DR. PREETI SRIVASTAVA AND ANR. ETC. ETC. A

v.

THE STATE OF MADHYA PRADESH AND ORS.

AUGUST 10, 1999

[DR. A.S. ANAND, CJ., S.B. MAJMUDAR, SUJATA V. MANOHAR, B
K. VENKATASWAMI AND V.N. KHARE, JJ.]

Constitution of India, Articles 14, 15 (4), 16 (I) and 335—Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1997—Whether for admission to Post Graduate Medical Courses it is permissible to prescribe a lower minimum percentage of qualifying marks for the reserved category—Uttar Pradesh by legislation prescribing 20% and 45% as qualifying marks for reserved and general categories respectively—Madhya Pradesh, by executive order, prescribing minimum qualifying marks as 20% for SC 15% for ST and 40% for OBC candidates—Held, Per Majority, prescribing 20% and 45% as minimum qualifying marks for reserved and general candidates is not permissible under Article 15(4), being unreasonable and contrary to public interest; there cannot be a wide disparity between minimum qualifying marks for reserved category and general candidates at post-graduate level; Uttar Pradesh legislation and Madhya Pradesh G.O. set aside; Per Majmudar. J., (partly dissenting) if 45% passing marks are prescribed for general category, permissible dilution of reserved category can go up to 22 and 1/2% (50% of 45%); any further dilution beyond this would be impermissible under Article 15(4)—Medical Council of India Act, 1956. C D E

Medical Council of India, Act 1956—Ss.20,33(1) r/w Regulations on Post-Graduate Medical Education—Constitution of India—Article 254 r/w Seventh Schedule, Entry 66, List I and Entry 25 List III—Prescribing lower minimum percentage of qualifying marks for the reserved category for admission to post-graduate medical courses—Held, Per Majority, whether lower minimum qualifying marks can be prescribed is to be decided by the Medical Council of India since it affects standards of post-graduate medical education; Held, further, States cannot in the exercise of power under Entry 25 List III make rules in conflict with Regulations framed by the Medical Council of India; Per Majmudar, J., (dissenting), Medical Council of India Regulations cannot curtail power of States from fixing minimum qualifying F G H

marks differently for reserved category candidates; full play is available to state authorities to exercise legislative or executive power as field is not occupied by any legislation till date; Held, further, Medical Council of India regulations do not cover the question and though not binding, cannot be ignored by State authorities while short-listing eligible candidates for admission to post-graduate medical courses.

Constitution of India, Articles 15 (4) and 16(4) Post-Graduate Institute of Medical Education and Research, Chandigarh Act 1966—Ss.2, 13, 32 r/w Post-Graduate Institute of Medical Education and Research, Chandigarh Regulations 1967, Regulation 27—Reservation of 20% of seats for SC & ST candidates for admission to super speciality courses of D.M. and M.C.H—Held, reservation at super-speciality level being inconsistent with constitutional mandate under Articles 15(4) and 16(4) impermissible ; merit alone can be basis of selection.

The State of Uttar Pradesh (U.P) prescribed a Post-Graduate Medical Entrance Examination (PGMEE) for admission to Post Graduate Degree/ Diploma courses in medicine. By G.O. dated October 11, 1994 the cut-off percentage was fixed as 45% marks in the PGMEE for admission of the general category candidates and 35% for the reserved category candidates *viz.,* **Scheduled Castes (SC), Scheduled Tribes (ST). Thereafter, by another G.O. dated August 31, 1995 the State of U.P completely did away with a cut-off percentage of marks in respect of the reserved category candidates. This G.O. of August 31, 1995 was challenged before this Court in** *Dr. Sadhna Devi* **v.** *State of U.P.,* **by its judgment reported in [1997] 2 SCC 90 this Court held that while laying down minimum qualifying marks for admission to the Post Graduate Courses, it was not open to the Government to say that there will be no minimum qualifying marks for the reserved category of candidates. This Court struck down the G.O. dated August 31, 1995.**

Thereafter the State of U.P. issued another G.O. dated April 2, 1997 under which the cut-off percentage of marks for the reserved category candidates was restored at 35%. However, the State of U.P. moved an application before this Court in which it prayed that it should be given the liberty to reduce the cut-off percentage from 35% to 20% for the reserved category candidates who appear in the PGMEE for 1997. Without waiting for a decision, by an Ordinance date June 15, 1997, the State of U.P. reduced the minimum qualifying marks for the reserved category candidates appearing in the PGMEE 1997 from 35% to 20%. Later the Ordinance, which was challenged in the present petition, was replaced by the Uttar Pradesh Post Graduate

Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1997. A

Also under challenge in writ petitions before this court was the G.O. dated June 7, 1997 by the State of Madhya Pradesh prescribing the following minimum percentage of qualifying marks for the reserved category candidates to make them eligible for counselling and admission to the Post Graduate Medical Courses:-SC: 20%, ST: 15% and OBC: 40%. B

In the petition seeking review of this court's decision in *Post-Graduate Institute of Medical Education & Research, Chandigarh and Ors.* v. *K.L. Narasimhan and Anr.*, [1997] 6 SCC 283, the issue involved was the permissibility of reservations in admissions to super-speciality courses in medicine. C

Allowing the writ petitions and review petitions, this court

HELD: *Per majority:*

1.1. The Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1997 and the G.O. dated June 7, 1997 of the State of Madhya Pradesh are set aside. [287-A] D

1.2. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4) the same being unreasonable at the post-graduate level and contrary to public interest. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. [286-G; F] E F

Dr. Sadhna Devi and Ors. v. *State of U.P. and Ors.*, **[1997] 3 SCC 90, affirmed.**

Ajay Kumar Singh and Ors. v. *State of Bihar and Ors.*, **[1994] 4 SCC 401 and** *Post Graduate Institute of Medical Education and Research, Chandigarh* v. *K.L. Narasimhan*, **[1997] 6 SCC 283, overruled.** G

M.R. Balaji v. *State of Mysore*, **[1963] Suppl. 1 SCR 439;** *Dr. Jagdish Saran* v. *Union of India*, **[1980] 2 SCC 768;** *Indra Sawhney and Ors.* v. *Union of India and Ors.*, **[1992] Supp. 3 SCC 217;** *Mohan Bir Singh Chawla* v. *Punjab University, Chandigarh*, **[1997] 2 SCC 171;** *S. Vinod Kumar* v. *Union* H

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A *of India,* **[1996] 6 SCC 580 and** *Dr. Fazal Ghafoor* **v.** *Union of India,* **[1988] Supp. SCC 794, referred to.**

'Completing Equalities' by Marc Galanter, **referred to.**

1.3. There is a great deal of difference in the knowledge and skills of
B **those passing with a high percentage of marks and those passing with a low percentage of marks. The reserved category of students who are chosen for higher levels of university education must be in a position to benefit and improve their skills and knowledge and bring it to a level comparable with the general group, so that when they emerge with specialized knowledge and**
C **qualifications, they are able to function efficiently in public interest.**
[268-G-H; 269-A]

2.1. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of medical education is a question which must be decided by the Medical Council of
D **India since it affects standards of post-graduate medical education. [286-E]**

State of Madhya Pradesh **v.** *Kumari Nivedita Jain,* **[1981] 4 SCC 296;** *Medical Council of India* **v.** *State of Karnataka,* **[1998] 6 SCC 131 and** *State of Kerala v. Kumari T.P. Roshana,* **[1979] 1 SCC 572, referred to**

2.2. The States cannot, in the exercise of power under Entry 25 of List-
E **III, make rules and regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for post-graduate 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**
F **of States under Entry 25 of List-III is subject to Entry 66 of List-I.**
[281-D-E]

P. Rajendran **v.** *State of Madras,* **[1968] 2 SCR 786;** *Chitra Ghosh* **v.** *Union of India* **[1970[1 SCR 413;** *State of Andhra Pradesh* **v.** *Lavu Narendranath;* **[1971] 3 SCR 699 and** *Dr. Ambesh Kumar* **v.** *Principal,*
G *L.L.R.M. Medical College, Meerut,* **[1986] Supp. SCC 543, referred to.**

2.3. A State has the right to control education including medical education so long as the field is not occupied by any Union Legislation. The State cannot, while controlling education in the State, impinge on standards in institutions for higher education because this is exclusively within the
H **purview of the Union Government. [271-C-D]**

2.4. A common entrance examination envisaged under the Regulations framed by the Medical Council of India for post-graduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test. [286-E]

Per Curiam, **(Majmudar, J. concurring with the majority) :**

1.1. At the level of admission to the super speciality courses, no special provisions are permissible, they being contrary to national interest. Merit alone can be the basis of selection. There can be no lowering of minimum qualifying marks for any category of candidates at the level of admission to the super-speciality courses. [288-A; F-G]

1.2. Reservations made for SC and ST candidates for admission to D.M. and M.C.H courses which are super-speciality courses, is not consistent with the constitutional mandate under Articles 15(4) and 16(4). [290-E]

Post Graduate Institute of Medical Education & Research, Chandigarh **v.** *K.L. Narasimhan,* **[1997] 6 SCC 283, overruled.**

Per Majmudar, J. **(dissenting)**

1. While there cannot be a dilution of minimum qualifying marks for reserved category candidates up to almost a vanishing point, maximum dilution can be upto 50% of the minimum qualifying marks prescribed for general category candidates. On that basis if 45% passing marks are prescribed for general category, permissible dilution can then go up to 22 and 1/2% (50% of 45%). Any dilution below this rock bottom would not be permissible under Article 15 (4) of the Constitution of India. [291-E-F]

2.1. It is permissible to the State authorities which are running and/or controlling the medical institutions in the States concerned to short-list the eligible and qualified MBBS doctors for being considered for admission to post-graduate medical courses in these institutions. For the purpose of such short-listing full play is available to the State authorities to exercise legislative or executive power as the field is not occupied till date by any legislation of the Parliament on this aspect in exercise of its legislative powers under Entry 25 of List III of the Constitution of India and this topic is also not covered by any legislation under Entry 66 of List I of the Constitution. [334-B-C-D]

The Gujarat University, Ahmedabad **v.** *Krishna Ranganath Mudholkar,* **[1963] Supp. 1 SCR 112;** *Tej Kiran Jain* **v.** *N. Sanjiva Reddy,* **[1970] 2 SCC**

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272; *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, [1994] 4 SCC 401; *State of M.P.* v. *Nivedita Jain*, [1981] 4 SCC 296 and *Indra Sawhney and Ors.* v. *Union of India and Ors.*, [1992] Supp. 3 SCC 217, referred to.

2.2. The Indian Medical Council Act and the regulations framed thereunder do not cover the question of short-listing of admission of eligible and duly qualified MBBS doctors who seek admission to different medical institutions imparting post graduate education run or controlled by the States concerned. [334-D-E]

D.N. Chanchala v. *State of Mysore*, [1971] Supp. SCR 608; *Ajay Kumar Singh* v. *State of Bihar*, [1994] 4 SCC 401 and *State of M.P.* v. *Nivedita Jain*, [1981] 4 SCC 296, referred to.

2.3. The regulations and guidelines given by the Medical Council of India in this connection, though persuasive and not having any binding force, cannot be totally ignored by the State authorities but must be broadly kept in view while undertaking exercise of short-listing of eligible candidates for being admitted to postgraduate medical courses. The performance of the candidate concerned during the time he or she undertook the study at MBBS level for ultimately getting the MBBS degree also would be a relevant consideration for the State authorities to be kept in view.

