

(2003) 09 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1007 and 1091 of 1993

Thokchom Biswajit Singh and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 249, 250, 254
Indian Medical Council Act, 1956 — Section 19A, 20, 33
Manipur MBBS/BDS Entrance Examination (Selection of Candidates) (Amendment) Rules, 2003 — Rule 17, 20
Manipur MBBS/BDS Entrance Examination (Selection of Candidates) Rules, 1993 — Rule 16, 17, 18, 8

Citation : (2003) 3 GLT 306

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : N. Kerani and N. Umakanta, for the Appellant; G.A. Manipur and S. Risom, for the Respondent

Judgement

D. Biswas, J.—By this common judgment W.P.(C) No. 1007/2003 and W.P.(C) No. 1091/2003 are being disposed of.

2. In these two writ petitions, the Petitioners have prayed for quashing the Manipur M.B.B.S/B.D.S. Entrance Examination (Selection of Candidates) Amendment Rules, 2003 issued on 5.7.2003 and the subsidiary select list and the waiting list published thereafter for admission into the first year M.B.B.S./B.D.S. Course for the session 2003-2004.

3. The amendment under challenge is quoted below:

The manipur mbbs/bds entrance examination (selection of candidates) amendment Rules, 2003

1. Short, title and commencement: 1. These Rules may be called the Manipur MBBS/BDS Entrance Examination (Selection of Candidates) Amendment Rules, 2003. They shall come into force with immediate effect.

2. Amendment of Rule 17.- Clause (iii) of Rule 17 of the Manipur MBBS/BDS Entrance Examination (Selection of Candidates) Rules, 1993 (hereinafter referred to as the Principal Rules) shall be deleted.

3. Amendment of Rule 20.- For Rule 20 of the Principal Rules, the following be substituted, namely. "Notwithstanding anything contained in these Rules, the Government may relax any of the provisions of these Rules in the public interest."

By order and in the name of the Governor.

4. The subsidiary list (Annexure-A/7) published incorporating the names of seventeen candidates from S.T. category, one from children of armed forces personnel/exservicemen and one from meritorious sports person candidate along with a wait list of four candidates, is also in challenge. According to the writ Petitioners, the Manipur MBBS/BDS Entrance Examination (Selection of Candidates) Rules, 1993, hereinafter referred to as the Rules of 1993 and the amendments made therein are of no legal consequence since the State is bereft of legislative competence in the matter. Their case in short is that the admission process has to be in conformity with the Regulations on Graduate Medical Education, 1997 framed by the Medical Council of India in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956. On this premises, the amendment made on 5th July, 2003 and the subsidiary list published thereafter have been challenged.

5. I have heard Mr. Asok Potsangbam, Mr. N Ibotombi, Mr. N. Kerani and Mr N. Umakanta, learned Counsel for the Petitioners. I have also heard Mr. N.K. Singh, learned Advocate General, Manipur and Mr. S. Risom, learned Counsel for the private Respondents.

6. The argument advanced on behalf of the Petitioners is that the subsidiary list of candidates has been prepared for those reserved category candidates who have failed to secure the minimum qualifying marks in the selection test. In order to legalise the selection of unsuccessful candidates, the State Rules of 1993 were amended after publication of the result of the written test in which not a single candidate from the reserved category could come out successful.

7. The Indian Medical Council Act, 1956 was enacted by the Union Parliament under Entry 66 of List I of the Seventh Schedule which reads as follows:

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

8. The legislative powers of the State relatable to Entry 11 of List II has been omitted by the Constitution (Forty-second Amendment) Act, 1976. In list III (concurrent list). Entry 25 has been substituted by the Constitution (Forty-second Amendment) Act, 1976. Entry 25 as substituted reads 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.

