

(2014) 04 AP CK 0107

In the Andhra Pradesh High Court

Case No : W.P. Nos. 20283, 20362 and 21547 of 2013

Dubbasi Praveen Kumar

APPELLANT

Vs

NTR University of Health Sciences
 J.T. Peace Preethy
Vs State of Andhra Pradesh

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of
Capitation Fee) Act, 1983 — Section 15(1), 3
Constitution of India, 1950 — Article 14, 15, 15(4)

Citation : (2015) 2 ALD 515

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

**Advocate : J. Ramachandra Rao, V. Venugopala Rao and C.V. Mohan Reddy, Sr.
Counsel for V. Ravinder Rao, Advocate for the Appellant; A. Prabhakar Rao, SC,
Advocate for the Respondent**

Final Decision : Allowed

Judgement

P. Naveen Rao, J.—Petitioners in these writ petitions were unsuccessful in the entrance examination for admission, to Post Graduate Degree Courses in medical colleges for the academic year 2013-14 conducted by Dr. NTR University of Health Sciences (University). Petitioners assail various clauses in the A.P. Medical Colleges (Admission into Post Graduate Medical Courses) Rules, notified vide G.O.Ms. No. 43, dated 13.3.2013 (the Rules).

2. These writ petitions are listed before me as per the orders of Hon''ble the Chief Justice. With the consent of counsels appearing for parties writ petitions were heard and disposed of finally. As the issues in these writ petitions relate to procedure of allocation of seats to various categories of backward classes and method of application of sliding down principle in admissions to Post Graduate Medical Courses, these writ petitions are disposed of by common order.

3. In exercise of powers vested by Section 15(1) read with Section 3 of the A.P.

Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, and in supersession of the A.P. Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997 fresh set of rules are notified vide G.O.Ms. No. 43 dated 13.3.2013. (It describes as amendment to 1997 Rules). Clause I of the said rules deal with preparation of seat matrix for the purpose of allocation of seats in various disciplines in favour of BC, SC and ST and other categories. Rules prescribe guidelines for the second respondent University to prepare the seat matrix. Rules envisage earmarking of percentage of seats exclusively to be filled up by students belonging to SC/ST and BC community in the ratio of 15 : 6 : 29 broad speciality-wise in each of the university areas. Out of 29% reserved for backward classes, 7% each for BC-A and BC-D, 10% to BC-B, 1% to BC-C and 4% to BC-E is earmarked. Rules mandate that the seats reserved for backward classes should be allotted as per the percentage of reservation by maintaining the outer limit of 29%. Rules also envisage that to the extent possible reservation should be maintained to backward classes categories on broad speciality wise. However when a seat cannot be earmarked for backward class category, seat should be allotted to another backward class category as per merit.

4. Clause II deals with Selection procedure. Sub-clauses vii, viii and x deal with sliding down principle.

W.P. No. 20283 OF 2013

5. Petitioner is working as Medical officer, he has applied for admission to Post Graduate Medical Courses for the academic year 2013-14 as an inservice candidate. Petitioner secured 110 marks and 4075 rank in Osmania University inservice quota. He was first candidate in BC-C category in Osmania University inservice quota. 30% of the seats in Post Graduation Courses are reserved in clinical broad speciality. Petitioner was a scheduled caste candidate, later converted as Christian and therefore was categorized as BC-C. Grievance of the petitioner necessitating institution of this writ petition is even though 1% of reservation is provided to BC-C, by putting all the seats into common pool and seeking to fill up those seats by way of over all merit among all backward class categories, no seat was allocated to BC-C in service quota and petitioner was deprived of admission into Post Graduation Medical Course. Petitioner is aggrieved by common pool system adopted without earmarking reservation to BC-C category.

W.P. No. 20362 of 2013

6. As per the reservation policy adopted by the State of A.P., the castes that petitioners hale from are categorized as group "C" within backward classes.

7. Case of the petitioners is as per the reservation policy, insofar as BC-C category is concerned, only 1% out of over all 29% would apply. Since in many disciplines, the number of seats available is less than 4, i.e. 1 or 2, no seat is earmarked for BC-C category. In several disciplines as seats earmarked to be

filled up by backward classes are 1 or 2, all those seats are pooled together for allocation to backward classes. This is called "common pool". The seats in common pool are intended to be filled based on over all merit principle among the backward classes. While preparing the seat matrix again reservation policy is adopted and most of the seats are earmarked for BC-A and BC-D categories and women. Since many seats are earmarked for BC-A or BC-D and women, the required percentage of seats to which BC-C category is eligible, are not allocated to them. Grievance of the petitioners is with reference to provision contained in second limb of Clause I(e) and Clause I(f) of the Rules and the seat matrix drawn up by the university.