[334-E-F-H; 335-A]

2. It is permissible for the State authorities while undertaking the aforesaid exercise of short-listing to fix 50% minimum qualifying marks at the entrance test for general category of candidates and to dilute and prescribe lesser percentage of passing marks for reserved category of candidates as exigencies of situation may require in a given year but in no case the minimum qualifying marks as reduced for reserved category of candidates can go below 25% of passing marks for such reserved category of candidates. [335-B-C]

R. Chitralekha v. *State of Mysore*, [1964] 6 SCR 368; *Chitra Ghosh* v. *Union of India*, [1970] 1 SCR 413; *State of Andhra Pradesh* v. *Lavu Narendranath*, [1971] 1 SCC 607; *Dr. Ambesh Kumar* v. *Principal L.L.R.M. Medical College, Meerut*, [1986] Supp. SCC 543; *Dr. Sadhna Devi and Ors.* v. *State of U.P. and Ors.*, [1997] 3 SCC 90; *Post-graduate Institute of Medical Education & Research Chandigarh* v. *K.L. Narasimhan*, [1997] 6 SCC 283; *Medical Council of India* v. *State of Karnataka*, [1998] 6 SCC 131; *M.R. Balaji* v. *State of Mysore*, [1963] Supp. 1 SCR 439; *Minor P. Rajendran* v. *State of Madras*, [1968] 2 SCR 786; *S. Vinod Kumar* v. *Union of India*,

[1996] 6 SCC 580; *R.K. Sabharwal* v. *State of Punjab*, [1995] 2 SCC 745 and *Dr. Pradeep Jain and Ors.* v. *Union of India and Ors.*, [1984] 3 SCC 654, referred to.

***'Bakke, Defunis and Minority Admissions (The Quest for Equal Opportunity)' by Allan P. Sindler,* referred to.**

CVIL ORIGINAL JURISDICTION: Writ Petition (C) No. 290 of 1997 Etc. Etc.

(Under Article 32 of the Constitution of India.)

Altaf Ahmad, Additional Solicitor General, A.B. Rohtagi, H.N. Salve, Subodh Markandeya, P.P. Rao, Rajendra Sachar, Bhaskar P. Gupta, M.N. Krishnamani, Anoop G. Chaudhary, D.S. Nehra, (K.R. Nambiar (NP), Ashok K. Srivastava, Irshad Ahmad, Suranya Aiyar, L.R. Singh, Amitesh Kumar, Mrs. Vimla Sinha, Yunus Mallik, Ms. Chitra Markandeya, Adesh Kumar, Satish K. Agnihotri, Ashok K. Singh, Jamshed Bey, Ajay Talesara, Ambar Qamaruddin, S.K. Agnihotri, Ms. Yogmaya, Sakesh Kumar, K.L. Hathi, Bhagwan Das, A. Mariarputham, Ms. Aruna Mathur, Ms. K. Sarada Devi, (Ms. Indra Sawhney) (NP), Sanjay Parikh, A.K. Mishra, Sanjay Hegde, Vikrant Yadav, Pramod Swarup, (Goodwill Indeevar) (NP), L.K. Pandey, V.N. Raghupathy, S.K. Mehta, Dhruv Mehta, Fazlin Anam, Ms. Shobha and (D.K. Garg) (NP) for the appearing parties.

The judgments of the Court were delivered by

MRS. SUJATA V. MANOHAR, J. Leave granted in SLP(C) No.12231 of 1997.

The following issue formulated by this Court at the commencement of hearing, requires consideration:

> "The question is whether apart from providing reservation for admission to the Post Graduate Courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category."

"This question certainly requires consideration of the Constitution Bench as it arises and is likely to arise in a number of cases in different institutions of the country and needs to be decided authoritatively keeping in view the

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observations made in three different two or three-Judge Bench judgments". These judgments are *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, [1994] 4 SCC 401, *Dr. Sadhna Devi and Ors.* v. *State of U.P. and Ors.*, [1997] 3 SCC 90 and *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors.* v. *K.L. Narasimhan and Anr.*, [1997] 6 SCC 283.

Facts:

The State of Uttar Pradesh has prescribed a Post Graduate Medical Entrance Examination for admission to Post Graduate Degree/Diploma courses in medicine. This is in conformity with the relevant Regulations of the Medical Council of India. By G.O. dated 11.10.1994, the State Government fixed a cut-off percentage of 45% marks in the Post Graduate Medical Entrance Examination (PGMEE) for admission of the general category candidates to the Post Graduate Courses in Medicine. The cut off percentage of marks for the reserved category candidates *viz.* Scheduled Castes, Scheduled Tribes etc. was fixed at 35%. Thereafter, by another G.O. dated 31.8.1995 the State of Uttar Pradesh completely did away with a cut-off percentage of marks in respect of the reserved category candidates so that there were no minimum qualifying marks in the Post Graduate Medical Entrance Examination prescribed for the reserved category candidates who were seeking admission to the Post Graduate Courses.

This G.O. of 31.8.1995 was challenged before this Court in Writ Petition (C) No.679 of 1995 *Dr. Sadhna Devi & Ors.* v. *State of U.P. & Ors.*, [1997] 3 SCC 90. This Court, by its judgment dated 19.2.1997, held that while laying down minimum qualifying marks for admission to the Post Graduate Courses, it was not open to the Government to say that there will be no minimum qualifying marks for the reserved category of candidates. If this is done, merit will be sacrificed altogether. This Court struck down G.O. dated 31.8.1995.

After the said decision, the State of U.P. issued another G.O. dated 2.4.1997 under which the cut-off percentage of marks for the reserved category candidates was restored at 35%. However, the State of U.P. moved an application before this Court, being I.A. No.2 of 1997 *Dr. Sadhna Devi* (Supra) in which the State of U.P. (*inter alia*) prayed that it should be given the liberty to reduce the cut-off percentage from 35% to 20% for the reserved category candidates who appear in the PGMEE for 1997. Without waiting for a decision, by an Ordinance dated 15.6.1997, the State of U.P. reduced the minimum qualifying marks for the reserved category candidates appearing in the PGMEE 1997 from 35% to 20%. This Ordinance is challenged in the present Writ

Petition (C) No.300 of 1997. The Ordinance has now been replaced by the Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1997. The petitioners have now amended the said writ petition to challenge this Act.

For admissions effected in 1998, the State of U.P. again prescribed a cut-off percentage of 20% marks for the reserved category candidates. Learned counsel for the State of U.P. has further stated that for the current year's admission, i.e. for admission to the P.G.M.E.E. 1999, the State has introduced a Bill in the Legislative Assembly prescribing the same cut-off percentage of 20% marks for the reserved category candidates.

The lower percentage of qualifying marks prescribed for the scheduled caste, scheduled tribe and backward class candidates are in conjunction with the following reservation of seats at the PGMEE:

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

In the State of Madhya Pradesh also a common entrance examination is held for admission to the Post Graduate Courses in Medicine. Under the Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules, 1997, certain seats were reserved for the Scheduled Caste, Scheduled Tribe, BC and in-service candidates. The Rules, however, did not lay down any minimum qualifying marks for admission to the Post Graduate Courses either for the general category or for the reserved category of candidates. These Rules were challenged by a writ petition before the Madhya Pradesh High Court. By its judgment which is under challenge in these proceedings, the Madhya Pradesh High Court directed the State Government to stipulate minimum qualifying marks in the PGMEE for all categories of candidates, including the general category candidates, in view of the decision of this Court in *Dr. Sadhna Devi's* case (supra).

By G.O. dated 7.6.1997 the State of Madhya Pradesh prescribed the following minimum percentage of qualifying marks for the reserved category candidates to make them eligible for counselling and admission to the Post Graduate Medical Courses:

Scheduled Castes	:	20%
Scheduled Tribes	:	15%
Other Backward Classes	:	40%

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A This Government Order of the State of Madhya Pradesh is under challenge before us.

We have, therefore, to consider whether for admission to the Post Graduate Medical Courses, it is permissible to prescribe a lower minimum percentage of qualifying marks for the reserved category candidates as B compared to the general category candidates. We do not propose to examine whether reservations are permissible at the Post Graduate level in medicine. That issue was not debated before us, and we express no opinion on it. We need to examine only whether any special provision in the form of lower qualifying marks in the PGMEE can be prescribed for the reserved category.

C

The Constitutional Imperative:

The constitutional protection of equality before the law under Article 14 of the Constitution is one of the basic tenets of the Constitution. It is a cardinal value which will govern our policies and actions, particularly policies D for employment and education. Article 15(1) prohibits State discrimination on the ground (among others) of religion, race or caste. Article 16(1) prescribes equality of opportunity for all in matters relating to employment or appointment to any office under the State. Article 16(2) prohibits discrimination on the ground (among others) of religion, race, caste or descent. At the same time, E the Constitution permits preferential treatment for historically disadvantaged groups in the context of entrenched and clearly perceived social inequalities. That is why Article 16(4) permits reservation of appointments or posts in favour of any backward class which is not adequately represented in the services under the State. Reservation is linked with adequate representation in the services. Reservation is thus a dynamic and flexible concept. The F departure from the principle of equality of opportunity has to be constantly watched. So long as the backward group is not adequately represented in the services under the State, reservations should be made. Clearly, reservations have been considered as a transitory measure that will enable the backward to enter and be adequately represented in the State services against the G backdrop of prejudice and social discrimination. But finally, as the social backdrop changes - and a change in the social backdrop is one of the constitutional imperatives, as the backward are able to secure adequate representation in the services, the reservations will not be required. Article 335 enters a further caveat. While considering the claims of Scheduled Castes and Scheduled Tribes for appointments, the maintenance of efficiency of H administration shall be kept in sight.

Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, *inter alia*, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of non- discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. As a result of the combined operation of these Articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government. Marc Galanter, in his book, "Competing Equalities" has described the constitutional scheme of compensatory discrimination thus :

> "These compensatory discrimination policies entail systematic departures from norms of equality (such as merit, evenhandedness, and indifferences of ascriptive characteristics). These departures are justified in several ways. First, preferential treatment may be viewed as needed assurance of personal fairness, a guarantee against the persistence of discrimination in subtle and indirect forms. Second, such policies are justified in terms of beneficial results that they will presumably promote: integration, use of neglected talent, more equitable distribution, etc. With these two - the anti-discrimination theme and the general welfare theme - is entwined a notion of historical restitution or reparation to offset the systematic and cumulative deprivations suffered by lower castes in the past. These multiple justifications point to the complexities of pursuing such a policy and of assessing its performance."

Since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That is its final constitutional justification. Therefore, programmes and policies of compensatory discrimination under Article 15(4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public polices, therefore, in this area have to be tested on the anvil of

A reasonableness and ultimate public good. In the case of Article 16(4) the Constitution makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration. Article 15(4) also must be used, and policies under it framed, in a reasonable manner consistently with the ultimate public interests.

B In the case of *M.R. Balaji and Ors.* v. *State of Mysore,* [1963] Suppl. 1 SCR 439 at pages 466-467), a Constitution Bench of this Court considered this very question relating to the extent of special provisions which it would be competent for the State to make, under Article 15(4). This Court accepted the submission that Article 15(4) must be read in the light of Article 46 and C that under it, the educational and economic interests of the weaker sections of the people can be promoted properly and liberally, to establish social and economic equality. The Court said, "No one can dispute the proposition that political freedom and even fundamental rights can have very little meaning or significance for the backward classes and the Scheduled Castes and Scheduled Tribes unless the backwardness and inequality from which they suffer are D immediately redressed".

The Court, however, rejected the argument that the absence of any limitation on the State's power to make an adequate special provision under Article 15(4) indicates that if the problem of backward classes of citizens and E Scheduled Castes and Scheduled Tribes in any given State is of such a magnitude that it requires the reservation of all seats in the higher educational institutions, it would be open to the State to take that course. This Court said: "When Article 15(4) refers to the special provisions for the advancement of certain classes or Scheduled Castes or Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; F *it is not a provision which is exclusive in character so that, in looking after the advancement of those classes the State would be justified in ignoring altogether the advancement of the rest of the society.* It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special G provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were H to be completely and absolutely ignored." This Court struck down a reservation

of 68% made for backward classes for admission to Medical and Engineering Courses in the University. This Court further observed, (at page 407) *"A special provision contemplated by Article 15(4), like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits.* The interest of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interest of the community as a whole". The Court also said that while considering the reasonableness of the extent of reservation one could not lose sight of the fact that the admissions were to institutes of higher learning and involved professional and technical colleges. "The demand for technicians, scientists, doctors, economists, engineers and experts for the further economic advancement of the country is so great that *it would cause grave prejudice to national interests if considerations of merit are completely excluded by wholesale reservation of seats in all technical, medical or engineering colleges or institutions of that kind."* (Page 468) Therefore, consideration of national interest and the interests of the community or society as a whole cannot be ignored in determining the reasonableness of a special provision under Article 15(4).

