
(1989) 09 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 575 of 1989

Dr. Penil Sharad Kumar Doshi and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 25-09-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 226

Citation : AIR 1990 MP 171 : (1990) JLJ 352 : (1990) MPLJ 253

Hon'ble Judges : V.D. Gyani, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : V.S. Kokje, Ku. Rashmika Vaidya and Ku. Vandana Kasarekar, for the Appellant; S.B. Bhargava, G.M. Chafekar, Chafekar and S. Kulshretha, for the Respondent

Judgement

V.D. Gyani, J.

By this petition under Article 226 of the Constitution of India, the petitioners (in all 23) have challenged the "Rules" for admission to Post-Graduate Degree and Diploma Courses in Medical Colleges of the State of Madhya Pradesh, as also the rules for allotment of House-jobs, in the Hospitals attached to the Medical Colleges in t-he State.

It is an. admitted position at these admissions to Post-Graduate Courses are governed by executive instructions issued by the State Government under Article 162 of the Constitution of India, although they are titled as Madhya Pradesh Selection for Post-Graduate Courses (Clinical, Para-clinical and Non-Clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1984 (hereinafter referred to as P.G. Rules). The rules pertaining to Diploma Courses are referred to as "Diploma Rules". These rules have been annexed to the petition as Annexures P/1 and P/3. It may also be noted that though titled and called as "Rules", they are not statutory rules, but mere executive instructions.

The petitioners have challenged categorisation of candidate as made under Rule

3 of these Rules as wholly arbitrary and discriminatory, having no nexus with the object of selection --- to select the best talent and the most meritorious ones. The weightages in evaluation of merits and deduction of marks, have also come under scalling attack by the petitioners.

Institutionalised reservations or preferences in the matter of admissions to P. G. Courses in Medical Colleges is the theme of this petition and the whole argument built by Shri Kokje, learned counsel for the petitioners, on the basis of what the Supreme Court has been saying for almost about a decade, beginning with Dr. Jagadish Saran and Others Vs. Union of India (UOI), and culminating with a very recent judgment in Dr. Sanjay Mehrotra and Another Vs. GSVM Medical College, Kanpur and Others,

The respondent-State on the other hand, pla ng reliance on certain observations made by the Supreme Court in Dinesh Kumar v. M.L.N. Medical College, Allahabad AIR 1986 SC 1877, sought to justify the reservations made under the "rules".

The petitioners claim a common competitive examination as recommended by the Supreme Court, while the State contends that since the number of candidates is limited and the principle of institutional continuity has been upheld by the Supreme Court in Dinesh Kumar's case (AIR 1986 SC 1877) (supra), it is neither necessary nor desirable to have common competitive test.

Before proceedings to deal with the contentions raised, it would not be out of place to note that a group of students had applied for being intervenors and we have heard their counsel Shri Chaphekar, as well.

Few more facts, which need to be noted are that the Medical Colleges situated at Indore, Bhopal, R'ewa, Gwalior, Jabalpar and Raipur in the State of Madhya Pradesh, all having Post-Gradaute Courses, are affiliated one each, to a different University. Thus, each University having only one Medical College affiliated to it (All Colleges having Post-Graduate Courses). "

That as desired and directed by the Supreme Court, provision has been made by the State Government and 25% of the total number of seats available, have now been earmarked and allocated for candidates passing the All India Competitive Examination. It is also significant to note that the respondent-State in its return does not dispute the position as averred by the petitioners that the total number of seats available for admission are determined as per Regulations of the Medical Council of India. The number of seats are revised every January, which depends on the availability of P. G. Teachers as on 31st December of the preceding year.

It is an admitted position that as for merit quota, candidates are selected on the recommendations of the College and Hospital Council, known as P. G. Committee of the College, on the basis of merit amongst students passing from the same College. The method and manner of determining merits is also not disputed by the respondents except for an explanatory note amending Rule No. 8(0 (relating

to deduction of marks on account of extra attempt) in the light of two judgments of this Court in M. P. No. 1600 of 1986 Sanjay v. State and M. P. No. 1635 of 1986 Moizali v. State decided on 25-2-1987 : (reported in 1987 MPLJ 664).

The respondent-State further admits the weightage given to Assistant Surgeons and also the manner and method of determining their inter se merit.

According to the petitioners, merit alone should be the criteria for admission to a Post-Graduate Course. They further contend that merit of a candidate should be judged in a manner which would afford them equality of opportunity. According to them, the rules as prevailing are extremely arbitrary, unjust and improper.

To begin with, the categorisation of candidates, the first step towards discrimination, the five different channels for admission to Post-Graduate Courses are created. Shri Kokje, learned counsel for the petitioners vehemently urged that this classification for the purposes of admission to Post-Graduate Courses is meaningless, the ultimate goal being to select the best amongst the available candidates.

The respondents in order to justify the question of candidates and the institutional preference given, seeks support from the following passages extracted from the case of Dinesh Kumar (AIR 1986 SC 1877) (supra) :

"But after condemning such wholesale reservation, we proceeded to observe that the very mandate of the equality clause viewed in the perspective of social justice, would justify some extent of reservation within the State or on institutional preference for students passing the qualifying examination held by the University from para I, pp. 1879."

"We then proceeded to discuss the question of admissions to post-graduate courses, such as MD, MS and the like and taking into account broader considerations of equality of opportunity and institutional continuity in education which has its own value and relevance, we took the view that though residence requirement within the State should not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may be reserved on the basis of institutional preference in the sense that a student who has, passed MBBS course from a Medical College may be given preference for admission to post-graduate course in the same Medical College or University....."

(From para I, pp. 1880) :

"We do not think that it would be right for us to limit the reservations which can be validly made by a State Government in the matter of admission to the MBBS/ BDS course and the post-graduate Courses to 50% of the total number of seats. There are some States like Tamil Nadu and Karanataka, which have reservation far exceeding 50% in admissions to MBBS/BDS course and we do not propose to restrict such reservations to 50%....." (From para 6, pp. 1883).

It is from the above passages that Shri Bhargava, learned Government Advocate

appearing for the respondent-State; not only seeks to support, but strength for building up his arguments. It now remains to be seen as to how far this judgment helps the respondents in justifying the rules, as they are.

Shri Kokje, learned counsel for the petitioners on the other hand pointing out from this very judgment and later and earlier ones, submitted that the institutional preferences can in so circumstance be justified. The submission made by the learned Government Advocate very conveniently overlooks the subsequent decisions as also the earlier decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others,

The Supreme Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, after discussing the possibility that in highly urbanised areas, there may be a surfeit of doctors, considering the large tracts of rural areas throughout the country where competent and adequate medical services are not available concluded in paragraph 10 :

"But as the position stands today, there is considerable paucity of seats in Medical Colleges to satisfy the increasing demand of students for admission and some principle has, therefore, to be evolved for making selection of students for admission to the Medical Colleges and such principle has to be in conformity with the requirement of Article 14. Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in Dr. Jagadish Saran and Others Vs. Union of India (UOI), "this has burning relevance to our times when the country is gradually being broken up into fragments by narrow domestic wait, by surrender to narrow parochial loyalties."

