

(1988) 07 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No's. 3264, 3407, 3408, 3409, 3418, 3451, 3463, 3523, 3557, 3579 and 3679 of 1988

Thukral Anjali Dookumar (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-07-1988

Acts Referred:

Admission to Post Graduate Degree and Diploma Courses in Medical Colleges Rules (Rules Framed by Bombay Municipal Corporation) — Rule 4(A), 6
Constitution of India, 1950 — Article 14

Citation : (1988) 4 BomCR 209

Hon'ble Judges : P.B. Sawant, J; H.H. Kantharia, J

Bench : Division Bench

Advocate : M.A. Rane and V.M. Thorat, in W.P. 3264 and 3418 etc, for the Appellant; M.F. Saldhana, Asstt. Govt. Pleader for respondent No. 1 in W.P. 3264 and 3418, etc. T.R. Andhyarujina, F.D. Damania and M.D. Slodia for respondent No. 3 in W.P. 3264, E.P. Bharucha and S.T. Khar for respondent No. 15 in W.P. 3264, S. Radhakrishna, for respondent No. 21 in W.P. 3264, S.C. Dharmadhikari, for respondent No. 20 in W.P. 3264, for the Respondent

Judgement

P.B. Sawant, J.—In view of the urgency, the petitions are admitted and the Rules are made returnable forthwith. The main contesting parties, viz. the Bombay Municipal Corporation, the State Government and the University of Bombay waive service and appear. The Corporation has also filed its affidavit-in-reply to the petition. Since the interests of both the sets of students, namely, those who support the petitions and those who oppose, are fairly and effectively represented by the contesting parties, it is not necessary to hear all the students. Nor is it possible to do so. Some of the students who are joined as parties to some of the petitions are present in Court to instruct the respective Counsel. One of them, i.e. respondent No. 16 in Writ Petition No. 3264 of 1988 has also filed an affidavit-in-reply. However, the appearances of all the students have not been recorded. We will treat those students who are not served as deleted. It may be mentioned that by our interim orders we had restrained the

concerned Colleges from giving effect to the list of students selected by them for admission to the respective post-graduation courses. Hence no prejudice can be said to have been caused to them, if they are not individually heard, as indeed it is not possible to do so. Further, it is a common question of law, and not merits in individual cases which is being decided in the present case and the decision will affect all equally, even if in the meanwhile same students have been admitted in some colleges. The courses have yet to commence. With these preliminary observations, we may now proceed to deal with the petitions.

2. These are petitions in which a common question of law is raised, namely, the validity of Rule 4(A) of the Rules framed by the Bombay Municipal Corporation for admission to Post-Graduate Degree and Diploma Courses as its Medical Colleges framed on June 18, 1988, and Rule 6 framed under the Government Resolution dated 18th June, 1971. The said Rule 4(A) reads as follows :

""4. PREFERENCE :

(A) While selecting candidates for admission to the post-graduate courses preference shall be given in the following order :

(a) Candidates applying for admission at the parent institution (Note : Parent institution means the medical college at which the candidate has passed his qualifying examination);

(b) Candidates who have graduated from other Municipal Medical Colleges in Brihan Mumbai.""

This Rule obviously incorporates what is known as ""Institutional"" preference. As is apparent while selecting candidates, the Corporation gives first preference to the students who pass their qualifying examinations from the same Municipal College in which the Post-Graduation Course is available. The second preference is given to the students who pass their qualifying examinations from its other Colleges. There is no mention of the admission to the Courses, of students who pass their qualifying examination from Colleges other than the Municipal Colleges. It is therefore clear that only students who pass their qualifying examination from the Municipal Colleges are entitled to the Post-Graduate Courses available in the Municipal Colleges. As stated earlier, even among the students from Municipal Colleges, the first preference is to the students belonging to the Colleges in which the Post-Graduate courses are available. There is thus 100% reservation in favour of the students belonging to the Colleges where the Post-Graduation Courses are available.

Likewise sub-rule (6) of the Government Resolution, Urban Development, Public Health and Housing Department, No. MCG-2571-24516-Q dated 18th June, 1971 states as follows :

6. ""While selecting from amongst eligible candidates preference will be given to the students of that college i.e. who passed their final M.B.B.S. Examination from that College in Board Specialities and their ancillary discipline. In the case of

super specialities, candidates who have qualified from other colleges may also be registered upto a limit of 50% of the vacant seats, when selection of candidates for super specialities candidates from all Government Colleges in Maharashtra shall be considered with respect with their merit to be on par with each other on corrected marks thus when a local candidate is of higher merits than the candidate from other Government Colleges in Maharashtra, he will be preferred for registration keeping 50% quota for the non-local candidates to be filled in, Broad Specialities for the purposes of this Rule are Medicine, Surgery, , Obst and Cardiology, Neuro-Surgery, Plastic Surgery, Thorasis Surgery, etc. while psychiatry, Ophthalmology, Orthopaedic, E.N.T., T.B., Radiology, Anaesthesia, Skin and V.D. shall be ancillary broad specialities. When further super specialities or broad specialities, develop the staff committee will notify the category to which new development is assigned.'''

