
(2010) 05 AHC CK 0289
In the Allahabad High Court

Hemant Krishna Maurya and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 335, 46
Indian Medical Council Act, 1956 — Section 33
Constitution of India, 1950 — Article 14, 15, 16, 335, 46
Indian Medical Council Act, 1956 — Section 33
Constitution of India, 1950 — Article 14, 15, 16, 335, 46
Indian Medical Council Act, 1956 — Section 33

Citation : (2010) 5 AWC 4525

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—Five candidates, who had appeared at the U.P. Post Graduate Medical Entrance Examination 2010 (hereinafter referred to as the U.P.P.G.M.E.E.-2010) for admission to the State Quota Seats of Post Graduate MD/MS/MDS/PG Diploma Course in various State Medical Colleges and Medical/Dental Faculty of C.S.M. Medical University, Lucknow, have filed this petition for quashing the order dated 6th April, 2010 issued by the Principal Secretary, U.P. Government and for a direction upon the respondents not to permit the candidates belonging to reserved categories, who have secured less than 40% marks at the Entrance Examination, to participate in the counselling scheduled to commence from 11th April, 2010. A further direction has been sought that the respondents should also not admit any student under the reserved categories who has obtained less than 40% marks at the Entrance Examination.

2. The State Government, by the order dated 30th October, 2009 authorised the CSM Medical University, Lucknow (hereinafter referred to as the "University") to conduct the U.P.P.G.M.E.E.-2010 and pursuant to the said notification, the University issued the Information Brochure giving details of the procedure to be

followed for conducting the said Entrance Examination to be held on 28th February, 2010. Amongst others, it mentions the Important Dates, General Information, Applying and Question Paper. The Important Dates are as follows:

IMPORTANT DATES

Date of Entrance Sunday 28th February, 2010 Examination Application Process starts Friday 8th January, 2010 Last date for receiving Wednesday 27th January, 2010 by completed application 4:00 P.M. Expected date of declaration Monday 15th March, 2010 of merit list Date of Medical Board for Monday 22nd March 2010 obtaining Physically handicapped certificate Date of first Counselling Sunday 11th April, 2010 (Venue C.S.M. Medical University, Lucknow) Last Date for joining the Tuesday 20th April, 2010 allotment college & course from the first counselling Date of second counselling Wednesday 26th May, 2010 Any change in dates of counselling will be announced by the Director General Medical Education. (Enquiries should not be directed to the Examination Body. Last date for candidates for Monday 31st May, 2010 joining allotted seats from 2nd round of counselling

3. Under the head "QUESTION PAPER", the Brochure mentions:

1. The examination will be conducted in English medium only.

2. The examination shall consist of one paper of 200 MCQ (Multiple Choice Question) as follows:

(a) 100 questions on pre and para - clinical subjects.

(b) 100 questions on clinical subjects.

3. There will be four types of multiple choice questions (MCQs):

(a) There will be 100 questions with 4 options or choices of which one will be best suited or best response.

(b) There will be 50 questions with 5 options or choices of which one will be best suited or best response.

(c) There will be 40 questions with 5 options or choices of which two will be best suited or best response.

(d) There will be a paragraph followed by 5 questions based on that paragraph. Each question will have 4 alternatives of which one will be best suited or best response. Number of such paragraphs will be 2 and the number of questions is expected to be about 10.

4. The Best response to each shall be as determined by the Board of Examiners of the UPPGMEE - 2010. The decision of the Board of Examiners shall be final and binding.

5. Each question shall carry 4 marks each. Four (4) marks will be awarded for

each correct question answered.

6. There will be negative marking. One mark will be deducted for each incorrect answer. Zero (0) mark will be awarded for no response. Indicating more than one choice for any question shall be considered as incorrect response except where questions have two correct responses. Questions with 2 correct responses shall be clearly marked in the question paper.

7. The marking including negative marking for questions with two correct responses will be as follows: 2 marks will be awarded for each correct option/ response marked i.e. 4 marks for the question. There will be one negative mark for each option/ response wrongly answered hence if one option is answered wrong then one mark will be deducted and if both options are wrong 2 marks will be deducted. If a candidate marks more than 2 options then 2 marks will be deducted.

8....

9....

10....

(emphasis supplied)

4. The Brochure also contains the head "RESULT AND MERIT LIST" which is as follows:

1. General category candidates shall have to secure a minimum of 50% marks and the reserved category candidates a minimum of 40% marks to qualify for admission to a postgraduate medical/dental course. Qualifying does not mean admission. Admission will be given according to merit at the time of Counselling.

2. Merit list for only those candidates who have qualified will be declared. A marks sheet will be sent to all candidates.

3. Candidates securing minimum qualifying marks (50% for general and 40% for reserved) shall be given ranks according to the total marks obtained. There shall be a combined merit list (with State rank) for all category candidates. The merit rank of reserved category candidates in their respective categories (Category rank) shall also be indicated along with their combined merit (State rank).

4. In case of two or more candidates obtaining equal marks in the competitive entrance examination, their inter-se rank will be determined in order of preference as under:

(a) Candidate obtaining higher marks in questions with two correct options of the UPPGMEE-2010.

(b) Candidate scoring less negative marks.

(c) According to age, older will get preference over younger.

(d) If rank cannot be decided by above criteria, then tie shall be decided by toss of coin.

5. There is no provision of re-evaluation. However, there is provision of scrutiny for which candidate may apply within seven days of declaration of result along with a demand draft of Rs. 300/- in favour of UPPGMEE -2010 payable at Lucknow.

(emphasis supplied)

5. The result of the Entrance Test was declared on 4th March, 2010 and the counselling was to begin from 11th April, 2010. After the declaration of the result, but just five days before the counselling was to begin, a communication dated 6th April, 2010 was sent by the Principal Secretary, Government of U.P. to the Director General, Medical Education and Training, Lucknow regarding negative marking in the U.P.P.G.M.E.E. 2010 for the candidates belonging to the Scheduled Castes/Scheduled Tribes only for the purpose of determining their eligibility. The letter mentions that in accordance with the Post Graduate Medical Education Regulations 2000 framed by the Medical Council of India, the reserved category candidates have to secure a minimum of 40% marks at the Entrance Examination to qualify for admission to the Post Graduate Medical/Dental Courses and though there is no system of negative marking in the Post Graduate Medical Entrance Examination, yet the U.P.P.G.M.E.E. was continuing with negative marking and even for the present U.P.P.G.M.E.E. 2010, negative marking was done as a result of which sufficient number of reserved candidates were not available for filling up all the seats reserved for SC/ST candidates. Thus, in order to ensure that all the reserved seats are filled up, the letter mentions that the Government has taken a decision that for the SC/ST candidates, the marks deducted for wrong answers at the Entrance Examination shall be added to the marks obtained by them for the purpose of determining their eligibility, but the merit determined by the University shall not be changed and such candidates who become eligible after adopting the aforesaid procedure shall be permitted to appear at the counselling in accordance with the merit list prepared by the University.