In this very judgment, the Supreme Court further explained in paragraph 11 as under :

"The object of selection can only be to secure the best possible material for admission to colleges subject -- the provision for socially and educationally backward classes. Further, whether selection is from the socially and educationally backward classes. Further whether selection from the socially and educational backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources."

The Supreme Court in paragraph 11 further explained and observed :

"The fact, however, that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved.

Proceeding further the Supreme Court in paragraph 13, further observed and pointed out :

"Obviously, such departure can be justified only on equality oriented grounds, for whatever be the principle of selection followed for making admissions to medical

colleges, it must satisfy the test of equality."

The Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, has very categorically and in plain terms denounced reservations on the basis of Institutional preference for admission to Post-Graduate courses, such as M.D., M.S. and the like. This is what the Supreme Court has said "There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation." The Court quoted with approval what Krishna Iyer, J. had said in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, A few excerpts emphasising merit are reproduced below :

"Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk."

"Merit must be the test when choosing the best, according to this rules of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses."

"To devalue merit at the summit is to temporise with the country's development in the vital areas of professional exercise."

"In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowlege, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims in the long run, may be the people themselves."

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for postgraduate or post-doctoral courses in specialised subjects."

"To sympathise mawkishly with the weaker sections by selecting sub-standard candidates 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 specilists, not hundrum second-rates."

The emphasis the Supreme Court has laid on merits, is clearly and unmistakably brought out by the above passages.

Reliance placed by Shri Bhargava, learned Govt. Advocate on certain portions of the judgment in *Dinesh Kumar's case (AIR 1986 SC 1877)* (supra), really speaking do not help the State in support of their contention justifying reservation on the basis of institutional preference, as they have been quoted by the State, out of context.

Reading further the excerpts, as quoted by the respondent State from paragraph 6 of *Dinesh Kumar's case (AIR 1986 SC 1877)* (supra), it is clear that

reservation which the Supreme Court was dealing was relating to Scheduled Caste, Scheduled Tribes and Backward Classes. Even while holding that the Court did not propose to restrict such reservations to 50% the Court made it clear.... "When we say that we do not propose to limit the percentage of reservations to 50, as suggested by the Government of India, we should not be understood as laying down that the State Government may make reservations to any extent it likes or that the percentage of reservations can validly exceed 50 without violating any constitutional guarantees. The Supreme Court further made it clear and added that "we are not going into this question because it does not directly arise for determination in this case." Similarly, clarifying the stand taken in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, the Supreme Court said, "We took the view that though residence requirement within the State should not be a ground for reservation in admission to Post-Graduate Courses, a certain percentage of seats may be reserved on the basis of institutional preference in the sense that a student who has passed MBBS Course from a Medical College may be given preference for admission to 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 admissions to the Post-Graduate Course."

In this very case of *Dinesh Kumar (AIR 1986 SC 1877)* (supra), the Supreme Court has come out very heavily on weightage to be given to Post-Graduate Course. It was suggested that 15% of total marks obtained by a student at the All India Entrance Examination should be given to a candidate who has put in a minimum of three years of rural service and this is what the Supreme Court has said about it (at P. 1888) :

"We do not think that by merely offering a weightage of 15% to a doctor for three years" rural service we shall be able to bring about a migration of doctors from the urban to the rural areas. 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 admission to Post-graduate Courses and if we want to produce doctors who are M.D. or M.S., 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 has rendered three years" rural service for the purpose of getting a weightage of 15% would go back to the rural area after he has got M.D. or M.S. 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 M.D. or M.S. Degree he will settle down in a rural area and serve the rural masses."

The Supreme Court explained the reasoning behind it by saying :

"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."

Now, let us turn to Rule 3, which provides for the following five categories Rule 3(e), when read along with other connected rules, particularly Rule 5(c) and Rule 12, which provides for reservation of seats of such candidates as covered under Rule 5(e) and Rule 12 further makes it obligatory on the authorities to grant admission to such candidates in the subject or discipline of the candidate's choice (sic). Howsoever liberally construing, this rule does not stand the test nor does it serve the object of selection. It is totally devoid of any nexus with the object, namely, to select the best available talent on merit. It is a preposterous move stinking with mala fide added to the rules with an eye on a particular candidate.

The petitioners have averred that this 5th channel was obviously arbitrary and had clearly been carved out for accommodating some favourite candidates. The respondent State in its return has not come out with a straightforward answer to this allegation.

A very faint and feeble attempt has been made to justify this rule with reference to the reservation of seats in respect of Medical Officers employed in Central Government Institutions and Public-service Undertakings located in the State of Madhya Pradesh. On the same ground the return reads, "children of the State Government employees and All India Service Officers borne on the cadre of Madhya Pradesh do need to be compensated." The choice of discipline is not given to any candidate under the rule. It is only the fortunate sons or daughters or wards of the All India Service Officers borne on the cadre of Madhya Pradesh, who have been granted the choice under the rules. What is the rationale behind this classification is not even attempted to be suggested by the State.

The Rules 5(a) was inserted by way of an amendment dated 6-5-1988, issued by the State Government in continuation and partial modification of the rules. This Notification has been filed as Annexure P/1 and not disputed by the respondent State. It is reproduced hereunder as follows :

"AMENDMENTS

S. No. 1 after Clause "D" of Rule 3 add Clause"E":

E.-- The State Government employees and the All India Service Officers, borne on the cadre of Madhya Pradesh, who had been deputed to serve outside the State, when they return, on the expiry of the deputation, and join a post in the State, their children, who have obtained MBBS/BDS Degree from a Medical College, outside, the State of Madhya Pradesh, recognised by the Indian Medical Council, and who have completed one year of house-job before the month of commencement of the post-graduate course to which they seek admission, such

children shall be eligible for admission subject to the number of seats reserved for this category under Rule 5.C.

S. No. 2- After Rule 5.B add Clause "C":

C. Six seats in all the Medical Colleges, taken together, in both the clinical and non- clinical subjects combined, will be reserved for the children of the State Government employees and All India service officers borne on the cadre of Madhya Pradesh as described in Rule 3.E. above.

S.No. 3-- After Rule 11 and Rule 12:

The allocation of subject against seats for candidates covered by Rule 3.E.