Since we are concerned in the present petitions only with broad specialities the effect of this Rule is the same as Rule 4(A) framed by the Bombay Municipal Corporation.

At present there are three medical colleges run by the Bombay Municipal Corporation and one by the State Government in the Greater Bombay and all are affiliated to the University of Bombay. All post-graduate courses are not available in all four colleges and the number of seats available also vary from college to college depending upon the availability of the infrastructure and other factors. The strength of the students studying M.B.B.S. course also varies from College to College.

3.The question that is raised in the present petitions is therefore whether the micro-institutional preference below the University level which is incorporated in the said Rule 4 (A) and 6 is valid in view of the provisions of Article 14 of the Constitution of India and the decisions of the Supreme Court reported in N. Vasundara Vs. State of Mysore and Another, ; D.N. Chanchala Ors. Vs. The State of Mysore and Others, ; Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, ; Dr. Jagadish Saran and Others Vs. Union of India (UOI), ; Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ; Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College, , Nidamarti Maheshkumar Vs. State of Maharashtra and Others, ; and Dr. Dinesh Kumar & others v. Motilal Nehru Medical College, Allahabad AIR 1986 S.C. 1877.

4.We may point out that a similar Rule framed by the Bombay Municipal Corporation had come up for consideration recently before a Division Bench of this Court of which one of us (Sawant, J.) was a member, in connection with the reservations kept for super-specialities in the medical courses. That Rule was then applied also to the broad-specialities or the post-graduation courses, the admission to which is under consideration in the present case. It has since been amended. That Rule read as follows :

''4. Preference :

(A) While selecting a candidates for admission to the post-graduate courses preference shall be given in the following order :

(a) Candidates applying for admission at the parent institution (Note : parent institution means the medical college at which the candidate has passed his qualifying examination) ;

(b) Candidates who have graduated from other Municipal Medical Colleges in Brihan Mumbai;

(c) Candidates who have graduated from other constituent medical colleges of the University of Bombay;

(d) Candidates who have graduated from a recognised medical colleges of any other Indian University."''

It would be apparent from a comparison of the two Rules that in the present Rule Clauses (c) and (d) of the earlier Rule have been deleted. Except for that, there is no change in the present Rule. Clauses (a) and (b) of the old Rule remains as they were. This Court in that case, *Dr. Hari Prasad Sanat Trivedi v. Dean, Topiwala National Medical College & others*, reported in 1988 Mh.L.J. 475 and decided on 29th April, 1988 has, after considering the aforesaid decisions and while striking down the Rule as made applicable to the Super speciality courses, has held as follows :

""5. ...This Rule thus incorporates what is known as institutional reservation in the order of priority given in sub-clauses (a), (b), (c) and (d) above. as has been rightly pointed out on behalf of the petitioners, the Rule is directly in conflict with the law laid down by the Supreme Court in *Dr. Pradeep Jain's case* (supra) and the subsequent decision in the case of *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, . The ratio of these decisions is that while all seats for the M.B.B.S. Courses may be reserved either on the basis of domicile in the State and/or institutional preference affected through University-wise distribution of seats, for the Post-Graduate Courses such as M.D., M.S., etc. at least 30% of the seats have to be kept open for merits on country-wide basis. So far as however the seats in the Super-Specialities such as the ones in the present case are concerned, reservation on any ground except those permitted by the Constitution is illegal being in breach of Article 14 of the Constitution.

""6. It must further be remembered that the cent per cent reservation of the graduate seats on the basis of domicile in the State and/or institutional preference at the University level is upheld by the Court because of the acknowledged reality uneven development of the different regions in the country and the need for continuity of education in the particular University. However, none of these considerations can apply to the reservations either on the basis of the domicile in a district or of continuity of education in a particular College. Hence the Court has not countenanced reservations made on the basis of the domicile in a particular district. The cases of the distribution of seats effected

through Colleges though belonging to the same University have not come before the Court. However, since none of the considerations for keeping reservation would apply to such micro-classification, we have no doubt that such reservations will be invalid being violative of Article 14 of the Constitution.'"