6. The petitioners, who have appeared at the U.P.P.G.M.E.E-2010 as General candidates, have sought the quashing of this communication dated 6th April, 2010 and have also sought a direction that any candidate belonging to the SC/ST category securing less than 40% marks at the Entrance Examination should not be permitted to appear at the counselling and seek admission to the Post Graduate Courses.

7. Two impleadment applications have been filed. One impleadment application has been filed by the three candidates who have been admitted under the Scheduled Castes category pursuant to the counselling held on 11th April, 2010, while the second impleadment application has been filed by five candidates who have also been admitted under the Scheduled Castes category on the basis of

the counselling held on 11th April, 2010. These applications were allowed by the order dated 18th May, 2010 and the applicants have been directed to be impleaded as respondent Nos. 3 to 10 to the writ petition. The petitioners also filed an Amendment Application for quashing the Circular dated 6th April, 2010, which application was allowed by the order dated 27th April, 2010.

8. I have heard Sri P.S. Baghel, learned Senior Counsel appearing for the petitioners assisted by Sri Vinay Dwivedi. Sri Zafar Nayyar, learned Additional Advocate General has made submissions on behalf of respondent Nos. 1 and 2, while Sri Ashok Khare, learned Senior Counsel has made submissions on behalf of the newly impleaded respondents.

9. Sri P.S. Baghel, learned Senior Counsel for the petitioners submitted that the Circular dated 6th April, 2010 deserves to be set aside as it not only violates Article 14 of the Constitution but also seeks to amend the evaluation criteria mentioned in the Information Brochure for the SC/ST candidates after the Entrance Examination was held and after the result was declared. It is his submission that the Regulations framed by the Medical Council of India are binding on the authority conducting the Entrance Examination and the Circular dated 6th April, 2010 seeks to lower the eligibility criteria prescribed under the Regulations and the Information Brochure for the reserved SC/ST category candidates from the required 40% marks since the Circular dated 6th April, 2010 has the effect of increasing their percentage as the marks earlier deducted for wrong answers will have to be added to the total marks obtained by such reserved category candidates. It is also his submission that the Circular dated 6th April, 2010 is in the teeth of the directions issued by the Supreme Court in Dr. Sadhna Devi and others Vs. State of U.P. and others, and Dr Preeti Srivastava and Another Vs. State of M.P. and Others, since the Supreme Court in the aforesaid decisions had directed that in the event the reserved category Post Graduate Medical seats are not filled up, the authorities must fill up such vacant seats from the students belonging to the General Category. It is, therefore, his submission that the State Government could not have issued the Circular for filling up the vacant SC/ST seats by lowering the examination standards for such candidates.

10. Learned Additional Advocate General, however, submitted that the Circular dated 6th April, 2010 cannot said to be contrary to the Regulations framed by the Medical Council of India since these Regulations do not deal with the manner of evaluation of answer books at all and that the State Government had issued the said Circular to give effect to the provisions of Articles 15(4) and 46 of the Constitution. It is his submission that the exclusion of negative marking for the candidates belong to the Scheduled Castes/Scheduled Tribes does not mean that the State Government has lowered the cut off percentage marks prescribed for students belonging to these reserved categories and the manner of evaluation of the answer books can always be changed by the State Government even after the examination is held, if the State Government finds that all the seats meant

for SC/ST candidates are not filled up because of insufficient eligible candidates of these categories. He further submitted that since no guidelines had earlier been issued by the State Government to the University regarding the procedure to be followed for evaluation of the answer books, the State Government was justified in directing the University to exclude the system of negative marking for the Schedule Castes/Scheduled Tribes candidates. He has further submitted that the petitioners cannot be said to be aggrieved because some of them have already been admitted and the remaining will get a chance of admission in the second round of counselling which is to start from 26th April, 2010. It is also his submission that when the first round of counselling has already taken place and most of the admissions have been made, it will not be a wise exercise of jurisdiction by the Court to annul the counselling at this stage at the behest of some candidates only. In support of his contention, learned Additional Advocate General has relied upon the decisions of the Supreme Court in *Banking Service Recruitment Board, Madras Vs. V. Ramalingam and Others, Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, and Ombir Singh and Anr. Etc. v. State of U.P. and Ors. etc.* (1992) 2 UPLBEC 1295.

11. Sri Ashok Khare, learned Senior Counsel appearing for the Scheduled Castes candidates who have been granted admission pursuant to the counselling held on 11th April, 2010, has supported the Circular dated 6th April, 2010 and has contended that the said Circular does not reduce the standard of Post Graduate Medical Education at all and in any case, the evaluation of answer books is merely a procedural part which can be altered at any stage to give benefit to the SC/ST candidates.

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

13. In order to appreciate the contentions advanced by learned Counsel for the parties, it will first be useful to refer to the Post Graduate Medical Education Regulations 2000 framed by the Medical Council of India under the Indian Medical Council Act, 1956 with the prior approval of the Central Government (hereinafter referred to as the "2000 Regulations").

14. Regulation 9 which deals with the Selection of Postgraduate Students has been amended by the notification dated 21st July, 2009 and the amended Regulation 9 is as follows:

9. (1)(a) Students for Post Graduate medical courses shall be selected strictly on the basis of their Inter-se Academic Merit.

b) 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas.

(2) For determining the 'Academic Merit', the University/Institution may adopt

the following methodology:

(a) On the basis of merit as determined by a 'Competitive Test' conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of Universities in the same State; or

(b) On the basis of merit as determined by a centralized competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise.