The selection will be made from applicants on the basis of merit in the category to which they belong by the Committee mentioned in Rule 9. The person selected should, however, be offered admission to the post-graduation course in the subject of his choice.

These amendments shall come into force with effect from 5th May, 1968.

Sd/-A. N. Tiwari Deputy Secretary, Bhopal Dated 6th May, 1968."

Read this rule in juxtaposition with all that the Supreme Court had said about equality of opportunity in the matter of admission to post-graduate courses in Medical Colleges, can one escape the conclusion, that there could be greater mockery of the equality clause enshrined in Article 14 of the Constitution, a wholly unjust and unfair rule diametrically opposite to all that had been propounded and said by the highest Court of the land, on the point.

26- Cases of favouritism have been there, but they were all exceptions to the rule. But this is a classically unique case, where favouritism is provided and patronised under the very rule itself. Even administrative action, it has been said, must be informed with reason and fairness. Read and re-read the rule, as it is all that is needed to supply the name of the candidate, the fortunate one, in whose case the institutional preference so much stressed by the State is ignored, merely because he happens to be the son of an I. A.S. Officer, borne on the cadre of the State, but deputed outside the State, and to put a premium, such a candidate is conferred with a choice of discipline, whereas others have to accept what comes to their lot on the basis of merit.

If this be equality of opportunity, reason and fairness what else favouritism? Where the avowed object is to select the best talent available on the basis of merit, how can such a rule be conceived of?

Mind well, it is not a case of reservation in favour of one belonging to Scheduled Caste, Scheduled Tribe or Backward Class, and the Supreme Court, as noted above, having repeatedly emphasised merit alone as the criteria for admission, to post-graduate courses in Medical Colleges, such executive instructions violently offending Article 14 of the Constitution cannot be allowed to stand.

A similar provision made by the State of Gujarat was challenged in *Patel Rajesh Motibhai and Another Vs. State of Gujarat and Others*, It was contended that since the State or Central Government, provides finances for Medical Colleges, it has the power to lay down the sources from which candidates may be selected for admission. In order to protect the interest of the employees, who serve the State, special provisions for their wards, in the educational institutions, including Medical Colleges, the same plea is raised in this case as a well. "In a society governed by rule of law, the Government managing the funds of the people as a trustee cannot arrogate to itself the power of a capitalist handling his own funds. The Court further held that those who manned the Indian Civil Service, might have enjoyed a privileged position in preindependence days, it was now a relic of the past, to which the constitutional mandate of Article 14 applied. This could be a good temptation to join or continue in Government service, but meritoriousness could not be sacrificed to please the bureaucrats."

After *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, this emphasis on merits, particularly for admission to post-graduate Courses, applies with all the more greater force.

A mere glance at the amended Rule 3(e) would show that this Rule has not been issued in the name of the State Government it is a pure and simple bureaucratic act to suit the exigency and demands of a given situation, and it may also be added, of a given individual. There are allocations of Business Rules framed by the State. However, the learned Govt. Advocate could not point out when asked to show any particular Rule under which this newly amended Rule 5(e) was added to the P.G. Rules.

It is not disputed that out of the total number of seats available for making all deductions in respect of other categories and All India Test, the remaining seats available in merit quota in 146, out of 294 and these seats are reserved for candidates selected on the basis of Institutional preference. Thus, there is cent per cent reservation in the merit quota, based on Institutional preference.

It was argued by Shri Bhargava learned Government Advocate that the admissions under the Rules are controlled by the Universities and the reservation is Universitywise, which has been recognised by the Supreme Court in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, and also approved in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, Reliance was also placed on *M.R. Mini (Minor) Represented by her Guardian and Father M.P. Rajappan Vs. State of Kerala and Another*, by the learned Government Advocate. In support of his arguments. The number of Medical Colleges and the Universities they are affiliated to, have already been noted above in paragraph 7, but there are other Universities in the State, which do not have Medical Colleges at all, for example, the Vikram University at Ujjain and Sir Harisingh Gaur University at Sagar. Firstly, *Minis''s case (supra)* was not a case of admission to Post-Graduate Courses. She was seeking admission to the M.B.B.S. Course in one or other Medical Colleges in Kerala. She could not satisfy the requirements of

Kerala University pool and could not get admission to Calicut University-pool as was not a student of that University. What was contended before the Supreme Court was, if treated as a student of Calicut University, the marks secured by her would have been sufficient to gain admission and since she belongs to the Malabar region, which was broadly served by the Calicut University, she should have been given the benefit of Calicut University students and consequently admission to M.B.B.S. Course, what holds good at the graduate level does not necessarily holds good for the Post-Graduate Courses and reading the judgment as a whole, a pragmatic formula constitutionally permissible, so as to promote equality against the backdrop of social justice, was suggested to the State and in this context the Court made a reference to its earlier decision in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, again emphasising the importance of merit and excellence. To say that Universitywise classification was approved by the Supreme Court would be misreading the judgment. The position as it obtains in this State with regard to the number of Medical Colleges providing Post-Graduate Courses, has already been noted in the foregoing paragraph 7, but there are Universities in the State which do not have Medical Colleges at all, affiliated to them. For example, the Vikram University at Ujjain and Sir Harisingh Gaur University at Sagar. If the argument as advanced by the learned Government Advocate is to be accepted, then possibly the alumni coming from the areas served and covered by these Universities stand no chance of being admitted to Post-Graduate Courses in Medical Colleges of the State, if they had obtained their degrees from some other University outside the State. Although they may be residents of the State. Reservation based on cent per cent Institutional preference, keeps them out of the field, howsoever meritorious they may be. On the one hand, we have the pronouncement of the Supreme Court by approving and upholding recognised only one domicile of the country and on the other, we have such restrictions and preferences based on Institutions.

The argument that the Supreme Court has approved Universitywise reservations in *Dr. Pradeep Jain and Others Vs. Union of India (UOI)* and *Others*, (supra) following *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, appears to be based on misreading of both the judgments, firstly, *D. N. Chanchalal's* case (supra) was not a case of admission to Post-graduate Course," and the question involved in this case was relating to admission to MBBS Course and what has been approved is (at p. 1435) :

"the object of selection for admission to the Medical Colleges considered in the background of the Directive Principles of State Policy contained in our Constitution, appears to be to select the best material from amongst the candidates in order not only to provide them with adequate means of livelihood but also to provide the much needed medical aid to the people and to improve public health generally."