5.It is not, therefore, necessary to tread the same ground once again by dealing with the aforesaid decisions in extenso. In the present cases, the aforesaid decision of this Court is sought to be distinguished on the ground that whereas that decision dealt with the cases of Super-Specialities, the present case involve broad specialities. It is urged on behalf of the Bombay Municipal Corporation, the Bombay University and the State Government that institutional reservation on Collegewise basis such as in the present case will be valid for admission to the Post-Graduate Course or the broad specialities. We have, therefore, to examine whether there is any substance in this distinction and to what extent.

6.All the decisions of the Supreme Court on the subject till then have, with respect, been succinctly summarised by the Court in its decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, and the law has further been reiterated in AIR 1986 S.C. 1326 Nidamarti Maheshkumar v. State of Maharashtra. That law has not yet been changed. The law which emerges from the aforesaid decisions of the Supreme Court is as follows :

(1) There can be reservations to medical courses (except those of Super-Specialities) on the ground of residence or domicile in a State, and the regional imbalances within the State. For the purposes of considering regional imbalances, however, the region to be taken into consideration is not a geographical unit such as the district but the region within the jurisdiction of a University at the minimal level.

(2) Even when reservations become necessary on the aforesaid two grounds, at least 15% of the seats available for the graduation course and 25% of the seats available for the Post-Graduate Courses should be kept non-reserved and free for competition from students all over the country.

(3) There should be no reservation (except constitutional reservation) for Super-Speciality Courses.

7.The aforesaid law laid down by the Supreme Court was for sometime not given effect to, firstly, because the preparations for holding an All-India Entrance Examination were not made by the All-India Medical Council and secondly, because some of the States had applied for exemption from the directions given by the Court in that behalf. We are informed that in this year, for the first time, an All-India Entrance Examination has been held both for Graduation and Post-Graduation Medical Courses for the all India seats reserved in all the States.

8.In spite of the aforesaid law laid down by the Supreme Court, it is argued before us on behalf of the Bombay Municipal Corporation and others that the Collegewise reservation is not invalid for the post-graduate Courses and that the

""institutional"" preference permitted by the Supreme Court will include collegewise preference. For this purpose, firstly a reliance is placed on the observations of Krishna Iyer, J., in paragraphs 48 and 49 Dr. Jagdish Saran's case (supra) which read as follows :

""48. Another consideration which justifies some measures of reservation is the desire of students for institutional continuity in education. Parents, pupils and teachers will usually prefer such continuity and it has own value.

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

Reliance is also placed on the following observations of Pathak, J., as he then was made in paragraph 59 of the same judgment :

""In my judgment, there is good reason in an educational institution extending a certain degree of preference to its graduates for admission to its post graduate classes. The preference is based on a reasonable classification and bears a just relationship to the object of the education provided in the post-graduate classes. The concept of equality codified in our constitutional system is not violated.""

It must be remembered that the learned Judges have made the aforesaid observations in the context of the facts of that case. The facts were that : there were three Medical Colleges affiliated to the Delhi University, one of them run by the University itself. The University held a common Entrance Test for the Post-Graduate Degree Course in Dermatology. The petitioner took the test and secured enough marks to qualify for admission, but he was turned down because of a rule reserving 70% of the seats only to those students who had passed their M.B.B.S. Examination from the Delhi University. Only the remaining 30% of the seats were kept open to all. It may be mentioned here that earlier only 48% seats were reserved for the students of the Delhi University. For want of similar reservations elsewhere, there was an agitation by the students and on that account the reservation was increased to 70%. The rule was challenged in that case for a disproportionate premium in favour of the Delhi University students. It was not a case of Institutional reservation in favour of students from a College or colleges but was thus a case of preference in favour of the students from a University. The aforesaid observations were made in that context and have to be read as such. It may also be mentioned that in spite of the said facts, the learned Judges have expressed doubt even in that case whether the reservations of the seats to the extent of 70% was not excessive. The Court left the matter at that since there was no proper data before the Court to come to the conclusion one way or the other. We are, therefore, not impressed by the contention that

the observations of the learned Judges support institutional reservations on college-wise basis

9. Secondly, it is urged that the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, (*Dr. Pradeep Jain*) had in paragraph 22 observed as follows :

""We are therefore of the view that so far as admissions to post-graduate courses, such as M.S., M.D., and the like are concerned, it would be eminently desirable not to provide for any reservations based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or University, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course.....""

