
(2010) 05 AHC CK 0113
In the Allahabad High Court

Dr. Nupur Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 41

Citation : (2010) 05 AHC CK 0113

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Judgement

Dilip Gupta, J.—The petitioners, who had appeared at the U.P. Post Graduate Medical Entrance Examination-2009 (hereinafter referred to as the "U.P.P.G.M.E.E.- 2009") and were admitted to the Diploma Courses, have sought the quashing of Condition No. 3(iv)(b) contained in the Information Brochure of the U.P. Post Graduate Medical Entrance Examination-2010 (hereinafter referred to as the "U.P.P.G.M.E.E.-2010"). They have also sought a declaration that Clause 8(e) of the Notification dated 9th October, 1990 issued by the State Government, as amended by the Notifications dated 30th March, 1994 and 8th July, 1996 is ultra vires the Constitution and a direction upon the respondents to permit them to appear in the U.P.P.G.M.E.E.-2010 counselling in all the subjects available at the time of counselling as per the merit and not to compel them to seek admission in the Degree Courses in the same subject in which they are pursuing the Diploma Courses.

2. On the basis of the result of the U.P.P.G.M.E.E.-2009, Dr. Nupur Singh (petitioner in Writ Petition No. 16718 of 2010) was admitted to the Diploma Course in Gynaecology and Obstetrics in Maharani Laxmi Bai Medical College, Jhansi, Dr. Amit Dwivedi (petitioner in Writ Petition No. 16720 of 2010) was admitted to Diploma Course in Orthopedics in L.R. Medical College, Meerut, Dr. Pratishtha Sachan (petitioner in Writ Petition No. 16722 of 2010) was admitted to the Diploma Course in Laryngo and Otology in Maharani Laxmi Bai Medical College, Jhansi, Dr. Monika Shukla (petitioner in Writ Petition No. 18769 of 2010)

was admitted to the Diploma Course in Gyanaecology and Obstetrics in Baba Raghav Das Medical College, Gorakhpur and Dr. Hari Shankar Gangwar (petitioner in Writ Petition No. 14687 of 2010) was admitted to the Diploma Course in Orthopedics in M.L.B. Medical College, Jhansi.

3. For the U.P.P.G.M.E.E.-2010, Chhatrapati Shahu Ji Maharaj Medical University, Lucknow (hereinafter referred to as the "Medical University") published the prospectus and the eligibility for admission to M.D./M.S/Post Graduate Diploma seats are contained in Clause 3 of the aforesaid prospectus and are as follows:

3. ELIGIBILITY FOR ADMISSIONS:

(i) Candidates who have passed MBBS /BDS Course from the State Medical Colleges of Agra, Allahabad, Gorakhpur ,Jhansi, Kanpur, Meerut and Medical / Dental Faculty of CSM Medical University, Lucknow and recognized Private Medical /Dental Colleges of U.P. are eligible to appear in the entrance examination. (vide G.O. No. 09/71-03-02-104/2001 Dated 22.01.2002)

(ii) Candidates who have passed MBBS from Himalayan Institute of Medical Sciences, Dehradun, and are bonafide residents of U.P. and selected through CPMT 2000 conducted by Undivided Uttar Pradesh are also eligible. (Vide G.O. No. 1202/71-03-04-sa-64/2000 dated 11.08.2004 and G.O. No. 4917/71-03-04 sa- 64/2000 dated 20.3.2007. Candidates who have passed MBBS from the Himalayan Institute of Medical Sciences, Dehradun and are bona fide students of U.P. but selected after year 2000 in that Institute are not eligible.

(iii) Candidates must have completed or completing their Compulsory Rotatory Internship by 30th May, 2010.

(iv) A candidate who has already taken admission on the basis of earlier U.P.P.G.M.E.E./A.I.P.G.E.E. is not eligible to appear in the examination until he/she completes and passes the course where he/she is presently admitted. However, such a candidate shall be eligible if

(a) he/she has resigned from the said course, his/her resignation has been accepted by the Principal of the Medical/Dental college or the Vice Chancellor in the case of candidates of CSM Medical University and he/she has refunded the full amount of salary/stipend received by him/her during the said course, before the date of notification of this examination, i.e. 1.1.2010.

