
(2014) 09 AP CK 0112
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17918 of 2014

S.P. Shivani

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 15, 3, 3(1)
Constitution of India, 1950 — Article 14, 16, 162, 226, 246
Indian Medical Council Act, 1956 — Section 20, 33

Citation : (2015) 2 ALD 385 : (2015) 2 ALT 712

Hon'ble Judges : R. Subhash Reddy, J;A. Shankar Narayana, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, Senior Counsel for P. Girish Kumar, Advocate for the Appellant; A. Prabhakar Rao, SC, Srinivas Dammalapati Vedula Venkata Ramana, Senior Counsel for K.V. Bhanu Prasad S. Satyam Reddy, Senior Counsel for K.V. Rajasree, Advocate for the Respondent

Judgement

R. Subhash Reddy, J.—In this writ petition, the petitioners, who are medical graduates aspiring to enter into medical post-graduate and diploma courses, have invoked the jurisdiction of this Court by way of this petition under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari or any other appropriate writ or order or direction with the following reliefs:

"(a) Declaring the Rule 3(vi) and Rule 4(v)(a), in so far as fixing 15% weightage to the interview, of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admission into Post Graduation Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, as arbitrary, illegal, contrary to the provisions of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, and Post Graduate Medical Education Regulations, 2000 issued by the Medical Council of India apart from violative of Articles 14 and 16 of the Constitution of India and the principles of natural justice; and

(b) Declare the action of the 4th respondent college in not considering the case of petitioners for admission to the Post Graduate Medical Courses applied by them under management quota seats for the academic year 2014-15, as arbitrary, illegal, contrary to the Rules governing admissions, the Judgments of the Supreme Court and A.P. High Court and violative of fundamental rights guaranteed under Constitution of India and

(c) Consequently direct the 4th Respondent to consider the case of the petitioners for admission in P.G. Medical courses under management quota for the academic year 2014-15; as per their merit in the qualifying examination i.e. MBBS without reference to the interview;

(d) Declare the inaction of the respondent No. 2 in taking corrective action against 4th respondent as arbitrary, illegal and unjustified and consequently direct the 2nd respondent not to approve the P.G. admissions under management quota in 4th respondent College unless and until the case of the petitioners is considered for admission according to their merit in the qualifying examination in the 4th respondent College."

2. Admissions into post-graduate professional courses in medical and dental/super speciality courses in unaided non-minority professional institutions in the State of Andhra Pradesh are governed by the Rules titled as "Andhra Pradesh Unaided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013", which are framed by the State of A.P., in exercise of powers conferred under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act No. 5 of 1983). As per the said Rules, 50% of the sanctioned intake of seats (management quota) can be filled-up by the individual private un-aided non-minority institutions with the eligible candidates in order of merit after following the fair, transparent and non-exploitative procedure. Earlier to present Rules, there were another set of Rules framed at first instance in the year 2004, but the same were amended from time to time and the Rules that are now in force, are framed vide G.O. Ms. No. 93, Health, Medical and Family Welfare (EI) Department, dated 01.07.2013. As per Rule 4(v)(a) of the said Rules, for making admissions under 50% management quota seats, colleges have to prepare the merit list of candidates by giving weightage of 15% of marks secured by them in the interview conducted by the management. After receipt of applications from the students, college shall scrutinize such applications and prepare merit list on the basis of individual cumulative performance in their I, II and III year MBBS course and display the list of candidates eligible for interview. After conducting interviews, a final merit list will be drawn based on the individual's cumulative performance in I, II and III year MBBS course which will carry 85% of weightage and the marks obtained in the interview, which will carry 15% weightage and such list has to be sent to the University and on approval of such list by the University, colleges are empowered to admit the candidates strictly in the order

of merit as shown in the approved merit list.

3. The 4th respondent is an un-aided non-minority institute imparting medical education in graduate and post-graduate courses. The petitioners, who have completed their MBBS course, claim that, with a view to secure admission into post-graduate degree and diploma courses in the management quota for the academic year 2014-15, have submitted applications to the 4th respondent-College in the month of March 2014 along with demand drafts for a sum of Rs. 5,000/- for each course, by enclosing all necessary certificates in complete form. Petitioners 1 and 2 have applied for diploma courses, petitioner No. 3 has applied for two post-graduate degree courses, petitioner No. 4 has applied for one post-graduate degree course and petitioner No. 5 has applied for three post-graduate degree courses. The names of petitioners, their application numbers, demand draft numbers, marks obtained by them in MBBS course and the courses applied by them, as stated in the affidavit filed in support of the writ petition, read as under :

4. At first instance, they approached this Court by filing the writ petition mainly complaining that inspite of their making applications to the 4th respondent-college, they were not called for interview and the 4th respondent-college has sent a list of candidates to the University for approval, on 28.06.2014. It is their allegation that the 4th respondent-college has considered and selected those candidates who are willing to pay huge capitation fee and has ignored the candidature of the petitioners by giving go-bye to the merit as well as the Regulations governing the post-graduate admissions under management quota. It is their case that immediately coming to know of sending of such list by the 4th respondent-college without reference to the applications submitted by them, they have sent a mail and also fax to the 2nd respondent-University complaining the illegality and irregularity committed by the 4th respondent-college, in preparing the merit list for admissions into post-graduate medical courses in violation of the Rules. At first instance, without questioning the vires of the Rules, the writ petition was filed on 30th June 2014 complaining against the 4th respondent-college about the preparation of merit list in violation of the Rules, and by order dated 01.07.2014, a learned Single Judge of this Court has directed the 2nd respondent-University not to approve the list of candidates sent by the 4th respondent-college for admission into post-graduate degree/diploma courses under management quota for the academic year 2014-15 and the said interim order continued all along. In view of the said interim orders, final merit list is not approved by the University. Subsequently, as the petitioners were permitted to amend the prayer in the writ petition questioning the vires of Rules 3(vi) and 4(v) (a) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post-graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, the writ petition is directed to be listed before this Bench.