Relying on the words "medical college or university" in the aforesaid passage, it is contended that the Court has upheld reservations on collegewise basis. We are afraid that this is an incorrect reading of the judgment. In the entire body of the judgment till the aforesaid passage, Bhagwati, J., (as he then was who has delivered the judgment for the majority of the Court (Sen, J. delivering a separate but concurrent judgment) has discussed the issue on the basis of University wise reservations and University wise distribution of seats. The earlier decisions, which were considered in that case, involved cases also of Universities which had only one medical college within its jurisdiction. In those cases therefore, the University wise reservation perforce meant also Collegewise reservation. It is with reference to such cases that the learned Judge, while summarising the position with regard to the post-graduation reservations has made the aforesaid observation. There is nothing in this passage to support the contention that the Court had upheld Collegewise reservations as it is sought to be contended.

On the other hand, in paragraph 11 of the same judgment, while discussing the earlier cases, viz. *Minor P. Rajendran Vs. State of Madras and Others*, and *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, , the Court has observed that the allocation of seats districtwise has no reasonable relation with the object to be achieved, namely to get the best talent for admission to the professional College and has condemned the unitwisescheme under which the Medical Colleges in the city of Madras were constituted as one unit and each of the other medical colleges in the mofussil was constituted as a

separate unit and a separate selection committee was set up for each of these units. These decisions and the observations made in the same have been approvingly quoted by the Court in Dr. Pradeep Jain's case. If therefore any district authority was needed for invalidating collegewise reservations, we find it both in the very same judgment, viz. Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, as well as in the said earlier judgments and in particular in the judgment in Periakaruppan's case (supra).

10. The last contention was based on two decisions of this Court one reported in 1983 Mh.L.J 771 , Dean, G.S. Medical College & anr. v. Dr. Samina Suhel Khatib & anr., and another unreported decision of the Nagpur Bench of this Court in Writ Petition No. 1707 of 1986 and other Writ Petitions delivered on 13th/16th February, 1987. As regards the first judgment, which is the decision of a Full Bench of this Court, it was admitted prior to the decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . Hence it was not followed by two later Division Benches of this Court in Abhay Darshane v. State of Maharashtra & ors. 1985 Mh.L.J. 155 and in Sarita Damodar Patil v. Dean, Govt. Medical College, Nagpur & ors. 1987 Mh.L.J. 120. As regards the unreported judgment of the Division Bench delivered on 13th/16th February, 1987, a perusal of the said judgment shows that there is nothing in it which is contrary to the view that we are taking, namely that the reservation on collegewise basis is invalid. The Court in that case was not called upon to decide the question whether reservation below the University level was valid. It was mainly concerned with evolving a modality of admission pending the suspension of the directions by the Supreme Court given by it in Dr. Pradeep Jain's case. Even so, the Court in that case directed 18% of the seats to be reserved for students from other Colleges from out of the seats reserved on Collegewise basis. We may also further observe that in Dr. Sunil Vasant Sathe & anr. v. Bombay Municipal Corporation & Ors. AIR 1987 Bom. 291 the Division Bench of this Court has, while ratiocinating the aforesaid decisions of the Supreme Court has interpreted the law laid down by the Supreme Court consistent with the present interpretation. To that judgment, one of the learned Judges (Dharmadhikari, J.) is a party and he also happens to be a party to the aforesaid unreported judgment. The judgment also does not purport to lay down any proposition of law.

11. The position of law which, therefore, emerges is that any reservation in an institution below the University level is violative of Article 14 of the Constitution, since the classification of the students made on the basis of the colleges from which they pass their qualifying examinations is not reasonable taking into consideration the object or the purpose for which it is made, nor has it a rational nexus with the said object. An attempt has no doubt been made by the Municipal Corporation to justify collegewise reservation by filing an affidavit of Dr. S.V. Nadkarni, Dean of the Lokamanya Tilak Municipal College. In paragraph 4 of the said affidavit, the Dean has stated as follows :

""4. I say that the rule of institutional preference is based upon the value of

institutional continuity if a student who has been taught by the same teachers who will continue to teach him/her at the post-graduate level, on the easy adaptability of the student in continuing his studies at the same institution in the same academic and hospitals environment and in the same teaching academic ethos and techniques employed in that institution.