(b) he/she is presently pursuing P.G. Diploma course in any subject, with the condition that he/she will be considered for the Postgraduate Degree course in that subject only

4. The prospectus of the Medical University further mentions the important dates which is as follows:

IMPORTANT DATES

Date of Entrance Examination

Sunday

28th February, 2010

Application Process starts

Friday

8th January, 2010

Last date for receiving completed application

Wednesday

27th January, 2010 at 4:00 P.N.

Expected date of declaration of merit list

Monday

15th March, 2010

Date of Medical Board for obtaining Physically handicapped certificate

Monday

22nd March 2010

Date of first Counselling (Venue C.S.M. Medical University, Lucknow)

Sunday

1 1th April, 2010

Last Date for joining the allotment college & course from the first counselling

Tuesday

20th April, 2010

Date of second counselling. Any change in dates of counselling will be announced by the Director General Medical Education. (Enquiries should not be directed to the Examination Body.

Wednesday

26th May, 2010

Last date for candidates for joining allotted seats from 2nd round of counselling

Monday

31st May, 2010

5. All the petitioners appeared at the U.P.P.G.M.E.E.-2010 which was conducted on 28th February, 2010 by the Medical University. Dr. Nupur Singh was placed at Rank No. 183, Dr. Amit Dwivedi was placed at Rank No. 242, Dr. Pratishta

Sachan was placed at O.B.C. Rank No. 155, Dr. Monika Shukla was placed at Rank No. 163 and Dr. Hari Shanker Gangwar was placed at O.B.C. Rank No. 49. It needs to be mentioned that in the earlier U.P.P.G.M.E.E.-2009, they were placed at Rank Nos. 264, 334, 189, 242 and 422 respectively.

6. The grievance of the petitioners is that in view of Clause 3(iv)(b) contained in the eligibility criteria referred to above, the petitioners can be considered for admission in the Post Graduate Degree Course only in the subject in which they are pursuing the Post Graduate Diploma Course.

7. Section 28(5) of the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act") provides that admission to Medical and Engineering Colleges shall be regulated by such orders as the State Government may, by notification, make. In exercise of the said powers, the State Government issued the Notification dated 9th October, 1990 providing Scheme of Junior Residency which is as follows:

Scheme of Junior Residency.- (1). This scheme shall be applicable to post graduate degree (M.D./M.S. And post graduate diploma courses in all Government Medical Colleges and K.G.'s Medical College and its norms and terms shall be as under:

....

(2) This Scheme shall be deemed to have come into force on August 1, 1987

.....

8. The procedure for selection and registration of candidates under the said Residency Scheme shall be as under:

(a) A competitive entrance examination for registration and residency admission in two years post graduate diploma course and three years post graduate degree course shall be held in every year.

(b) The said examination shall be based on objective question paper on the basis of M.B.B.S. Examination course.

(c) The said entrance examination shall, after excluding 25% seats specified for All India Entrance Examination, be hold for the remaining 75% Institutional seats. In these 75% seats institutional preference shall be given to a candidate shall be admitted in the medical college associated to the same University, wherefrom he has passed the M.B.B.S. Examination. In respect of Government Medical Colleges, a candidate who has been transferred from one college to another shall be deemed to be the Institutional candidate of that very college wherefrom he has passed the last two professional examination of M.B.B.S.

(d) The said Entrance Examination shall be conducted every year by any University/Institution nominated by the State Government.

(e) A candidate, if admitted to any speciality in post graduate diploma or degree

course, he shall not be eligible for admission to any other speciality in post graduate diploma or degree course. For removal of doubts it is hereby clarified that if any candidate has been admitted to any speciality in Post Graduate Diploma Course, he may be allowed to be admitted in the same speciality in the post graduate degree course.

(f) The departmental examination and registration of residents in the College under the said Scheme shall be made on the basis of meritcum- option. The said merit shall be determined on the basis of marks obtained in the competitive examination.