Or

(d) Combination of (a) and (c)

Provided that wherever 'Entrance Test' for postgraduates admission is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Provided further that in Non-Governmental institutions fifty percent of the total seats shall be filled by the Competent Authority notified by the State Government and the remaining fifty percent by the management(s) of the institution on the basis of Inter-se Academic Merit.

(emphasis supplied)

14. The Supreme Court has repeatedly emphasised that the Regulations framed by the Medical Council of India have statutory force and shall prevail over any law or executive instructions of the State Government.

15. In *State of Punjab Vs. Dayanand Medical College and Hospital and Others*, the Supreme Court has held that when the Entrance Test is held for admission, the Post Graduate Courses standards prescribed by the Medical Council of India cannot be diluted and it is not open to the University or the Government to dilute the said standards by fixing marks lower than what is set out by the Medical Council of India. The observations are:

Therefore, it is not open to the University or the Government to dilute that standard by fixing marks lower than what is set out by Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly stated by this Court to be the repository of the power to prescribe standards in postgraduate studies subject, of course, to the control of the Central Government as envisaged in the Act constituting the Council.

(emphasis supplied)

16. A perusal of the aforesaid Regulation 9 of the 2000 Regulations shows that students for the Post Graduate Medical Courses shall be selected strictly on the basis of their inter-se Academic Merit and for determining the "Academic Merit", the University can either hold a competitive Entrance Test or determine it on the basis of individual cumulative performance at the MBBS Examination or a combination of the two, but it is specifically provided that wherever Entrance Test for Post Graduate Admission is held by the University, the minimum percentage of marks for eligibility for admission to the Post Graduate Medical Course shall be 50% for the General Category candidates and 40% marks for the candidates belonging to the SC/ST category and Other Backward Classes.

17. In the State of U.P., as is also clear from the Circular dated 6th April, 2010, an Entrance Test for selecting candidates for admission to the State Quota Seats of Post Graduate MD/MS/MDS/PG Diploma Courses in State Medical Colleges was being held and such examination is known as U.P.P.G.M. Entrance Examination. The State Government, by the order dated 30th October, 2009, notified that the C.S.C.M. Medical University, Lucknow shall conduct the U.P.P.G.M. Entrance Examination 2010. The University issued Information Brochure for the U.P.P.G.M.E.E-2010. This Information Brochure mentions that 378 State Quota Seats are available for the U.P.P.G.M.E.E 2010 and that the category wise distribution of seats will be as per the U.P. Public Services (Schedule Castes, Scheduled Tribes and other Backward Classes Reservations)(Amended Ordinance) 2002.

18. As noticed hereinabove, it is clearly provided in the Information Brochure that the General Category candidates shall have to secure a minimum of 50% marks and the reserved category candidates shall have to secure a minimum of 40% marks at the Entrance Examination to qualify for admission to the Post Graduate Medical/Dental Courses. This is in accordance with the Regulation 9 of the 2000 Regulations framed by the Medical Council of India. The Information Brochure further mentions that there will be four types of multiples choice questions and each question shall carry four marks. Four marks will be awarded for each correct answer but there will be a negative marking system as indicated in Clauses 6 and 7 in the head "Question Paper". The negative marking depends upon the type of multiples choice questions and can be 1 or 2 marks

19. In accordance with the provisions of Regulation 9 and the Information Brochure, the result of the Entrance Examination was declared on 4th March, 2010 and the counselling was to begin on 11th April, 2010. It is after the declaration of the result that the State Government realised that sufficient number of eligible SC/ST candidates were not available. It needs to be noticed that the minimum percentage of marks which a candidate belonging to the SC/ST category was required to secure at the Entrance Examination for being eligible for admission to the Post Graduate Course is 40%. The Circular dated 6th April, 2010 mentions that it has been issued by the State Government to ensure that

the vacant SC/ST seats due to lack of sufficient number of SC/ST eligible candidates are filled up by providing that for the SC/ST category candidates, the marks deducted for the wrong answers at the Entrance Examination shall be added to the total marks obtained by them for the purpose of determining their eligibility only but the merit list shall remain the same.

20. It is the contention of the learned Senior Counsel for the petitioners that not only will this be violative of Article 14 of the Constitution but it will also lower the standards of Post Graduate Medical Education.

21. It is not in dispute that Circular dated 6th April, 2010 was issued to give benefit only to such SC/ST category candidates, who had secured less than 40% marks at the Entrance Examination so as to make them eligible by adding the marks deducted for wrong answers given by them in the multiple choice questions. Regulation 9 clearly provides that students for Post Graduate Medical Courses shall be selected strictly on the basis of their inter-se Academic Merit and for determining "Academic Merit", the University could hold a competitive test and if such a competitive test was held, the minimum percentage of marks for eligibility for admission to Post Graduate Medical Courses will be 50% for General Category candidates and 40% for candidates belonging to the SC/ST category.

22. It needs to be mentioned that even earlier in 1995, the State Government had issued a Circular dated 30th August, 1995 cancelling the requirement of 35% minimum qualifying marks prescribed for Written Examination for the reserved seats since sufficient number of reserved category candidates were not available and in Dr. Sadhna Devi (supra) the Supreme Court did not approve of this Circular and held that even if sufficient number of special category candidates failed to secure the minimum percentage of marks in the test, then too it was not open to the Government to say that all the special category seats for the Post Graduate Course must be filled by removing the eligibility requirement because if this is done, merit will be sacrificed altogether. The Supreme Court also directed that in case the seats reserved for SC/ST category cannot be filled up on account of failure of the candidates belonging to these categories to obtain the minimum qualifying marks at the Entrance Examination, then such seats should be made available to the candidates belonging to the General category.

23. The portion of the judgment of the Supreme Court in Dr. Sadhna Devi which deals with this issue is as follows:

In the State of Uttar Pradesh by virtue of executive instructions issued from time to time the following reservations have been made for admission to postgraduate degree and diploma courses:

Scheduled Castes ... 21% Scheduled Tribes ... 2% Backward Classes ... 27%

This practice has been in force for some time. What gives rise to the present

dispute is a circular/letter dated 31.8.1995 written by the Principal Secretary, U.P. Government, to the Director General, Medical Education and Training, Uttar Pradesh. In that circular, the requirement of minimum qualifying marks, which was 35% for the written examination, has been cancelled for the reserved seats. The contention of the petitioners is that even if these special category candidates fail to score any marks in the test, they will be eligible for admission as long as there are vacancies in the special categories.