Considered in the background of the Directive Principles of State Policy to provide the much needed medical aid to the people and to improve public health

generally, the Universitywise reservation in the State of Karnataka, so far as MBBS Course was concerned, was approved of. There is one significant feature which has possibly missed attention of the learned counsel. The PUC Examination of the Karnataka University was open to all, as is evident from the concluding part of para 17 of the judgment, which is reproduced as under Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, at Pp. 1436-37):

"Universitywise distribution of seats was thus upheld by the Court as constitutionally valid even though it was not in conformity with the principle of selection based on merits and marked a departure from it. The view taken by the court was that Universitywise distribution of seats was not discriminatory because it was based on a rational principle.

There was nothing unreasonable in providing that in granting admissions to medical colleges affiliated to a University, reservation shall be made in favour of candidates who have passed PUC examination of that University firstly, because it would be quite legitimate for students who are attached to a University to entertain a desire to "have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own" University, since that would promote institutional continuity which has its own value and secondly, because any student from any part of the country could pass the qualify-ing examination of that University, irrespec-tive of the place of his birth or residence."

In the instant case the reservation based on Institutional preference is made so sacrocent that there is absolutely no scope for any candidate coming from any other Medical College or University in the State, let alone the country. It may also be noted that the first twentyone paragraphs of the judgment in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, are devoted to the MBBS Course and from paragraph 22 onwards the Apex Court started considering P. G. Courses, such as M.D., M.S. and the like. The inherent fallacy in the argument of the learned Government Advocate is too obvious. Firstly, D. N. Chanchala's case(AIR 1971 SC 1762) (supra) was a case relating to admission to MBBS Course and even if what has been stated in that context is to be applied to the present case. The most distinguishing feature of that case, throwing open of PUC Examination to all in the country, makes it wholly inapplicable to the facts of the present case.

No material has been placed on record to show as to how this institutional preference is conducive to the Directive Principles of State Policy, catering to the needs of public health and well-being of a particular area of the State. Even if the argument advanced by the learned Government Advocate, Shri Bhargava, is to be accepted and the Directive Principles of State Policy are to be read in the cent percent reservtion based on Institutional preference, there is absolutely no material on record placed by the State to justify as to how such reservation, either provides the much needed medical aid to the perople, or serves the cause of Directive Principles of State Policy.

Shri Chaphekar, learned counsel appearing for the Interveners was also heard and he had also contended that Universitywise distribution of seats was not unreasonable. In support of his argument, he referred to Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, which has been discussed above, particularly in paragraphs 10, 12, 13, 14, 15, 16 and 17 thereof and Dr. Jagdish Saran and Others Vs. Union of India (UOI), (supra), in paragraph 50. Shri Chaphekar submitted that this issue was kept at large. No doubt that the Court has stated "We spare the Impugned regulation even though we are, prima facie, sceptical about the vires thereof. To doubt is not enough to demolish. When fuller facts are placed, the Court will go into this question more confidently. "

In this context, it would not be out of place to reproduce what the Supreme Court said in paragraph 49 in Dr. Jagdish Saran and Others Vs. Union of India (UOI),

"We recognise that institutionwise reservation is constitutionally circumscribed and may become ultra vires if recklessly resorted to. But even such rules, until revised by competent authority or struck down judicially, will rule the roost. That is why we have to concede that until the signpost of "no admission for outsiders" is removed from other Universities and some fair percentage of seats in other Universities is left for open competition, the Delhi students cannot be made martyrs of the Constitution."

One cannot overlook that the case at hand is a case of cent percent reservation, based on Institutional preference.

What was kept at large in Dr. Jagdish Saran's case (supra), is now almost settled and decided by the subsequent decisions of the Supreme Court the first in the series is Dr. Pradeep Jain's case (supra), the second being Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others,

Apart from that the Supreme Court has said in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , the question for institutional preference again came up for its consideration in a very recent judgment in Dr. Sanjay Mehrotra and Another Vs. GSVM Medical College, Kanpur and Others, In this case the rule providing for preference to institutional candidates and reservation of 75% of seats for them, came up for consideration before the Supreme Court. Two candidates were admitted to post-Graduate Courses on the basis of institutional preference, without holding any merit test or examination. The High Court of Allahabad, following Pradeep Jain's case (supra), set aside their admissions. The Supreme Court while allowing admissions of the two doctors, disapproved of the institutional preference. It may be noted that in view of the position as explained and the number of seats lying vacant and available at the time, a direction was made by the Court to the respondents to admit the appellant and one more candidate who figured as respondent No. 9. Even while -making such a direction, the Supreme Court made it clear in paragraph 7 of the judgment "Before we conclude, we may express the view that in future, it would be better for the

authorities concerned to hold admission-tests for the assessment of merits of the candidates for admission in the super speciality Courses."

Reading this case along with Pradeep Jain's case (supra), it would be clear that admission tests for assessment of merits is not confined to super-speciality alone, as was sought to be suggested by the learned Government Advocate during the course of his argument. While reading this judgment in Dr. Sunjaya's case (supra), the principles laid down by the Supreme Court in Dr. Pradeep Jain's case (supra), cannot be overlooked. Merit-tests cannot be restricted to super-specialities alone, making any such departure from what has been laid down in Pradeep Jain's case (supra), and restricting the merit-tests to super-specialities only, and tolerating institutional preference would not merely mean ignoring the principles regarding merit-test, laid down by the Supreme Court in Pradeep Jain's case (supra), again reiterated in Dr. Sanjay's case (supra), but also a total negation of the law, as has been laid down by the Supreme Court in Dr. Pradeep Jain's case (supra). It would be nothing short of misreading and misconstruing the above judgments of the Supreme Court. If there still remains any doubt, it stands cleared by two subsequent decisions of the Supreme Court in State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, and a very recent judgment in Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, which holds that Collegewise institutional preference is violative of Article 14 of the Constitution of India.

In Rajasthan case (supra), the Supreme Court held as unconstitutional, weightage of 5% marks to the students applying for admission to the Post-Graduate Course in any of the five Medical Colleges of the State, if the student had passed his final MBBS Examination from the College to which admission post-Graduate Course was sought. These five Colleges are situated at Jaipur, Jodhpur, Udaipur, Bikaner and Ajmer. The Supreme Court observed that this weightage of 5% to students of each of the five Medical Colleges of the State of Rajasthan in actual operation, brought out oppressive and abnoxious inequality. Once the veil of "apparent equality" is pierced, the ugly/inequality stares one, in the eyes, which are open to the offensive "reality". Such being the position, the constitutional validity of the impugned rule cannot be sustained. It had to be buried unceremoniously as unconstitutional, being violative of Article 14 of the Constitution of India.

State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, again came to be considered by the Supreme Court in Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, and the Supreme Court again reiterated the same principle that Collegewise institutional preference could not be approved of, as there was no intelligible differentia for the classification by way of Collegewise institutional preference, as provided by the impugned rules. As for merit, this is what the Supreme Court said (para 16) :

"So far as educational institutions are concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of

merit, will not stand the test of Article 14 of the Constitution. So, the impugned rules are discriminatory and do not satisfy the tests of reasonable classification and, as such, cannot be sustained."