Some of the reasons why institutional preference is necessary to be maintained in the same college is as follows :

(a) Whilst it is accepted that marks obtained in different Universities cannot be compared, it must be also realised that marks obtained, in different colleges are also not strictly comparable. The reasons as far as the Bombay University is concerned are that each College has its own centre for examination and there are completely independent panels of examiners for each medical college. The panel consists of the Chairman who is the teacher in the same medical college, examiner from other institution and two external examiners. But as the whole panel is different and the examination is very subjective the marking pattern of each panel differs a good deal. It can be shown that the higher marks and the number of distinctions vary extremely widely in different institutions indicating gross differences in the assessment by the four different panels of examiners at 4 different colleges. Therefore, the marks obtained in one college cannot be compared to the marks obtained in other colleges.

(b) The review of the past 25 years is worthwhile. Earlier in Bombay University the M.B.B.S. examination was conducted at two centres only and the candidates appearing for the examination from all the 4 colleges were listed alphabetically and divided equally at the two centres. Thus, the candidates with say surnames A to M went to one centre and from N to Z went to other centre but even during this time the selection for registration and house posts was based on institutional preference. It was then found that the wide discrepancy between the two panels of examiners resulted in one group grossly overriding the other group in securing the admissions to the post graduate courses depending on which group of the examiners were inclined to give more marks. It was, therefore, decided to have each college as a separate centre as per the advice of the Medical Council of India and to conduct the examination at each centre separately.

(c) Because of institutional preference the different marks given at different centres do not affect the students because it is the relative merit of the students in the same college which matters in the present selection pattern and this has largely removed all injustices in the selection of post-graduate students.

(d) In the original Bombay State before the State of Maharashtra was formed the admissions to the Medical College after Inter-Science were from a common pool though the candidates appeared for their Inter-Science examination at 4 different Universities, viz. Bombay, Poona, Gujarat and Karnataka. It was found that a particular University was prone to give very high marks in their assessments and thus students from that University secured far more seats than

the other Universities. This resulted in the most undesirable race for giving more and more marks in the various Universities and the standards of examination started getting severely diluted. It was only when respective Universities were allotted admission seats from their own areas for the professional colleges and this undesirable dilution stopped and each University felt free to maintain its own standards as per its own conscience.

(e) If the institutional preference is removed and all the candidates from the same University are pooled the same process of dilution and undesirable racings is likely to start once again making a mockery of the examination system and creating a mad race of over-taking the other colleges. This is the most dangerous effect on the medical education and examination system which needs to be avoided. The present system enables even a single college and the teachers therein to maintain their own standards irrespective of what the other colleges try to do.

(f) Medicine is a highly subjective Science. It is based on human inter actions. Not only the teacher and the students but the very subject of the whole Science, i.e. the patients, are all human beings and therefore in the practice of medicine wide differences of attitudes and approaches are inevitable. The emphasis on basic amenities vs high technology with high sophistication, personal human approach vs highly sufficient cold mechanical approach etc. make a distinct impart on the students and goes a longway in creating a particular philosophy which gets incorporated in the minds of the students subtly but invariably and that determines what type of doctors the institution produces. Therefore, it is highly desirable that the students should continue in their post-graduate studies in the same College and work and learn in the same spirit and philosophy in their continued post-graduate learning. The whole process is termed in medical literature as ""school of thought"". A development of ""School of thought"" is extremely important as these doctors will develop into either practical doctors for the masses or elitistic doctors with high sophistication for the elite or scientific researches for the future generation. Thus the continuity of medical education in the same institution has considerable merits.

(g) It is not suggested that all the seats have to be filled by institutional preference. As per the Supreme Court directive 25% of the seats have already been thrown open on open merit.

(h) As the marking pattern is not strictly comparable and the continuity of medical education is equally important, the equality of opportunity for various candidates has been achieved in a different way. As far as the post-graduate courses are concerned, all the medical colleges have the facilities for post-graduate studies and the number of post-graduates seats created in each college are proportionately very similar in all the colleges compared to the intake of the under-graduate students. Therefore, the students of all the Colleges have been given equal opportunity for post graduate education in their own respective colleges. A few marks-up and down becomes irrelevant in this context. This is

unlike super-specialities ; where seats are few and concentrated in a few centres.

(i) The facilities and those in working order vary from college to college. Not only does it change the quality of educational standards but it also varies the pattern of patients coming to the various institutions. For example, at L.M. Medical College there is a maximum load of trauma cases (accidents and injuries) higher than in the other Institutions. The under graduate students in this College therefore will have a wider exposure to these cases and therefore would be far more suitable for a seat in post-graduate course in Surgery where he will have to actually deal with these cases than a student from, say Topiwala National College who has almost none of these exposures during his under-graduate career. Some thing may be true reversely in terms of Urology, Obstetricals and Gynec (Case of sterility and tube baby) and so on. However, the examination does not reflect this at all as the tendency of examination board is to define passing level of 50% in their own mind and then to add or subtract as per the merit of the candidates but strictly compared to what he has been taught and what facilities he has been exposed to . Experience has shown that in some cases M.S. students had not seen a single ultra-sound test and not a single isotope study, but 50% students were still declared successful in the examination. Even in the city of Bombay the equipments, facilities and the management differ fairly widely in different colleges making a material difference in the actual knowledge of the candidates which will not be reflected in the marks obtained in the examination.