5. Separate counter affidavits are filed by the respondents. Though this Court

permitted the petitioners to amend the prayer in the writ petition by order dated 15.07.2014, counter affidavit is filed by the 1st respondent-State on 07.08.2014 without adverting to the averments made in the writ petition with regard to the validity of the Rules. It is stated in the counter of 1st respondent that the Rules relating to admissions into post-graduate medical degree, dental and super-speciality courses in un-aided non-minority professional institutes in the State of Andhra Pradesh were issued vide G.O. Ms. No. 93, HM & FW (EI) Department, dated 01.07.2013. It is stated that 50% of the sanctioned intake of seats shall be filled by the competent authority on merit obtained in the entrance examination, by conducting counseling and the remaining 50% shall be filled by the respective colleges with eligible candidates in the order of merit after following the fair, transparent and non-exploitative procedure. It is stated that 15% of marks are to be allocated to the candidates depending on their performance in the interview and the respective colleges will issue a notification calling applications from the candidates eligible to be admitted in the post-graduate courses under management quota. In the counter, it is stated that as per the information provided by the 2nd respondent-University, the Principal of the 4th respondent-college has submitted a merit list vide letter dated 24.06.2014 and the management of NRI Academy of Sciences, Chinnakakani has submitted another merit list vide its letter dated 28.06.2014, and thus, the University has received two sets of merit lists; one from the Principal of the 4th respondent-college and another from the management of the said college. Therefore, the University addressed a letter dated 05.07.2014, to the Principal of the college, calling explanation as to why two sets of merit lists were sent to the University for approval, for which, the Principal has submitted explanation stating that he has followed the procedure prescribed in G.O. Ms. No. 93, dated 01.07.2013 and the guidelines given by the University from time to time in preparing the merit list and that he was not aware of the list submitted by the management of the college. It is stated that as per the information provided by the 2nd respondent-University, the merit list sent by the Principal of the college is to be treated as official list as per G.O. Ms. No. 93, dated 01.07.2013. Further, it is stated that on verification of the merit list submitted by the management of the 4th respondent-college, it was found that the names of petitioners find place in such list. While referring to the interim orders passed by this Court, it is stated that in view of said orders, the University has not approved the list sent by the 4th respondent-college.

6. In the counter affidavit filed by the Registrar of the 2nd respondent-Dr. NTR University of Health Sciences, while stating that as per the Rules framed in G.O. Ms. No. 93, dated 01.07.2013, 50% of seats are to be filled-up by respective colleges with eligible candidates in the order of merit after following the fair, transparent and non-exploitative procedure, it is stated that 15% of marks are to be allocated to the candidates while preparing the merit list, by way of interview, and those 15% marks will be awarded basing on the assessment of the character of candidate, motivation, suitability etc. It is stated that the respective colleges

will issue notifications calling applications from the candidates eligible to be admitted in post-graduate degree and diploma courses and the candidates can get applications directly from the college and the information regarding seat matrix in different specifications under management quota will be made available in the websites of the respective colleges. The colleges shall issue receipts acknowledging the receipt of applications and fix a date for conducting interviews and thereafter, the college will prepare the merit list on the basis of candidate's cumulative performance in I, II and III year of MBBS course, which consists of 85% marks and the remaining 15% consists of the marks awarded in the interview. It is stated that the Committee for conducting interviews in the college comprises of the Dean/Principal/Director of the college as Chairman, one senior faculty member from pre and para-clinical subjects, one senior faculty from clinical subjects and one member from the management committee of the college. In the counter, it is stated that the Principal of the 4th respondent-college has submitted a merit list vide letter dated 24.06.2014, and the management of the said college has sent another merit list vide its letter dated 28.06.2014, and thus, the University has received two merit lists; one from the Principal and another from the management of the 4th respondent-college. Referring to the letter dated 05.07.2014, addressed by the University to the Principal of 4th respondent-college and the explanation received from the Principal vide letter dated 07.07.2014, it is stated that the list submitted by the Principal is to be treated as official merit list as per G.O. Ms. No. 93, dated 01.07.2013. At the same time, it is admitted that the names of petitioners find place in the list sent by the management. While pleading that the 2nd respondent-University did not approve the merit list sent by the Principal in view of the directions of this Court, the 2nd respondent has prayed for dismissal of the writ petition.

7. The Law Officer of the Medical Council of India has filed counter affidavit on behalf of the 3rd respondent. In this counter, it is stated that the writ petition is filed mainly aggrieved of Rules 3 and 4 of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, which provide for giving weightage of 15% marks by way of interview, for admission into post-graduate courses. In the counter, reference has been made to various judgments of the Hon'ble Supreme Court holding that the Medical Council of India, which is constituted under the Indian Medical Council Act, 1956, is an expert body to control the minimum standards of medical education. In the counter, reference is made to the judgment of Hon'ble Supreme Court in the case of Medical Council of India Vs. State of Karnataka and Others, , wherein, the Hon'ble Supreme Court has held that the Regulations of Medical Council of India are binding and mandatory. In the counter, reference is also made to the Post-graduate Medical Education Regulations, 2000, framed in exercise of powers under Section 33 read with Section 20 of the Indian Medical Council Act, 1956, which are approved by the Government of India on 22.05.2000. It is stated that

all the admissions in medical colleges in MBBS and post-graduate courses shall be made in terms of the Medical Council of India Regulations and the law laid down by the Hon''ble Supreme Court. It is categorically pleaded that such Regulations do not envisage for conducting of any interview for admission into postgraduate degree and diploma courses.

8. The 4th respondent-college has filed two counter affidavits, denying the allegations made by the petitioners. The 1st counter affidavit is filed with the following averments :