In the case of *Dr. Jagdish Saran & Ors.* v. *Union of India,* [1980] 2 SCC 768, reservation of 70% of seats for the local candidates in admissions to the Post Graduate Medical Courses by the Delhi University was struck down by this Court. While doing so, Krishna Iyer J. speaking for the Court spelt out the ambits of Articles 14 and 15. He said, (at page 778) "But it must be remembered that exceptions cannot overrule the rule itself by running riot or by making reservations as a matter of course in every University and every course. For instance, you cannot wholly exclude meritorious candidates as that will promote sub-standard candidates and bring about a fall in medical competence injurious in the long run to the very region.....Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation. So, within these limitations without going into excesses there is room for play of the State's policy choices." He further observed, *"The first caution is that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation*.....A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potentials of the weak with the partial recognition of the presence of competitive merit - such is the dynamic of social justice which animates the three egalitarian articles of the Constitution."

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A "Flowing from the same stream of equalism is another limitation. *The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best scale or talent must be handpicked by selecting according to capability. At the level of* B *P.H.D., M.D. or levels of higher proficiency where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss, the considerations we have expended upon as important, lose their potency, where equality measured by matching excellence has more meaning and cannot be diluted much without grave risk."*

C

The same reasoning runs through *Dr. Pradeep Jain & Ors.* v. *Union of India & Ors.*, [1984] 3 SCC 654. It dealt with reservation of seats for the residents of the State or the students of the same university for admission to the medical colleges. The Court said, (at page 676) "Now, the concept of D equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere ideal indentation but it must become a living reality for the large masses of people..... It is, therefore, necessary to take into account *de facto* inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically E disadvantaged persons or inflicting handicaps on those more advantageously placed in order to bring about real equality." The Court after considering institutional and residential preferences for admission to the M.B.B.S. course, said that different considerations would prevail in considering such reservations for admission to the Post Graduate Courses such as M.D., M.S. F and the like. It said, (at page 691) "There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation." Quoting the observation of Justice Krishna Iyer in *Dr. Jagdish Saran* case (supra) the Court said, "This proposition has far greater importance when we reach the higher levels of education like Post Graduate Courses. After all, top technological expertise in any vital field like G medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. *To devalue merit at the summit is to temporise with the country's development* H *in the vital areas of professional expertise.*" (underlining ours).

A similar strand of thought runs through *Indra Sawhney and Ors.* v. *Union of India and Ors.*, [1992] Supp. 3 SCC 217, where a Bench of nine Judges of this Court considered the nature, amplitude and scope of the constitutional provisions relating to reservations in the services of the State. Jeevan Reddy J. speaking for the majority (in paragraph 836) stated that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid if the constitutional promise of social justice is to be redeemed. We also formally believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with - and may in some cases excel - members on open competition. Having said this, the Court went on to add, (in paragraph 838) "We are of the opinion that there are certain services and positions where either on account of nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove alone counts. In such situations it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/departments/institutions, *in specialities and super-specialities in medicine*, engineering and other such courses in physical science and mathematics, in defence services and in the establishments connected therewith." (underlining ours)

A similar view has been taken in *Mohan Bir Singh Chawla* v. *Punjab University, Chandigarh and Anr.*, [1997] 2 SCC 171 where this Court said that at higher levels of education it would be dangerous to depreciate merit and excellence. The higher you go in the ladder of education, the lesser should be the reservation. In *Dr. Sadhna Devi's* case (supra) also this Court has expressed a doubt as to whether there can be reservations at the Post Graduate level in Medicine.

We are, however, not directly concerned with the question of reservations at the Post Graduate level in Medicine. We are concerned with another special provision under Article 15(4) made at the stage of admission to the Post Graduate Medical Courses, namely, providing for lesser qualifying marks or no qualifying marks for the members of the Scheduled Castes and Scheduled Tribes for admission to the Post Graduate Medical Courses. Any special provision under Article 15(4) has to balance the importance of having, at the higher levels of education, students who are meritorious and who have secured admission on their merit, as against the social equity of giving compensatory benefit of admission to the Scheduled Caste and Scheduled Tribe candidates who are in a disadvantaged position. The same reasoning

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A which propelled this Court to underline reasonableness of a special provision, and the national interest in giving at the highest level of education, the few seats at the top of the educational pyramid only on the basis of merit and excellence, applies equally to a special provision in the form of lower qualifying marks for the backward at the highest levels of education.

B It is of course, important to provide adequate educational opportunities for all since it is education which ultimately shapes life. It is the source of that thin stream of reason which alone can nurture a nation's full potential. Moreover, in a democratic society, it is extremely important that the population is literate and is able to acquire information that shapes its decisions.

C The spread of primary education has to be wide enough to cover all sections of the society whether forward or backward. A large percentage of reservations for the backward would be justified at this level. These are required in individual as well as national interest. A university level education upto graduation, also enables the individual concerned to secure better D employment. It is permissible and necessary at this level to have reasonable reservations for the backward so that they may also be able to avail of these opportunities for betterment through education, to which they may not have access if the college admissions are entirely by merit as judged by the marks obtained in the qualifying examination. At the level of higher post-graduate E university education, however, apart from the individual self interest of the candidate, or the national interest in promoting equality, a more important national interest comes into play. The facilities for training or education at this level, by their very nature, are not available in abundance. It is essential in the national interest that these special facilities are made available to persons of high calibre possessing the highest degree of merit so that the nation can F shape their exceptional talent that is capable of contributing to the progress of human knowledge, creation and utilisation of new medical, technical or other techniques, extending the frontiers of knowledge through research work - in fact everything that gives to a nation excellence and ability to compete internationally in professional, technical and research fields.

G This Court has repeatedly said that at the level of super specialisation there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level of a super speciality, something more than a mere professional competence as H a doctor is required. A super-specialist acquires expert knowledge in his

speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. For example, specialised sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even ability to innovate and device new lines of treatment in critical situations, requires high levels of intelligent understanding of medial knowledge or skill and a high ability to learn from technical literature and from experience. These high abilities are also required for absorbing highly specialised knowledge which is being imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz. the best brains in the country, irrespective of the class to which they belong.

At the next below stage of post-graduate education in medical specialities, similar considerations also prevail though perhaps to a slightly lesser extent than in the super specialities. But the element of public interest in having the most meritorious students at this level of education is present even at the stage of post-graduate teaching. Those who have specialised medical knowledge in their chosen branch are able to treat better and more effectively, patients who are sent to them for expert diagnosis and treatment in their specialised field. For a student who enrols for such speciality courses, an ability to assimilate and acquire special knowledge is required. Not everyone has this ability. Of course intelligence and abilities do not know any frontiers of caste or class or race or sex. They can be found anywhere, but not in everyone. Therefore, selection of the right calibre of students is essential in public interest at the level of specialised post-graduate education. In view of this supervening public interest which has to be balanced against the social equity of providing some opportunities to the backward who are not able to qualify on the basis of marks obtained by them for post-graduate learning, it is for an expert body such as the Medical Council of India, to lay down the extent of reservations, if any, and the lowering of qualifying marks, if any, consistent with the broader public interest in having the most competent people for specialised training, and the competing public interest in securing social justice and equality. The decision may perhaps, depend upon the expert body's assessment of the potential of the reserved category candidates at a certain level of minimum qualifying marks and whether those who secure

admission on the basis of such marks to post-graduate courses, can be expected to be trained in two or three years to come up to the standards expected of those with post-graduate qualifications.

The speciality and super speciality courses in medicine also entail on-hand experience of treating or operating on patients in the attached teaching hospitals. Those undergoing these programmes are expected to occupy posts in the teaching hospitals or discharge duties attached to such posts. The elements of Article 335, therefore, colour the selection of candidates for these courses and the Rules framed for this purpose.

In the premises the special provisions for SC/ST candidates whether reservations or lower qualifying marks -at the speciality level have to be minimal. There cannot, however, be any such special provisions at the level of super specialities.

Entrance Examination for post-graduate courses and qualifying marks:

When a common entrance examination is held for admission to post-graduate medical courses, it is important that passing marks or minimum qualifying marks are prescribed for the examination. It was, however, contended before us by learned counsel appearing for the State of Madhya Pradesh that there is no need to prescribe any minimum qualifying marks in the common entrance examination. Because all the candidates who appear for the common entrance examination have passed the M.B.B.S. examination which is an essential pre-requisite for admission to post-graduate medical courses. The PGMEE is merely for screening the eligible candidates.

This argument ignores the reasons underlying the need for a common entrance examination for post-graduate medical courses in a State. There may be several universities in a State which conduct M.B.B.S. courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the M.B.B.S. examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the M.B.B.S. examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the M.B.B.S. examination; while it may also be easier for candidates to secure

marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the M.B.B.S. examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the M.B.B.S. examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the M.B.B.S. examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialised education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialised education and the need to provide for some room for the backward even at the stage of specialised post-graduate education which is one step below the super specialities.

The submission, therefore, that there need not be any qualifying marks prescribed for the common entrance examination has to be rejected. We have, however, to consider whether different qualifying marks can be prescribed for the open merit category of candidates and the reserved category of candidates. Normally passing marks for any examination have to be uniform for all categories of candidates. We are, however, informed that at the stage of admission to the M.B.B.S. course, that is to say, the initial course in medicine, the Medical Council of India has permitted the reserved category candidates to be admitted if they have obtained the qualifying marks of 35% as against the qualifying marks of 45% for the general category candidates. It is, therefore, basically for an expert body like the Medical Council of India to determine whether in the common entrance examination *viz.* PGMEE, lower qualifying marks can be prescribed for the reserved category of candidates as against the general category of candidates; and if so, how much lower. There cannot, however, be a big disparity in the qualifying marks for the reserved category

A of candidates and the general category of candidates at the post-graduate level. This level is only one step below the apex level of medical training and education where no reservations are permissible and selections are entirely on merit. At only one step below this level the disparity in qualifying marks, if the expert body permits it, must be minimal. It must be kept at a level where it is possible for the reserved category candidates to come up to a certain B level of excellence when they qualify in the speciality of their choice. It is in public interest that they have this level of excellence.

In the present case, the disparity of qualifying marks being 20% for the reserved category and 45% for the general category is too great a disparity C to sustain public interest at the level of post-graduate medical training and education. Even for the M.B.B.S. course, the difference in the qualifying marks between the reserved category and the general category is smaller, 35% for the reserved category and 45% for the general category. We see no logic or rationale for the difference to be larger at the post-graduate level.

D *Standard of Education:*

A large differentiation in the qualifying marks between the two groups of students would make it very difficult to maintain the requisite standard of teaching and training at the post-graduate level. Any good teaching institution has to take into account the calibre of its students and their existing level of E knowledge and skills if it is to teach effectively any higher courses. If there are a number of students who have noticeably lower skills and knowledge, standard of education will have to be either lowered to reach these students, or these students will not be able to benefit from or assimilate higher levels of teaching, resulting in frustration and failures. It would also result in a F wastage of opportunities for specialised training and knowledge which are by their very nature, limited.