9. It would appear that the State's power of legislation in the matter of education including technical education, medical education and universities are subject to the Entry Nos. 63,64,65 and 66 of List I. There is no dispute at the Bar that the Indian Medical Council Act, 1956 has been enacted by the Union Parliament by and under the authority of Entry 66 of List I. Therefore, any law made by any State Legislature by and under the authority of Entry 25 of List III will have no application to the extent of repugnancy. Here, we may refer to the provisions of Article 251 of the Constitution which reads as follows:

251. Inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the Legislatures of States. - Nothing in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by parliament, whether passed before or after the law made by the legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

10. It is, therefore, clear from above that the legislative power of the State Legislature under Entry 25 of List III is not unfettered. However, exercise of such power by a State Legislature in enacting a law inconsistent with or repugnant to any provision of law made by the Parliament will be inoperative. Section 33 of the Indian Medical Council Act, 1956 empowers the Medical Council of India to make regulation with previous sanction of the Central Government for carrying out the purposes of the Act. this regulation framed in the year 1997 is in force throughout the country. Regulation 4 deals with admission to medical colleges and prescribes the eligibility criteria. Regulation 5 prescribes the method for selection of students for admission. The provisions in the Regulations of 1997 are mandatory and, therefore, the amendment made is inconsistent with the provisions of Regulation 4 and 5 and the subsidiary list published thereafter will have no force of law. Till the controversy arose, the students have been admitted to the Medical College in the State in accordance with the provisions of the Rules of 1993 which provide for eligibility and qualification for appearing in the entrance examination for selection for Government nomination for admission. The provisions in the Rules of 1993 are almost at par with the provisions in Regulation 4 of the Regulations of 1997. But these Rules of 1993, like the Regulation 5 of the 1997 Regulations, do not provide for any criteria i.e., the minimum marks to be secured in the competitive test for admission into the Medical College. The provisions of Regulation 5 were incorporated in the Rules of 1993 by an amendment made on 23rd June, 2003 to bring uniformity with the Regulations of 1997. After this amendment made on 23rd June, 2003, the select list was published after completion of the selection process. In this list, none of

the reserved category candidates could find berth for failure to secure the minimum marks prescribed under Regulation 5 of the Regulations of 1997 as incorporated in the State Rules of 1993. In order to overcome the situation, the second amendment was carried out on 5th July, 2003 to the Rules of 1993 deleting Rule 17 and substituting Rule 20 whereby the State reserved powers to relax any of the provisions in public interest. It was in pursuance of this second amendment made on 5th July, 2003, the subsidiary list was published by the State Government wherein as many as seventeen candidates from S.T. category and two from other categories have been included though they failed to secure the minimum qualifying marks in the selection test.

11. The Hon'ble Supreme Court had the occasion to deal with the status of the Regulations of 1997 and its enforceability. In *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, per majority, the Supreme Court with reference to the legislative powers of the Union as well as the States held as follows:

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 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.

12. The above decision of the Hon'ble Supreme Court sets at rest the controversy raised with regard to the legislative competence of the State Legislatures in the country to legislate with regard to admission into the Medical Colleges. In para 36 of the above judgment, the Supreme Court further observed that any rule made for admission should be consistent with the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. The excerpt from para 36 relevant for the purpose at hand is quoted below:

36. ...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 postgraduate medical courses, lay down qualifications in addition to those prescribed in Entry 66 of List I. This would be consistent with prompting 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....

13. The above observation although made in the context of admission to postgraduate courses will also apply to the admission at graduate level since Section 19A of the Indian Medical Council Act, 1956 empowers the Council to prescribe the minimum standard of medical education required for granting recognized medical qualification by universities or medical institutions in India. In para 39 and 52, the Hon'ble Supreme Court held as follows:

39. The Respondents have emphasized the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis ? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in exercise of its powers under Entry 66 List I. At times, in some of the judgments, the words "eligibility" and "qualification" have been used interchangeably" and in some cases a distinction has been made between the two words "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down....

52. Mr. Salve, learned Counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers u/s 20 read with Section 33 the Indian Medical Council has framed regulations which govern postgraduate medical education. These regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.

14. The above decision of the Hon'ble Supreme Court read with Sections 19A and 33 of the Indian Medical Council Act, 1956 amply demonstrates that the States cannot, in exercise of powers under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India, even for graduate level medical education. The ratio available in this judgment has also been followed in subsequent judgments, namely, Veterinary Council of India v. Indian Council of

Agricultural Research (2000) 1 SCC 250 and in Medical Council of India Vs. Diparani P. Deshmukh and Another,

15. It would, therefore, appear that the State Rules of 1993 as amended by the amendment made on 23rd June, 2003 (first amendment) were in conformity with the Regulations of 1997 which stood reversed by the second amendment made on 5th July, 2003 ushering in serious conflict with the Regulations of 1997.