It has been contended on behalf of the petitioners that the ultimate power to fix norms and standards for admission to medical colleges vests in the Medical Council of India under the Indian Medical Council Act, 1956 read with the Indian Medical Council (Amendment) Act, 1993. So far as admissions to medical colleges are concerned, the Regulations framed by the Medical Council of India u/s 33 of the Act will prevail over any law or executive instructions made by any State Government.

AND

after referring to its decision in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, the Supreme Court observed:

15. It was held that the authority of the Council extended to the sphere of maintaining proper medical standards in the medical colleges or institutions necessary for obtaining recognised medical qualifications. It was open to the Council to lay down the minimum educational qualifications required of a student for getting admission into a medical college. In other words, the eligibility of a candidate who may seek to get admission into a medical college for obtaining recognised medical qualifications may be prescribed by the Council. But how the selection was to be made out of the eligible candidates for admission into the medical college was a matter which had necessarily to depend on circumstances and conditions in a particular State.

....

18. The position in law that emerges from this judgment is that all candidates who have successfully completed their MBBS course are eligible for admission to the post-graduate medical courses. The Council was entitled to enhance the minimum qualification for admission to the Post Graduate Courses. But the Council has not done that. There may be more candidates than seats available for admission to the post-graduate courses. For this purpose, the State Government decided to hold tests for selection among the eligible candidates. By reserving seats in these courses for certain categories of persons the State Government has departed from the norm of merit being the only criterion for selection. Eligible candidates of lesser merit may be admitted to the post-graduate courses if they belong to any of the three categories mentioned in the Government Notification. But what is essential is that even the candidates of the three special categories must have an MBBS degree and must obtain the requisite marks in the test to gain admission to MS, MD and other courses. Here,

the State Government has drawn a distinction between the special category of candidates and candidates belonging to the open category. All the candidates seeking admission to post-graduate medical courses will have to pass a further test. The MBBS degree obtained by the candidates is the minimum qualification required for taking the test. Even thereafter, the candidates will have to secure a minimum percentage of marks in the admission tests to qualify for admission to the postgraduate medical courses. If in the test, the special category candidates obtained lesser marks than the general category candidates, even then they will be eligible for admission within their reserved quotas provided they have secured the minimum qualifying marks in the admission test. They do not have to compete equally with the candidates belonging to the general category.

19. But the Government has gone one step further. It has now laid down that it will not necessary for the special category candidates to obtain even the minimum qualifying marks in the admission tests in order to gain admission to the post-graduate medical courses. In other words, the seats reserved for the three special categories of candidates will be filled up by the candidates belonging to these three special categories even if they fail to obtain the minimum qualifying marks in the tests held. In other words, the candidates belonging to the three special categories who have passed the MBBS examination will have to take the test for admission to post-graduate medical courses but that will be an idle formality because they will qualify for admission to the post-graduate medical courses even though they do not secure the minimum qualifying marks in the tests.

20. In our view, this rule comes in conflict with the direction given by the Post Graduate Medical Education Committee that students for post-graduate training should be selected strictly on merit. It was open to the State Government to say that selection to the post-graduate medical courses should be on the basis of the performance of the candidates in the MBBS examination only. But the State Government has chosen to hold a test among the persons who have passed the MBBS examination in order to select candidates for postgraduate courses. It has laid down minimum qualifying marks for admission. Candidates belonging to the three special categories who secure the minimum qualifying marks will have to be admitted as long as their quota of seats is not filled up. But if the special category candidates fail to secure the minimum marks in the tests held, it is not open to the Government to say that even then the special category of candidates must be selected for the post-graduate courses. If this is done, the merit will be sacrificed altogether.

21. In our view, the Government having laid down a system for holding admission tests, is not entitled to do away with the requirement of obtaining the minimum qualifying marks for the special category candidates. It is open to the Government to admit candidates belonging to special categories even in a case where they obtain lesser marks than the general candidates provided they have got the minimum qualifying marks to fill up the reserved quota of seats for them.

....

27. In that view of the matter, this writ petition succeeds. The decision contained in the letter dated 31.8.1995 addressed by the Principal Secretary, Uttar Pradesh Government to the Director General, Medical Education and Training, Uttar Pradesh directing that there shall be no minimum qualifying marks for Scheduled Caste/Scheduled Tribes/Other Backward Classes candidates in the written examination for admission to post-graduate and diploma courses is quashed. It is directed that if the seats reserved for SC/ST/OBC candidates cannot be filled up on account of failure of the candidates belonging to these categories to obtain the minimum qualifying marks, then such seats should be made available to the candidates belonging to the general category.

(emphasis supplied)

24. The aforesaid decision of the Supreme Court in *Dr. Sadhna Devi (supra)* was affirmed by the Constitution Bench of the Supreme Court in *Dr. Preeti Srivastava (supra)*, which decision also deals with admission to Post Graduate Medical Courses. It was held that the Common Entrance Examination conducted under the Regulation framed by the Medical Council of India for Post Graduate Medical Education requires fixing of qualifying marks and even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the General Category candidates. The Constitution Bench also agreed with the reasoning and conclusions of the Supreme Court in *Dr. Sadhna Devi (supra)*. The Constitution Bench noticed the submissions advanced by the State of U.P. that the State will not be able to fill up all the seats of the reserved category candidates if the minimum qualifying marks at the Entrance Examination is raised from 20%, but this plea was repelled by the Court holding that the purpose of higher medical education is not to fill the seats which are available by lowering the standards and nor is the purpose of reservation at the stage of Post Graduate Medical Education merely to fill the seats with the reserved category candidates. The purpose of reservation, is to ensure that the reserved category candidates having requisite training and calibre are not denied the opportunity by competing with the General category candidates.

25. The observations of the aforesaid Constitution Bench decision of the Supreme dealing with this issue are:

10. We have, therefore, to consider whether for admission to the postgraduate medical courses, it is permissible to prescribe a lower minimum percentage of qualifying marks for the reserved category candidates as compared to the general category candidates. We do not propose to examine whether reservations are permissible at the postgraduate level in Medicine. That issue was not debated before us, and we express no opinion on it. We need to examine only whether any special provision in the form of lower qualifying marks in

PGMEE can be prescribed for the reserved category.