8. The aforesaid Notification dated 9th October, 1990 was subsequently amended by the Notification dated 30th March, 1994. Clause 8(e) was deleted and substituted by Clause 8(h) which is as follows:

8(h): A candidate who is admitted to any speciality in a post-graduate diploma or degree course shall be ineligible for appearing at the subsequent entrance examination for admission to a different speciality until the course in which he has been admitted is completed. Nothing in this Sub-section shall apply to a candidate who does not join the course to which he is admitted.

9. Clause 8(h) of the Notification dated 9th October, 1990 was deleted by the Notification dated 8th July, 1996 and replaced by Clause 8(h) of which the English version will read as follows:

8(h) A candidate who is admitted in any speciality in a post-graduate diploma or degree course in Government Medical Colleges or K.G. Medical College, Lucknow shall be ineligible for appearing at the subsequent entrance examination for admission to a different speciality until the course in which he has been admitted is completed and he is not declared successful but he will be eligible if his resignation is accepted by the Principal of the College before the date of notification of the examination and has refunded the full amount of salary/ stipend received by him during the said Course. However, nothing in this Sub-section shall apply to a candidate who does not join the course to which he is admitted.

10. Sri Praveen Kumar and Sri Ambrish Sahai, learned Counsel for the petitioners submitted that Clause 8(h) of the Notification dated 9th October, 1990, as it now stands, which imposes a restriction on the candidates who have been admitted in any speciality in Post Graduate Diploma or Degree Course in the Government Medical Colleges from taking admission in the subsequent admission test to any other speciality in Post Graduate Diploma or Degree Course is violative of Article 14 of the Constitution and, therefore, deserves to be set aside. According to them, there is no rationale in prohibiting a candidate admitted to a particular Diploma Course from seeking admission in a Degree Course in a different speciality in the next year and, therefore, all candidates pursuing a Diploma Course should be permitted to take admission in the next year in any speciality of the Degree Course. They further submitted that such a restriction has been

imposed only on the candidates who have been admitted in any speciality in Post Graduate Diploma Course in a Government Medical College in the State but a candidate pursuing a Post Graduate Diploma Course or Degree Course outside the State of U.P. can apply for admission in the State Medical College through All India Post Graduate Entrance Examination and claim admission to any Diploma or Degree Course since there is no such restriction imposed in the All India Post Graduate Entrance Examination. Likewise, a candidate pursuing a Post Graduate Diploma Course or Degree Course in any State Medical College can apply in the subsequent years in the All India Post Graduate Entrance Examination and take admission on the seats available for the All India Quota in a State Medical College. In support of their contention, they have relied upon the decision of a learned Judge of this Court in Writ Petition No. 286 of 1991 (Rajesh Arora and Anr. v. State of U.P. and Ors.) decided on 21st October, 1991 alongwith five other petitions.

11. Sri Mahendra Pratap, learned Counsel appearing for the respondents, however, submitted that the notifications have been issued in due exercise of the powers conferred u/s 28(5) of the Act and cannot be said to be discriminatory or arbitrary and in any case, since there is no challenge to Section 28(5) of the Act, the petitioners cannot urge that the notification issued by the State Government under the said Section is bad in law. It is also his submission that if a candidate is permitted to leave the seat midway for joining another speciality, the earlier seat will fall vacant which will not only cause monetary loss to the State Government but will also deprive a candidate lower in merit from being admitted. In support of his contention, he has also relied upon the decision of a learned Judge of this Court in Dr. Sanjay Sharma and Anr. v. Director General Medical Education and Training, U.P. Lucknow reported in 1996 (28) ALR 522. He has also referred to the eligibility criteria for admission for the Gujarat Post Graduate Medical Entrance Examination and Punjab University, wherein candidates can appear in another Post Graduate Course after completing the Course. It is, therefore, his contention that Clause 3(iv)(b) of the eligibility criteria laid down in the Brochure is in accordance with the subsequent notification dated 8th July, 1996 and does not suffer from any infirmity.