(j) Even a common test can hardly substitute for the present system as this test is also a memory test and does not indicate the attitudes developed or the skills developed due to the actual exposure of the students in their own respective colleges. The machinery to set up the competitive test is also very difficult and impractical at the present moment. Besides there are likely to be a lot of pressure on examiners in such restricted small tests.

(k) The new Medical Council of India Act envisages that the Medical Council of India will have a right to selectively recognise or derecognise a particular medical college even in the same University, even when the University is recognised. This again highlights the wide discrepancy that can exist between different colleges in the same University which are not reflected in the results or the marks obtained by the students in those different colleges.""

A reading of the aforesaid justification of the collegewise reservation gives impression as if there is something basically wrong with the pattern of medical education imparted in the State. In the Colleges belonging to the same University and what is more in the College run by the same management, which in the present case are the Bombay Municipal Corporation and the State Government a differentiation is sought to be made on various grounds. There is no reason why with a common curriculum and common standard of examination under the same university, such differentiation should be made among the students passing the same examination, for determining their capacity to take the common post-graduation courses. If the statements made by the Dean are accepted, it would

mean that although the students pass the same examination with the same curriculum and with the same standard of passing under the same University, there is an inherent difference in their calibre to pursue the higher studies in different Colleges, and only the students belonging to the same College and not others, will be fit or suitable to pursue them. This argument is advanced on the spacious ground that the student prosecuting his qualifying examination, namely M.B.B.S. becomes familiar with the infrastructure of the College and that facilitates his higher studies there. This contention suffers from many pit-falls. In the first instance, in the M.B.B.S. Course the teacher student ratio on an average is not higher than 1 : 100 in any College. What is more, the teachers at the graduation level are not in all cases teachers who teach the post-graduate courses and their services are transferable from one College to another. Secondly, the other infra-structure required for studies in the M.B.B.S. course has to be the same in all the Colleges. Otherwise the course is not recognised by the University. The fact that in the hospital attached to a College more patients of one or the other ailment are admitted is no ground for differentiating the students. It is also difficult to appreciate that when the students join a College initially, all of them do so with the intention of specializing in a particular branch at that time. The stage to think of specialization comes or should come after the M.B.B.S. examination. Thirdly, in the M.B.B.S. course the students are required to study the basics of all clinical and non-clinical subjects and the post-graduate courses are meant for specialisation, either in one or the other of these subjects or branches. For such specialisation it is not necessary that the student must pursue his studies in the same College. Lastly, the contention ignores that the courses in all broad specialities are not available in all Colleges run even by the same management. If the logic of the contention is to be accepted, it would mean that the career of the students will depend upon the medical colleges to which they get admission for their M.B.B.S. Course. In other words, in the present circumstances, the marks a student obtains in his XII Standard examination will decide his entire further career. It is well known that all students who secure high marks in their XII Standard Examination do not fair well in their later career. Likewise some of those who do not secure competitively higher marks in the XII Standard examination to secure admission in the Medical College of their choice, fair far better in their later career and prove themselves head and shoulders above those who had secured more marks in the XII Standard Examination and therefore could choose their College. This is apart from the fact that various malpractices are sometimes resorted to for securing higher marks in the XII Standard Examination.

What is more tantalizing is that the rules for admission to the Government medical colleges differ from those for further admissions to the Municipal Colleges. For example, where there are diploma and degree courses in a speciality, the municipal rules insist that the candidates must pass diploma course before they apply for the degree course which is not the case in the Government Colleges and is also not a requirement of the University. The rules also vary periodically

within such short period as even six months creating uncertainty, if not chaos, every time.

If further the contentions of the Dean are accepted, the Supreme Court direction to keep 25% of the seats open for all India competition will become unimplementable.

We are, therefore, of the view that the aforesaid contents of the affidavit of the Dean are not sufficient to make out a case in favour of Collegewise institutional preference which, as has been pointed out above, has also not been countenanced by the Supreme Court.