....

20. We are, however, not directly concerned with the question of reservations at the postgraduate level in Medicine. We are concerned with another special provision under Article 15(4) made at the stage of admission to the postgraduate medical courses, namely, providing for lesser qualifying marks or no qualifying marks for the members of the Scheduled Castes and Scheduled Tribes for admission to the postgraduate medical courses. Any special provision under Article 15(4) has to balance the importance of having, at the higher levels of education, students who are meritorious and who have secured admission on their merit, as against the social equity of giving compensatory benefit of admission to the Scheduled Caste and Scheduled Tribe candidates who are in a disadvantaged position. The same reasoning which propelled this Court to underline reasonableness of a special provision and the national interest in giving at the highest level of education, the few seats at the top of the educational pyramid only on the basis of merit and excellence, applies equally to a special provision in the form of lower qualifying marks for the backward at the highest levels of education.

....

44. On the facts before us, PGMEE is not just a screening test. Candidates who have qualified from different universities and in courses which are not necessarily identical, have to be assessed on the basis of their relative merit for the purpose of admission to a postgraduate course. It is for proper assessment of the relative merit of candidates who have taken different examinations from different universities in the State that a uniform entrance test is prescribed. Such a test necessarily partakes of the character of an eligibility test as also a screening test. In such a situation, minimum qualifying marks are necessary. The question of minimum qualifying marks is not addressed at all in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, since it did not arise in that case.

....

46. There are, however, two cases where there are observations to the contrary. One is the case of the *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, a judgment of a Bench of three Judges. In this case the Court dealt with admission to the MBBS course in the medical colleges of the State of Madhya Pradesh. The rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks were prescribed as 40%. Later on, the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court observed, (SCC p.305, para 17)

That it was not in dispute and it could not be disputed that the order in question

was in conflict with the provisions contained in Regulation II of the regulations framed by the Indian Medical Council.

But it held that Entry 66 of List-I would not apply to the selection of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation II of the regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Although this judgment is referred to in the Constitution Bench judgment of *Indra Sawhney and Ors. v. Union of India* and Ors. 1992 Supp. (3) SCC 217 the question of standards being lowered at the stage of postgraduate medical admissions was not before the Court for consideration. The Court merely said that since Article 16 was not applicable to the facts in *Nivedita Jain* case Article 335 was not considered there. For postgraduate medical education, where the "students" are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in *Nivedita Jain* is approved in all its aspects by *Indra Sawhney v. Union of India*.

....

47. The other case where a contrary view has been taken is *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, decided by a Bench of three Judges. It also held, following *Nivedita Jain* (at SCC p.417 para 22) that:

Entry 66 in List-I does not take in the selection of candidates or regulation of admission to institutes of higher education. Because standards come into the picture after admissions are made.

For reasons stated above we disagree with these findings.

48. In this connection, our attention is also drawn to the emphasis placed in some of the judgments on the fact that since all the candidates finally appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In *Ajay Kumar Singh v. State of Bihar* this Court, relying on *Nivedita Jain*, said that everybody has to take the same postgraduate examination to qualify for a postgraduate degree. Therefore, the guarantee of quality lies in everybody passing the same final examination. The quality is guaranteed at the exit stage. Therefore, at the admission stage, even if students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in *Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc.*, This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If excellence is to be promoted at postgraduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs-calibre of students, calibre of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, and *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan and Anr.* (supra).

....

58. The regulations governing post-graduate medical education already referred to earlier, provide for admission on the basis of merit. The regulations, however, have not clearly spelt out whether there can or cannot be, any reservations for Scheduled Castes, Scheduled Tribes and/or backward class candidates at the stage of post-graduate medical admissions. Whether such a reservation would impinge on the standards or not would depend upon the manner in which such reservation is made, and whether the minimum qualifying marks for the reserved categories are properly fixed or not. It is for the Medical Council of India to lay down proper norms in this area and to prescribe whether the minimum qualifying marks for the admission of students in the reserved category can be less than the minimum qualifying marks for the general category students at the post-graduate level; and if so, to what extent. Even if we accept the contention of the respondents that for the reserved category candidates also, their inter se merit is the criterion for selection, although for the reserved category of candidates lower minimum qualifying marks are prescribed, the merit which is envisaged under

the Indian Medical Council Act or its Regulations is comparative merit for all categories of candidates. For admission to a post-graduate course in medicine, the merit criterion cannot be so diluted by the State as to affect the standards of postgraduate medical education as prescribed under the Regulations framed by the Indian Medical Council. It is for the Indian Medical Council to consider whether lower minimum qualifying marks can be prescribed at the post-graduate level for the reserved category candidates. We have already opined that the minimum qualifying marks of 20% as compared to 45% for the general category candidates appear to be too low. This would make it difficult for the reserved category candidates to bring their performance on a par with general category candidates in the course of postgraduate studies and before they qualify in the postgraduate examination. It is also necessary in public interest to ensure that the candidates at the postgraduate level have not just passed the examination, but they have profited from their studies in a manner which makes them capable of making their own contribution, that they are capable of diagnosing difficult medical conditions with a certain degree of expertise, and are capable of rendering to the ill, specialised services of a certain acceptable standard expected of doctors with specialised training.

59. The States of U.P. and Madhya Pradesh have contended that if the minimum qualifying marks are raised in the case of the reserved category candidates, they will not be able to fill all the seats which are reserved for them. The purpose, however, of higher medical education is not to fill the seats which are available by lowering standards; nor is the purpose of reservation at the stage of post-graduate medical education merely to fill the seats with the reserved category candidates. The purpose of reservation, if permissible at this level, is to ensure that the reserved category candidates having the requisite training and calibre to benefit from post-graduate medical education and rise to the standards which are expected of persons possessing postgraduate medical qualification, are not denied this opportunity by competing with general category candidates. The general category candidates do not have any social disabilities which prevent them from giving their best. The special opportunity which is provided by reservation cannot, however, be made available to those who are substantially below the levels prescribed for the general category candidates. It will not be possible for such candidates to fully benefit from the very limited and specialised post-graduate training opportunities which are designed to produce high calibre well trained professionals for the benefit of the public. Article 15(4) and the spirit of reason which permeates it, do not permit lowering of minimum qualifying marks at the postgraduate level to 20% for the reserved category as against 45% for the general category candidates. It will be for the Medical Council of India to decide whether such lowering is permissible and if so to what extent. But in the meanwhile at least the norms which are prescribed for admission to the MBBS courses ought not to be lowered at the postgraduate level. The lowering of minimum qualifying marks for admission to the MBBS courses has been permitted by the Indian Medical Council up to 35% for the reserved category as

against 45% for the general category. The marks cannot be lowered further for admission to the postgraduate medical courses, especially when at the superspeciality level it is the unanimous view of all the judgments of this Court that there should be no reservations. This would also imply that there can be no lowering of minimum qualifying marks for any category candidates at the level of admission to the superspeciality courses.