12. I have considered the submissions advanced by learned Counsel for the parties.

13. Clause 3(iv)(a) provides a candidate who has already taken admission on the basis of an earlier U.P.P.G.M.E.E./A.I.P.G.E.E. is not eligible to appear in the U.P.P.G.M.E.E 2010 until the candidate completes and passes the Course in which he is admitted, but such a candidate will be eligible under Sub-clause (a) if the candidate has resigned from the said Course, his resignation has been accepted by the Principal and he has refunded the full amount of salary/stipend before the date of notification of the 2010 examination which is 1st January, 2010. Sub-clause (b) of Clause 3(iv), however, provides that candidates presently pursuing Post Graduate Diploma Course in any subject will also be eligible with a condition

that they will be considered for the Post Graduate Degree Course in that subject only.

14. The petitioners are aggrieved by the condition prescribed in Clause 3(iv)(b) to the extent it restricts a candidate pursuing a Post Graduate Diploma Course in any subject from consideration for admission in the same subject in the Post Graduate Degree Course. It is their contention that there is no good and valid reason for restricting admission to the Post Graduate Degree Course in the same subject in which the candidate is pursuing the Post Graduate Diploma Course and admission in all the subjects in the Post Graduate Degree Course should be open to them.

15. In Writ Petition No. 286 of 1991 (supra), a learned Judge of this Court examined whether the provisions of Clause 8(e) of the Notification dated 9th October, 1990 are valid or not. The petitioners therein had been admitted in a particular M.D./M.S. Degree/Diploma Course in 1990. They again appeared at the Entrance Examination in 1991 but they were denied admission in the speciality of their choice on account of provision contained in Clause 8(e). In this connection, the Court observed:

9. From a perusal of the Government notification dated October, 1990 which has statutory base u/s 28(5), empowering the State Government to regular admission, it will appear that it satisfies the test that equal opportunity should be provided to all concerned seeking admission to post graduate medical degree and diploma courses by enabling them to appear in the competitive entrance examination which may be held for the purpose. It also provides that admission to the medical colleges shall be made according to meritcum- option on the basis of the result of such examination. But this provision has been made in regard to some of the candidates and those who have appeared in any previous examination and have already been admitted in any speciality have been put in a different class and have been denied the benefit of that provision. It has been declared that a candidate, if admitted to any speciality in post graduate diploma or degree course shall not be eligible for admission to any other speciality in post graduate diploma or degree course. This cuts at the root of the right of such candidates to equal opportunity in the matter of appearing in the entrance examination and getting admission on the basis of merit-cum-option. If this was the real intention of the State government, then there was no use permitting the candidates to appear in the subsequent entrance examination. The bar should have been clearly laid down. By allowing him to appear in the examination and then denying him the right to enjoy the fruit of the examination are some thing inconsistent with each other. The provision in substance and effect is that a person who has already been admitted to any speciality should not take chance in the subsequent examination and even if he appears he will not be given admission in any other speciality according to merit-cum-option on the basis of the result of the examination. The second test that the most meritorious students should be given admission in the medical colleges has not been

satisfied. The impugned provisions of Clause 8(e) have no nexus with the object of the statutory scheme. They are, therefore, clearly unreasonable and violative of Article 14 of the Constitution.

10. It has been submitted on behalf of the respondents that there was long-standing demand from the Junior Doctors for implementation of Residency Scheme. A committee was formed to work out the details and since the assurance was given by the then Honourable Minister in early 1987 that the Residency Scheme will be implemented, the cut-off-date for the enforcement of the said Scheme has been fixed as August 1, 1987 in the said Scheme. It has also been submitted that Clause 8(e) has been fixed incorporated in Government notification because, if a candidate already enrolled in a course is allowed to go in another course with the students of next batch, the students of junior batch would not get their higher choice. Even some students would not be able to secure admission in post graduate courses in this way. Hence more persons cannot be trained in various specialities. It is asserted that the bar regarding the change of speciality has been imposed in public interest. If this is the real object of the impugned provision, then it would have been very easy for the State Government to provide a person who has already appeared in same competitive entrance examination and has been admitted to any speciality on the basis of result of such examination, he shall not be eligible for appearing in the subsequent examination, and in the alternative the number of chances, which a person may take in the subsequent examinations, may be limited to say two or three. But it does not appear to be reasonable that a person may be allowed to appear in the examination and yet be denied admission on the ground that he is already admitted in a speciality.