W.P. No. 21547 of 2013

8. There are five petitioners in this writ petition. Petitioners 1 to 3 belong to BC-C category and petitioners 4 and 5 belong to SC category. The petitioners are challenging the legality and validity of the provision contained in second limb of Clause I(e) and Clause I(f) and clause II(viii) and (ix). Second limb of Clause I (e) read with clause I(f) seeks to allot a seat to any sub group on merit basis, if a seat cannot be earmarked for a sub group within the Backward class category. Clause II(viii) read with (ix) provides for sliding down principle. Clause II(viii) mandates that in case a reserved category candidate selected against OC vacancy in a broad speciality opts to slide down to another broad speciality in the reserved category, the seat vacated by him in the first speciality should be filled only by OC candidate treating it as OC vacancy. Clause II(ix) mandates that if a reserved category candidate does not join the speciality the seat vacated shall be filled as OC seat. The petitioners are aggrieved by the said provisions as the said provisions are offending their right to seek allocation of seat as per the reservation policy of the Government.

9. Heard Sri C.V. Mohan Reddy, learned senior counsel for petitioners in W.P. No. 20362 of 2013, Sri V. Venugopal Rao, learned counsel for petitioners in W.P. No. 21547 of 2013, Sri J. Ramachandra Rao, learned counsel for petitioners in W.P. No. 20283 of 2013, Sri A. Prabhakar Rao, learned standing counsel for 2nd respondent in W.P. Nos. 20362 and 21547 of 2013 and also respondent No. 1 in W.P. No. 20283 of 2013, and learned Government Pleader for Medical & Health, for respondent No. 1 in W.P. Nos. 21547 and 20362 of 2013 and also respondent No. 2 in W.P. No. 20283 of 2013.

10. Sri C.V. Mohan Reddy, learned senior counsel appearing for the petitioners contended that as envisaged in Clause I(c) of the Rules, it is mandatory to ensure that 1% of the seats in Post Graduation should be filled up by candidates belonging to BC-C, but this was not complied.

11. Referring to second limb of Clause I(e) read with Clause I(f) learned senior counsel submitted that filling up of the vacancies based on over all merit of all Backward Class candidates per-se is contrary to the very reservation policy to backward classes. Backward classes are classified into 5 categories and specific

percentage is earmarked to each of the categories. Thus, ignoring the separate reservation to each of the categories and to fill the common pool seats on over all merit is ex-facie illegal, unconstitutional and without power and jurisdiction. If overall merit is to be adopted, then the guarantee given by the Rules to compulsorily provide reservation to each of the five categories of backward classes is violated. As has happened in the academic year 2013-14 candidates belonging to particular social group acquired more merit and were selected for seats more than the percentage of reservation assigned to their group and no seats could be allocated to BC-C as demonstrated by the learned senior counsel.

12. In General Medicine, the total number of seats available were 345 and one seat was earmarked to BC-C (General) in Osmania University. Out of the 19 seats earmarked for service candidates in General Medicine, no seat is earmarked for BC-C; one seat was kept in common pool for female candidates and that was reserved to be filled up exclusively by BC-A or BC-D (Female). In M.S. (General Surgery) 21 seats were earmarked for service candidates out of which no reservation is provided for BC-C; one seat was kept in common pool reserved to be filled up by a female candidate and those reserved in favour of BC-A and BC-D (female). In non-service category there were 48 seats available and one seat was reserved for BC-C (General). In MS (Orthopedics) against non service quota there were 22 seats and no reservation is made in favour of BC-C. In service quota there were 10 seats and 2 seats were kept in BC pool general category; both seats were reserved to be filled by BC-A/BC-D one in private college and another in Government college. In MS (ENT) 6 seats were earmarked for service candidates; two seats were kept in BC pool (General) which were made open to all, one in private college and another in Government college. No reservation is provided for seats meant for non-service candidates. In MS (Obg) there were 11 seats for service candidates; two were kept in BC pool and reserved in favour of BC-A/BC-D one in private college and another in Government college. No reservation is provided to BC-C in the seats meant to be filled up by non service candidates out of 26 seats. In MD (Pathology) there were 20 seats for non service candidates, no reservation is provided for BC-C. One was kept in BC pool and reserved in favour of BC-A/BC-D (female). Similarly in service category, one was kept in BC-pool and was reserved for BC-A/BC-D (female).

13. These examples were cited to demonstrate the injustice caused to BC-C category by earmarking the seats exclusively to be filled up by BC-A, BC-D and women even in the seats kept in common pool. Tabulated statements are enclosed to writ petition paper book from pages 275 to 278. According to the consolidated tabulated statement at page 275, in Andhra University area 180 seats were meant to be filled up by BC-category (29% reservation) out of which 5 seats were earmarked to BC-C, whereas only 2 seats were filled. In Osmania University area 211 seats are reserved to be filled up by BC (29% reservation) and BC-C category was entitled to 6 seats, whereas they were allotted only 2 seats. In Rayalaseema region, BCs were entitled to 90 seats. BC-C were entitled

to 3 seats but no seat was given. In the entire state BC-C were entitled to 14 seats, whereas they were given only 4 seats, thus, there was a shortfall of 10 seats for BC-C category.