Rule 3, as it stands, providing for cent percent reservations based on institutional preference does not stand the test of Article 14 of the Constitution. No reasons have been assigned by the respondents, much less compelling and strong reasons, as pointed out by the Supreme Court for exclusion of meritorious candidates while providing for reservations based on institutional preference rather than the order of merit. Instead of placing the factual data in support of and as a justification for the institutional preference, the state in its return has essentially and mainly relied upon the excerpts in Dinesh Kumar's case (AIR 1986 SC 1877) (supra), as has already been noted above. It may also be noted here at this stage that the rule does not speak of Universitywise reservations. It is a plain and simple provision for Graduates from Medical Colleges in Madhya Pradesh and not from Universities in Madhya Pradesh. The petitioners in paragraph 6 of the petition have clearly averred the method of selection of candidates for P. G. Courses. The averments made in this paragraph are not disputed by the respondents in their return. It is an admitted position that the selection is made on the basis of recommendations of the College and Hospital Council otherwise known as P. G. Committee of the College and these recommendations are solely based on the basis of merits from amongst students passing from the same College. This part and other preferences as averred in paragraph 6 of the petition, is not factually disputed by the respondents, who have merely tried to explain these averments in their own way in their return.

Meeting yet another contention, advanced by the learned Additional Solicitor General, that in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, Collegewise institutional preference had been recognised and upheld, as can be gathered from the following observations the Court said Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, para 6) :

"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 postgraduate 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 post-graduate course."

The Supreme Court further said Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, para 6):

"It is true the expression "institutional preference" has been used in the said observation in respect of a medical College or a university, but we do not think that in making that observation Bhagwati, J. had in his mind collegewise institutional preference, Any observation in a judgment has to be read and

understood in the context of facts of that particular case in respect of which such observation has been made. As has been pointed out the question that has been considered in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, relates to reservation of seats in medical Colleges on the ground of domicile or residential qualification within the State irrespective of merit. It was not the case of any body that reservation of seats should be made on the ground of collegewise institutional preference. The "institutional preference that was considered in the case was universitywise institutional preference and not collegewise institutional preference. It is also apparent from the judgment of *Amarendra Nath Sen, J.*, who delivered a separate but concurring judgment, that the court had no occasion to consider the question of Collegewise institutional preference in matters of admission to M.D. Course. In the circumstances, we are unable to accept the contention of the learned Additional Solicitor General that the Court in *Pradeep Jain's* case has upheld or recognised collegewise institutional preference of seats in medical colleges for admission in M.D. Course."

In support of the contention that a Collegewise or a institutional preference or reservation of seats was in contemplation of the Supreme Court, reference was made to *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, particularly the observations made by *Pathak, J.* (as he then was) (also quoted in the judgment in *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, at p. 1201) (supra), the Supreme Court observed :

"It is true that the observation of *Pathak, J.* without reference to the context of the facts and the question involved in that case, may support to some extent the contention of the appellant, but the contention has to be rejected on a reference to the facts and the question involved in that case."

Repelling yet another contention that special facts and circumstances would justify Collegewise reservation, as provided by the impugned rules, the Supreme Court, in no uncertain terms, declare :

"We regret, we are unable to accept such a Contention."

An argument was also advanced before the Supreme Court that the standard of examination and evaluation of the merits of students differ from college to College in MBBS practical examinations. This contention was also turned down by the Supreme Court, as untenable.

In this very case of *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, the Supreme Court examined the question of Collegewise or institutional preference from the point of view of Article 14 and held as under (at p. 1203) :

"There is no intelligible differentia for the classification by way of Collegewise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each colleges from those excluded from such classification. By such classification of Collegewise institutional preference, merit

has been sacrificed, far less it has been preferred. When the university is the same for all these colleges, the syllabus, the standard or examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same university, except in order of merit will exclude merit to a great extent affecting the standard of educational institutions. In such circumstances, College-wise institutional preference cannot be supported and it has already been noticed that this Court has not approved of such preference at all."

Coming now to the instructions called "Rules", regarding weightages and deductions of marks in evaluation of merits on certain counts (as for example, addition of ten marks for representing or participating in Inter-University event, and deduction of 15% of minimum pass-marks in each subject for each extra-attempt) in view of the emphasis laid on merit and merits alone by the Supreme Court. All these fringe benefits offered, have lost not only much of their relevance, meaning and significance, but existence as well. Some of these rules, on the face of it, are not only irrelevant, having absolutely no nexus with the object of selecting the best-talent available to the P.G. Course, as emphasised by the Supreme Court.

Take Rule 8(5)(b)(ii), which reads as follows :

" 10 marks will be added for participating in Inter-University event as a representative of the University and/or securing a prize at an All India Event on behalf of the College, or University."

?What is the nature of event, conducted by whom? It can be anything by anybody and what is rewarded in true "Sports-man" like spirit, is participation and not winning, even a consolation-prize at such an event. It is the later part of this rule, which insists on securing a prize at an All India event. All that is necessary under this part of the rule is to have an "All India" event. Give any event a prefix "All India" and the purpose is served. What is the nature of event, whether debate or elocutions musical chants or quiz? Both ambiguity and absurdity of this rule is writ large. What is its relevance in evaluating merit for admission to P.G. Courses in Medical College.

It is not to suggest that extra-curricular activities have no value or importance in the career of a student. The question is one of stage - at P.G. level, in medicine. How does this rule, ill-drafted as it is, serve the object of merit? It defeats rather than determining merit.

The petitioner have in para 9 of the petition categorically averred :

"Participation in Inter-University event as a representative of University or securing a prize in all India event does not have any nexus with the purpose of selecting the best candidates for admissions to a post-graduate course."

The respondents have not said a word about it in their return, so as either to explain the nature of all India event -- whether Inter-University competition,

what is its nature, whether games or sports or cultural activities. Secondly, whether conducted by any recognised body, such as U.G.C. or Inter-University Board or under the auspices of any University. All these questions are left vague in the rule and the respondents do not choose to say a word to justify it.

The petitioners have also challenged allocation of marks for N.C.C. Certificate. This is what they have specifically averred

"Similarly obtaining certificates in NCC has also no relevance to the merit of a candidate for selection for admission to a post-graduate course."

This has not been controverted by the respondents. A very vague and faint reply is given in the following words, which does not at all justify such bonus marks :

"Bonus marks are awarded for distinction in the subjects of examination, for representing University or securing a prize at an all India event, for NCC and in case of Assistant Surgeons, rural service and sterilization operations. The bonus marks are intended as deliberate incentives for achievement, all-round development of personality and for compensating the Assistant Surgeons for some time encouraging them to participate actively in the National health programmes."