"The writ petitioners are set up by the rival group in the NRI Academy of Sciences, headed by one Dr. N. Upendra. The petitioners do not disclose as to when they purchased application forms for seeking admission in the management quota and a person who is intending to make an application to college directly, shall get the application upon payment of Rs. 5,000/- either in cash or by way of demand draft. If a candidate downloads the application form from the website of the college, he has to pay the amount of Rs. 5,000/- at the time of submission of the application. A perusal of the application forms filed along with the writ petition disclose that the same are not downloaded from the website, therefore, the said applications must have been directly obtained from the college. Referring to receipt numbers on the top of the applications, it is stated that such receipts are not issued by the 4th respondent-college. It is stated that the Principal of the college is responsible for admissions and college activities and all the questions in relation thereto are to be posted to and answered by him. Therefore, for all practical purposes, the said applications are not received by the 4th respondent, therefore, the allegation that the 4th respondent-institution has not followed the Rules in conducting the admissions, is incorrect and false. The 2nd respondent-University communicated the information to all the medical colleges on 18.03.2014 with regard to filling-up of seats in management quota for P.G. courses by fixing the last date for submission of applications as 15.04.2014, as such, the 4th respondent-college gave paper notification inviting applications from the candidates seeking admission in P.G. courses in management quota, by fixing the last date for submission of such forms as 28.03.2014 and only 41 applications are received and interviews were conducted for all of them and list of candidates and their applications were sent to the 2nd respondent-University, therefore, the writ petitioners cannot seek for any direction to consider their cases. It is pleaded in the counter that in the absence of receipt of valid applications from the petitioners, they cannot demand to include their names in the list prepared by the college. At the same time, in the counter, it is stated that some 60 application forms have been submitted to the University at the instance of other group of the management, without any basis, and out of those 60 applications, only 5 students have chosen to file this writ petition. While pleading delay in making admissions into P.G. courses, prayed for dismissal of the writ petition."

9. In the subsequent additional counter affidavit filed by the 4th respondent-

college, while repeating the similar averments, it is stated that the Principal of the college has received a total number of 44 applications for various P.G. courses and all of them were subjected to interviews on 15.04.2014 and the list of selected candidates was sent to the 2nd respondent-University and the petitioners who did not file any proof of submission of application forms in the office of the Principal, are not entitled to seek for inclusion of their names in the list. It is stated that the interviews were conducted by a Committee consisting of Principal, Medical Superintendent of the college, two Heads of Departments and one person from the Management, and after due verification of the applications, merit list was sent to the 2nd respondent-University. Referring to 60 other applications submitted by the other group of the management, it is alleged that the rival group is encouraging the students to file such applications to tarnish the image of the college. In the counter, it is stated that the counseling for convener quota is already completed and the management quota lists of many colleges were also approved and only the list furnished by this college is held up due to this litigation.

10. An implead petition is filed by 5 of the medical graduates who were in the list sent by the college stating that they have responded to a paper notification inviting applications by the college for admission under management quota and they were called for interview and they appeared for such interview on 15.04.2014 and they were selected for admission into various post-graduate courses. While pleading that the college has proceeded in accordance with the Rules, sought for dismissal of the writ petition.

11. Reply affidavit is filed on behalf of the writ petitioners. In the reply affidavit, it is reiterated that they submitted applications in the 4th respondent-college along with demand draft for an amount of Rs. 5,000/- for each course applied. It is stated that they have submitted the filled-in applications along with the required documents and they were given receipts in the office of the 4th respondent-college. While pleading that they are not concerned with the internal disputes of the college, it is stated that all the petitioners are fully eligible and qualified for admission into post-graduate degree and diploma courses under management quota. It is further stated that as the petitioners have secured good percentage of marks in the qualifying examination over and above many other applicants, they are entitled for admission in the 4th respondent-college. It is stated that all the petitioners have submitted their applications before the last date i.e. 28.03.2014 as per the notification issued by the 4th respondent-college.

12. Additional reply affidavit is filed on behalf of the petitioners, in which, it is stated that the 4th respondent-college, only to cover-up their illegal attempt to admit less meritorious candidates by brushing aside the claim of the petitioners, has taken up a false plea that the petitioners were set up by one group of the college. It is further stated that after filing of the counter, they have verified from the office of the 4th respondent-college, which revealed that all the applications received at the 4th respondent's academy office were handed to one Sri

Raghuram Kumar and when the petitioners have enquired with the said person, they were told that all the applications received by him were submitted in the office of the Principal of the college.

13. Heard Sri C.V. Mohan Reddy, learned senior counsel appearing for the writ petitioners, learned Government Pleader for Health, Medical and Family Welfare, appearing for the 1st respondent-State, Sri A. Prabhakar Rao, learned Standing Counsel appearing for the 2nd respondent-University, Sri Dammalapati Srinivas, learned counsel appearing for the 3rd respondent-Medical Council of India, Sri Vedula Venkata Ramana, learned senior counsel appearing for the 4th respondent-college and Sri S. Sathyam Reddy, learned Senior Counsel appearing for the impleaded respondents.

14. It is contended by Sri C.V. Mohan Reddy, learned senior counsel appearing for the petitioners that the impugned Rules, namely, Rule 3(vi) and 4(v)(a) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, which are framed in exercise of powers conferred under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, run contrary to the Post Graduate Medical Education Regulations, 2000, which are framed under Section 33 of the Indian Medical Council Act, 1956 and which are approved by the Government of India. It is submitted that in view of the mandatory procedure contemplated under the Post-graduate Medical Education Regulations, 2000, only academic merit shall be the criteria for making admissions into post-graduate medical courses, but contrary to the same, impugned Rules are framed by the State. It is submitted that apart from the same, such Rules are also framed contrary to the judgment of the Hon'ble Supreme Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, . It is submitted that in any event, when academic merit should only be the criteria as per the Post-graduate Medical Education Regulations, 2000, it is not open for the State to make a provision for giving weightage of 15% marks by way of conducting interviews to the candidates, restricting the cumulative academic merit in the qualifying examination i.e. I, II and III year of MBBS course, to only 85%. It is submitted that the said Rules framed in exercise of powers under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, permitting preparation of merit lists by giving 15% weightage to interview, are also contrary to the purport of the very enactment, which is primarily intended to prohibit capitation fee in educational institutions. It is submitted that inspite of submission of applications by the petitioners seeking admission under 50% management quota, their applications were not even considered and the applications of less meritorious candidates were forwarded for approval from the 2nd respondent-University. It is submitted that the 4th respondent-college has considered the candidature of only those candidates who are willing to pay huge amount towards capitation fee and exclude the

candidature of petitioners and similarly placed persons, by giving go-bye to merit and the same is contrary to the Post-graduate Medical Education Regulations, 2000 framed under the Indian Medical Council Act, 1956. The learned senior counsel, in support of his arguments, apart from relying on Mridul Dhar's case (2 supra), has placed reliance on the judgments of the Hon'ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, , in Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, , in State of Punjab Vs. Dayanand Medical College and Hospital and Others, , in Dr. Preeti Srivastava & another Vs. State of Madhya Pradesh & others (1999) 7 SCC 120 and in Medical Council of India Vs. State of Karnataka and Others, .