14. He further contended that the seat matrix drawn by the second respondent University for allocation of the seats was contrary to the mandate of the Rules. While pooling the residuary seats many seats were exclusively reserved for BC-A or BC-D and women. The seat matrix also violated the mandate of Clause I(h). The rotation system envisaged in this clause is not adopted.

15. Learned senior counsel submitted that earlier to the notification of the Rules in G.O.Ms. No. 43 dated 13.3.2013, G.O.Ms. No. 74 dated 21.3.2006 governed the system of allocation of seats to various social groups. Learned senior counsel contended that G.O.Ms No. 74 dated 21.3.2006 stood the test of judicial scrutiny and has been effectively implemented and there was not much grievance in the manner in which the reservation principles were followed. Therefore there was no justification to give up the said system and introduce the new system. This new system is also not fool-proof and as demonstrated, it is causing greater injustice to backward classes groups such as BC-C and BC-E, where the percentage of reservation is small than the mischief it seeks to remedy. The implementation process created further problems and injustice.

16. Sri V. Venugopala Rao, learned counsel contended that adopting the principle of selection by merit by putting the residuary seats into a common pool and filling up the seats based on merit is contrary to reservation policy, is in conflict with the provision contained in Clause I(c) of the Rules impugned and contrary to the principle of reservation envisaged in Article 15(4) of the Constitution. Learned counsel further submitted that Anantaraman Commission submitted report recommending categorization of the backward classes into four groups i.e., A, B, C and D and subsequently group E is added. This categorization is based on the in-equities among the backward classes and all similar categories of castes are classified into respective categories. Out of the total reservation earmarked for backward classes for the respective social groups, separate percentage of reservation is earmarked. The earmarking of fixed percentage of reservation to respective categories within backward classes is envisaged to ensure equilibrium and to ensure proper representation to various social groups who are classified as backward classes. The recommendations of the Anantaraman commission and consequential reservation principles adopted by the Government is held to be valid by the Supreme Court in *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc.,* .

17. Creation of common pool and filling up of the seats based on over all merit without regard to the seats earmarked to the respective categories among the backward classes amounts to creation of a new class which is not permissible. The reservation has to be confined and made in accordance with the principles evolved by the State and principles laid down by the Courts. He further contended that in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,*

the division of backward classes into 4 groups is upheld by the Constitution Bench of the Apex Court. Supreme Court upheld the earlier decision in U.S.V. Balam case. He further contended that creation of separate backward class pool and filling up those seats by following the merit disregarding the reservation to the respective categories in the backward classes is unconstitutional and contrary to the policy of reservation and also contrary to the other provisions of very notification and therefore liable to be set aside.

18. In this context, he further contended that earlier policy notified in G.O.Ms. No. 74 dated 21.3.2006 intended to follow the 100 point roster system already determined. No good reason is assigned for changing the said system and evolving different system. The reasoning assigned for changing the system now is nothing to do with the earmarking of seats to the respective groups in the backward classes category as per 100 point roster. The grievance of the reserved category candidates on insufficient representation to reserved category candidates in premium broad specialties is sought to be rectified is not correct and in fact the present system is doing greater injustice to several social groups. The respondent University ought to have evolved a hybrid system which takes in its component 100 point roster system adopted by the State Government and reservation in broad specialties so that reserved category candidates can also compete and prosecute premium speciality courses on par with the open category candidates.

19. On the principle of sliding down adopted by the respondents, the learned counsel contended that the said procedure is contrary to the principle laid down by the Supreme Court in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, . Ritesh R. Sah also deals with the admission to post graduation courses. Supreme Court held that in sliding down principle the resultant vacancy should be filled by same category candidate. In Union of India Vs. Ramesh Ram Civil Appeal No. 4310-4311 of 2010, Supreme Court distinguished the principle laid down in Ritesh R. Sah holding that it relates to admission to medical courses and therefore cannot apply to employment. Thus, insofar as medical courses are concerned, the principle laid down in Ritesh R. Sah is binding and present exercise is in violation of the said principle. Learned counsel, therefore, contended that the sliding down principle adopted by respondent university is ex-facie illegal and unconstitutional. Thus, for any reason a backward class category candidate who was selected against an open competition seat on account of his merit, when he slides down and opts to another seat in any other college or speciality which is specifically earmarked for reserved category to which he belongs, the seat vacated by him should be reserved for the same category of said candidate, such as SC/ST, BC-A/B/C/D/E.

20. Sri J. Ramachandra Rao, learned counsel appearing for petitioner has adopted the submissions made by Sri Venugopal Rao, learned senior counsel.