16. Regulation 4 of the Regulations of 1997 provide for eligibility criteria with which there is no controversy in the instant writ petitions. The dispute relates to Regulation 5 which provides for selection of students for admission into the Medical Colleges Clause (1) of Regulation 5 provides for admission on the basis of marks obtained in the qualifying examination in States having one Medical College and one university/board/examining body conducting the qualifying examination. We are not concerned with it. There is no dispute at the Bar that the selection will have to be made in the instant case in accordance with the provisions laid down in Clause (2) of Regulation 5 by a competitive entrance examination as incorporated in the State Rules of 1993. Clause (5) of Regulation 5 prescribes the procedure for selection to MBBS course. The dispute revolves around the provisions incorporated in this clause. Hence, it is quoted below:

(5) Procedure for selection of MBBS course shall be as follows:

(i) In case of admission on the basis of qualifying examination under Clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

(ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Schedule Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take

up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.

17. The above provisions made by the Medical Council of India in exercise of statutory powers clearly provide that a candidate seeking admission into Medical College must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination to be eligible to appear in the competitive examination and, in addition, must be in the merit list prepared in pursuance of the entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. The minimum cut off mark prescribed in respect of the candidates belonging to Scheduled Caste, Scheduled Tribes and Other Backward Classes is, however, 40% instead of 50%.

18. The subsidiary list (Annexure-A/7) was published after carrying out the second amendment enlisting seventeen candidates from the S.T. Community. It appears that none of them could secure 40% marks in the competitive entrance examination. Therefore, their enlistment for the purpose of admission is contrary to the provisions of Regulation 5 of the Regulations made by the Medical Council of India as well as the State Rules as in force prior to the impugned amendment. In this list, we find one candidate from the category of armed forces personnel/ex-servicemen and another from the category of meritorious sports person candidate. There is no dispute that these two candidates belong to the general category and, therefore, in their case the cut-off-mark is 50% which they have failed to secure. In view of the mandatory provisions in Regulation 5 of the Regulations of 1997 made by the Medical Council of India, these candidates being off the mark cannot be considered for admission. The subsidiary list appear to have been prepared and published in brazen violation of the provisions of law.

19. It is of great importance to mention here that the competitive test for selection of candidates for admission to MBBS/BDS course was held on 29.6.2003 i.e., after the amendment made on 23rd June, 2003 to bring uniformity with the Regulations of 1997. By the second amendment made on 5th July, 2003, the above provisions were deleted and on the very day the subsidiary list was published with a view to make the unsuccessful candidates successful for the purpose of admission. The step taken by the State Government to qualify the unsuccessful candidates by an amendment made after publication of the result of the competitive entrance examination is not permissible in law. The State action goes contra to the ratio available in *Dr. Sadhna Devi and others Vs. State of U.P. and others*, . In this judgment the Supreme Court held that 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.

20. Rule 17 inserted in the Rules of 2003 by the amendment made on 31.5.99

reads as follows:

17. Subject to the provisions of Rules 8 and 18, candidates shall be considered by the Government for nomination against the available seats in the order in which their names appear in the Select List. If any candidate in the Select List does not avail of nomination or surrenders the seat after admission or if any additional seat becomes available to the Government after declaration of the result of the competitive test as provided in Rule 16, candidates in the Waiting List may be considered by the Government for nomination against such surrendered or additional seats in the order in which their names appear in the Waiting List subject to the provisions of Rule 8 and 18.

21. The above Rule provides for Government nomination for admission against available seats in order of merit. In case of any seat falling vacant due to failure of any candidate to avail nomination or on surrender after admission, or if any additional seat becomes available to the Government after declaration of the final result, such seat shall be filled up from and amongst the candidates in the wait list. The writ Petitioners are in the wait list and they were in expectation of consideration for Government nomination for admission against the seats reserved for special category candidates for their failure to come out successful in the examination. Hence, they have filed the writ petitions to vindicate their grievance on the sudden amendment carried out on 5th July, 2003 to deprive them of the benefits under Rule 17 in force during the selection process.

22. Mr. N.K. Singh, learned Advocate General argued at length to salvage the situation on the ground that the writ Petitioners have no locus standi since the subsidiary list was prepared to fill up the special category seats as per reservation made in the State Rules of 1993, as amended from time to time against seventeen numbers of seats reserved for S.T. Community candidates and that the writ Petitioners who belong to the general category cannot lay their hands on it. According to the learned Advocate General, the decision of the State Government to amend the Rules to enable the special category candidates to take admission was in public interest and in aid of social justice and, as such, this Court may not exercise its extraordinary jurisdiction to upset the decision of the government taken in larger public interest.