15. On the other hand, it is submitted by the learned Government Pleader for Health, Medical and Family Welfare, appearing for the 1st respondent-State that it is open for the State Government to regulate admissions into post-graduate medical courses and accordingly, Rules are framed vide G.O. Ms. No. 93, dated 01.07.2013, in exercise of powers conferred under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, which itself is enacted in view of Entry 25 of List-III of Schedule-VII to the Constitution of India. It is submitted that the said Rules will not run contra to the Post-graduate Medical Education Regulations, 2000 so as to seek quashing of the same in this writ petition.

16. Sri A. Prabhakar Rao, learned Standing Counsel appearing for the 2nd respondent-University, submitted that after receipt of list containing the names of 41 students forwarded by the Principal of the 4th respondent-college, as another list was sent by another group of the management of said college, a clarification was sought from the Principal by addressing a letter, for which, explanation was offered by the Principal, but in the meanwhile, petitioners have obtained interim orders from this Court, as such, the admissions are not approved by the University.

17. Sri Dammalapati Srinivas, learned counsel appearing for the 3rd respondent-Medical Council of India, submitted that Post-graduate Medical Education Regulations, 2000 are framed in exercise of powers under Section 33 of the Indian Medical Council Act, 1956 and the said Regulations provide the procedure for selection of students for post-graduate courses, strictly on the basis of their academic merit. It is submitted that for determining the academic merit, the University/Institution may adopt any of the methods contemplated under Regulation No. 9, but it does not prescribe any weightage for interview. It is contended by the learned counsel that the Post-graduate Medical Education Regulations, 2000 are mandatory in nature and therefore, the procedure prescribed by those Regulations is to be followed for making admissions into post-graduate degree and diploma courses in the un-aided medical colleges in the State.

18. Sri Vedula Venkata Ramana, learned senior counsel appearing for the 4th respondent-college submitted that only the Principal of the college is competent

to receive applications from the students and pursuant to the notification issued by the college, 44 applications were received and after conducting necessary interviews as per Rules 3(vi) and 4(v)(a) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, a list of 41 selected candidates was sent to the University for approval. It is submitted that the petitioners have not obtained applications from the office of the college, and as such, they are not entitled to seek admission under 50% management quota in the 4th respondent-college. It is further submitted that the 4th respondent-college has issued advertisement on 22.03.2014 and the last date for receipt of filled-in applications was 28.03.2014, but the petitioners have not mentioned as to on what date they submitted their applications. It is further contended that only on last day, they claim that they obtained and submitted their application forms, that too, without handing over to the Principal of the college. It is further submitted that in view of the time schedules notified by the Hon'ble Supreme Court, notifying the last date for admissions into post-graduate courses, admissions are already delayed and any directions at this stage, will delay the process of admissions further. The learned senior counsel, in support of his contention that the State Government is empowered to frame Rules for regulating admissions into post-graduate medical degree and diploma courses, placed reliance on the judgment of Hon'ble Supreme Court in the case of Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and Others, and in R. Chitrlekha and Another Vs. State of Mysore and Others, .

19. Sri S. Sathyam Reddy, learned Senior Counsel appearing for the impleaded respondents submitted that having regard to the merit secured by the impleaded respondents, they are entitled for admission and he further submits that in the quota meant for management, the managements of the Colleges have got some discretion in filling up such seats.

20. In view of the pleadings on record and the rival contentions advanced by the learned counsel for the parties at length, the following questions emerge for consideration by this Court;

"(1) Whether Rules 3(vi) and 4(v)(a) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, are within the ambit of the State's power or the same are to be declared as arbitrary and illegal on the ground that they run contrary to the Post-graduate Medical Education Regulations, 2000 framed by the Medical Council of India under the Indian Medical Council Act, 1956, and contrary to the directions issued by the Hon'ble Supreme Court and also contrary to the very Act under which they are framed, namely, the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983;

(2) If the aforesaid Rules 3(vi) and 4(v)(a) are to be held illegal and ultra vires the Post-graduate Medical Education Regulations, 2000, what further directions

are to be issued by this Court for the purpose of making admissions into various post-graduate degree and diploma courses in the 4th respondent-college for the academic year 2014-15; and

(3) Whether the petitioners in this writ petition are to be denied relief on the ground that any directions for making admissions at this stage will upset the time schedule notified by the Hon"ble Supreme Court for making admissions into post-graduate courses for the academic year 2014-15."

21. The Indian Medical Council At, 1956 is enacted by the Parliament by repealing the earlier Indian Medical Council Act, 1933 and the Legislative competence to enact such law is traceable to Entry 66 of List-I of Schedule-VII to the Constitution of India. If we look at the objects and reasons of the Indian Medical Council Act, 1956, it is clear that it is enacted with several objectives including an objective to provide for formation, of a Committee of Post-graduate Medical Education for the purpose of assisting the Medical Council of India to prescribe standards of post-graduate medical education, for guidance of Universities and to advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India. Section 33 of the said Act empowers the Medical Council of India to make Regulations generally to carry out the purposes of the Act, with the previous sanction of Central Government. Accordingly, in exercise of such powers under Section 33 of the Act, Post-graduate Medical Education Regulations, 2000 are framed by the Medical Council of India. Regulation 9 of the said Regulations prescribes the procedure for selection of students for post-graduate courses and it reads as under:

"9. Selection of postgraduate students :

1. Students for Postgraduate medical courses shall be selected strictly on the basis of their academic merit.

2. For determining the academic merit, the university/institution may adopt anyone of the following procedures both for degree and diploma courses :-

1. On the basis of merit as determined by the 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

2. On the basis of merit as determined by a centralized competitive test held at the national level; or

3. On the basis of the individual cumulative performance at the first, second and third year of their MBBS examination, if such examination have been passed from the same university; or

4. Combination of (i) and (iii);

Provided that wherever entrance test for Postgraduate admission is held by the State Government or a university or any other authorized examining body, the

minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty per cent for general category candidates and 40 per cent for the candidate 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 and the remaining fifty per cent by the management of the institution on the basis of merit."