21. Learned standing counsel Sri A. Prabhakar Rao, representing the second respondent University submitted that after the notification of earlier system of

earmarking of seats to various social groups, University has received lot of complaints alleging that by adopting the said system the important disciplines are not being allocated to SC/ST and BC groups and they are being given on merit basis to the open category candidates and therefore the persons belonging to those social groups are deprived of their opportunity to prosecute more preferred disciplines and therefore demand was made to revise the system of allocation of seats. The second respondent University has undertaken extensive study and has come out with the present system. The present seat matrix evolved by the University takes care of the grievances of the students of all social groups insofar as allocation of seats in all disciplines.

22. With reference to the more formidable contention that seat matrix is in violation of Rules notified in G.O.Ms. No. 43 dated 13.3.2013 per-se and reservation of seats within the common pool to BC-A, BC-D and women, the learned standing counsel could not effectively contradict. No justification was shown for such system either in law or on facts. The only justification sought to be presented was that insofar as BC-A and BC-D groups are concerned, the percentage of reservation earmarked is 7% and therefore while allocating the seats, the over all percentage of reservation in favour of BC-A and BC-D were taken care of and alternatively the seats in the common pool were reserved for BC-A and BC-D. So also to give effect to 33 1/3% seats to women reservation is made to women within backward classes.

23. He further contended that the writ petition is not maintainable as petitioners have not shown how the selection method adopted by the University has affected them and how they were deprived of their seats. He further contended that the issues raised by the petitioners are academic in nature. Petitioners cannot be described as persons aggrieved and this writ petition not a public interest litigation. Unless petitioners substantiate that they were affected by the principle adopted by the University in allocation of seats, no declaration can be given, as sought by them.

24. Learned Government Pleader for Medical and Health submitted that by pooling together all the residuary seats no new category is created. In many specialties, as the number of seats available are few, it has become difficult to provide a seat to all backward class categories, and many times to none of the categories in backward classes, There are several such seats and if all those seats cannot be pooled together, it would be impossible to fill up seats by backward class candidates. In order to fulfill the obligation of providing 29% reservation to the backward classes, the common pool method is adopted.

25. As with reference to the sliding down principle, learned Government Pleader contended that the person who is selected against OC vacancy on account of merit in that particular branch opts on his own to another speciality which is earmarked to the concerned social group, the person loses his status as open category candidate and the seat originally allotted to him is to be filled up as per over all merit by treating the seat as meant to be filled by open competition.

Learned Government Pleader strenuously contended that APSRTC Vs. Budha Ramulamma (Died) and Others, has no application. Principle laid down in Ritesh R. Sah is applicable only to graduation courses and has no application to post graduation courses. Further he contended that the principle laid down in Ritesh R. Sah is also followed [by referring to Clause II (vii)] when a candidate initially selected against an open competition seat of a particular speciality in one college, opts to go to another college in the same speciality in a seat reserved for social group to which he belongs, the seat originally earmarked to him is treated as reserved to the same social group and filled up accordingly. The principle in Ritesh R. Sah cannot be extended if there is a change in the discipline itself as each broad speciality is treated as a separate group and such classification is reasonable. Learned counsel justified adoption of present seat matrix to implement reservation policy as the earlier reservation policy deprived many reserved category candidates to secure more preferred specializations on account of the running roster cycle followed and present system ensures equitable representation by all social groups in all broad specialties. Over all percentage of reservation i.e. 29% is maintained and backward class reservation principle is not violated.

26. Issues that arise for consideration are:

- 1) Whether the issues agitated in these writ petitions are academic and the cause do not survive?
- 2) Whether the second limb of Clause I(e) and clause I(f) of the Rules violate the mandate of providing fixed percentage of reservations to various categories of backward classes.?
- 3) Whether sliding principle incorporated in clause II(viii) and (ix) of the Rules violates principle of reservation in favour of backward classes, SC/ST and the principle laid down by the Supreme Court in Ritesh R. Sah case.?

ISSUE NO. 1

27. Learned standing counsel raised preliminary objection on maintainability of the writ petitions as cause do not survive since to a great extent academic session is over and even if petitioners succeed, they cannot be provided admissions. Though, initially this Court granted interim orders not to fill up seats, subsequently interim orders were vacated observing that any admissions made shall abide the result of the writ petition. In view of the same, the writ petitions cannot be thrown out on the ground that academic year has already commenced. By the time these writ petitions are taken up, the academic year has come to an advanced stage of completion and none of the selected candidates are impleaded as respondents, thus, as analysed hereunder, though petitioners succeed in the writ petitions, no relief can be granted to the petitioners to provide admissions. However, it cannot be said that writ petitions have become infructuous. During the course of hearing, learned Standing Counsel representing second respondent University informed the Court that the rules notified in G.O.Ms. No. 43 dated

13.3.2013 and the seat matrix drawn as a consequence at the time of selections to academic year 2013-14 continue to govern Post Graduate Medical Courses admissions. All the petitioners are entitled to apply and participate in the selections for admissions to Post Graduate Medical Courses during the academic year 2014-15 and later. In view of the same the cause still survives and the grievance agitated by the petitioners in these writ petitions continue to haunt them even in the subsequent academic years. It is also necessary to adjudicate the issues in the larger interest of students and to avoid multiplicity of litigation.