Except for achievement and "all round development of personality", there is nothing else in the reply so as to explain the vagueness of the rule. The rule does not provide for any achievement. It merely speaks of participation, the class of N.C.C. Certificate whether "A", "B" or "C", as specified in the rule, some of which can be obtained at the High School level and the highest grade at the under-graduate level, has also been rewarded with weightage of 10 marks. Rule 8(5)(b)(iii) itself provides for addition of marks, even if any of the Certificate had been obtained, even before joining the Medical College.

There is not a word about its relevance to evaluation of merits. There is no nexus with the object of selection. It is a matter of common knowledge that all institutions or colleges do not have N.C.C. facility and to grant such weightage without providing facility to all is clearly arbitrary. Similarly, even unsuccessful participation has been rewarded under Rule 8(5)(b)(iii).

The respondents have based their case for allocation of bonus marks on account of N.C.C. on the decision of the Punjab and Haryana High Court in Archana Saxena Vs. Maharshi Dayanand University, Rohtak and Others, This decision, as is obvious from paragraph 4, does not help the respondents at all. It was in relation to the course leading to the Degree of M. Phil. It overlooks all the Supreme Court decisions, which have been referred to heretoabove. Paragraph 4 of the said judgment reads :

"It is obvious that weightages are given by the University to its students to further institutional preference a phenomenon which has come to stay. Yet the principle of fairness cannot be overlooked despite the element of competition existing in determining the added weightage. Both the contended principles, as it

appears to us, are equally sound. There is something to say in favour " of weightage on the obtained percentage and equally there is something to be said in favour of the principle of percentage on total marks. If out of the two sound principles, the University in its view has specifically chosen to opt for one (in its own way sounder), we see no room to interfere in the matter, all the more under Article 226 of the Constitution. Inevitably, we have to reject the contention of the petitioner despite the illustration given of following the other principle in a college affiliated to the University."

As noted above, it is this very phenomenon, which the Supreme Court in a number of cases has held as unconstitutional, so far as admissions to P.G. Courses in Medical Colleges are concerned, where merit alone is recognised- There is not even a remote reference to the judgment in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, and the subsequent Supreme Court cases.

The Bombay High Court in *Madhuvanti Purushottam Thatte Vs. State of Maharashtra and Others*, struck down the Maharashtra State rule relating to Government Medical Colleges providing for weightage on the basis, of participation in sports. This is what the Bombay High Court has held (Para 12A) :

"Sub-rule (iv) of Rule 16, clearly indicates a large number of sports therein. But the contention that University, State or National level tournaments must and ought to be held therein so that without discrimination benefits of participation in all the various sports is available to all the students is, we think, unsound. The qualification for marks is not simple participation in games or sports. It is for participation in games or sports at a certain level and obtaining a certain degree or proficiency therein. A mere participation or a mere fact of having played in all the sports or partaking in any of the tournaments or activities, which are included in Rule 16(iv) does not entitle any benefit of addition of marks. That he may do so for his own advantage. In order to earn marks he must further acquire a status or proficiency in that branch, in that he must represent his institution and must participate in any of those levels of tournaments specified unless he does that he does not get any entitlement. We do not think, therefore, that merely because no such competitions or tournaments at the various levels were held relating to mountaineering or shooting or riding, the petitioner who has participated at the Bhonsala Military School in riding and shooting should be straightway given those three marks. We think that she was correctly denied the benefit and she correctly stated in her application that she was not qualified for it (these three additional marks under Rule 16(iv))."

What holds good in case of sports, equally holds good in case of participation of events named "all India" in the Madhya Pradesh Rules.

Rule 8 (5)(b)(i) provides for addition of 10 marks for securing distinction marks in each subject. This rule is highly illogical. There is no rational basis for this weightage. A candidate securing distinction already has an edge over others by

his superior performance. He cannot be given further advantage which amounts to giving double advantage for single performance :

FOR EXAMPLE

Candidate

Subject

Total

1

2

3

4

296

A

74

74

74

74

B

75

70

70

72

287

Candidate "A" has secured 9 marks more in aggregate, but candidate "B" because of distinction in one subject will get weightage of 10 marks and his total will be counted as 297, as against 296 of candidate "A". This is clearly arbitrary.

The petitioners have challenged the weightage given in Assistant Surgeons quota, as wholly arbitrary. Their contention is to be found in paragraph 10 of the petition, which reads as follows :

"Weightages are also given to Assistant Surgeons quota arbitrarily. There is no justification for granting more marks for particular years of service in scheduled areas. It is not the sweet will of a Government servant to be placed in a particular area. He has to obey the orders of the Government posting him at a particular place. Service in the scheduled area also does not have any separate

distinct advantages or disadvantages on the basis of which weightage can be given. Similarly, who would be engaged in sterilisation operations, is a matter of chance and weightage cannot be given for having performed more sterilisation operations. It has no nexus with the object of selection, i.e. to select the best candidates available. A person applying for post graduation in a subject totally unconnected with family planning is also given the advantage of weightage in marks. For example a candidate seeking admission in Pathology or ENT or General Medicine does not stand to benefit in his line because of mere performance of family planning operations. The weightage given is, therefore, arbitrary and on irrelevant considerations."

The respondents in their return have sought support from the decision of the J&K High Court in *Rajkumar Pandita Vs. State of J. and K. and Others*, The case relied upon by the respondents run counter to the observations made by the Supreme Court in *Dinesh Kumar's case*, (AIR 1986 SC 1877) (supra) as has already been quoted in this judgment, para 20. The learned single Judge of the J. & K. High Court, in paragraph 16 of the judgment has opined that *Dinesh Kumar's case* (supra) was distinguishable on two grounds, firstly, because the selection of some candidates was made in the scheme of examination of all India basis, and secondly, because the scheme had not been made applicable to the State of J. & K. and thirdly, because that 15% marks were earmarked for three years rural service; whereas under the impugned rules, before the J&K High Court, it was only 15 points for 7 1/2 years service. It would thus be seen that the respondents cannot derive any benefit from *Rajkumar Pandit's case* (supra).