12.The contents of the affidavit, however, highlight the need not to compare the marks obtained by the students from the different Colleges while admitting them to the Post-Graduate courses. The Dean has pointed out that there is a separate centre of examination for each College and there are different sets of examiners for such centre. Their assessment of candidates is subjective and differs widely. If, therefore, a just system is to be evolved for admission of the candidates to the post-graduation courses, it will have to be on the basis of merits reflected by marks obtained otherwise than at the M.B.B.S. examination. That alone can effectively implement the law laid down by the Supreme Court in this behalf. Otherwise it may result in unhealthy race between different Colleges in giving higher marks to their students, and the system will develop distortions.

13.Thus we are of the view that the attempt made in the Dean's affidavit to classify students belonging to different colleges on their different ""rearings"" so to say and that is what all that has been stated in his affidavit comes to is neither reasonable nor has it any rational relation to the object sought to be achieved by such classification. The Society is interested in having the best talent in the medical profession. For that purpose, all those with merit must get an opportunity to prove their worth. The careers of students cannot be stultified or prospered by the accident of initial admission to a particular College. If it is, there are enough inequalities in our society on account of various factors. There is a need to minimise them and not to add to them. But we are told that there should be classification even in the noble profession like medical not on account of skills and talents but on account of the College or Colleges which the students are forced to join initially. These ""birth marks"" must continue to rule the rest of the students' career and the society should suffer and go without the better and the best on account of these accidents of ""birth"". All post-graduation courses in all branches of knowledge are a continuation of studies and specialisation in one or the other branch. There is nothing unique about it in medicine. The distinction sought to be made between medicine and other branches of knowledge on the ground of association with particular infrastructures at the graduation level, is, as we have pointed out above, neither warranted nor real. To deny a post-graduation course on account of such distinction is all the more unreasonable and unjust.

14. For all these reasons, we are of the view that both the impugned Rule 4 (A) framed by the Bombay Municipal Corporation and the part of Rule 6 framed under the Government Resolution relating to admission to the post-graduation courses are invalid being violative of Article 14 of the Constitution. They are also contrary to the law laid down by the Supreme Court. They are hereby struck down. In fact the concerned authorities ought to have taken steps to amend them soon after the decisions of the Supreme Court. But it appears that unless Courts are invited to strike down such provisions, the authorities do not budge, and in the nature of things, the aggrieved students are forced to move the Court on the eve of the commencement of the terms. We had the same experience last April when the earlier Municipal Rule 4 (A) was challenged in connection with the admissions to the super-specialities.

15. Although we have struck down the part of the Government Rule 6 which governs admission to the post-graduate courses in all the State Government Colleges in the State, since neither the students of the Colleges belonging to the Universities other than the Bombay University nor the said College and Universities are before us, the directions which we are giving hereafter will be confined only to the Colleges affiliated to the University of Bombay. Hence the admissions to the medical colleges outside Greater Bombay which are already effected and which are not under challenge before us on account of the invalidity of the impugned rule, will not be effected by this judgment. However, it is hoped, that the State Government will take steps to implement the law laid down and the directions given here for holding the entrance examination from the next academic term for those colleges as well, by constituting the Joint Boards of Examiners representing the respective institution.

16. In view of the striking down of the impugned Municipal Rule 4 (A) and the part of the Government Rule 6 it has become necessary to lay down an alternative procedure for admission of the candidates to the Post-Graduation Courses or the broad specialities as they are called, for all seats other than those reserved for open competition on the national level, consistent with the law discussed above. We have already referred to the contents of the affidavit-in-reply filed on behalf of the Municipal Corporation in which the Dean has pointed out a widescope for subjective assessment of the merits of the candidates at the final M.B.B.S. qualifying examination, on account of the decentralised system of examination. It is not disputed that this system has been introduced only a few years ago and earlier there was a centralised system of examination. We, therefore, feel that the only method to ensure just, fair and impartial admissions will be to hold an entrance examination with only objective question paper or papers in the requisite subjects eliminating as far as possible the scope for subjective evaluation. Since the examination has to be held for the candidates belonging to all the Medical Colleges affiliated to the University of Bombay, a Joint Board of Examiners representing the State Government, the Bombay Municipal Corporation and the University of Bombay should be constituted for the purpose. This Board should hold the examination every term preferably soon

after the final M.B.B.S.examination to lessen the additional hardship to the students. The admissions to the courses should be given strictly according to the marks earned in such Entrance Examination and disregarding all other differences, including those of the year of the passing of the M.B.B.S. Examinations. Where there are constitutional reservations the relative merits of the candidates seeking admissions to the reserved seats should also be determined on the basis of the marks secured at such entrance examination.