ISSUE No. 2

28. To appreciate this issue, it is necessary to look into relevant provisions of Rules, which read as under:-

I-PREPARATION OF SEAT MARTIX:--

(c) :- The 29% of seats for BC shall be distributed as BC-A-7%, BC-B-10%, BC-C-1%, BC-D-7% and BC-E-4%.

.....

(e) :- The reservations for BC sub groups shall be maintained broad specialty wise as far as possible. When a seat cannot be earmarked for a sub group, the seat shall be allotted to any BC sub group by merit.

(f) :- When the number of seats in a broad speciality for BC is 1 or 2, the BC seats shall be allotted to any sub group on merit.

(g) :- When the number of BCs seats in a broad speciality and in a college are 4 or more than 4 at least one seat shall be allotted to each sub group of BCs as per percentage of sub group reservation.

(h) :- When the seats for all the BCs subgroups cannot be allotted in a college, the seats to sub groups shall be rotated among the colleges every year.

29. Rules envisage reservation of 29% of seats in Post Graduation courses to backward classes. Out of 29% earmarked for backward classes, 7% each is earmarked to BC-A and BC-D respectively, 10% to BC-B, 1% to BC-C and 4% to BC-E. The effect of provisions in second limb of Clause I(e) and clause I(f) is, in any broad speciality if number of seats available are one or two for backward classes, such seats should be filled up based on the over-all merit among the backward classes. Applying over all merit meant that category wise reservation cannot be enforced. Based on merit more seats can be occupied by one category to the exclusion of or with reduced representation to another category as per the percentage fixed. As demonstrated by the petitioners, in the selections conducted for the academic year 2013-14, more number of BC-A and BC-D candidates were given seats than the percentage prescribed to them and less number of seats to BC-C category than the percentage prescribed.

30. The roster system hitherto adopted was working well except for the fact

because of the running roster system, speciality-wise reservation could not be provided. The Government justifies changing the reservation system with an intention to offset the imbalance in implementation regarding allocation of specialties. However, in practice this has caused more injustice than it intended to rectify.

31. No scientific data or empirical study is placed before this Court to show that a particular discipline is superior to other disciplines. The choice of a discipline depends on the individual preference of the candidate and it changes from year to year and person to person. Earlier Radio diagnosis was not a preferred choice. Now it is one of most preferred discipline. Less significant disciplines of earlier years are now more sought after. The choice of a discipline depends upon the background of a student. It is not uncommon that in a family there are many doctors. Thus, family members prefer to represent several disciplines, and therefore each of them chooses a speciality. The advent of multi-speciality hospitals also influenced the choice of preferences. In a given case, top most meritorious candidate may opt to Ophthalmology and less meritorious candidate may opt to Surgery speciality. The Full Bench of this Court in Dr. Kaladhar case considered this aspect. In para 67 Full Bench noted as under:

67. In the preceding paragraphs it has already been pointed out that course wise reservation and roster cannot go together. In a way, it can be said that both are mutually exclusive. Further, the importance of a course or specialization varies from time to time. Even at a given point of time, it would depend, much upon the likes and dislikes of candidates. During the current academic year itself the topper in the list has chosen the course in M.D. Radio-diagnosis. Annexure-B1 filed by the petitioners discloses that the candidate at roster No. 2 in the Osmania University area has chosen M.D. Pediatrics, and it was only the candidate at roster point Nos. 7 and 31, that have chosen the other two seats in the M.D. Radio-diagnosis. The same is the case with other courses. One clear phenomenon, which cuts across all the admissions, is that the courses of study were guided, mostly by the choices of the candidates, than by any definite importance.

32. Even assuming that the respondents are entitled to provide broad specialty-wise reservation, provision of reservation broad specialty-wise is nothing to do with providing fixed percentage of reservation to categories in backward classes and same cannot be dispensed with. Filling up seats as per fixed percentage is imperative. Allocation of seats on broad speciality wise is secondary. Thus, in anxiety to provide reservation on broad specialty wise, the respondents cannot dispense with mandate to fill seats as per percentage of seats reserved to a category of backward classes. Clause I(h) recognizes the fact that in a given situation in a particular year it may not be possible to accommodate all backward class categories in all broad specialties and therefore it mandates rotation of the seats among the colleges so that all backward classes over a period of time can be accommodated in broad specialties in all colleges.