From a reading of the aforesaid Regulation, it is clear that the students for post-graduate medical courses shall be selected directly on the basis of their academic merit. The Regulation also makes it clear that for determining the academic merit, the University/institution may adopt any of the procedures laid down therein, namely, on the basis of merit as determined by way of competitive test conducted by the State Government or by the competent authority appointed by the State Government or by University or group of Universities in the same State or on the basis of merit as determined by a centralized competitive test held at National level or on the basis of the individual cumulative performance at I, II and III year MBBS examinations, if such examinations have been passed from the same University or by combining one and three of such tests. It makes it clear that selections are to be made based on academic merit. The word "Academic" used in this Regulation also makes it clear that no other method is permissible like giving weightage in interview etc., for selecting the candidates.

22. The Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013 are framed in exercise of powers conferred under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983. Section 3 of the said Act makes it clear that admissions into medical institutions shall be made either on the basis of marks obtained in the qualifying examination or on the basis of the ranking assigned in the competitive test conducted by such authority and in such manner as may be prescribed. Section 15 of the Act empowers the Government to make Rules for carrying out all or any of the purposes of the said Act. A perusal of the provisions under the aforesaid Act shows that its legislative competency is traceable to Entry 25 of List-III of Schedule-VII to the Constitution of India. From a reading of Entry 25 of List-III, it is also clear that States are empowered to legislate laws on education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List-I. If we compare the various provisions of the Post-graduate Medical Education Regulations, 2000 framed under Section 33 of the Indian Medical Council Act, 1956 and the Rules framed vide G.O. Ms. No. 93, dated 01.07.2013, namely, Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, it is amply clear that, as per the Post-graduate Medical Education Regulations, 2000, selection of

students to post-graduate medical courses is to be made only based on academic merit in the qualifying examination or based on any competitive test conducted by the Government, University or group of Universities/institutions and except academic merit, there is no provision for giving any weightage marks for selecting the students into post-graduate medical degree and diploma courses. In contrast, in the Rules framed vide G.O. Ms. No. 93, dated 01.07.2013, 15% weightage marks can be awarded by way of interview, while preparing the merit list by assessing the candidate's character, motivation and suitability for medical profession and studies. Further, Rule 4(v)(a) of the said Rules contemplates to prepare final merit list of candidates based on the individual's cumulative performance in I, II and III year MBBS examinations, which shall carry 85% weightage and the marks obtained by the candidate in the interview shall carry 15% weightage. Such lists are to be sent to the University concerned, for approval, and the colleges shall admit the students strictly in the order of merit shown in the approved merit list. Awarding of such 15% weightage marks by way of interview, runs contrary to the procedure prescribed under the Post-graduate Medical Education Regulations, 2000. Whereas, the said Regulations contemplate for uniform procedure of preparing the list based on the cumulative academic merit alone, 15% weightage is provided by way of interview as per the "Rules framed by the State in exercise of powers under Sections 3 and 15 of Act 5 of 1983. The very power of the State under Entry 25 of List-III of Schedule-VII to the Constitution of India to enact laws relating to medical education etc., is restricted and is subject to Entries 63, 64, 65 and 66 of List-I. In that view of the matter, we are of the view that such Rules framed by the State i.e. Rules 3(vi) and 4(v)(a) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, run contrary to the Post-graduate Medical Education Regulations, 2000 framed by the Medical Council of India, and hence, are illegal. In the judgment of Hon'ble Supreme Court in Dayanand Medical College's case (5 supra), when the minimum qualifying marks in the entrance examination for admission into post-graduate medical courses were reduced, the Hon'ble Supreme Court has held that the minimum marks as prescribed by the Medical Council of India in terms of Entry 66 of List-I of Schedule-VII to Constitution of India, cannot be unilaterally diluted by the State Government or the University. In the said judgment, while considering the scope of Entry 66, the Hon'ble Supreme Court has held in paragraphs 17 and 19, as under :

"17. It is clear that in respect of subjects other than Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Social and Preventive Medicine at least 40% of the marks will have to be obtained in order to be eligible for admission and in respect of other subjects there is no such condition at all. In the counter-affidavit filed in the High Court, it is stated that the percentage of marks has been reduced below 40% for the basic subjects like Anatomy, Physiology and Pharmacology because the candidates of

higher merit are not opting for these subjects and as such the postgraduate seats in Departments of Anatomy, Physiology and Pharmacology keep lying vacant and thus leading to an acute shortage of teachers in these Departments. Further, the condition of 50% marks in the entrance test was reduced to 40% because 80% of the seats reserved for PCMS doctors remained unfilled because most of them could not secure 50% marks in PGET due to the fact that they do not get academic support in rural areas. It is submitted that the postgraduate entrance examination is held for those who have already passed in MBBS examination by securing at least 50% marks and, therefore, the candidates who had not secured 50% in the postgraduate entrance examination cannot be declared to be filled (sic) in MBBS. The lowering of the marks to less than 50% has the twin objective of safeguarding the interests of weaker sections of the Scheduled Castes and Backward Classes and to meet the constitutional obligation. We are afraid, the approach of the State of Punjab in this regard results in stultifying the logic. What is contended is that suitable candidates are to be selected from amongst the eligible candidates and in that regard an entrance test is being held. When such an entrance test is held, a prescription has been made by the Medical Council of India fixing a standard in terms of Entry 66 List I of the Seventh Schedule to the Constitution and which cannot be diluted at all as has been held in a series of decisions including *Dr. Preeti Srivastava case*, *Dr. Narayan Sharma v. Dr. Pankaj Kumar Lehar* and *Medical Council of India v. State of Karnataka*. 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 the 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.

19. We, therefore, find that the prescription made by the appellants reducing the minimum marks to 40% in the entrance examination for considering the eligibility of the candidates for admission to postgraduate medical courses and in respect of the basic subjects fixing no minimum standard is plainly in contravention of the Regulations framed by the Medical Council of India and that part of the notification will have to be ignored. If that is done and if the Regulations framed by the Medical Council of India are applied in toto, appropriate working will have to be made by the appellants as indicated supra and the same will have to be given effect to."