....

61. In *Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc.*, there are observations to the effect that the reservation of seats at the postgraduate and doctoral courses in Medicine would not lead to a loss of efficiency and would be permissible under Article 15(4). There are also observations to the effect that since all appear for the same final examination, there is no downgrading of excellence. These observations, in our view, cannot be accepted for reasons set out earlier. The judgment of the Court in *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan and Anr. (supra)* insofar as it lays down these propositions is overruled.

62. In the premises, we agree with the reasoning and conclusion in *Dr. Sadhna Devi and Ors. v. State of U.P. and Ors. (supra)* and we overrule the reasoning and conclusions in *Ajay Kumar Singh and Ors. v. State of Bihar and Ors.* and *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan and Anr.* To conclude:

1. We have not examined the question whether reservations are permissible at the postgraduate level of medical education.
2. A common entrance examination envisaged under the Regulations framed by the Medical Council of India for postgraduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.
3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the postgraduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of postgraduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the postgraduate level and contrary to the public interest.
4. At the level of admission to the superspeciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection.

(emphasis supplied)

26. The aforesaid decisions of the Supreme Court in Dr. Sadhna Devi (supra) and Dr. Preeti Srivastava (supra), therefore, make it absolutely clear that even if all the seats belonging to the reserved category candidates are not filled up because sufficient number of such candidates have not secured the minimum qualifying marks at the Entrance Examination, then too the State Government cannot lower the prescribed eligibility requirement to fill up such seats and the vacant seats should be filled up from the General category candidates. In spite of such clear directions of the Supreme Court, the State Government thought it proper to still fill up the reserved SC/ST seats remaining vacant because of paucity of candidates securing the prescribed percentage of marks, by directing that the marks deducted on account of negative marking shall be added to the marks obtained by them at the Entrance Examination so as to enable them to secure the required 40% marks and become eligible. It has, therefore, to be examined whether this is permissible in law.

27. Thus, what has to be first examined is whether the State Government was justified in considering the need to fill up the vacant seats of the SC/ST categories even if the required number of eligible candidates were not available for admission to the Post Graduate Medical Courses on the basis of the Entrance Examination result declared on 4th March, 2010. The decisions of the Supreme Court in Dr. Sadhna Devi and Dr. Preeti Srivastava leave no manner of doubt that any attempt to fill the vacant seats by making any changes in the eligibility requirement will tend to lower the Post Graduate Medical Education standards and such vacant seats have necessarily to be filled up by the candidates belonging to the General category. Of course, it can be argued on behalf of the State that the minimum eligibility requirement of 40% has not been lowered since only negative marking has been excluded in the case of SC/ST category candidates, but for the present it is sufficient to point that the Circular dated 6th April, 2010 seeks to confer benefit on such reserved category SC/ST candidates who have admittedly secured less than 40% marks at the Entrance Examination which examination has been held for the purpose of determining the "Academic Merit" of the candidates. The State Government, in view of the aforesaid decisions of the Supreme Court, should not have undertaken such an exercise and should have strictly followed the directions issued by the Supreme Court. The exercise undertaken by the State Government was uncalled for and not justified.

29. The next question that needs to be considered, apart from the other submissions that have been advanced by learned Senior Counsel for the petitioners for setting aside the aforesaid Circular dated 6th April, 2010, is whether the State Government could have issued such a Circular after the holding of the Entrance Examination for providing that in the case of SC/ST category candidates, the negative marks earlier deducted will be added to the marks obtained by them at the Entrance Examination but this addition of marks

will be only for the purpose of determining their eligibility requirement and not for the purpose of merit, which shall remain the same.

30. The Information Brochure, as noticed above, provides under the head "Question Paper", that there shall be 200 multiple choice questions with each question having four marks. The Brochure has taken care to even provide the types of multiple choice questions that will be given and the manner of marking these questions. It also mentions the number of options that will be provided in the questions and how negative marking will be done. It provides that in certain multiple choice questions, one mark will be deducted, while in others, two marks will be deducted. All the candidates appeared at the Entrance Examination on the basis of the information conveyed to them in the Brochure. The result of the Entrance Test was declared on 4th March, 2010 and it is later on that the aforesaid Circular dated 6th April, 2010 was issued when it came to the notice of the State Government that some of the seats belonging to SC/ST category could not be filled up for lack of eligible candidates.

31. The number of questions that a candidate may attempt to answer in a multiple choice question paper depends largely on whether there will negative marking or not. If there is negative marking, a candidate will naturally attempt to answer only those questions of which he is sure of the answer and may not attempt to answer the remaining questions if he is not sure of the answer to those questions. On the other hand, if there is no negative marking, a candidate will take a chance and attempt to answer all the questions even if he is not sure of the answers. For instance if a candidate, as in the present case, is required to answer 200 multiple choice questions and he is sure about the answers to 100 questions, then if there is negative marking, he will not attempt to answer the remaining 100 questions since answering them may result in decrease of the number of marks that he will secure for answering the 100 questions, but if there is no negative marking, he will like to take a chance and answer the remaining 100 questions also since there will be a possibility of getting some more marks without any risk. The negative marking, therefore, has a direct effect on the number of questions a candidate may answer in the multiple choice question paper and so it is necessary for the authority to make it known to the candidates before the examination whether there will be negative marking or not and if a decision for negative marking has been taken prior to the holding of the examination, such decision cannot be altered after the examination is held. Thus, if the system of negative marking is dispensed with after the holding of Examination, the examination will stand vitiated and cannot be considered as valid for determination of the inter-se "Academic Merit" of the candidates. For this reason alone, the Circular dated 6th April, 2010 deserves to be set aside.