It is, therefore, wrong to say that the standard of education is not affected by admitting students with low qualifying marks, or that the standard of education is affected only by those factors which come into play after the G students are admitted. Nor will passing a common final examination guarantee a good standard of knowledge. There is a great deal of difference in the knowledge and skills of those passing with a high percentage of marks and those passing with a low percentage of marks. The reserved category of students who are chosen for higher levels of university education must be in a position to benefit and improve their skills and knowledge and bring it H to a level comparable with the general group, so that when they emerge with

specialised knowledge and qualifications, they are able to function efficiently in public interest. Providing for 20% marks as qualifying marks for the reserved category of candidates and 45% marks for the general category of candidates, therefore, is contrary to the mandate of Article 15(4). It is for the Medical Council of India to prescribe any special qualifying marks for the admission of the reserved category candidates to the post-graduate medical courses. However, the difference in the qualifying marks should be at least the same as for admission to the under-graduate medical courses, if not less.

Learned senior counsel Mr. Bhaskar P. Gupta for the intervenors drew our attention to an interesting study done by R.C. Davidson in relation to the affirmative action and other special consideration admissions at the University of California, Davis, School of Medicine. The study graded the students who were admitted on a scale (MCAC) with a range from 1 to 15. On this scale, the students who received special consideration admission had an average score of nine while the students who were admitted on open merit had an average of 11. However, when both these groups graduated from medical school both the groups had a high rate of successful graduation though the general group had a statistically significant higher rate. The special group had a graduation rate of 94% while the general group had a graduation rate of 98%. The study also found that the differences in the abilities of special consideration students were more evident in the first and second years of the curriculum. In the third year also the differences were visible. However, the two groups had begun to merge in their achievements; and ultimately by the time the groups qualified in the final examination, there was a convergence of academic progress between the special consideration admission students and the regularly admitted students as the process of training lengthened. A similar study does not appear to have been made in our country relating to the progress of the reserved category candidates in the course of their studies. But two things are evident even from the study made by Davidson. The longer the period of training, the greater the chances of convergence of the two groups. Secondly, both the groups had an initial high score - more than halfway up the scale. Also, the initial difference in their scores was not very large. It was nine as compared to eleven on a scale of fifteen. Therefore, at a high level of scoring, the narrower the difference, the greater the chances of convergence. This study, therefore, will not help the respondents in the present case because of the substantial difference in the qualifying marks for admission prescribed for the reserved category candidates as against the general category candidates; and the very low level of qualifying marks prescribed. Thirdly, at the post-graduate level the course of studies is relatively

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A shorter and the course is designed to give high quality speciality education to the qualified doctors to enable them to excel in their chosen field of speciality. Therefore, unless there is a proper control at the stage of admission, on the different categories of the students who are admitted, and unless the differences are kept to a minimum, such differences will not disappear in the course of time if the course of study is a specialised course such as a post-graduate course.

Who should decide the qualifying marks and will it affect the standard of education:

C Learned counsel for the States of Uttar Pradesh and Madhya Pradesh contend that it is for the States to decide the qualifying marks which should be prescribed for the reserved category candidates at the PGMEE. It is a matter of state policy. The Medical Council of India cannot have any say in prescribing the qualifying marks for the PGMEE. The two States have contended that it is the State which controls admissions to the post-graduate D courses in medicine. It is for the State to decide whether to provide a common entrance examination or not. This examination may or may not have any minimum qualifying marks or it may have different qualifying marks for different categories of candidates. It is, therefore, not open to any other authority to interfere with the rules for admission to the post-graduate medical courses in each State. They have also contended that a common entrance examination E is merely for the purpose of screening candidates and since all the candidates have passed the M.B.B.S. examination the standard is not affected even if no minimum marks are prescribed for passing the common entrance examination. The latter argument we have already examined and negatived. The other contention, however, relating to the power of the State to control admissions F to the post-graduate courses in medicine requires to be examined.

The legislative competence of the 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 States an exclusive power to legislate on "Education including G 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:

H *"Entry 25, List III:* 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." A

Entry 25 is subject, *inter alia*, to Entry 66 of List-I. Entry 66 of List-I is as follows:-

"*Entry 66, List I*: Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." B

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 C research and scientific and technical institutions as also co-ordination 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 D 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 E 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.

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 F 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 post-graduate medical G 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 do 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: H

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A (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;

B (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 C 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 D the papers are set and examined and the clinical performance is judged.

While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be E suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a F continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered G essential at the levels of higher university education, particularly when the training to be imparted is highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their post-graduate courses.

H The respondents rely upon some observations in some of the judgments

of this Court in support of their stand that it is for the State to lay down the rules and norms for admission; and that these do not have any bearing on the standard of education. In *P. Rajendran* v. *State of Madras & Ors.*, [1968] 2 SCR 786, a Constitution Bench of this Court considered the validity under Articles 14 and 15(1), of district-wise reservations made for seats in the medical colleges. In that case, the Act in question prescribed eligibility and qualifications of candidates for admission to the medical colleges. The Court observed, "So far as admission is concerned, it has to be made by those who are in control of the colleges - in this case, the Government because the medical colleges are Government colleges affiliated to the university. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it, subject to the rules of the university as to eligibility and qualifications. This was what was done in these cases and, therefore, the selection cannot be challenged on the ground that it was not in accordance with the University Act and the rules framed thereunder." This Court, therefore, upheld the additional criteria framed by the State for admission which were not inconsistent with the norms for admission laid down by the University Act. Since these additional qualifications did not diminish the eligibility norms under the University Act, this Court upheld the additional criteria laid down by the state as not affecting the standards laid down by the University Act. The question of diluting the standards laid down, did not arise.

The respondents have emphasised 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 the 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.

In *Chitra Ghosh and Anr.* v. *Union of India and Ors.*, [1970] 1 SCR 413,

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A the Constitution Bench of this Court considered, *inter alia*, reservation of nine seats for the nominees of the Government of India in a Government Medical College under Article 14 of the Constitution. This Court upheld the reservation as a reasonable classification under Article 14 on the ground that the candidates for these seats had to be drawn from different sources and it B would be difficult to have uniformity in the matter of selection from amongst them. The background and the course of studies undertaken by these candidates would be different and divergent and, therefore, the Central Government was the appropriate authority which could make a proper selection out of these categories. The questions before us, did not arise in that case.

C In *The State of Andhra Pradesh and Ors.* v. *Lavu Narendranath and Ors. etc.*, [1971] 3 SCR 699, this Court considered the validity of a test held by the State Government for admission to medical colleges in the State of Andhra Pradesh. The Andhra University Act, 1926 prescribed the minimum qualification of passing HSC, PUC, I.S.C. etc. examinations for entry into a D higher course of study. The Act, however, did not make it incumbent upon the Government to make their selection on the basis of the marks obtained by the candidates at these qualifying examinations. Since the seats for the MBBS course were limited, the Government, which ran the medical colleges, had a right to make a selection out of the large number of candidates who had passed the HSC, PUC or other prescribed examinations. For this purpose E the State Government prescribed an entrance test of its own and also prescribed a minimum 50% of marks at the qualifying examination of HSC, ISC, PUC etc. for eligibility to appear at the entrance test. The Court said that merely because the Government supplemented the eligibility rules by a written test in the subjects with which the candidates were already familiar, there was F nothing unfair in the test prescribed. Nor did the test militate against the powers of Parliament under Entry 66 of List-I. Entry 66 List-I is not relatable to a screening test prescribed by the Government or by a University for selection of students from out of a large number applying for admission to a particular course of study.

G Therefore, this Court considered the entrance test held by the State, in that case as not violating Entry 66 of List-I because the statutory provisions of the Andhra University Act were also complied with and the test was not inconsistent with those provisions. Secondly, in that case the Court viewed the test as not in substitution of the HSC, PUC, ISC or other such examination, H but in addition to it, for the purpose of proper selection from out of a large

number of students who had applied. A

This latter observation is relied upon by the State of Madhya Pradesh in support of its contention that the additional test which the State may prescribe is only for better selection. Therefore, it is not necessary to lay down minimum qualifying marks in the additional test. *Lavu Narendranath* (supra), however, does not lay down that it is permissible not to have minimum B qualifying marks in the entrance test prescribed by the State; nor does it lay down that every test prescribed by the State must necessarily be viewed as only for the screening of candidates. On the facts before it, the Court viewed the test as only a screening test for proper selection from amongst a large number of candidates.

C

On the facts before us, the PGMEE is not just a screening test. Candidates who have qualified from different universities and in courses which are not necessarily identical, have to be assessed on the basis of their relative merit for the purpose of admission to a post-graduate course. It is for proper assessment of relative merit of candidates who have taken different examinations from different universities in the State that a uniform entrance D test is prescribed. Such a test necessarily partakes of the character of an eligibility test as also a screening test. In such a situation, minimum qualifying marks are necessary. The question of minimum qualifying marks is not addressed at all in *Levu Narendranath* (supra) since it did not arise in that case. In *Dr. Ambesh Kumar* v. *Principal, L.L.R.M. Medical College, Meerut* E *and Ors.*, [1986] Supp. SCC 543, a State order prescribed 55% as minimum marks for admission to post-graduate medical courses. The Court considered the question whether the State can impose qualifications in addition to those laid down by the Medical Council of India and the Regulations framed by the Central Government. The Court said that any additional or further qualifications which the State may lay down would not be contrary to Entry 66 of List-I F since additional qualifications are not in conflict with the Central Regulations but are designed to further the objective of the Central Regulation which is to promote proper standards. The Court said, (at page 552) "The State Government by laying down the eligibility qualification, namely, the obtaining of certain minimum marks in the M.B.B.S. examination by the candidates has G not in any way encroached upon the Regulations made under the Indian Medical Council Act nor does it infringe the central power provided in the Entry 66 of List-I of the Seventh Schedule to the Constitution. The order merely provides an additional eligibility qualification." None of these judgments lays down that any *reduction* in the eligibility criteria would not impinge on the standards covered by Entry 66 of List-I. All these judgments dealt with H

A additional qualifications—qualifications in addition to what was prescribed by the Central Regulations or Statutes.

There are, however, two cases where there are observations to the contrary. One is the case of the *State of Madhya Pradesh and Anr.* v. *Kumari Nivedita Jain and Ors.*, [1981] 4 SCC 296, a judgment of a Bench of three B Judges. In this case the Court dealt with admission to the M.B.B.S. course in the medical colleges of the State of Madhya Pradesh. The Rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks C were prescribed as 40%. Later on, the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court observed, (paragraph 17) "That it was not in dispute and it could not be disputed that the order in question was in conflict with the provisions contained in Regulation 2 of the Regulations framed by the Indian Medical Council." But it held that Entry 66 of List-I would not apply to the selection D of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation 2 of the Regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine E the character of the Regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and F admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes G would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely H impinge on the standards prescribed by the appropriate authority. Although

this judgment is referred to in the Constitution Bench judgment of *Indra Sawhney & Ors.* v. *Union of India & Ors.*, (supra) the question of standards being lowered at the stage of post-graduate medical admissions was not before the court for consideration. The court merely said that since Article 16 was not applicable to the facts in *Kumari Nivedita Jain's* case (supra), Article 335 was not considered there. For post-graduate medical education, where the "students" are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in Nivedita Jain is approved in all its aspects by *Indra Sawhney and Ors.* v. *Union of India and Ors.*

The other case where a contrary view has been taken is *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.* [1994] 4 SCC 401 decided by a Bench of three Judges. It also held, following *Kumari Nivedita Jain and Ors.* (supra) (at page 417) that "Entry 66 in List-I does not take in the selection of candidates or regulation of admission to institutes of higher education. Because standards come into the picture after admissions are made." For reasons stated above we disagree with these findings.

In this connection, our attention is also drawn to the emphasis placed in some of the judgments on the fact that since all the candidates finally appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, (supra) this Court, relying on *Kumari Nivedita Jain* (supra), said that everybody has to take the same post-graduate examination to qualify for a post-graduate degree. Therefore, the guarantee of quality lies in everybody passing the same final examination. The quality is guaranteed at the exit stage. Therefore, at the admission stage, even if students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in *Post Graduate Institute of Medical Education and Research, Chandigarh and Ors.* v. *K.L. Narasimhan & Anr.*, (supra). This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If excellence is to be promoted at post-graduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass

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marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs - calibre of students, calibre of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, (supra) and *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors.* v. *K.L. Narasimhan and Anr.*, (supra).