23. In so far the plea of locus standi is concerned, relying upon the decisions of the Hon"ble Supreme Court in Mani Subrat Jain and Others Vs. State of Haryana and Others, and in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, the learned Advocate General argued that the writ Petitioners do not have any legal right to enforce since the seats in question are reserved for S.T. Community candidates and other special category in accordance with the State Rules of 1993. In the above judgment, the Hon"ble Supreme Court held that it is elementary though it is to be restated that no one can ask for a mandamus without a legal right. But the writ petitions at hand cannot be thrown away on the ground that the writ Petitioners have no legal right to enforce. It is because, the provisions in Rule 17 as in force from before and also during the course of

examination made them eligible for consideration for admission against reserved category seats in the absence of suitable candidates. As none could qualify and attain the minimum standard prescribed by the Medical Council of India, a right for consideration vested with the general category candidates. Therefore, it would be impermissible to hold that the writ Petitioners have no locus standi. The provisions of Rule 17 vested in them a right for consideration which has been withered away by the amendment made on 5th July, 2003.

24. The limited legislative power available to the State Legislature after the field is occupied by the Central Law cannot be interpreted as discretionary enabling the State to alter the mandatory provisions of Regulation 5. This Court is unable to agree with the learned Advocate General that the decision in *R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others*, would be a guiding factor to come to the conclusion that the provisions in Regulation 5 are discretionary merely because it prescribes the procedure for selection. In the considered opinion of this Court, this contention is devoid of any force and cannot be entertained. In view of the Hon'ble Supreme Court's decision in *Dr. Preeti Srivastava's case (supra)*, the provisions in Regulation 5. (5)(ii) also cannot be read as directory, particularly for the ratio available in para 52, 53 and 54 in *Calcutta National Bank Ltd. Vs. Rangaroon Tea Co. Ltd. and Another*,

25. The learned Advocate General relied upon a decision of the Hon'ble Supreme Court in *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, in order to show that it is open to the Court to exercise the extraordinary remedy under Article 226 to pass such order as public interest dictates and equity projects. To further reinforce this contention, the learned Advocate General relied upon the decision of the Hon'ble Supreme Court in *State of U.P. Vs. District Judge, Unnao and Others*, and in *Roshan Deen Vs. Preeti Lal*, In para 4 of the judgment in the case of *State of U.P. (supra)*, the Hon'ble Supreme Court observed that Article 227 or Article 226 was devised to advance justice and not to thwart it. In *Roshan Deen (supra)*, the Supreme Court held as follows:

12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilise all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. *State of U.P. Vs. District Judge, Unnao and Others*, The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law., If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice

in the name of correcting the error of law.

26. The observation of the Hon"ble Supreme Court in the above three judgments clearly indicate that justice should be the prime consideration while exercising the extraordinary powers under Article 226 and 227, even though the exercise of such power is founded on erroneous interpretation of law. This Court is not oblivious of the above propositions of law propounded by the Hon"ble Supreme Court from time to time in various judgments.

27. Mr. Risom, learned Counsel for the private Respondents also argued at length in order to justify the Government action in the name of social justice and the rights and privileges of the reserved category candidates guaranteed under the Constitution. By and large, the argument advanced by Mr. Risom is in tune with the argument advanced by the learned Advocate General. I have also duly considered the decisions relied upon by Mr. Risom, learned Counsel, particularly in Dr. Sadhna Devi (Supra) and Dr. preeti Srivastava (Supra). The decision in P. Mahendran and others Vs. State of Karnataka and others, has been relied upon by Mr. Risom to bring home the point that the amendment made on 23rd June, 2003 to remove the disparity between the State Rules of 1993 and the regulations framed by the Medical Council of India is prospective in operation and, therefore, it cannot take away the vested right of the private Respondents that accrued under the rules in force. In the Rules of 1993, before the amendment made on 23rd June, 2003, the minimum qualifying marks to be secured in the entrance examination was not prescribed. In the absence of such provisions, according to Mr. Risom, learned Counsel, the private Respondents were eligible for admission even though they failed to secure the minimum qualifying marks. The learned Counsel also relied upon the decision of the Hon"ble Supreme Court in N.T. Devin Katti and Ors. v. Karnataka Public Service Commission and Ors. (1990) 3 SCC 757. In para 11 of the said judgment, it has been held that a candidate for appointment if eligible and otherwise qualified in accordance with the existing rules and the terms contained in the advertisement, does not acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. But in my considered opinion, this was a field left vacant in the State Rules of 1993 and, therefore, occupied by the provisions of Regulation 5(5)(ii). The decision in N.T. Devin Katti (supra) does not help the private Respondents inasmuch as the Rules of 1993 were silent on the minimum qualifying marks thereby enabling the provisions of Regulation 5(5)(ii) to occupy the field.