33. The issue is further complicated by seat matrix drawn by the respondent University. In common pool some of the disciplines were exclusively reserved for BC-A or BC-D and/or women. On account of exclusive reservation, majority of the seats in the common pool are out of competition. In other words, a mini-classification is made and separate reservation is provided among the common pool in favour of BC-A and BC-D and women. Such mini-classification has no basis to the object sought to be achieved. It is in fact against the very objective of placing the seats in common pool. It is irrational and arbitrary and discriminatory. It cannot stand the rigors of Article 14 of the Constitution of India. By adopting such procedure the other category backward classes are totally eliminated from allocation of seats irrespective of the merit obtained by them and it also restricted the consideration of other categories of backward classes to few disciplines. Such reservation even at the threshold is not inconsonance with the mandate of the Rules. Thus, seat matrix as it stands is *ex-facie* illegal.

34. As demonstrated by the learned senior counsel for petitioners, the percentage of reservation for all categories of backward classes in post graduation is not fulfilled and more number of BC-A and BC-D candidates are selected than the percentage of seats reserved for them. Thus, equilibrium required to be maintained as per the percentage of reservation earmarked to each of the categories of backward classes within the over all 29 % reservation is violated and therefore such procedure is illegal. While filling up seats reserved for a category over all merit cannot be the basis. Merit in the same category after excluding the meritorious candidates who stand upto open merit shall be the basis to fill seats reserved to a category. Second limb of Clause I(e) read with Clause I(f) of the Rules ignores this cardinal principle. They seek to confer undue benefit on one category to the detriment of another category.

35. In the above analysis, second limb of Clause I(e) and Clause I(f) of the Rules is arbitrary, discriminatory and thus unconstitutional. Consequent seat matrix drawn by the respondent university is set aside.

36. By relying on the decisions in *T. Muralidhar Rao Vs. State of A.P. and Others*, and *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc., Sri Venugopal Rao*, learned counsel contended that adopting the common pool system amounts to creation of new category and without consulting the Backward Classes Commission, no such creation of another class or group can be made. In the facts of this case, the said contention has no merit. No new class or group is created. In the medical courses at the post graduation level in individual specialties number of seats are very few; thus as per ratio of percentage to 5 categories of backward classes, it is very difficult to allocate seats in a broad speciality to all five categories. Thus, there are several seats which could not have been earmarked to each of the categories in backward classes. Therefore in order to give effect to the mandate of filling up of 29% seats in favour of backward classes, such residuary seats were pooled together and sought to be

filled up by the backward classes only. It does not amount to creation of a new class as sought to be contended by the learned counsel. However, the procedure adopted to fill the seats in common pool is held bad.

ISSUE NO. 3

37. To appreciate this issue, it is necessary to look into relevant provisions which read as under:

II-SELECTION PROCEDURE:

.....

(vii) A reserved category candidate selected under OC in a college in a broad speciality shall be permitted to slide into the same broad speciality to another college. The seat vacated Shall be filled with the candidate of the same reserved category.

(viii) A reserved category candidate selected under OC in a college in a broad speciality Shall be permitted to slide into another broad speciality. The seat vacated Shall be filled with the OC candidate in the subsequent counseling treating the seat as OC.

(ix) A reserved category candidate selected under OC and does not join the broad speciality, the said vacancy shall be treated as OC and shall be filled in the subsequent counseling.

(x) A reserved category candidate selected under OC and slides into a category seat in another college and does not join in the broad speciality, the seat vacant under OC category shall be treated as OC and the category into which he has slid not joined shall be treated as respective category seat in the subsequent counseling.

38. On the issue of sliding down principle, Sri Venugopal Rao, learned counsel placed reliance on the decision of the Supreme Court in Ritesh R. Sah which was followed by two Full benches of this Court in Koganti Jayakrishna and Another Vs. State of A.P. and Another, and Dr. B. Kaladhar.

39. In Ritesh R. Sah, Supreme Court held as under:

In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept

reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

40. The scope of application of principle laid down in Ritesh R. Sah to the seats in engineering colleges was considered by Full Bench of this Court in Koganti Jayakrishna. By majority opinion, Full Bench upheld the Government order in G.O.Rt. No. 550 dated 30.7.2001. By the afore said orders, Government evolved the principle of sliding down and the seat vacated by the meritorious reserved category candidate on opting to seat available under reserved category to which he belongs, be filled by another reserved candidate of the same category by following the principle laid down in Ritesh R. Sah case. In the majority opinion of the Full Bench, it is held as under:

95. In a situation as is obtained in Andhra Pradesh where the region-wise reservations, institution-wise reservations as well as statutory reservations have to be adhered to, it is possible that in relation to one college a more meritorious candidate belonging to reserved category by reason of such merit may be placed at the bottom among the OC candidates, whereas a less meritorious candidate belonging to reserved category by reason of his rank among the reserved categories may be placed at the top of the reserved category merit list. In such event, giving option to more meritorious candidates is, in our considered opinion, a valid classification amongst the reserved candidates which satisfies the "rationality test" as well as "nexus test" for the purpose of Article 14 and 15 of the Constitution of India. Such a procedure has a rational relation to the object it seeks to achieve, namely, to remove the disadvantage suffered by a more meritorious candidate by reason of the Presidential Order as well as statutory rules. The procedure adopted cannot be held to be arbitrary and unreasonable.