The respondents in their return, para 9, have averred as follows :

"In the case of Assistant Surgeons, rural service fetches them added weightage of marks. Similarly, sterilization operations also carry a weightage of marks. Awarding of points (or marks) for service in rural areas has been upheld in the case of *Rajkumar Pandita Vs. State of J. and K. and Others*,

The same plea has been reiterated by the respondents in the return, para 10, which is reproduced hereinunder :

"To this indicator of the academic merit is then added weightage of marks for achievements in meeting the national targets in the Family Planning Programme as well as for service rendered in the rural areas. The added weightage reduces the statistical error in comparison of merit. The added weightage of marks has been, as already stated, upheld in the case of *Rajkumar Pandit v. State of J. & K.* (supra). Merit, after all, is not merely academic. "Service in rural areas is also lone kind of merit", as pointed out in the aforesaid judgment in *Rajkumar Pandit's case*."

It would thus be seen that the very foundation of the stand taken by the respondents is based on *Rajkumar Pandita Vs. State of J. and K. and Others*, This case, for the reasons noted above, has been distinguished from *Dinesh Kumar's case* (AIR 1986 SC 1877) (supra), by the learned single "Judge of J. & K. High

Court.

Rule 9.5(a) and (b) deals with the determination of merit of Assistant Surgeons and the weightage given to them.

The observations made by the Supreme Court in Dinesh Kumar's case (supra), and as quoted in para 20 of this judgment, have a binding effect. Rajkumar Papdit's case (supra), relied upon by the respondents afford no justification, either logically or legally to ignore the observations made by the Supreme Court. The observations made by the Supreme Court are highly pertinent in this context. The higher weightage, the more the cases of fake rural service to enter the medical colleges. It is not to say that the country does not need medical aid in its villages, but as rightly pointed by the Supreme Court, whether this preferential treatment given to the doctors would really attract them to serve the rural masses after their post-graduation.

Rural area has itself been defined under the Rules. The definition reads as follows :--

"(viii) Rural area means an area, for the time being not included within the limits of any Municipal Corporation or any Municipality or notified area, constituted under any law for the time being in force, relating to Municipalities or any village or group of villages, which may be specified by the State Government as urban area."

With growing urban population, even villages lying on the outskirts of the city, though not included within the limits of any Municipal Corporation or any Municipality, are continued to be villages within the rule and the definition of rural area, as it is, it is difficult to expect that the weightage given has even any justification for the object of rural service after post graduation, even if the question of merit is kept apart. The respondents have not placed any factual material on record to justify the weightage given to Assistant Surgeons on the basis of their rural service, except for relying on Rajkumar Pandita Vs. State of J. and K. and Others, there is nothing else in the whole of their return and Rajkumar Pandit's case (supra), cannot be preferred as against the observations made by the Supreme Court in Dinesh Kumar's case (AIR 1986 SC 1877) (supra), as quoted above in paragraph 20 of this judgment.

Apart from this, there is yet another case of the Supreme Court in Suneel Jatley and Others Vs. State of Haryana and Others, It was a case where seats were reserved for rural candidates for admission to MBBS Course in Maharshi Dayanand University and the Supreme Court in this connection observed :

"The another discernible purpose in making the reservation, that the urbanised students are disinclined to go to rural areas for practice or service and therefore if the students coming from rural common schools are encouraged to seek admission they may return after obtaining qualification to their childhood habitat and thus help extend efficient medical service to rural areas at present wholly

neglected, is too flimsy a material to sustain classification as this approach overlooks the fact that even students educated in common rural schools from 1st to 8th standard would be joining urban schools for four years before going to medical college and then spend about five years in medical college. There is no guarantee, save a wishful thinking that they would return to rural areas."

67A. So much for the weightages and bonus marks, the rules also provide for deduction of marks. For example, under Rule 8(c)(d), a deduction of 15% of minimum pass marks is provided for each extra attempt. It was contended by the petitioners' counsel, that even if a candidate acquires his present merit, after repeated attempts, there is no denying the fact, that he holds his position on the basis of merit and the selection has to be on the basis of present merit. Why should a candidate be discounted for his attempts, which could at times be quite unforeseen and far beyond his control.

Shri Bhargava, learned. Govt. Advocate, however, pointed out that after Sanjay Phadke's case (1987 MPLJ 664), the rule has been suitably amended. Even non-appearance at the examination is treated as an extra-attempt. An element of "sufficient cause" has now been introduced in the rule, filed as Annexure-R/4. The Supreme Court had occasion to deal with a similar rule in *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*, and had categorically held, that there was no justification for deduction of five marks in face of the undisputed fact that the candidate had not even submitted his application form. It is not necessary to go into the question any further in view of the amendment done to the rule.

There is yet another deduction under Rule 8(f). By this rule, minimum qualifying effective percentage of marks for Forensic Medicine, Anaesthesia and Radiology, have been reduced to 45% from 50% for five years from 1985.

The absurdity and arbitrariness of the rule is so flagrant and writ large that the respondent-State has no words to justify it in its return. The petitioners have in paras 6 and 9 of the petition made averments about it, but there is no reply thereto by the respondents in their return, para 6. One finds a very laconic statement in the return, para 9 "in any case the five years period of relaxation is to expire in 1990". But what was the justification for this relaxation in merit even for five years? The justification offered is "with a view to encouraging candidates with lower percentage of marks to obtain post-graduate qualifications", so that in due course of time the vacancies of teachers in the concerned departments may be filled up". What a travesty, merit is to be discounted for filling up vacancies and that too for the sake of fulfilling Medical Council of India's norms. There can be no better example of convenient compromise with the norms.

There is an inherent incongruity in the rules and the stand taken by the state in the matter of merit. Rule 9.5(a) concerns Assistant Surgeons quota and the same test for determining merit is made applicable to them as provided for merit candidates in Rule 8.5. In the merit quota, candidates from the same college and

same batch only are considered on the ground that there should be uniformity in the examination passed by such candidates. Candidates from other colleges and Universities are excluded and not considered because the courses and curriculum may differ. This very difficulty is present even in case of Assistant Surgeons, who might have passed their MBBS examination from different Universities in different years -- may be from Universities outside the State. The stand taken by the respondent-State is self-contradictory, while supporting exclusion of all other colleges and batches in merit quota and inclusion of all such Candidates in Assistant Surgeons quota. The norms set out by the Medical Council of India are advanced and placed according to convenience.

The weightage and bonus marks as given to the Assistant Surgeons for service rendered in a scheduled or rural areas or for sterilization operations do not bare any nexus to the object of selecting the best for postgraduate courses. As has been discussed above, Rule 9.5(b)(i) is not in consonance with what has been held by the Supreme Court in Dinesh Kumar's case (AIR 1986 SC 1877) (supra). Similarly, the bonus marks earned for sterilization operations, the rule is not clear. No percentage of addition is mentioned. If it means weightage for sterilization operations performed, it is extremely arbitrary, having no nexus with the object of selection. There are such specialities in which experience of sterilization operations has no benefit at all, for example candidate desirous of admission to ENT course will have no concern with sterilization operations.