Further, in *Preeti Srivastava's case* (6 supra), the Hon'ble Supreme Court has considered the power of the State under Entry 25 of List-III of Schedule-VII to the Constitution of India vis-a-vis the power of the Union on the subjects which also fall within the scope of Entry 66 of List-I of Schedule-VII. In the said

judgment, while rejecting the plea that the norms for admission have no connection with the standard of education, the Hon"ble Supreme Court has held that the norms prescribed for admission can have a direct impact on the standards of education. Paragraphs 35 and 36 of the said judgment read as under :

"35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List-II gave to the State an exclusive power to legislate on;

"education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List-III."

Entry 11 of List-II was deleted and Entry 25 of List-III was amended with effect from 3.1.1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Entry 25 is subject, inter alia, to Entry 66 of List-I.

Entry 66 of List-I is as follows:-

"66. Coordination and determination of standards in institutions for a higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact

on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) the calibre of the teaching staff;
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;
- (3) the student-teacher ratio;
- (4) the ratio between the students and the hospital beds available to each student;
- (5) the calibre of the students admitted to the institution;
- (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
- (7) adequate accommodation for the college and the attached hospital; and
- (8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

Thus, in the said judgment, it is held in clear terms that the State has got right to control education including medical education so long the field is not occupied by the Union Legislation. Further, it is held that the State cannot, while controlling education in the State, impinge on standards in institutions for higher education, because, the same is within the purview of the Union Government. Therefore, it is concluded in the said judgment that while prescribing the criteria for admissions into institutions of higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I of Schedule-VII to the Constitution.

Further, in Mridul Dhar's case (2 supra), while issuing a series of directions for maintaining academic schedules in MBBS, BDS and post-graduate super speciality courses in Government and private medical institutions, the Hon'ble Supreme Court, in clear and categorical terms, held that the merit determined through competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or by any other mode. In the light of the said directions issued by the Hon'ble Supreme Court, it is not open for the State to make a provision for conducting interviews and to give weightage of 15% marks for such interview for the purpose of preparing merit list among

the applicants for making admissions into post-graduate medical and diploma courses. Thus, we are of the view that the impugned Rules are contrary not only to the Post-graduate Medical Education Regulations, 2000, but also to the directions issued by the Hon''ble Supreme Court in Mridul Dhar's case (2 supra).

In another judgment of Hon''ble Supreme Court in P.A. Inamdhar's case (3 supra), while elaborately considering the method of admissions and fee structure in Non-minority educational institutions, a Constitution Bench of Hon''ble Supreme Court has held that for making admissions into the institutions of higher education, the triple test of fair, transparent and non-exploitative procedure prescribed for admissions in minority educational institutions will equally apply to non-minority un-aided institutions. In the aforesaid judgment, the Hon''ble Supreme Court has held that the admission procedure for admitting students shall be fair, transparent and non-exploitative. It is further held that all institutions imparting same or similar professional courses, it is open for them to join together for holding a test for the purpose of admissions, by satisfying the triple test as indicated in the judgment.

In the Asha's case (4 supra), the Hon''ble Supreme Court has held in paragraph 24 as under :

"24. The Court cannot ignore the fact that these admissions relate to professional courses and the entire life of a student depends upon his admission to a particular course. Every candidate of higher merit would always aspire admission to the course which is more promising. Undoubtedly, any candidate would prefer course of MBBS over BDS given the high competitiveness in the present times, where on a fraction of a mark, admission to the course could vary. Higher the competition, greater is the duty on the part of the authorities concerned to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to the appropriate course and college, as per his preference. We are not oblivious of the fact that the process of admissions is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The authorities concerned are expected to perform certain functions, which must be performed in a fair and proper manner i.e. strictly in consonance with the relevant rules and regulations."

All the aforesaid judgments of Hon''ble Supreme Court, relied on by the learned senior counsel for petitioners would indicate that any procedure adopted for making admissions by the Government, University, Institution or group of institutions etc., shall provide fair, transparent and non-exploitative procedure for making admissions and all the aforesaid judgments support the case of petitioners in this case.

23. In Ambesh Kumar's case (8 supra), relied on by the learned counsel for 4th respondent-college, with regard to admissions in medical colleges, when the State has notified by its executive power under Article 162, prescribing minimum

eligibility qualifications which are found to be in addition to those prescribed by the Regulations of Medical Council of India, the Hon''ble Supreme Court has held that such order issued by the Government did not infringe nor was it in conflict with the Regulations notified by the Medical Council of India under Indian Medical Council Act, 1956, which is legislated under Entry 66 of List-III of Schedule-VII. In this case, as we are holding that the impugned Rules are contrary to the Regulations framed by the Union Government and would dilute the standards of medical education, the said judgment would not render any assistance in favour of the case of respondent No. 4.

A reading of the another judgment of Hon''ble Supreme Court, relied on by the learned counsel for respondent No. 4 in Chitralkha's case (9 supra) in support of his argument that it is open for the State to make a provision for conducting interviews for assessing the merit for admission into medical courses, it is clear that the validity of the interview was challenged in the said case only on the ground that orders notified by the Government were not issued in the name of the Governor. In any event, in many subsequent judgments relied on by the learned counsel for petitioners, as referred above, it is clearly held by the Hon''ble Supreme Court that the State is not empowered to take any steps to dilute the standards notified by the Medical Council of India under the Indian Medical Council Act, 1956, which is enacted under Entry 66 of List-I of Schedule-VII of the Constitution, and hence, this judgment is also not of any help to the case of respondent No. 4.

24. The Rules titled as "Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013", are framed in exercise of powers conferred under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983. Section 3 of the said Act regulates admissions into educational institutions and proviso to Section 3(1) also makes it clear that admissions into medical and engineering colleges shall be made only on the basis of the ranking assigned in the common entrance test conducted. Section 15 of the Act empowers the Government to make Rules by issuing notification for the purpose of carrying-out all or any of the purposes of the Act. From the statement of objects and reasons of Act No. 5 of 1983, it is clear that the said Act is intended and enacted to eradicate the practice of collecting capitation fee and to maintain excellence in the standard of education. In the objects and reasons, it is observed that the undesirable practice of collecting fee at the time of admission into colleges has been on increase and the same is causing frustration among the indigent and meritorious students and the same is resulting in steep fall in the standards of education. It is also stated in the statement of objects and reasons that the A.P. Education Act, 1982, which was already in force, was not adequate to control the evil practice of collecting capitation fee at the time of admissions, and hence, to prohibit collection of such capitation fee by the educational institutions, Act No. 5 of 1983 is enacted.