.....

.....For instance, if a candidate, say belongs to SC-A who got a seat merit quota by virtue of his rank, wants to opt and slide to a college/course of his choice, there must be a seat in the other college which was occupied by a candidate belonging to SC-A candidate whose merit is less than the meritorious candidate. Only in such an event, the option is given. As the candidate opting goes and gets admission in the seat which in usual course Would have gone to a candidate of the same reservation category, para 5(ii) provides that the vacated seat shall be filled with the same reservation category candidate, it is equitable principle which indeed also satisfies paragraph 10 of Presidential Order read with Annexure-III (and illustrations given thereunder) to G.O.P. No. 646, dated 10-7-1979.

41. In Koganti Jayakrishna, following the judgments in Indra Sawhney, Sabarwal, Ritesh Sah, Rajiv Mittal and Preeti Mittal cases, this Court held that the "resultant vacant seat by the operation of the sliding rule must necessarily go to a candidate belonging to reserved category. The law is binding on all the Courts including this Court."

42. The Full bench of this Court in Dr. Kaladhar case was directly dealing with the issue of reservation in post graduate medical admissions. It is useful to extract the order of reference to full bench:

We consider it appropriate that the issue whether the principle enunciated in Ritesh Sah's case (supra) is relevant and applicable in the context of postgraduate medical admissions, independent of the implications of the Presidential Order; and whether a general seat declined by a meritorious reserved candidate who opts for a reserved seat invariably be reserved for being filled up by a lower ranked student belonging to the same reserved class are matters which require a consideration by a Bench of appropriate strength.

The Full bench held as under:

53. Had no arrangement been made under G.O.Ms. No. 123 to meet such contingencies, it deserves to be declared as violative of the principle laid down by the Supreme Court, to that extent. The respondents have, however, made an effort to meet the contingency. It is beneficial to extract Clause-III of G.O.Ms. No. 123, which dealt with the same.

III. COUNSELLING:

(i) Statewide seats and seats available in each University local area i.e., AU, OU and SVU have to be displayed at and during the counselling by earmarking in each subject/discipline 85% and 15% seats for locals and unreserved respectively.

(ii) Counselling will be conducted for the statewide seats, AU, OU and SVU areas simultaneously.

(iii)

(iv)

A perusal of Sub-clause (iv) of Clause-III discloses that wherever any reserved candidates, who were otherwise eligible to be admitted against Open Category seats, are admitted against reserved seats, the corresponding number of seats shall be made available to the said category, by displacing the Open Category candidates in the reverse order. This arrangement in our view, fully accords with the principle laid down in Ritesh Sah's case (supra). It also strikes a decent balance between two conflicting situations that were pointed out by the Supreme Court, in that case.

54.

55. In the ultimate analysis, the number of candidates belonging to a particular reserved category admitted to a course, would be those, who get admissions on the basis of merit as well as those who get on account of reservation. Clause III(iv) of G.O.Ms. No. 123, ensures that no reserved category loses even a single seat on account of adoption of roster. If the contention of the petitioners is to be accepted, the reservation tends to become an end by itself, and not a means to achieve and ensure equality. The principle laid down by the Supreme Court in Ritesh Sah's case (supra) applies, may be in a modified form, to the procedure adopted under G.O.Ms. No. 123; and Clause III(iv) of the said G.O. had ensured compliance therewith.

.....

.....

65. "Course of study" is not a term of definite connotation. Its purport may change, depending on the context in which it is used. It is not uncommon that the levels of study, specializations etc., are treated as the bases for this purpose. For example, the courses will be known as under-graduate, postgraduate courses, depicting the stage at which they are studied. Instances are also not lacking, where courses of study are understood with reference to the specialization of study, such as M.S. General Surgery, M.S. Ophthalmology. When the State has the absolute discretion in the matter of providing reservations, and to decide the extent and mode thereof, it cannot be precluded from adopting a particular unit, for enforcing the same. It is not necessary that the unit of reservation must be the same for all purposes. It is also to be noted that the Presidential Order itself provides for unit of reservation, being "courses of study"; whereas no such expression is found in Article 15(4).....

43. Learned standing counsel placed reliance on the decision of the Supreme Court in Ramesh Ram to contend that the judgment in Ritesh R. Sah is distinguishable and is applicable to graduation courses and in view of the subsequent judgment in Ramesh Ram, the principle in Ritesh R. Sah has no application.