The petitioners have challenged Rule 9.9, which provides with the merit list drawn would be valid only up to 31st December of the respective year. One fails to see the logic behind the rule. What is the rational basis for such a rule. What could be so sacrosanct about a calendar year so far as admission to Post-Graduate Courses in Medical Colleges are concerned. A calendar is not academic year"and nothing turns on it. Such a rule is extremely arbitrary. It would be too harsh a penalty to be imposed on a"selected candidate to exclude him merely because the calendar year had elapsed.

So far as Post-Graduate Diploma Courses are concerned, the rules are substantially the same and what holds good in the case of Post-Graduate Degree Courses, also holds good in the case of Diploma Courses.

Rule 1.2 of the Diploma Rules gives top priority for admission to such candidates completing their house-job in the concerned subjects and in the same medical college. The second in priority comes the candidate completing house-job in the same subjects, but coming from other medical college of the State. The criteria for the selection is the same under Rule 3.1, as it is for Post-Graduate Degree Courses.

The House-Job rules, filed as An-nexure-P/4, play an important part in these selection process. Rule 3 provides that only such candidates, who have graduated and completed their regular internship from the same college during the calendar year, would be eligible for consideration and this virtually amounts

to 100% reservation, based on institutional preference. This aspect of the matter has been discussed above.

Rule 8, provides for calculation of effective percentage and weightage and the same method of calculation, as in the case of degree courses, is applicable. Rule 10 of the House-Job Rules requires a choice to be exercised in respect of his subject and has to appear before the college and Hospital Council as the number of house-jobs is greater than the seats available for Post-Graduates. Similarly, there are house-jobs with more or less assured admission to Post-Graduate Courses and House-Job with no such assurance known are called as plain House-Jobs candidates. Accepting such house-jobs, totally depends on chance of vacancy occurring after selection or due to increase in the number of P. G. seats in the particular subject. Since the vacancies cannot be known beforehand, even a candidate with higher position in the merit list has a difficult choice between an assured admission in a subject of lower priority in his choice, as exercised by him and a chance of admission in the subject of his top choice. Such a situation, leaving a meritorious candidate in a dilemma, cannot be said to be fair or just or in any manner conducive to the very object of selecting the best for P.G. Courses. It leads to and creates a situation where a meritorious candidate, who has played safe, by taking a house-job in a subject which assures him admission, though the subject is not his top-preference, finds to his dismay and disappointment that a candidate much lower in merit has got his subject ultimately because such candidate had opted for plain house-job in the subject and a fortuitous circumstance like occurrence of a vacancy of a seat in the P.G. Course in that particular subject or increase of a seat later on at a later stage in the subject. Merit cannot and should not be lost to chance.

" Petitioners have canvassed one more point, assailing the rules. This relates to the recommendations made by the Medical Council of India for P.G. Courses adopted as back as 13th of February, 1971 and these recommendations have also been approved of by the Government of India in exercise of powers conferred u/s 33 of the Indian Medical Council Act, 1956. Petitioners have filed these recommendations as Annexure-P/2. The selection for Post-Graduate Courses, both Degree and Diploma, has been recommended strictly based on academic merit. In order to determine the merit of a candidate for admission to Post-Graduate Medical Course (i) his performance in the MBBS examination (ii) his performance during the course of internship and housemanship for which a daily assessment chart be maintained and (iii) the report of the teachers which is to be submitted periodically may be considered. Alternatively, the authorities concerned may conduct competitive entrance examination to determine the merit of a candidate for admission to post-graduate medical courses.

Respondents in their return, while not disputing the recommendations of the Medical Council of India have tried to interpret the recommendations in their own way. Their contentions are reproduced hereinunder :

"Under the heading "criteria for the selection of candidates" is clearly mentioned

that "students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course." It will be noticed that the emphasis is on the performance in the undergraduate course. This is further confirmed by the repetition at Item (i) under "Evaluation of Merit" on the very next page. It reads as follows :

"(i) His performance at the MBBS examinations. Holding of a competitive entrance examination is only suggested as an alternative, the first choice being performance in the MBBS examinations. The petitioners contention that the curricula of different Universities are different is at the best only a misleading statement, for as far as the medical curriculum is concerned, it cannot differ any significantly from University to University; it has to be equally exhaustive and comprehensive at all Universities in the State."

While Shri Kokje emphasised merit and the rules running counter to the principles laid down by the Supreme Court, Shri Bhar-gava maintained that the very fact that performance at the MBBS examination during the course of Internship has been recognised by the Medical Council of India as the first choice, itself suggests that the alternative is not preferable. He also contended that the rules are in consonance with the recommendations of Medical Council and the principles laid down by the Supreme Court. So far as weightages of marks given in evaluation of merit is concerned, the matter has already been dealt with at length. All that can be said would be repetition of the fact that wherever weightage is provided under the rules, it is merit, which is sacrificed. Even if the alternative suggestion of holding an open competition or a common entrance test for selection of candidates for admission to P.G. Courses, is not workable for any reason, the weightage of marks as provided under different rules, cannot be permitted to be continued and perpetuated at the cost of merit, as they run counter to both, the recommendations of the Council as adopted by the Govt. of India and have also been held to be violative of Article 14 of the Constitution by the Supreme Court. Such weightages, in the light of the Supreme Court judgments discussed above, cannot be allowed to be continued and conferred without offending the principles laid down by the Apex Court.

The State would do well to suitably amend the rules so as to restore merit rather than preference, be it institutional or any other, in the light of the various decisions of the Supreme Court, as discussed above. The Supreme-Court by its order dated 25-9-1987, in Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, has propounded the necessity of having uniform practice to be evolved in the matter of admissions to P.G. Courses. The respondents have also relied upon this judgment in their return. There is no reason as to why at the State level a uniform policy as suggested by the Medical Council of India, be not evolved so as to discourage preferences and restore the merit and merit alone in the matter of admissions. A period of three years from now would, to our mind, be more than enough for switching over to such a practice. It would also not cause any inconvenience to the students aspiring for

admission to P.G. Courses. It is, however, made clear that while following the existing pattern for selection of students from various channels, the State shall see to it that merit is not sacrificed while giving preference and weightages on considerations held to be untenable and illegal by the Supreme Court.

It is made clear that candidates already found eligible for admission to P.G. Courses for the current session and those candidates who may be found eligible for admission to P.G. Courses for the period of further three years, shall not be affected in any way by this order and the delay, if any, caused due to the stay order passed by this Court, shall not come in the way of admission or attendance of such successful candidates in the current session of P. G. Courses.

In the result, this petition is allowed to the extent indicated. Petitioners are entitled to costs of this petition. Counsel's fee shall be Rs, 1000/-, if certified.