The Indian Medical Council Act, 1956 and standards:

Has the Union Government, by Statute or Regulations laid down the standards at the post-graduate level in medicine in the exercise of its legislative powers under Entry 66, List I? The appellants/petitioners rely upon the Indian Medical Council Act, 1956 and the Regulations framed under it. The respondents contend that, in fact, no standards have been laid down by the Medical Council of India. Also the standards laid down are only directory and not mandatory.

Now, one of the objects and reasons contained in the Statement of Objects and Reasons accompanying the Indian Medical Council Act of 1956 is: ".....(d) to provide for the formation of a Committee of Post-Graduate Medical Education for the purpose of assisting the Medical Council of India in prescribing standards of post-graduate medical education for the guidance of universities and to advice universities in the matter of securing uniform standards of post-graduate medical education throughout India." Section 20 of the Indian Medical Council Act, 1956 deals with post-graduate medical education. The relevant provisions under Section 20 are as follows:-

> "20. *Postgraduate medical education committee for assisting council in matters relating to postgraduate medical education:-*
>
> (1) The Council may prescribe standards of postgraduate medical education for the guidance of universities, and advise universities in the matter of securing uniform standards for postgraduate medical education throughout India, and for this purpose the Central government may constitute from among the members of the Council a post graduate medical education committee (hereinafter referred to as the post graduate medical education committee).
>
> (2).....
>
> (3).....

(4).....

(5) The views and recommendations of the post graduate committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the post-graduate committee on any matter, the Council shall forward them together with its observations to the Central Government for decision."

Section 33 of the Act gives to the Council the power to make Regulations generally to carry out the purposes of the Act with the previous sanction of the Central Government. It provides that without prejudice to the generality of this power such Regulations may provide, under Section 33(j) for the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained in universities or medical institutions, for grant of recognised medical qualifications, and under Section 33(l) for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations.

Pursuant to its power to frame Regulations, the Medical Council of India has framed Regulations on Post-Graduate Medical Education which have been approved by the Government of India under Section 33 of the Indian Medical Council Act, 1956. These Regulations which have been framed on the recommendations of the Post-Graduate Medical Education Committee prescribe in extenso the courses for post-graduate medical education, the facilities to be provided and the standards to be maintained. After setting out the various courses, both degree and diploma, available for post-graduate medical education, the Regulations contain certain general provisions/ conditions some of which need to be noted. Condition 4 deals with the student-teacher ratio. It says:

"The student-teacher ratio should be such that the number of post-graduate teachers to the number of post-graduate students admitted per year, be maintained at one to one.

For the proper training of the post-graduate students there should be a limit to the number of students admitted per year. For this purpose every unit should consist of at least three full time post-graduate teachers and can admit not more than three students for post-graduate training per year. If the number of post-graduate teachers

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A in the unit is more than three then the number of students can be increased proportionately. For this purpose, one student should associate with one post-graduate teacher".

Condition 5 says:

B "The selection of post-graduates both for degree and diploma courses should be strictly on the basis of academic merit."

Condition 6 is as follows:-

"*Condition 6*: The training of post-graduates for degree should be of
C the residency pattern with patient care. Both the in-service candidates and the stipendaries should be given similar clinical responsibility .....".

Under the heading "facilities for post-graduate students" clause (1) provides as follows:-

D "*Clause (1):* There would be two types of post-graduate students:

(a) Those holding posts in the same Department like Resident, Registrar, Demonstrator etc. Adequate number of paid posts should be created for this purpose.

E (b) Those receiving stipends. The stipends should normally be Rupees 300 per month payable for the duration of the course."

Under the heading "criteria for the selection of candidates" Clause (a) is as follows:-

F "(a) Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the under-graduate course. All selection for post-graduate studies should be conducted by the Universities."

Under the heading "Evaluation of merit" it is provided as follows:-

G "The Post-graduate Committee was of the opinion that in order to determine the merit of a candidate for admission to post-graduate medical courses, (i) his performance at the M.B.B.S. examinations, (ii) his performance during the course of internship and housemanship for which a daily assessment chart be maintained and (iii) the report
H of the teachers which is to be submitted periodically may be considered.

Alternatively the authorities concerned may conduct competitive entrance examination to determine the merit of a candidate for admission to post-graduate medical courses." A

Under the heading "Methods of training" it is, *inter alia*, provided:

".....The in-service training requires the candidate to be a resident in the campus and should be given graded responsibility in the management and treatment of patients entrusted to his care. Adequate number of post of clinical residents or tutors should be created for this purpose." B

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 post-graduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed Regulations which govern post-graduate 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 post- graduate 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. C D E

Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List-III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254. F

In *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, (supra), this Court examined the powers of the Indian Medical Council under Section 20 of the Indian Medical Council Act, 1956 and held that the power of the Council to prescribe standards of post-graduate medical education under Section 20 are only for the guidance of the universities. Since Section 20 also refers to the power of the Council to advice universities in the matter of securing uniform standards for post-graduate medical education throughout G H

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A India, the Court said that the entire power under Section 20 was purely advisory. Therefore, the power of the Indian Medical Council to prescribe the minimum standards of medical education at the post-graduate level was only advisory in nature and not of a binding character (page 415).

We do not agree with this interpretation put on Section 20 of the
B Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that the Council may *prescribe* standards of post-graduate medical education for the guidance of universities. The second part of sub-section(1) says that the Council may *advise* universities in the matter of securing uniform standards for post-graduate medical education
C throughout. The last part of sub- section (1) enables the Central Government to constitute from amongst the members of the Council, a post-graduate medical education committee. The first part of sub-section(1) empowers the Council to prescribe standards of post-graduate medical education for the guidance of universities. Therefore, the universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes
D accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so
E recognised, the students who qualify will be not be able to practice. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the Council. The post-graduate medical committee is also under Section 17, entitled to appoint medical inspectors to inspect any medical institution, college,
F hospital or other institution where medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any
G medical institution or university concerned in the manner provided in Section 19. Section 19A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than post-graduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of post-graduate medical education. The universities must
H necessarily be guided by the standards prescribed under Section 20(1) if their

degrees or diplomas are to be recognised under the Medical Council of India Act. We, therefore, disagree with and overrule the finding given in *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, (supra), to the effect that the standards of post-graduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed.

In *State of Madhya Pradesh and Anr.* v. *Kumari Nivedita Jain and Ors.*, (supra), the provisions of Indian Medical Council Act and the Regulations framed for under-graduate medical courses were considered by the Court. The Court said that while Regulation 1 was mandatory, Regulation 2 was only recommendatory and need not be followed. We do not agree with this line of reasoning for the reasons which we have set out above.

In the case of *Medical Council of India* v. *State of Karnataka and Ors.*, [1998] 6 SCC 131 a bench of three Judges of this Court has distinguished the observations made in *Kumari Nivedita Jain* (supra). It has also disagreed with *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.* (supra) and has come to the conclusion that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with admissions to the M.B.B.S. course and the Regulations framed by the Indian Medical Council relating to admission to the M.B.B.S. course. The Court took note of the observations in *State of Kerala* v. *Kumari T.P. Roshana and Anr.*, [1979] 1 SCC 572 at page 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to post-graduate medical courses. We are in respectful agreement with this reasoning.

The Regulations governing post-graduate medical education already referred to earlier, provide for admission on the basis of merit. The Regulations, however, have not clearly spelt out whether there can or cannot be, any reservations for Scheduled Castes, Scheduled Tribes and/or backward class candidates at the stage of post-graduate medical admissions. Whether such a reservation would impinge on the standards or not would depend upon the manner in which such reservation is made, and whether the minimum qualifying

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

The States of U.P. and Madhya Pradesh have contended that if the minimum qualifying marks are raised in the case of the reserved category candidates, they will not be able to fill all the seats which are reserved for them. The purpose, however, of higher medical education is not to fill the seats which are available by lowering standards; nor is the purpose of reservation at the stage of post-graduate medical education merely to fill the seats with the reserved category candidates. The purpose of reservation, if permissible at this level, is to ensure that the reserved category candidates having the requisite training and calibre to benefit from post-graduate medical education and rise to the standards which are expected of persons possessing post- graduate medical qualification, are not denied this opportunity by competing with general category candidates. The general category candidates

do not have any social disabilities which prevent them from giving of their best. The special opportunity which is provided by reservation cannot, however, be made available to those who are substantially below the levels prescribed for the general category candidates. It will not be possible for such candidates to fully benefit from the very limited and specialised post-graduate training opportunities which are designed to produce high calibre well trained professionals for the benefit of the public. Article 15(4) and the spirit of reason which permeates it, do not permit lowering of minimum qualifying marks at the post-graduate level to 20% for the reserved category as against 45% for the general category candidates. It will be for the Medical Council of India to decide whether such lowering is permissible and if so to what extent. But in the meanwhile at least the norms which are prescribed for admission to the M.B.B.S. courses ought not to be lowered at the post-graduate level. The lowering of minimum qualifying marks for admission to the M.B.B.S. courses has been permitted by the Indian Medical Council upto 35% for the reserved category as against 45% for the general category. The marks cannot be lowered further for admission to the post-graduate medical courses, especially when at the super speciality level it is the unanimous view of all the judgments of this Court that there should be no reservations. This would also imply that there can be no lowering of minimum qualifying marks for any category of candidates at the level of admission to the super-specialities courses.

In *Mohan Bir Singh Chawla* v. *Punjab University, Chandigarh and Anr.*, (supra) also this Court has taken the view that the higher you go the less should be the extent of reservation or weightage and it would be dangerous to depreciate merit and excellence at the highest levels. In *S. Vinod Kumar and Anr.* v. *Union of India and Ors.*, [1996] 6 SCC 580 this Court while considering Articles 16(4) and 335 held that for the purpose of promotion, lower qualifying marks for the reserved category candidates were not permissible. *Dr. Sadhna Devi and Ors.* v. *State of U.P. and Ors.* (supra) has rightly prescribed minimum qualifying marks for the common entrance examination for post-graduate medical courses. The Court left open the question whether there could be any reservation at the post-graduation level and to what extent lesser qualifying marks could be prescribed, assuming the reservations can be made. As we have said earlier, these are matters essentially of laying down appropriate standards and hence to be decided by the Medical Council of India. However, the disparity in the minimum qualifying marks cannot be substantial.

In *Post Graduate Institute of Medical Education & Research,*

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A *Chandigarh and Ors.* v. *K.L. Narasimhan and Anr.*, [1997] 6 SCC 283 there are observations to the effect that the reservation of seats at the post-graduate and doctoral courses in medicine would not lead to loss of efficiency and would be permissible under Article 15(4). There are also observations to the effect that since all appear for the same final examination, there is no downgrading of excellence. These observations, in our view, cannot be B accepted for reasons set out earlier. The judgment of the Court in Post *Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan and Anr.* (supra) in so far as it lays down these propositions is overruled.

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

D

1. We have not examined the question whether reservations are permissible at the post-graduate level of medical education;

2. A common entrance examination envisaged under the Regulations framed by the Medical Council of India for post-graduate medical E education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.

3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of medical education is a question which must be decided by the F Medical Council of India since it affects standards of post-graduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The G percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the post-graduate level and contrary to public interest.