44. While making said submissions learned standing counsel overlooked the basic fact that the issue in Ramesh Ram was sliding down principle in employment. Different categories of posts were notified to be filled up by a common recruitment examination, and reserved category candidate was eligible to secure employment to one of the posts earmarked for open competition. However, as per the principle of reservation to the category to which he belongs he would get better post from among the posts notified in recruitment. The procedure envisaged was that in the event a candidate belonging to a particular social group intend to move upward to a better post by opting to the reservation category, the post vacated by him which was to be filled up by open competition would have to be filled up by the open competition only. Supreme Court held that the decision in Ritesh R. Sah has no application to employment as it related to

admissions to medical colleges. It is held as under:

There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in the UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice.

.....

The decision in *Anurag Patel Vs. U.P. Public Service Commission and Others*, in turn referred to the earlier decision in *Ritesh R. Sah*. However, we have already distinguished the judgment in *Ritesh R. Sah*. That decision was given in relation to reservation for admission to post graduate medical courses and the same cannot be readily applied in the present circumstances where we are dealing with the examinations conducted by the UPSC. The ultimate aim of 53 Civil Services aspirants is to qualify for the most coveted services and each of the services have quotas for reserved classes, the benefits of which are availed by MRC candidates for preferred service. As highlighted earlier, the benefit accrued by different candidates who secure admission in a particular educational institution is of a homogeneous nature. However; the benefits accruing from successfully qualifying in the UPSC examination are of a varying nature since some services are coveted more than others.

(bold and italics supplied).

45. Full Bench of this Court in *Dr. B. Kaladhar* held that principle in *Ritesh R. Sha* applies to Post Graduate Medical Courses.

46. Thus, principle laid down in *Ritesh R. Sah* applies to Post Graduation Courses. Contrary provision impugned herein is unconstitutional.

47. Offending portion of sliding principle is in Clause II(viii). Clause II(ix) does not deal with sliding principle. It deals with a situation where a reserved category candidate secures a seat in a broad speciality as per over all merit against open competition seat but does not choose to join. This seat would be filled by open competition method only. It is based on the principle that a meritorious candidate does not represent reservation category. Here there is no sliding down involved. I therefore see no error in the provision.

48. Conclusions:

a. Second limb of Clause I(e) and Clause I(f) of the Rules notified in G.O.Ms. No. 43 dated 13.3.2013 are struck down as being discriminatory and offends Article 14 of the Constitution of India and are inconsistent with the mandate of percentage of reservation fixed to each of the backward classes categories.

b. In common pool category seats reserving certain seats to categories of BC-A, BC-D and women is declared as illegal. Consequently, the University is directed to ensure that percentage of reservation fixed for each of the backward classes categories and women are filled.

c. Pooling together residuary seats to be filled by BC candidates does not amount to creating a new class within the BC category. It is permissible for respondents to pool residuary seats in broad specialties reserved for backward classes into common pool.

d. Allocation of seats in common pool should be to ensure proportionate representation to each of the backward classes categories as per percentage of reservation earmarked to each of the categories and after ensuring that each of the categories of backward classes are adequately represented, allocation of seats on broad speciality wise can also be ensured.

e. The principle laid down by the Supreme Court in Ritesh R. Sah followed by two Full Benches of this Court, applies to admissions to post graduate medical courses. The contrary provision earmarking the open competition seat vacated by the reserved category candidate initially secured by him as per his merit, consequent to he/she choosing another speciality/college in a seat reserved for his/her reserved category and earmarking the said vacancy to open competition as contained in clause II(viii) of the Rules is struck down as being arbitrary, discriminatory and unconstitutional.

f. Clause (II)(x) is held valid and legal.

g. The respondents are directed to earmark the seat vacated by a reserved category candidate in the open competition in a speciality initially allotted to him as per his over all merit to the same reserved category consequent to his option to another speciality or college in the seat reserved for that category in the admissions which are scheduled to be held henceforth.

h. The selections already made for the academic year 2013-14 are not disturbed.

49. Accordingly, the writ petitions are allowed. No costs.

Squeal to the same, the miscellaneous petitions, if any, stand closed.

50. Before parting with these cases, it is to be noted that Rules notified in G.O.Ms. No. 43, dated 13.3.2013, are treated as amendments to Rules notified in the year 1997. But, the Rules are silent as to which of the Rules as notified in the 1997 were sought to be amended. At another place, it is stated that these new Rules supersede the earlier Rules. No separate numbers are assigned to the Rules. In the absence of numbering to the Rules, I am constrained to use the term clause to depict the separate provisions. I have also noted inconsistencies and overlapping of various provisions. To avoid uncertainty and to ensure better clarity in matters concerning admission to Post Graduate Medical Courses, it is desirable to undertake thorough exercise of revising and notifying fresh set of

Rules.