32. It, however, needs to be remembered that it is for the Examining Body to determine whether negative marking will be resorted to or not but such a decision has necessarily to be taken before the Examination is held. In fact, there are many Entrance Examinations even for admission to the Post Graduate

Medical Courses whether some of the Examining Bodies have a system of negative marking but some do not have this system.

33. There is also substance in the submission advanced by Sri P.S. Baghel, learned Senior Counsel appearing for the petitioners that when the Regulations framed by the Medical Council of India clearly prescribe that a candidate belonging to the SC/ST category must obtain a minimum of 40% marks for securing admission in the Post-Graduate Courses, the Circular dated 6th April, 2010 issued after the result was declared on 4th March, 2010 which seeks to increase the marks of such SC/ST candidates so to make them eligible, will defeat the purpose of maintaining academic standards in the Post-Graduate Medical Education.

34. The Constitution Bench of the Supreme Court in Dr. Preeti Srivastava disagreed with the observations made by the Supreme Court in *Km. Nivedita Jain (supra)* and *Ajay Kumar Singh (supra)* that if the students of lower merit are admitted, this will not cause any detriment to academic standards because such students will finally appear and pass the examination. The Supreme Court observed that it will be very difficult for the reserved category candidates to bring their performance at par with the general category candidates in the course of Post-Graduate studies if they are admitted on low minimum qualifying marks. The Supreme Court also observed that Article 15(4) of the Constitution does not permit lowering the minimum qualifying marks at the Post-Graduate level to 20% for the reserved category candidates as against 45% for the General Category candidates. In *Dr. Sadhna Devi*, the Supreme Court also made it absolutely clear that if the special category candidates fail to secure the minimum marks in the test, it will not be open for the Government to still say that all the special category seats for the post-graduate courses must be filled by reserved category candidates because if this is done, merit will be sacrificed.

35. It also needs to be noted that Regulation 9 clearly provides that if a competitive test is held for determining the Academic Merit, the minimum percentage of marks for eligibility for admission to the Post Graduate Medical Courses for SC/ST category candidates shall be 40%. This is also what has been provided for in the Information Brochure. The State Government had realised that it cannot lower the minimum percentage of qualifying marks from 40% in view of the decisions of the Supreme Court and so it devised a novel method of increasing the marks of such reserved category candidates so as to enable them to attain the prescribed eligibility requirement by directing that the marks earlier deducted on account of wrong answers in terms of the Brochure issued by the University shall now be added to the marks obtained by the candidates at the Entrance Test held by the University.

36. It has, however, been contended by the learned Additional Advocate General and Sri Ashok Khare, learned Senior Counsel appearing for the reserved category candidates that the circular dated 6th April, 2010 does not lower the minimum percentage of marks for SC/ST category candidates and so is not contrary to the

provisions of Clause 9 of the Regulations. This contention cannot be accepted for the simple reason that what cannot be done directly, cannot be permitted to be done indirectly. If the State Government could not have lowered the minimum marks for the reserved category candidates from 40%, it cannot be permitted to illegally add marks to the existing marks obtained by the SC/ST candidates so as to make them attain the minimum percentage of marks. The net result, therefore, brought about by the Circular dated 6th April, 2010 is that a SC/ST candidate who was, otherwise, not eligible in terms of the Examination result declared on 4th March, 2010 since he had obtained less than 40% marks will have a possibility of becoming eligible by addition of such marks which were deducted because of wrong answers given by him to the multiple choice questions and indeed, by this process many ineligible candidates have now come within the zone of consideration for admission to the Post Graduate Medical Courses as has been pointed out by the learned Additional Advocate General. Thus, whether minimum percentage of marks are lowered or whether some marks are added to the existing marks obtained by a candidate, in either case, the candidate who secured less than 40% marks becomes eligible. This is in clear violation of Regulation 9 of the Regulations framed by the Medical Council of India and it is not possible to accept the contention of learned Counsel for the respondents that Clause 9 of the Regulations framed by the Medical Council of India have not been violated.

37. It is, however, the contention by the learned Additional Advocate General and Sri Ashok Khare, learned Senior Counsel for the reserved category students that Circular dated 6th April, 2010 has been issued to give effect to Articles 15(4) and 46 of the Constitution. The provisions of Articles 15(4) and 46 have been noticed by the Supreme Court in *Dr. Preeti Srivastava* and it has been held that there cannot be a wide disparity between the minimum qualifying marks for the general category candidates and the reserved category candidates. In any case, the minimum percentage of marks for the reserved category candidates is 10% lesser than that prescribed for the general category candidates and cannot be permitted to be lower than 40% prescribed by the Medical Council of India.

38. There is also substances in the submission made by learned Senior Counsel for the petitioners that the Circular dated 6th April, 2010 which seeks to confer benefit to SC/ST candidates only is violative of Article 14 of the Constitution.

39. The Supreme Court in *U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and Another*, pointed out:

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

Every classification, to be legal, valid and permissible, must fulfil the twintest,

namely,

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(ii) such differentia must have a rational relation to the object sought to be achieved the statute or legislation in question.

40. The Supreme Court in *B. Manmad Reddy and Others Vs. Chandra Prakash Reddy and Others*, , also pointed out:

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

41. Regulation 9 of the Regulation framed by the Medical Council of India provides that students for Post Graduate Courses shall be selected strictly on the basis of their inter-se Academic Merit which can be determined by holding an Entrance Test. Thus, if an Entrance Test is held for the purpose of determining the inter-se Academic Merit, there is no plausible reason as to why the benefit conferred by the Circular dated 6th April, 2010 should be restricted only to the SC/ST candidates. If negative marking has to be excluded then the same system of evaluation of answers has to be adhered to for all the examinees for determining their inter-se Academic Merit. Thus, not only is the Circular dated 6th April, 2010 contrary to Clause 9 of the Regulations framed by the Medical Council of India but is also violative of Article 14 of the Constitution and deserves to be set aside for this reason also.

42. It is also not possible to accept the contention of the learned Additional Advocate General and Sri Ashok Khare, learned Senior Counsel for the reserved category candidates that the evaluation of the answer books is merely procedural in nature and can be altered at any stage. As has been noticed in the earlier part of this judgment, it is for the authority conducting the examination to decide the manner of holding the competitive examination but once it takes a decision with regard to the manner in which the examination is to be held, particularly with regard to the system of negative marking, the same cannot be altered after the examination is held.

