respondents based on the principles of proportionality which takes note of aim of the decision maker and if the maker has achieved more or less the correct balance or equilibrium and a decision if taken by the authority is proportionate being balanced & harmonious, it would not be proper for this Court to interfere and such decision of the authority is not open for judicial review within its limited scope U/Art. 226 of the Constitution of India. Upshot of the discussions made (supra) is that these writ petitions are disposed of with the direction to the respondents to publish the revised merit list of all the candidates appeared in Pre-

PG Examination held on 11th & 14th Feb. 2012, introducing statistical equivalence percentile (SEP) method and to ensure that admissions are made taking note of time schedule for Pre-PG courses as laid down by Apex Court & MCI regulations without any delay. No costs.