4. At the level of admission to the super speciality courses, no H special provisions are permissible, they being contrary to national

interest. Merit alone can be the basis of selection. A

In the premises, the impugned Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1997 and G.O. dated 7.6.1997 of the State of Madhya Pradesh are set aside. However, students who have already taken admission and are pursuing courses of post-graduate medical study under the impugned B Act/G.O. will not be affected. Our judgment will have prospective application. Further, pending consideration of this question by the Medical Council of India, the two States may follow the norms laid down by the Medical Council of India for lowering of marks for admission to the under-graduate M.B.B.S. medical courses, at the post-graduate level also as a temporary measure until C the norms are laid down. This, however, will not be treated as our having held that such lowering of marks will not lead to a lowering of standards at the post-graduate level of medical education. Standards cannot be lowered at this level in public interest. This is a matter to be decided by an expert body such as the Medical Council of India assisted by its Post-Graduate Medical Education Committee in accordance with law. D

I.A. No.2 in WP(C) No.679 of 1995, Writ Petition Nos.290 of 1997, 300 of 1997, C.A. No. 4360 of 1999. (Arising out of SLP(C) No.12231 of 1997) and Writ Petition (C) No.350 of 1998 are disposed of accordingly.

Review Petition Nos. 2371-72 of 1997 in CA Nos.3176-77/97 E

Normally the power to review is used by us sparingly to correct errors apparent on the face of the record. In the judgment sought to be reviewed, however, there are observations which are so widely worded that they may create mischief or national detriment. We would, therefore, like to clarify the position regarding admissions to the super specialities in medicine. In *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors.* v. *K.L. Narasimhan and Anr.*, [1997] 6 SCC 283, which is the judgment in question, it was, *inter alia*, held that there could be reservation of seats for the Scheduled Castes and Scheduled Tribes at post-graduate levels or doctoral levels in medicine and that such reservations would not lead to a loss of G efficiency and are permissible under Article 15(4). F

In the group of civil appeals decided by *Post Graduate Institute of Medical Education & Research, Chandigarh and Ors.* v. *K.L. Narasimhan and Anr.* (supra), the appeal of the present petitioners had challenged an Admission Notice No.15/90 issued in the Indian Express of 25.11.1990, under H

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A which six seats for the super speciality courses of D.M./M.C.H. were kept reserved for the Scheduled Caste and the Scheduled Tribe candidates. The petitioners rightly contend that at the super speciality level there cannot be any relaxation in favour of any category of candidates. Admissions should be entirely on the basis of open merit.

B The ambit of special provisions under Article 15(4) has already been considered by us. While the object of Article 15(4) is to advance the equality principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and be able to compete equally with others more fortunate, one cannot also ignore the wider interests of C society while devising such special provisions. Undoubtedly, protective discrimination in favour of the backward, including scheduled castes and scheduled tribes is as much in the interest of society as the protected groups. At the same time, there may be other national interests, such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to society, which D have also to be borne in mind. Special provisions must strike a reasonable balance between these diverse national interests.

In the case of *Dr. Jagdish Saran and Ors.* v. *Union of India,* (supra) this Court observed that at the highest scales of speciality, the best skill or talent must be hand-picked by selection according to capability. Losing a E potential great scientist or technologist would be a national loss. That is why the Court observed that the higher the level of education the lesser should be the reservation. There are similar observations in *Dr. Pradeep Jain and Ors.* v. *Union of India and Ors.* (supra). Undoubtedly, *Dr. Pradeep Jain and Ors.* v. *Union of India and Ors.* (supra) did not deal with reservation in favour F of the Scheduled Castes and the Scheduled Tribes. It dealt with reservation in favour of residents and students of the same university. Nevertheless it correctly extended the principle laid down in *Dr. Jagdish Saran and Ors. v. Union of India,* (supra) to these kinds of reservation also, holding that at the highest levels of medical education excellence cannot be compromised to the detriment of the nation. Admissions to the highest available medical courses G in the country at the super-speciality levels, where even the facilities for training are limited, must be given only on the basis of competitive merit. There can be no relaxation at this level.

Indra Sawhney and Ors. v. *Union of India and Ors.* (supra) has also observed that in certain positions at the highest level merit alone counts. In H specialities and super-specialities in medicine, merit alone must prevail and

there should not be any reservation of posts. The observations in *Indra Sawhney and Ors.* v. *Union of India and Ors.*, (supra) were in respect of posts in the specialities and super-specialities in medicine. Nevertheless, the same principle applies to seats in the specialities and super-specialities in medicine. Moreover, study and training at the level of specialities and super-specialities in medicine involve discharging the duties attached to certain specified medical posts in the hospitals attached to the medical institutions giving education in specialities and super-specialities. Even where no specific posts are created or kept for the doctors studying for the super-specialities or specialities, the work which they are required to do in the hospitals attached to these institutions is equivalent to the work done by the occupants of such posts in that hospital. In this sense also, some of the considerations under Article 16(4) read with Article 335 rub off on admissions of candidates who are given seats for speciality and super-speciality courses in medicine. Even otherwise under Article 15(4) the special provisions which are made at this level of education have to be consistent with the national interest in promoting the highest levels of efficiency, skill and knowledge amongst the best in the country so that they can contribute to national progress and enhance the prestige of the nation. The same view has been upheld in *Dr. Fazal Ghafoor* v. *Union of India and Ors.*, [1988] Supp. SCC 794 and *Mohan Bir Singh Chawla* v. *Punjab University, Chandigarh and Anr.*, [1997] 2 SCC 171.

The Post-graduate Institute of Medical Education and Research, Chandigarh, has been set up as an institution of national importance. The Post-graduate Institute of Medical Education and Research, Chandigarh Act, 1966, under Section 2 provides that the object of the said institution is to make the institution one of national importance. Section 12 sets out the objects of the Institute. These are as follows:-

> "*Objects of Institute:*The objects of the Institute shall be -
>
> (a) to develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education;
>
> (b) to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and
>
> (c) to attain self-sufficiency in post-graduate medical education to meet the country's needs for specialists and medical teachers."

A Under Section 13 the functions of the Institute include providing both under-graduate and post-graduate teaching, *inter alia*, in medicine as also facilities for research, conducting experiments in new methods of medical education both under-graduate and post-graduate, in order to arrive at satisfactory standards of such education, prescribe courses and curricula for both under-graduate and post-graduate study and to establish and maintain one or more B medical colleges equipped to undertake not only under-graduate but also post-graduate medical education in the subject.

Under Section 32 of the said Act, the Post-graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 have been framed. C Regulation 27 provides for 20% of the seats in every course of study in the Institute to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes or other categories of persons in accordance with the general orders issued by the Central Government from time to time. Regulation 27, however, cannot have any application at the highest level of super-specialities as this would defeat the very object of imparting the best possible D training to select meritorious candidates who can contribute to the advancement of knowledge in the fields of medical research and its applications. Since no relaxation is permissible at the highest levels in the medical institutions, the petitioners are right when they contend that the reservations made for the Scheduled Caste and the Scheduled Tribe candidates for admission to D.M. and M.C.H. courses which are super-speciality courses, is E not consistent with the constitutional mandate under Articles 15(4) and 16(4). Regulation 27 would not apply at the level of admissions to D.M. and M.C.H. courses.

We, therefore, hold that the judgment of this Court in *Post Graduate* F *Institute of Medical Education & Research, Chandigarh and Ors.* v. *K.L. Narasimhan & Anr.*, (supra) cannot be read as holding that any type of relaxation is permissible at the super-specialities level. The review petitions are disposed of accordingly.

All the interlocutory applications also stand disposed of.

G

S.B. MAJMUDAR, J. Leave granted.

I have carefully gone through the draft judgment prepared by our esteemed colleague Justice Sujata V. Manohar. I respectfully agree with some of the conclusions arrived at therein at pages 61 and 62, namely, conclusion H nos. 1 and 4.

However, so far as conclusion nos. 2 and 3 are concerned, I respectfully record my reservations and partially dissent as noted hereinafter. In my view, the common entrance examination envisaged under the Regulations framed by the Medical Council of India for Postgraduate Medical Education does not curtail the power of the State Authorities, legislative as well as executive, from fixing suitable minimum qualifying marks differently for general category candidates and for SCs/STs and OBC candidates as highlighted in my present judgment.

So far as conclusion no.3 is concerned, with respect, it is not possible for me to agree with the reasoning and the final conclusion to which our esteemed colleague Justice Sujata V. Manohar has reached, namely, that fixing minimum qualifying marks for passing the entrance test for admission to postgraduate courses is concerned with the standard of Postgraduate Medical Education.

I, however, respectfully agree to that part of conclusion no.3 which states that there cannot be a wide disparity between the minimum qualifying marks for reserved category candidates and the minimum qualifying marks for general category candidates at this level. I also respectfully agree that there cannot be dilution of minimum qualifying marks for such reserved category candidates up to almost a vanishing point. The dilution can be only up to a reasonable extent with a rock bottom, below which such dilution would not be permissible as demonstrated hereinafter in this judgment. In my view, maximum dilution can be up to 50% of the minimum qualifying marks prescribed for general category candidates. On that basis if 45% passing marks are prescribed for general category, permissible dilution can then go up to 22 and 1/2 % (50% of 45%). Any dilution below this rock bottom would not be permissible under Article 15(4) of the Constitution of India.

For reaching the aforesaid conclusions, I have independently considered the scheme of the relevant provisions of the Constitution in the light of the various judgments of this Court as detailed hereinafter :

Entry 66 of List I, Old Entry 11(2) of List II and Entry 25 of List III:

Entry 66 of List I of the Seventh Schedule reads as under :

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

Old Entry 11 of List II, as earlier existing in the Constitution of India,

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A read as under :

> `Education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III.'

While Entry 25 of List III as now existing in the Seventh Schedule of the
B Constitution reads as under :

> "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."

C A conjoint reading of these entries makes it clear that as per Entry 11 of List II which then existed on the statute book, all aspects of education, including university education, were within the exclusive legislative competence of the State Legislatures subject to Entries 63 to 66 of List I and the then existing Entry 25 of List III. The then existing Entry 25 of the Concurrent List conferred
D power on the Union Parliament and State Legislature to enact legislation with respect to vocational and technical training of labour. Thus, the said Entry 25 of List III had nothing to do with Medical Education. Any provision regarding Medical Education, therefore, was thus covered by Entry 11 of List II subject of course to the exercise of legislative powers by the Union Legislature as per entries 63 to 66 of List I. In the light of the aforesaid
E relevant entries, as they stood then, a Constitution Bench of this court in *The Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar and Ors.*, [1963] Suppl. 1 SCR 112, speaking through *J.C. Shah,* J., for the majority, had to consider whether the State Legislature could impose an exclusive medium of instruction 'Gujarati' for the students who had to study and take examination conducted by the Gujarat University. It was held that `If a legislation imposing
F a regional language or Hindi as the exclusive medium of instruction is likely to result in lowering of standards, it must necessarily fall within Item 66 of List I and be excluded to that extent from Item 11 of List II' as it then stood in the Constitution. Medium of instruction was held to have an important bearing on the effectiveness of instruction and resultant standards achieved
G thereby. In this connection, pertinent observations were made at pages 142 and 143 of the aforesaid Report:

> 'If adequate text-books are not available or competent instructors in the medium, through which instruction is directed to be imparted, are not available, or the students are not able to receive or imbibe
H instructions through the medium in which it is imparted, standards

must of necessity fall, and legislation for co-ordination of standards in such matters would include legislation relating to medium of instruction.

If legislation relating to imposition of an exclusive medium of instruction in a regional language or in Hindi, having regard to the absence of text-books and journals, competent teachers and incapacity of the students to understand the subjects, is likely to result in the lowering of standards, that legislation would, in our judgment, necessarily fall within Item 66 of List I and would be deemed to be excluded to that extent from the amplitude of the power conferred by Item No.11 of List II.'