11.....

12. My attention has not been drawn to any decided case in which the validity of the kind of the provision made in Clause 8(e) has been examined and upheld. On the other hand it has been pointed out that in Writ Petition No. 18604 of 1988 *Haleem Clinic v. Principal GSBM Medical College, Kanpur* this Court passed an order dated January 24, 1989 on the basis of some earlier decision of the Court that the petitioner should not be refused admission only because of Clause 7-A of the Government notification of 1982 which contained provisions similar to those contained in the impugned Clause 8(e). It must be held that any provision for securing the right to education which is made by the State in the discharge of its constitutional obligation under Article 41 of the Constitution, must be reasonable and conform to the requirements of Article 14 of the Constitution. As already indicated, the impugned provision contained in Clause 8(e) of the Government notification dated October 9, 1990 infringes the right to equality guaranteed under Article 14 and is as such void and unenforceable.

13....

14. The writ petitions are accordingly allowed and the impugned provisions of

Clause 8(e) of Government notification dated October 9, 1990 are hereby quashed and a writ of mandamus is issued directing the respondents to give admission to the petitioners according to merit-cum-option on the basis of result of competitive entrance examination 1991 without disturbing the candidates already admitted and not to give effect to the impugned provisions of Clause 8(e) of the Government notification dated October 9, 1990. Until any final arrangement is made by the respondents in pursuance of the said directions, petitioners in Writ Petition Nos. 420 and 421 of 1991, if they are prosecuting study in any speciality on the basis of any previous examination as stated by them, shall not be disturbed. The parties will bear their own costs.

16. Thus, as it was found that Clause 8(e) did not secure the right to equality guaranteed under Article 14 of the Constitution, it was declared void and was, accordingly, quashed.

17. The Government, however, issued another Notification dated 30th March, 1994. Clause 8(e) of the Notification dated 9th October, 1990 was deleted and Clause 8(h) was substituted. This newly inserted Clause 8(h) as also the condition imposed in Clause (iii) contained in item "C" of the Brochure was also challenged by certain Doctors in Dr. Sanjay Sharma (supra). In this petition, on the basis of the U.P.P.G.M.E.E. 1996, Dr. Sanjay Sharma was admitted in M.D. Pharmacology and Dr. Piyush Anand was admitted in M.D. Physiology. They did not appear in U.P.P.G.M.E.E.-1994 and U.P.P.G.M.E.E.-1995 but decided to appear at the U.P.P.G.M.E.E. 1996. In view of the restriction imposed by Clause 8(h) and C(iii) of the Information Brochure, they filed the petition to permit them to appear at the examination and if selected to grant them admission on the basis of the merit. This time, the writ petition was dismissed with the following observations:

Shri R.B. Singhal, learned Counsel appearing for petitioners in the first petition, has submitted that the prohibition or disqualification created by Clause (iii) of Instruction "C" containing that eligibility criteria is illegal and arbitrary. The impugned Clause (iii) is being reproduced below:

(iii) A candidate who is already admitted to any post graduate degree and diploma course will not be eligible to appear in the U.P.P.G.M.E.E. 96 examination till he/she completes the course

Learned Counsel has further submitted that the aforesaid prohibition has no connection with the object sought to be achieved by such Examinations. It has also been submitted that the prohibition contained in the Brochure was not in consonance with the Government Notification issued u/s 28(5) of U.P. Universities Act, 1973. It is submitted that under the Government Order, as amended from time to time, the bar is against a different specifically. However, the Brochure contains the absolute bar.

....

I have seriously considered the rival contentions of the learned Counsel for parties. The Government Notification dated 9.10.1990 was issued by the Governor of Uttar Pradesh on the basis of the judgments of Hon"ble Supreme Court, Regulations of the Medical Council of India and the recommendations given by the Committee constituted to bring improvements in the Post Graduate Education and Training in all the Government allopathic Medical Colleges and Dental Colleges for doing Post Graduate Diploma and Degree Course. Initially the bar contained in Clause (e) of Para 8 was as under:

....