28. It is true that in a case where justice has been done even on erroneous interpretation of law, the Court shall be slow in interfering with the impugned action. But the case at hand is otherwise. In the instant case, the seats have been reserved for the special category candidates and the State imbued with the spirit of social justice came out with the amendment on 5th July, 2003 in complete negation of the provisions in the Regulations made by the Medical Council of India. By this Act, the right vested with the general category

candidates under the provisions of Rule 17 of the Rules of 1993 have been wiped out.

29. In answer to the argument advanced by the learned Advocate General that the State action aimed to ensure social justice may not be interfered with in extra ordinary jurisdiction, it may be state that the concept of social justice is also a double-edged weapon. In order to do justice to a particular group, legitimate expectation of another group arising out of the laws in force cannot be tinkered with. Here is a case where the State decided to admit unsuccessful candidates who could not attain the minimum qualifying marks prescribed by the Medical Council of India. The Indian Medical Council Act, 1956 was enacted with a view to maintain the minimum standard of medical education in the country. Powers have been to the Medical Council of India u/s 19A of the Act to prescribe the standard of medical education for granting recognized medical qualification. The powers of the Council have been extensively dealt with by the Hon''ble Supreme Court per majority in Dr. Preeti Srivastava's case (supra). The aspiration of the nation was reflected in the Indian Medical Council Act, 1956 and in pursuance thereof, the minimum qualifying standard for admission has been prescribed by the Council under the authority of law. This was obviously done in larger public interest to ensure better medical care for the people at large. Therefore, this Court is of the opinion that the impugned amendment made on 5th July, 2003 and the subsidiary list prepared thereunder cannot be allowed to stand on the plea of social justice alone. Reservations may be permissible within the bounds of law, but it does not vest unbridled powers with the State to deviate from the law made by the Union Parliament and the Regulations framed thereunder.

30. It would be apposite to mention here that a Division Bench of this Court in *Surmila Khoirom v. Sujata Devi Gurumayum and Ors.* 2000 (2) GLT 27 held that the Rule 16 of the Rules of 1993 visualises that the Selection Board shall prepare a select list in order of merit based on competitive test separately for general and S.C/S.T. candidates and that the provisions therein are statutory. The Division Bench set aside the nomination given by the State for admission to the unsuccessful candidates in the entrance examination. This decision of the Division Bench is in tune with the decision in Dr. Preeti Srivastava's case (supra). The SLP preferred against the judgment of the Division Bench was also dismissed. Therefore, the seats in the Medical College will have to be filled up in accordance with the result of the competitive entrance examination. In the instant case as well, the State held the competitive examination and announced the result. The State could not have made the second amendment on 5th July, 2003 in order to reverse the situation contrary to the provisions in Regulation 5(5)(ii). The amendment made on 5th July, 2003, under no circumstance, can have overriding effect. The only course remained open with the State Government was to approach the Medical Council of India for relaxation of the eligibility criteria as provided in Regulation 5(5)(ii), if necessary by appropriate amendment.

31. In the result, (i) the Manipur MBBS/BDS Entrance Examination (Selection of Candidates) Amendment Rules, 2003 published on 5th July, 2003 is quashed; (ii) consequently, the subsidiary list prepared thereunder is also quashed. Admission of the unsuccessful candidates shall stand vacated and the seats shall be filled-up by nomination of candidates from the merit list (wait list).

32. The operation of the second limb of the order shall remain suspended for a period of six weeks and, in the meantime, the State Government may, if so advised, approach the Medical Council of India for relaxation of the qualifying marks in so far as the S.T. candidates are concerned. The limited stay is granted in consideration of the great hardships the S.T. candidates and others will face for no fault on their part.

33. No costs.