17.It is true that if an elaborate examination is to be held now, there will be delay in the commencement of the ensuing term which is scheduled to begin on the 1st August. However, the delay can be minimised and need not exceed three weeks if the following procedure is adopted for holding the entrance examination for this term, whatever the method the Joint Board of examiners suggested by us above may follow for future terms. The Board should set one common objective question paper in the following basic clinical and non-clinical subjects namely General Medicine, General Surgery, Gynaecology, Anatomy, Physiology and Biochemistry and hold the examination within two weeks from today. The period of two weeks is stipulated to enable students to prepare for the examination. It should be possible to examine the answer books and declare the results within three days thereafter, with the help of the computer. Thus the whole process will be over within three weeks from today. The present term can be adjusted accordingly and the University as well as the Indian Medical Council should accord their sanction for such adjustment in the peculiar circumstances of the case. For the further terms, the Board should hold examination sufficiently in advance as suggested above and in subject or subjects as the Board may decide upon. However, the examinations should be objective.

18.We may make it clear that since in view of the aforesaid decision the seats for the post-Graduation Courses in all the four Medical Colleges affiliated to the Bombay University will be affected, namely the Government Medical College and the three Municipal Medical Colleges, even if any student has been admitted in any of these Colleges to any of the post Graduation Courses, his admission will stand cancelled and all aspiring candidates belonging to these Colleges will have to appear for the Entrance Examination and would become entitled to the respective Courses only on the basis of merits displayed by them in the Entrance Examination.

19.A wide publicity should be given to these directions by the Bombay University, the Bombay Municipal Corporation and the State Government for the benefit of the aspiring candidates. In particular, the Deans of all four Colleges should display this order on their Notice Boards.

20.We may state that we have directed above the holding of only the objective tests for further terms as well as because unless the same set of examiners holds oral tests there is bound to be a discrimination in assessment on account of subjective evaluation. With a large number of candidates, it may not be possible to have only one set of examiners to hold such tests. If however, the Joint Board

of Examiners feel it imperative to have the oral tests, and it is possible to have one panel of examiners, they are at liberty to hold such tests, provided however the percentage of marks reserved for viva-voce does not exceed eighteen as laid down by the courts hitherto. For example, it may be possible to reduce the number of interviewers by eliminating candidates who fall below a particular standard in the objective test or tests. The modalities are to the Board of Examiners.

We may further make it clear that the subjects which we have prescribed for the entrance test for this term are in consultation with the Counsel and without the assistance of the Deans none of whom was present in the Court. We had to announce the subjects immediately to enable the students to have sufficient time to prepare themselves in view of the time-table for the examination that we have laid down.

21.The parties are at liberty to approach us if there are any difficulties in implementing the directions given herein.

22.It has become necessary to place the following facts on record, since Shri Chinoy wanted to put in a last minute appearance on behalf of some students. These petitions by their very nature had to be decided urgently since the future of all the affected students was involved. The matter was taken up for hearing on the 22nd instant and the arguments by all the parties till then appearing, were concluded by the close of the Court-hours yesterday (23rd to 25th being the non working days). The matter was kept today for orders. When we were about to dictate the operative part of our order (the judgment having been dictated in Chamber last evening after the Court-hours), Shri Chinoy made an application that he should be permitted to tender affidavits on behalf of some students and also to argue. It was rightly objected to on behalf of the petitioners and we rejected the application. A similar request to file an affidavit on behalf of the petitioners was objected to on behalf of the Municipal Corporation and we had upheld the objection and rejected the request.

23.Rule absolute accordingly with no order as to costs.

24.Mr. Andhyarujina for the Bombay Municipal Corporation makes an oral application for leave to appeal to the Supreme Court. The application is rejected, according to us, all that we are doing by this judgment is to give effect to the decisions of the Supreme Court pronounced from time to time, but which have not been implemented as yet.

25.Mr. Andhyarujina then applies for stay of the operation of this judgment. In the first instance, the period which we have prescribed for holding the examination is to spread over three weeks. During this period, the Bombay Municipal Corporation has enough time to approach the Supreme Court and get a stay of our directions. In the meanwhile the process of holding the examination need not be stayed, for ultimately, if the Supreme Court upholds our decision, there will be a further delay in holding the examination and in the

commencement of the ensuing term which is not in the interests of any one, much less the students. Secondly, no hardship will be caused to any body if the examinations are held in the meanwhile. No doubt, the students will have to study and some costs will have to be incurred for holding the examination. But that is inevitable in the process, and the negligible cost can be borne in the larger interests of the society which requires talented doctors. For these reasons we reject the application for stay as well.