25. If the provision under Section 3 of the Act is read keeping in mind the objectives of the Act, it is clear that only to make admissions transparent and prohibit capitation fee being collected by the institutions, it is provided that admissions into medical and engineering colleges shall be made only on the basis of merit secured by the students in the entrance test. In this writ petition, it is the specific allegation of petitioners that though they submitted applications to the 4th respondent-college before the last date for receipt of applications i.e. 28.03.2014, the 4th respondent has selected only those candidates who are willing to pay huge amount of capitation fee by giving go-bye to the merit and to the Rules governing postgraduate medical admissions. It has become routine practice for the students to approach this Court in every academic year at the time of making admissions in the professional institutions, complaining against the procedure adopted by the institutions denying admissions to meritorious students, and though many a time directions are issued by this Court quashing the selection lists, there is no improvement in the situation and such practice is still continued. On the directions of this Court, the learned counsel appearing for the 4th respondent-college has produced the list submitted by the college, indicating the marks allotted to the applicants based on their cumulative merit in I, II and III year MBBS course aggregating to 85% and also 15% weightage marks allotted in the interview in various courses. We have perused the said list in the backdrop of the allegations of petitioners that though they submitted the applications within time, they were not called for interview and their names were not included in the merit list. For instance, in MS Ophthalmology course, there is only one seat, and as indicated by the 4th respondent-college, only two candidates have submitted their applications for the said course. Petitioner No. 4 also claims that she has applied for the said course in MS Ophthalmology, but her name is not included in the merit list prepared by the 4th respondent-college and sent to the 2nd respondent-University for approval. A perusal of the list makes it clear as to how this Rule for giving weightage marks is resulting in tinkering the merit of the students. In the list, it is shown that a student, who secured a total percentage of 55.95 marks in MBBS course, is awarded 14 out of 15 marks in the interview and placed at first in the merit order, whereas, a student who secured 72.08% of marks in MBBS course, is given "0" (zero) marks in the interview and is shown in 2nd place in the merit list, and as only one seat is available in the said course, the candidate who secured 72.08% of marks in MBBS course will not come up for admission into post-graduate course. This is a glaring example to understand as to how this Rule for giving weightage marks is resulting in tinkering of merit. Of course, the mis-use of a Rule by itself is no ground to invalidate it, but as we come across from the perusal of the material, we have given the instance as referred above. Such example gain support to the allegation of the petitioners that the management of the 4th respondent-college has chosen the candidates who have prepared to pay huge amount towards capitation fee, at the cost of meritorious candidates and it establishes as to how the impugned Rules framed by the State for carrying-out the purposes of Act No. 5 of 1983, are running contrary to its very objectives. Though the said Act itself

is enacted with the primary objective of curtailing the evil practice of collecting capitation fee by the managements of private educational institutions and Section 3 of the said Act provides for the procedure for making admissions to medical institutions only by conducting a test, inspite of the same, exercising powers under Section 15, the impugned Rules are framed, which run contra to the objects and reasons of the very enactment and also runs contra to Section 3 of the said Act itself. Thus, we are of the view that the impugned Rules are fit to be declared as illegal not only on the ground that the same are framed by the State contrary to the Post-graduate Medical Education Regulations, 2000 framed under the Indian Medical Council Act, 1956, but they also run contrary to the directions issued by the Hon''ble Supreme Court in Mridul Dhar's case (2 supra), and we also hold that the impugned Rules are ultra vires of Section 3 of Act No. 5 of 1983 itself and also runs contrary to the intent of the said Act. If the said Rules are allowed to be intact, they defeat the very principle enunciated by the Hon''ble Supreme Court in various judgments referred above, for meeting the triple test while making admissions into medical institutions. Hence, they are liable to be struck down.

26. For the academic year 2014-15, for admission into post-graduate degree and diploma courses, it appears, as indicated in the counter affidavit, many institutions have already completed their selection process and merit lists are already approved by following the impugned Rules. In view of the fact that the validity of the impugned Rules is being adjudicated in this order by declaring the same as illegal and arbitrary, we are of the view that this shall not affect the admissions, which are already made by following those Rules. As it is stated that as per the academic schedule notified, the classes have already commenced in many institutions, this order shall not affect such admissions, which are already approved by the 2nd respondent-University. So far as the 4th respondent-institution is concerned, the final merit list forwarded by the Principal of the said college is not yet approved by the 2nd respondent-University, in view of the interim orders passed by this Court. Although it is the case of the impleaded respondents as well as the 4th respondent-college that admissions are already made and the impleaded respondents are attending the classes, it does not amount to valid admission, as the final merit list is not yet approved by the 2nd respondent-University. As per the Rules framed vide G.O. Ms. No. 93, dated 01.07.2013, particularly as per Rule 4(v)(a), the college is empowered to admit the students only in the order of merit shown in the list approved by the University. Thus, it is clear that admissions can be made by the college to various courses only after approval of the final merit list sent by the institution. As such, not only for the courses applied by the petitioners herein, but as the entire list is not yet approved, the question of already making any admissions in the 4th respondent-college for the academic year 2014-15, does not arise. Though it is the case of petitioners that they have applied to various post-graduate degree and diploma courses in several disciplines and have submitted application forms along with demand drafts well before the last date notified by the 4th respondent-

college, but the 4th respondent, in the counter affidavit, denied the receipt of such applications by the Principal before the last date notified. At the same time, in the counter affidavit filed by the 2nd respondent-University, it is clearly stated that they have received two sets of merit lists; one from the Principal of the 4th respondent-college and another from the management of the said college. Even in the counter affidavit filed by the Government, it is stated that the University has received two sets of merits lists; one from the Principal of the college and another from the management of the college and the petitioners' names find place in the list sent by the management. Thus, it is clear from the counter affidavits filed by the 4th respondent-college that there are serious disputes in its management, but in view of such disputes, the students who applied for admission under 50% management quota should not suffer for no fault on their part. As we are invalidating the impugned Rules which permit to give 15% weightage marks by way of interview, by holding that the same is contrary to the Post-graduate Medical Education Regulations, 2000, now, a fresh list requires to be prepared by taking into account the aggregate percentage of marks secured by the students in the qualifying examination i.e. I, II and III year MBBS course. As the merit list which is submitted by the 4th respondent-college is not approved, and further, as we are declaring the impugned Rules as illegal, if further directions are not issued to prepare de novo merit list in accordance with the cumulative academic merit of students in their MBBS course, all the sanctioned intake capacity of seats in the 4th respondent-college will go waste for this academic year. If the same is allowed, it may not be neither in public interest nor in the interest of student community who are seeking admission into post-graduate degree and diploma courses in medicine.