From a perusal of the aforesaid Clause (e) it is clear that the prohibition was against admission in any other speciality. The fact that this bar was not advertised or was not mentioned in the advertisements or Brochure of U.P.P.G.M.E.E. of 1993 does not make any difference as the admissions to the Post Graduate Diploma and Degree Course are governed by the aforesaid Government Order. The Entrance Examination is conducted for admission to Post Graduate Diploma or Degree Course. This prohibition has been amended and modified by the Government Orders dated 30.6.1993 and 30.3.1994. Clause (h), as it now stands, has already been reproduced in the earlier part of this judgment. In my opinion, the prohibition is not complete and it is only regulatory. A candidate on the basis of the merit secured in the Entrance Examination exercise his option to join a particular speciality and once it has been done, he should stick to that. It cannot be denied that a lot of money is spent in maintaining these courses and the candidates who join such courses are paid handsome salary. In counter affidavit it has been stated that such candidates are paid Rs. 6000/- per month as salary besides other expenses. They are provided facility of residence and studies etc. If the candidate is allowed to leave the course midway, certainly it shall be against the public interest. Further, speciality in medical science, whether it is clinical or non-clinical, plays an important role in maintaining the health and preserving the life of human being. So far as society is concerned, every speciality has the same value. The candidate may have likings or disliking for different specialities but their importances cannot be minimised on the basis of their likings which are mainly based on the prospects for future life. The medical colleges are run and maintained at the public expense. The prime object is the public service. If this kind of jumping from any one course to another course is allowed to be resorted to by appearing in further examination, it shall be highly prejudicial to the medical education. The disadvantage may be considered from another angle also. If a candidate is allowed to leave the course midway, the seat on which he was allowed admission on the basis of the earlier Entrance Examination shall remain vacant for remaining period of the course as no admission can be granted at that advanced stage of the course. Such a practice, if allowed to be pursued, will not be of any advantage to any body. In my opinion, the prohibition contained is regulatory and does not in any way violate the provisions contained in Articles 14 and 21 of the Constitution of India.

....

The third and last submission is that the prohibition contained in the Brochure is not in consonance with the Government Order dated 9.10.1990 as amended in 1993 and 1994. There appears substance in this submission of the learned Counsel for petitioners. Clause (h), as it stands after 1994, provides that a candidate who is admitted to any speciality in a Post Graduate Diploma or Degree Course shall be ineligible for appearing at the subsequent Entrance Examination for admission to a different speciality until the course in which he has been admitted is completed. Thus the bar is against appearing at the subsequent Entrance Examination for admission to a different speciality. Clause (e) of the Government Order of October 9, 1990 contained a clarification. It provided that if any candidate has been admitted to any speciality in Post Graduate Diploma Course, he may be allowed to be admitted in the same speciality in the post graduate degree course. This clarification has been subsequently omitted and in my opinion for the reason that it was not necessary. The Clause (h) as it stands was sufficient to depict the correct position that a candidate pursuing a diploma course in a particular speciality could appear in subsequent Entrance Examination for admission to the same speciality for doing degree course. The information Brochure and application form published for U.P.G.M.E.E-1996 contains an absolute bar that a candidate who is already admitted to the Post Graduate Degree or Diploma Course will not be eligible to appear in subsequent Entrance Examination till he has completed the course. Clause (iii) of the Eligibility Criteria is not in consonance with Clause (h) of the Government Order. A candidate who is already admitted to a diploma course in a particular speciality is entitled to appear and improve his merit so as to get admission in post graduate degree course. The Government Order dated 19.10.1990 and subsequent order are statutory in nature. They have been issued under Sub-section (5) of Section 28 of the U.P. State Universities Act, 1973. Thus, Clause (h) will prevail and Clause (iii) of Information "C" of the Brochure should be read along with Clause (h). Petitioners are thus entitled for a limited relief to the aforesaid extent.