43. It is also the submission of the learned Additional Advocate General that some of the petitioners have been admitted and the others are likely to be admitted and so the validity of the circular dated 6th April, 2010 should not be examined at their behest. This submission has merely to be stated to be rejected. The Supreme Court in *Dr. Sadhaha Devi and Dr. Preeti*

44. Srivastava directed that if certain SC/ST seats cannot be filled-up because of non-availability of candidates having the required percentage of marks, then such seats should be offered to the general category candidates. Thus, any attempt by the State Government to fill-up such vacant seats, which otherwise are available for the general category candidates, can be challenged by the general category candidates since their chances of getting a seat or a seat of their choice stands diminished. It is for this reason also that the submission of the learned Additional Advocate General that this Court should not interfere at this stage, when most of the seats had been filled-up by the counselling held on 11th April, 2010, cannot be accepted. It needs to be mentioned that the writ petition was presented before the Court on 9th April, 2010 immediately after the circular dated 6th April, 2010 was issued by the State Government and before the counselling was to begin from 11th April, 2010. The petitioners should not be denied relief merely because the counselling has now been held. It also needs to be mentioned that some of the reserved candidates have filed impleadment applications which have been allowed and Sri Ashok Khare, learned Senior Counsel has made submissions on their behalf.

45. It is also the submission of learned Additional Advocate General that since no guidelines had been earlier issued by the State Government regarding negative marking, the State Government was justified in issuing the circular dated 6th April, 2010 regarding negative marking. This submission, for the reasons stated above, also cannot be accepted. If the State Government had any reservation about negative marking, it should have expressed its views to the University prior to the holding of the examination so that the candidates were aware of the system of marking.

46. Learned Additional Advocate General has placed reliance upon the decision of the Supreme Court in Banking Service Recruitment Board (Supra) in which the Supreme Court observed as follows:

The first respondent had not qualified in the written examination since he had obtained marks below the cut-off marks in the English paper. There was, therefore, no question of calling him for an interview. Even amongst those who had obtained marks above the cut-off marks, only those who were high in the order of merit were called for an interview. Therefore, the direction of the High Court calling upon the appellants to interview the first respondent must be set aside. The learned Single Judge held that the system of fixing cutoff marks was bad. This was because the Single Judge took a view that different cut-off marks were fixed for each of the four papers. But so long as the same cutoff marks in each subject are applied to the papers of all the candidates, there is nothing irregular about fixing different cut-off marks for each paper. The cutoff marks fixed will depend upon the examining body's view of the importance of the subject for the post in question. It may well fix higher cut-off marks for subjects which may have greater relevance than other subjects which may have relevance but not to the same extent. Basically, it is for the examining body to fix cutoff

marks. The examination was conducted not by the appellants but by another independent body namely, the National Institute of Bank Management and cut-off marks were also fixed by it. From the list of the qualified candidates submitted by the National Institute of Bank Management, the appellants invited candidates ranking high in the merit list for interview and selection thereafter. The marks in the examination and the marks in the interview had been awarded by different independent bodies and the system which was adopted cannot be considered as unfair or arbitrary or even irregular. The High Court cannot substitute its own method of selection for the method which was adopted by the organisations entrusted with the task of selection.

(emphasis supplied)

47. This decision does not help the respondents at all. In fact it holds that so long as the same cut off marks in each subject are applied to the papers of all the candidates, there is nothing irregular about fixing different cut-off marks for each paper. The decision, therefore, emphasises that the same cutoff marks should be applied for all the candidates.

48. Learned Additional Advocate General has also placed reliance upon the judgment of the Supreme Court in *Union of India (supra)* in which the Supreme Court observed:

The respondents herein had approached the Tribunal in the year 2000. The Tribunal directed the appellants to consider this case of lowering of the cut-off marks. An inference, therefore, can be drawn from the aforementioned fact that the main prayer of the respondents was that the cut-off marks should be lowered. The appellants admittedly did not agree to the said proposal. The action of the appellants impugned before the Tribunal must, therefore, be considered from the viewpoint as to whether it had the requisite jurisdiction to do so. The Tribunal upheld the contention of the appellant. Once it is held that the appellants had the requisite jurisdiction to fix the cut-off marks, the necessary corollary thereof would be that it could not be directed to lower the same. It is trite that it is for the employer or the expert body to determine the cut-off marks. The court while exercising its power of judicial review would not ordinarily intermeddle therewith. The jurisdiction of the court, in this behalf, is limited. The cut-off marks fixed will depend upon the importance of the subject for the post in question. It is permissible to fix different cut-off marks for different categories of candidates. [See *Banking Service Recruitment Board, Madras Vs. V. Ramalingam and Others*,

(emphasis supplied)

49. This decision also does not help the respondents since it holds that it is for the expert body to determine the cut-off marks which will depend upon the post in question and it is permissible to fix different cut-off marks for different categories of candidates. In the present case, the Medical Council of India has fixed the cut-off marks for the different categories of students.

50. Learned Advocate General has also placed reliance upon the decision of the Supreme Court in *Ombir Singh* (supra). The Rule framed by the State Government fixing 50% marks for general category candidates at the Entrance Examination as the minimum qualifying marks for admission to the Post Graduate Courses and 40% marks for the SC/ST category candidates was held to be valid. The Court, however, left it open to the State Government to fill up vacant seats if sufficient number of eligible candidates were not available. In the subsequent decisions rendered by the Supreme Court in *Dr. Sadhna Devi* and *Dr. Preeti Srivastava*, directions for filling up such vacant seats have been given. The decision of the Supreme Court in *Ombir Singh* (supra), therefore, does not help the respondents.

51. Thus, for all the reasons stated above, it is not possible to sustain the circular dated 6th April, 2010 issued by the Principal Secretary of the State Government. It is, accordingly, quashed and a direction is issued to the respondents to hold the counselling afresh for admission to the State Quota Seats of Post Graduate MD/MS/MDS/PG Diploma Course in various State Medical Colleges and Medical/Dental Faculty of C.S.M. Medical University, Lucknow on the basis of the result declared on 4th March, 2010 without taking into consideration the circular dated 6th April, 2010.

52. The writ petition is, accordingly, allowed.