27. It is true that time schedules are notified by the Hon"ble Supreme Court by directing the Universities and State Governments to notify last dates for admissions into various graduate and post-graduate courses for avoiding the delay in starting the academic year. Respondents have also brought to the notice of this Court, the order passed by the Hon"ble Supreme Court in Writ Petition (Civil) No. 737 of 2013, wherein, directions are issued to the Medical Council of India, to notify the schedules for admissions into post-graduate medical courses for the academic year 2014-15. It is submitted by the learned senior counsel for petitioners Sri C.V. Mohan Reddy that the respondents, while depriving seats to the meritorious candidates who are seeking admission into various post-graduate degree and diploma courses, cannot escape from their liability of providing seats to such candidates, only on the ground that issuance of any directions will disturb the schedule notified by the Hon"ble Supreme Court.

28. The Hon"ble Supreme Court has issued directions to the Universities and Medical Council of India for notifying academic schedules, but in this case, the petitioners have approached this Court at first instance by filing writ petition on 30.06.2014, complaining the inaction on the part of 4th respondent-college in considering their applications for admission into various courses for the academic year 2014-15 and this Court, by order dated 01.07.2014, directed the 2nd

respondent-University not to approve the list submitted by the 4th respondent-college. Thereafter, petitioners have questioned the vires of the Rules by way of amendment petition, which was allowed, permitting the petitioners to question the vires of the Rules. Thereafter, Registry, by obtaining orders on administrative side from Hon"ble The Chief Justice, has listed this matter before this Division Bench. Thereafter, the matter was adjourned from time to time for filing counter affidavits, and the counter of the 3rd respondent-Medical Council of India came to be filed only on 15.09.2014, wherein, in clear terms, they have taken the stand that the Post-graduate Medical Education Regulations, 2000 do not envisage for conducting of any interviews for admission into post-graduate degree and diploma courses in medicine. In view of the interim orders passed by the learned Single Judge, no admissions are made, as much as the Rules contemplate for making admissions only after receipt of approved list from the University. In the judgment in Asha's case (4 supra), the Hon"ble Supreme Court has held that when the applicants are not at fault and pursued their remedies and rights as expeditiously as possible, cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. In the aforesaid judgment, in paragraphs 31, 32 and 38.2, the Hon"ble Supreme Court has held as under:

"31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, Regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate."

38.2. 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th

September of the relevant academic year (in terms of the decision of this Court in Priya Gupta). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in Priya Gupta and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction."

We are of the view that the claim of the petitioners herein be considered in view of the judgment of the Hon''ble Supreme Court in Asha's case (4 supra), as it falls within the exceptions carved out in the said judgment, for interfering with the admission process at this stage, and as we are of the view that there is no delay on the part of petitioners and they have approached this Court at the earliest possible time.

29. The learned counsel for petitioners has also relied on the order, dated 17.01.2013, passed by the Hon''ble Supreme Court in Civil Appeal Nos. 488-511 of 2013, wherein, the Hon''ble Supreme Court has issued directions to complete the admission process for medical courses by 31.01.2013 for the academic year 2012-13, in one of the medical colleges in the State of Andhra Pradesh. Therefore, we are of the view that merely on the ground that any directions at this stage would run contra to the schedule notified by the University, petitioners cannot be denied the relief in this petition filed under Article 226 of the Constitution of India. Even otherwise, if no directions are given, all the seats in the 4th respondent-college in postgraduate degree and diploma courses in medicine will go waste for this academic year, which is neither in public interest nor in the interest of students, who are seeking admission into such courses. As we have held that the case of petitioners is within the exceptions carved out by the Hon''ble Supreme Court in Asha's case (4 supra), by following the said judgment, we deem it appropriate to dispose of the writ petition with directions to make admissions in the 4th respondent-college for this academic year of 2014-15.

30. For the aforesaid reasons, the writ petition is allowed with the following order and directions :

1. The impugned Rules i.e. Rules 3(vi) and 4(v)(a) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/Super Speciality Courses) Rules, 2013, framed vide G.O. Ms. No. 93, dated 01.07.2013, are hereby struck down by declaring the same as arbitrary, illegal and run contrary to the Post-graduate Medical Education Regulations, 2000, directions in the judgment of Hon''ble Supreme Court in Mridul Dhar's case (2 supra) and also run contrary to

the provision under Section 3 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 itself.

2. The 2nd respondent-University is directed to prepare a fresh merit list by taking into account the cumulative academic merit of students in their I, II and III year MBBS course alone, by considering the names of all the candidates from both the lists i.e. the list sent by the Principal of the 4th respondent-college and the other list sent by the management of the said college and approve such list and forward the same to the 4th respondent-college within three days from the date of receipt of this order. After receipt of such approved merit list from the 2nd respondent-University, the 4th respondent-college shall take steps for admission of students into various post-graduate degree and diploma courses in medicine for the academic year 2014-15, in such merit order.

3. It is made clear that the admissions into post-graduate medical courses, which are already made in various private institutions under management quota, which are approved by the 2nd respondent-University by following the Rules which were in force, hold good and this order will not affect such admissions, which are already made for the academic year 2014-15.

4. The 1st respondent-Government shall take steps forthwith, for making suitable amendments to the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/ Super Speciality Courses) Rules, 2013, to bring them in conformity with the Post-graduate Medical Education Regulations, 2000, for the purpose of post-graduate medical admissions.

5. The State Government shall take necessary steps to ensure that admissions for the coming academic years into post-graduate degree and diploma courses in the 50% management quota are made only in accordance with the academic merit, without subjecting the applicants/students to any oral interview.

No order as to costs.

Miscellaneous applications pending, if any, shall stand closed.