However, after the deletion of Entry 11 from List II and re-drafting of Entry 25 in the Concurrent List as in the present form, it becomes clear that all aspects of education, including admission of students to any educational course, would be covered by the general entry regarding education including technical and medical education etc. as found in the Concurrent List but that would be subject to the provisions of Entries 63 to 66 of List I. Therefore, on a conjoint reading of Entry 66 of List I and Entry 25 of List III, it has to be held that so long as the Parliament does not occupy the field earmarked for it under Entry 66 of List I or for that matter by invoking its concurrent powers as per Entry 25 in the Concurrent List, the question of admission of students to any medical course would not remain outside the domain of the State Legislature. It is not in dispute that up till now the Parliament, by any legislative exercise either by separate legislation or by amending the Indian Medical Council Act, 1956 has not legislated about the controlling of admissions of students to higher medical education courses in the country. Therefore, the only question remains whether the Indian Medical Council Act enacted as per Entry 66 of List I covers this aspect. If it covers the topic then obviously by the express language of Entry 25 of List III, the said topic would get excluded from the legislative field available to the State Legislature even under Entry 25 of Concurrent List. For answering this question, we have therefore, to see the width of Entry 66 of List I. It deals with "Co-ordination and determination of standards in institutions for higher education..." A mere reading of this Entry shows that the legislation which can be covered by this entry has to deal basically with 'Co-ordination and determination of standards in institutions for higher education'. Meaning thereby, the standards of education at the institutions of higher education where students are taking education after admission are to be monitored by such a legislation or in other

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words after their enrolment for studying at such institutions for higher education such students have to undertake the prescribed course of education evolved with a view to having uniform and well laid down standards of higher medical education. It cannot be disputed that postgraduate teaching in medical education is being imparted by institutions for higher medical education. But the question is whether the topic of admission of eligible candidates/students for taking education in such institutions has anything to do with co-ordination and determination of standards in these institutions. Now `standards in the institutions' have been prefixed by two words, namely, `co-ordination and determination' of such standards as per Entry 66 of List I. So far as "co-ordination" is concerned, it is a topic dealing with provision of uniform standards of education in different institutions so that there may not be any hiatus or dissimilarity regarding imparting of education by these institutions to the students taking up identical courses of study for higher medical education in these institutions. That necessarily has a nexus with the regulations of standards of education to be imparted to already admitted students to the concerned courses of higher education. But so far as the phrase "determination of standards in institutions for higher education" is concerned, it necessarily has to take in its sweep the requirements of having a proper curriculum of studies and the requisite intensity of practical training to be imparted to students attaining such courses. But in order to maintain the fixed standard of such higher medical education in the institutions, basic qualification or eligibility for admission of students for being imparted such education also would assume importance. Thus, the phrase "determination of standards in institutions for higher education" would also take in its sweep the basic qualifications or eligibility criteria for admitting students to such courses of education. It can, therefore, be held that the Indian Medical Council Act, 1956 enacted under Entry 66 of List I could legitimately authorise Medical Council of India which is the apex technical body in the field of medical education and which is enjoined to provide appropriately qualified medical practitioners for serving the suffering humanity to prescribe basic standards of eligibility and qualification for medical graduates who aspire to join post-graduate courses for obtaining higher medical degrees by studying in the institutions imparting such education.

But the next question survives as to whether after laying down the basic qualifications or eligibility criteria for admission of graduate medical students to the higher medical education courses which may uniformly apply all over India as directed by the Medical Council of India, it can have further power and authority to control the intake capacity of these eligible students

in a given course conducted by the institutions for higher post-graduate medical education. In other words, whether it can control the admissions of eligible candidates to such higher medical education courses or lay down any criteria for short-listing of such eligible candidates when the available seats for admission to such higher post-graduate medical education courses are limited and the eligible claimants seeking admission to such courses are far greater in number? So far as this question is concerned, it immediately projects the problem of short-listing of available eligible candidates competing for admission to the given medical education course and how such admissions could be controlled by short-listing a number of eligible candidates out of the larger number of claimants who are also eligible for admission. In other words, there can be too many eligible candidates chasing too few available seats. So far as this question is concerned, it clearly gets covered by Entry 25 of Concurrent List III rather than Entry 66 of List I as the latter entry would enable, as seen above, the Medical Council of India only to lay down the standards of eligibility and basic qualification of graduate medical students for being admitted to any higher post-graduate medical course. Having provided for the queue of basically eligible qualified graduate medical students for admission to post-graduate medical courses for a given academic year, the role of Medical Council of India would end at that stage. Beyond this stage the field is covered by Entry 25 of List III dealing with education which may also cover the question of controlling admissions and short-listing of the eligible candidates standing in the queue for being admitted to a given course of study in institutions depending upon the limited number of seats available in a given discipline of study, the number of eligible claimants for it and also would cover the further question whether any seats should be reserved for SC, ST and OBCs as permissible to the State authorities under Article 15(4) of the Constitution of India. So far as these questions are concerned, it is no doubt true that Entry 25 of Concurrent List read with Article 15(4) of the Constitution of India may simultaneously authorise both the Parliament as well as the State Legislatures to make necessary provisions in that behalf. The State can make adequate provisions on the topic by resorting to its legislative power under Entry 25 of List III as well as by exercising executive power under Article 162 of the Constitution of India read with Entry 25 of List III. Similarly, the Union Government, through Parliament, may make adequate provisions regarding the same in exercise of its legislative powers under Entry 25 of List III. But so long as the Union Parliament does not exercise its legislative powers under Entry 25 of List III covering the topic of short-listing of eligible candidates for admission to courses of post-graduate medical education, the field remains wide open for the State authorities to pass suitable legislations or executive

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A orders in this connection as seen above. As we have noted earlier, the Union Parliament has not invoked its power under Entry 25 of List III for legislating on this topic. Therefore, the field is wide open for the State Governments to make adequate provisions regarding controlling admissions to postgraduate colleges within their territories imparting medical education for ultimately getting post-graduate degrees.

B

However, I may mention at this stage that reliance placed by Shri Chaudhary, learned senior counsel for the State of Madhya Pradesh on a Constitution Bench judgment of this Court in *Tej Kiran Jain and Ors.* v. *N. Sanjiva Reddy and Ors.*, [1970] 2 SCC 272, interpreting the word "in" in the C phrase "in Parliament" to mean "during the sitting of Parliament and in the course of the business of Parliament" cannot be of any avail to him while interpreting the phrase "determination of standards in institutions for higher education" as found in Entry 66 of List I. His submission, relying on the aforesaid decision that directions regarding "standards in institutions" mean only those directions of the Medical Council of India which regulate the D actual courses of study after the students are admitted into the institutions and cannot cover the situation prior to their admission, meaning thereby, pre-admission stage for students seeking entry to the institution of higher education cannot be countenanced. The reason is obvious. Once it is held that the Medical Council of India exercising its statutory functions and E powers under the Indian Medical Council Act, 1956 which squarely falls within Entry 66 of List I can lay down the eligibility and basic qualifications of students entitled to be admitted to such post-graduate courses of study, their eligibility qualification would naturally project a consideration which is prior to their actual entry in the institutions as students for being imparted higher education. That would obviously be a pre-admission stage. Therefore, F the phrase 'determination of standards in institutions' does not necessarily mean controlling standards of education only after the stage of entry of students in these institutions and necessarily not prior to the entry point. However, as seen earlier, the real question is whether "determination of standards in institutions' would go beyond the stage of controlling the G eligibility and basic qualification of students for taking up such courses and would also cover the further question of short-listing of such eligible students by those running the institutions in the States. For every academic year, there will be limited number of seats in post-graduate medical courses vis-a-vis a larger number of eligible candidates as per guidelines laid down by the Medical Council of India. Short-listing of such candidates, therefore, has to H be resorted to. This exercise will depend upon various imponderables like (i)

limited number of seats for admission in a given course *vis-a-vis* larger number of eligible candidates seeking admissions and the question of fixation of their *inter se* merits so as to lay down rational criteria for selecting better candidates as compared to candidates with lesser degree of competence for entry in such courses; (ii) Whether at a given point of time there are adequate chances and scope for SC,ST and OBC candidates who can equally be eligible for pursuing of such courses but who on account of their social or economic backwardness may lag behind in competition with other general category candidates who are equally eligible for staking their claims for such limited number of seats for higher educational studies; (iii) availability of limited infrastructural facilities for training in institutions for higher medical education in the State or in the colleges concerned. All these exigencies of the situations may require State authorities, either legislatively or by exercise of executive powers, to adopt rational standards or methods for *short-listing eligible* candidates for being admitted to such medical courses from year to year also keeping in view the requirement of Article 15(4) of the Constitution of India.

While dealing with Entry 25 of List III it has also to be kept in view that the word "education" is of wide import. It would necessarily have in its fold (i) the taught, (ii) the teacher, (iii) the text and also (iv) training as practical training is required to be imparted to students pursuing the course of post-graduate medical education. Who is to be the taught is determined by Medical Council of India by prescribing the basic qualifications for admission of the students. Adequate number of teachers keeping in view teacher taught ratio is also relevant. Prescribing appropriate courses for study i.e. curricula is also covered by the term 'education'. Training to be imparted to the students has a direct nexus with infrastructural facilities like number of beds of patients to be attended to by post-graduate medical students, providing appropriate infrastructure for surgical training etc. also would form part of education. Role of Medical Council of India is exclusive in the field of laying down of basic qualifications of the taught and also the requirement of qualified teachers, their numbers and qualifications, prescribing text and requisite training to be imparted to students undertaking post-graduate medical courses. All these provisions quite clearly fall within the domain of Medical Council of India's jurisdiction. However, the only field left open by the Parliament while enacting the Indian Medical Council Act, 1956 under Entry 66 of List III of Schedule VII is the solitary exercise of short-listing of eligible taught for being admitted to such courses. That field can validly be operated upon by the State authorities so long as Parliament, in its wisdom, does not step in to block even that solitary field otherwise remaining open for State authorities to

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A function in that limited sphere. Infrastructure facilities, therefore, for giving such practical training to the taught also would be an important part of medical education. It is of course true that not only the eligibility of students for admission to medical courses but also the quality of students seeking to get medical education especially post-graduate medical education with a view to turning out efficient medical practitioners for serving the suffering humanity B would all be covered by the term "education". So far as the quality of admitting students to the courses of higher medical education i.e. post-graduate medical courses is concerned, the admission of students may get sub-divided into two parts; (i) basic eligibility or qualification for being permitted to enter the arena of contest for occupying the limited number of C seats available for pursuing such education; and (ii) the quality of such eligible candidates for being admitted to such courses. As we have seen earlier, the first part of exercise for admission can be covered by the sweep of the parliamentary legislation i.e. the Indian Medical Council Act, 1956 enabling the delegate of the Parliament namely, Medical Council of India to lay down proper criteria for that purpose as per regulations framed by it under D Section 33 of the Indian Medical Council Act. This aspect is clearly covered by Entry 66 of List I but so far as the second part of admissions of eligible students is concerned, it clearly remains in the domain of Entry 25 of List III and it has nothing to do with Entry 66 of List I and as this field is wide open till the Parliament covers it by any legislation under Entry 25 of List III, the E State can certainly issue executive orders and instructions or even pass appropriate legislations for controlling and short-listing the admissions of eligible candidates to such higher post-graduate medical courses in their institutions or other institutions imparting such medical education in the States concerned.