18. A perusal of this judgment shows that the Court did take into consideration Clause 8(h) of the Notification dated 9th October, 1990, as amended in 1994 and observed that deletion of the clarification contained in Clause 8(e) was rightly done since it was redundant. It was also observed that the earlier part of Clause 8(e) made it clear that if any candidate admitted to any speciality in Post Graduate Diploma Course may be allowed to be admitted under the same speciality in the Post Graduate Degree Course. Clause 8(h), as it stands after the amendment in 1994, also contains the same restriction namely, that a candidate pursuing a Diploma Course in a particular speciality can appear in the subsequent Entrance Examination for admission to the same speciality for joining the Degree Course. What needs to be noticed is that the earlier decision in Writ Petition No. 286 of 1991 (supra) decided on 21st October, 1991 was not placed before the Court in Dr. Sanjay Sharma (supra) and nor was it considered.

19. There are, therefore, two conflicting decisions of learned Judges of this Court. In Writ Petition No. 286 of 1991 (supra), Clause 8(e) of the Notification dated 9th October, 1990 was found to be violative of Article 14 of the Constitution and so it was quashed. In Dr. Sanjay Sharma (supra), the Court while analyzing the provisions of Clause 8(h) of the Notification dated 9th October, 1990, as amended in 1994, which the Court found to be substantially the same as Clause 8(e) of the Notification dated 9th October, 1990, was found to be valid.

20. It needs to be mentioned that though the Court noticed in the subsequent decision rendered in Dr. Sanjay Sharma (supra) that if a candidate is allowed to leave the course midway, it will be against public interest and prejudicial to the Medical Education since lot of money is spent and the seat will remain vacant for the remainder period of the Course, but it failed to notice that even if a candidate pursuing a Diploma Course in a particular speciality is permitted to take admission in the Degree Course in the same speciality, the same position will emerge since his seat in the Diploma Course will also continue to remain vacant.

21. The prohibition should, therefore, either be complete, i.e., a student admitted in a particular Diploma Course should not be permitted to take admission subsequently in any other Diploma or Degree Course till he completes the Course, but if such candidates are permitted to take the next examination there is no plausible reason and indeed none has been pointed out by Sri Mahendra Pratap, learned counsel for the respondents as to why such a restriction has been placed on students seeking admission in the next year and if this be so, it is clearly violative of Article 14 of the Constitution. Reference in this connection can be made to the decision of the Supreme Court in U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and Another, in which it was observed:

It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.

Every classification, to be legal, valid and permissible, must fulfil the twin- test, namely,

- (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and
- (ii) such differentia must have a rational relation to the object sought to be achieved the statute or legislation in question.

22. Reference also needs to be made to the decision of the Supreme Court in B. Manmad Reddy and Others Vs. Chandra Prakash Reddy and Others, the Supreme Court observed:

...There is no gainsaying that classification must rest on a reasonable and intelligible basis and the same must bear a nexus to the object sought to be achieved by the statute. By its very nature classification can and is often fraught with the danger of resulting in artificial inequalities which make it necessary to subject the power to classify to restraints lest the guarantee of equality becomes illusory on account of classifications being fanciful instead of fair, intelligible or reasonable.

23. Though the Notification dated 9th October, 1990 has further been subjected to amendment in 1996 and the earlier Clause 8(h) has been omitted and has been substituted by new Clause 8(h), but this Clause also permits a candidate pursuing a Diploma Course in a particular speciality to take admission only in the same speciality in the Degree Course in the next year.

24. Thus, in view of the conflicting decisions of the learned Judges of this Court in Writ Petition No. 286 of 1991 (supra) and Dr. Sanjay Sharma (supra), it is appropriate to refer the matter to Hon'ble The Chief Justice for constitution of a Larger Bench to decide the following questions:

(1) Which of the two decisions namely Writ Petition No. 286 of 1991 (supra) decided on 21st October, 1991 and Dr. Sanjay Sharma (supra) lays down the correct law ? and

(2) Whether Clause 8(h) of the Notification dated 9th October, 1990, as amended by the Notification dated 8th July, 1996, which restricts candidates admitted to the Diploma Course from seeking admission in the same speciality in the Degree Course in the subsequent year to the exclusion of all other Degree or the Diploma Courses is violative of Article 14 of the Constitution ?

25. The writ petitions may, thereafter, be listed for final orders.