F A three Judge bench of this Court in *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, [1994] 4 SCC 401, has taken the same view on these entries which commands acceptance. *Jeevan Reddy*, J., speaking for the three Judge bench placing reliance on an earlier three Judge bench judgment of this Court in *State of M.P.* v. *Nivedita Jain*, [1981] 4 SCC 296, and agreeing with G the view expressed therein observed in para 22 of the Report as under :

> 'The power to regulate admission to the courses of study in medicine is traceable to Entry 25 in List III. (Entry 11 in List II, it may be remembered, was deleted by the 42nd Amendment to the Constitution and Entry 25 of List III substituted). The States, which establish and H maintain these institutions have the power to regulate all aspects and

affairs of the institutions except to the extent provided for by Entries 63 to 66 of List I. Shri Salve contended that the determination and coordination of standards of higher education in Entry 66 of List I takes in all incidental or ancillary matters, that Regulation of admission to courses of higher education is a matter incidental to the determination of standards and if so, the said subject-matter falls outside the field reserved to the States. He submits that by virtue of Entry 66 List I, which overrides Entry 25 of List III, the States are denuded of all and every power to determine and co-ordinate the standards of higher education, which must necessarily take in regulating the admission to these courses. Even if the Act made by Parliament does not regulate the admission to these courses, the States have no power to provide for the same that the said subject-matter falls outside their purview. Accordingly, it must be held, says Shri Salve, that the provision made by the State Government reserving certain percentage of seats under Article 15(4) is wholly incompetent and outside the purview of the field reserved to the States under the Constitution. We cannot agree. While Regulation of admission to these medical courses may be incidental to the power under Entry 66 List I, it is integral to the power contained in Entry 25 List III. The State which has established and is maintaining these institutions out of public funds must be held to possess the power to regulate the admission policy consistent with Article 14. Such power is an integral component of the power to maintain and administer these institutions. Be that as it may, since we have held, agreeing with the holding in *Nivedita Jain* that Entry 66 in List I does not take in the selection of candidates or regulation of admission to institutions of higher education, the argument of Shri Salve becomes out of place. The States must be held perfectly competent to provide for such reservations.'

It is also pertinent to note that decision of this Court in *Kumari Nivedita Jain,* (supra) is approved by a Constitution Bench of nine Judges of this court in *Indra Sawhney and Ors.* v. *Union of India and Ors.,* [1992] Supp. 3 SCC 217 at page 751, to which I will make a detailed reference later on.

II. Role of the Medical Council of India:

As noted earlier, the Indian Medical Council Act, 1956 was enacted by the Union Parliament in exercise of its powers under Entry 66 of List I of the Seventh Schedule of the Constitution. The statement of objects and reasons

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A of the said Act read as under :

'The objects of this Bill are to amend the Indian Medical Council Act, 1933 (Act XXVII of 1933) -

(a) to give representation to licentiate members of the medical
B profession, a large number of whom are still practising in the country;

(b) to provide for the registration of the names of citizens of India who have obtained foreign medical qualifications which are not at present recognised under the existing Act;

C (c) to provide for the temporary recognition of medical qualifications granted by medical institutions in countries outside India with which no scheme of reciprocity exists in cases where the medical practitioners concerned are attached for the time being to any medical institution in India for the purpose of teaching or research
D or for any charitable object;

(d) to provide for the 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 the guidance of Universities and to advise
E Universities in the matter of securing uniform standards for post-graduate medical education throughout India;

(e) to provide for the maintenance of an all-India register by the Medical Council of India, which will contain the names of all the medical practitioners possessing recognised medical
F qualifications.'

Amongst others, the object and reason no.(d) clearly indicated that the Act was to provide for the 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 the guidance of Universities.
G This necessarily meant conferring power on Medical Council of India to be the approving body for the Universities for enabling them to prescribe standards of post-graduate medical education. Naturally that referred to the courses of study to be prescribed and the types of practical training to be imparted to the admitted students for such courses. We may now refer to the relevant statutory provisions of the Act. Section 10-A empowers the Central
H Government to give clearance for establishing medical colleges at given

centres and the statutory requirements for establishing such colleges. It is the Medical Council of India which has to recommend in connection with such proposed scheme for establishing medical colleges. Sub-section (7) of Section 10-A lays down the relevant considerations to be kept in view by the Medical Council of India while making such recommendations in connection with any scheme proposing to establish a medical college. They obviously refer to the types of education to be imparted to admitted students and the basic requirement of infrastructure for imparting such education which only would enable the proposed college to be established. None of these requirements has anything to do with the controlling of admissions out of qualified and eligible students who can take such education. Section 11 deals with medical qualifications granted by any University or medical institution which can be recognised as medical qualifications for the purpose of the Act. Meaning thereby, only such qualified persons can be registered as medical practitioners under the Act. None of the other provisions of the Act deal with the topic of short-listing of eligible and otherwise qualified candidates for being admitted to medical courses either at MBBS level or even at post-graduate level. As we are concerned with minimum standards for medical education at post-graduate level, Section 20 of the Act becomes relevant. It reads as under :

> `*20. Post Graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical education—*
>
> (1) The Council may prescribe standards of post-graduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Post-Graduate Medical Education Committee (hereinafter referred to as the Post-graduate Committee).
>
> (2) The Post-Graduate Committee shall consist of nine members all of whom shall be, persons possessing post-graduate medical qualifications and experience of teaching or examining post-graduate students of medicine.
>
> (3) Six of the members of the Post-Graduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members.

A (4) For the purpose of considering Post-graduate studies in a subject, the Post-graduate Committee may co-opt, as and when necessary, one or more members qualified to assist it in that subject.

(5) The views and recommendations of the Post-Graduate Committee on all matters shall be placed before the Council; and if the B Council does not agree with the views expressed or the recommendations made by the Post-Graduate Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision."

Sub-section (1) of Section 20 while dealing with prescription of standards of C post-graduate medical education by the Council for the guidance of Universities does not by itself touch upon the topic of controlling of admission of eligible medical graduates or short-listing them according to the exigencies of the situations at a given point of time by those running medical institutions imparting post-graduate medical courses in the colleges. Standards of post graduate medical education as mentioned in sub-section (1) of Section 20 D therefore, would include guidance regarding the minimum qualifications or eligibility criteria for such students for admission and after they are admitted having undergone the process of short-listing at the hands of the State authorities or authorities running the institutions, how they are to be trained and educated in such courses, how practical training has to be given to them E and what would be the course of study, the syllabi and the types of examination which they have to undertake before they can be said to have successfully completed post-graduate medical education in the concerned States. But having seen all these it has to be kept in view that all that Sub-section (1) of Section 20 enables the Medical Council of India is to merely give guidance to the Universities. What is stated to be guidance can never refer to the F quality of a candidate who is otherwise eligible for admission. None of the remaining provisions up to Section 32 deal with the question of controlling of admission by process of short-listing from amongst eligible and duly qualified candidates seeking admission to post-graduate medical courses. We then go to Section 33 which confers power on the Medical Council of India G to make regulations. It provides that `the Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act. Therefore, this general power to make regulations has to be with reference to any of the statutory purposes indicated in any other provisions of the Act. As none of the provisions in the Act enables the Medical Council of India to regulate the admission of eligible candidates H to the available seats for pursuing higher medical studies in institutions, the

general power to make regulations cannot cover such a topic. So far as the express topics enumerated in Section 33 on which regulations can be framed are concerned, the relevant topics for our purpose are found in clauses (fc) and (j). So far as clause (fc) is concerned, it deals with `the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of Section 10B". When we turn to Section 10B, we find that it deals with those students who are admitted on the basis of the increase in its admission capacity without previous permission of the Central Government. Any medical qualification obtained by such student will not enable him or her to be treated as duly medically qualified. The medical qualification is obviously obtained by the student who has successfully completed his course of study and obtained the requisite degree. It is the obtaining of such requisite medical degree and qualification that entitles him to get enrolled as per Section 15 on any State Medical Register so that he can act as a Registered Medical Practitioner. That obviously has nothing to do with the admission of students desirous of obtaining medical degrees after undergoing requisite educational training at the institutions. Therefore, no regulation framed under Section 33(fc) can cover the topic of short-listing of eligible candidates for admission. Then remains in the field clause (j) which provides as under :

> "[(j)the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;"

A mere look at the said provision shows that regulations under this provision can be framed by the Medical Council of India for laying down the courses and period of study and of practical training to be undertaken, the subjects of examination and the standard of proficiency therein to be obtained by the admitted students for obtaining recognised medical qualifications. They all deal with post-admission requirements of eligible students in the medical courses concerned. That has nothing to do with pre-entry stage of such students eligible for admission. Consequently, any regulation framed by the Medical Council of India under Section 33 which seeks to give any guidelines in connection with the method of admission of such eligible students to medical courses would obviously remain in the realm of a mere advise or guidance and can obviously therefore, not have any binding force *qua* admitting authorities. It, therefore, must be held that once the Medical Council of India has laid down basic requirements of qualifications or eligibility criteria

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A for a student who has passed his MBBS examination for being admitted to post-graduate courses for higher medical education in institutions and once these basic minimum requirements are complied with by eligible students seeking such admissions, the role of Medical Council of India comes to an end. As seen earlier, the question of short-listing falls squarely in the domain of State authorities as per entry 25 of List III till Parliament steps in to cover this field.

We may now briefly deal with decisions of this Court rendered from time to time in connection with this question. A three Judge Bench of this Court in *D.N. Chanchala* v. *State of Mysore and Ors. etc.,* [1971] Supp. SCR 608, speaking through Shelat, J., emphasised the necessity for a screening test and short-listing of eligible candidates for being admitted to medical courses in view of the fact that claimants are many and seats are less. Dealing with three universities set up in the territories of the then State of Mysore catering to medical education, the following relevant observations were made at page 619 of the Report :

> "The three Universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one University for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centres for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the University statutes and regulations and do not suffer from infirmities, constitutional or otherwise".

"Similar observations were made at page 628 of the Report :

> "On account of paucity of institutions imparting training in technical studies and the increasing number of candidates seeking admission therein, there is obviously the need for classification to enable fair and equitable distribution of available seats. The very decisions relied on by counsel for the petitioner implicitly recognise the need for classification and the power of those who run such institutions to lay down classification`."

A three Judge Bench of this Court in *State of Madhya Pradesh and Anr.* v. *Kumari Nivedita Jain and Ors.*, (supra) had to consider the legality of order passed by the State of Madhya Pradesh completely relaxing the conditions relating to the minimum qualifying marks for SC, ST candidates for admission to medical courses of study on non- availability of qualified candidates from these categories. Such an exercise was held permissible under Articles 14 and 15 of the Constitution of India. A.N. Sen, J., speaking for the Court in this connection referred to Entry 25 of the Concurrent List and also the constitutional scheme of Entry 66 of List I and held that:

> `By virtue of the authority conferred by the Medical Council Act, the Medical Council may prescribe the eligibility of a candidate who may seek to get admitted into a Medical College for obtaining recognised medical qualifications. But as to how the selection has to be made out of the eligible candidates for admission into the Medical College necessarily depends on circumstances and conditions prevailing in particular States and does not come within the purview of the Council. Regulation I which lays down the conditions or qualifications for admission into medical course comes within the competence of the Council under Section 33 of the Act and is mandatory, whereas Regulation II which deals with the process or procedure for selection from amongst eligible candidates for admission is outside the authority of the Council under Section 33 of the Act, and is merely in the nature of a recommendation and is directory in nature.
>
> (paras 19 and 21)
>
> Entry 25 in List II is wide enough to include within its ambit the question of selection of candidates to Medical Colleges and there is nothing in the Entries 63, 64 and 65 of List I to suggest to the contrary.
>
> (para 22)
>
> As there is no legislation covering the field of selection of candidates for admission to Medical Colleges, the State Government would, undoubtedly, be competent to pass executive orders in this regard under Article 162.
>
> (para 24)
>
> Thus Regulation II of the Council which is merely directory and

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A in the nature of a recommendation has no such statutory force as to render the Order in question which contravenes the said Regulation illegal, invalid and unconstitutional. The Order can, therefore, be supported under Article 15(4).

(paras 22 and 25)

B The State is entitled to make reservations for the Scheduled Castes and Scheduled Tribes in the matter of admission to medical and other technical institutions. In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates C belonging to these categories for whose benefit and welfare the reservations have been made. In any particular situation, taking into consideration the realities and circumstances prevailing in the State it will be open to the State to vary and modify the conditions regarding selection for admission, if such modification or variation becomes necessary for achieving the purpose for which reservation has been D made and if there be no law to the contrary. Note (ii) of Rule 20 of the Rules for admission framed by the State Government specifically empowers the Government to grant such relaxation in the minimum qualifying marks to the extent considered necessary. Such relaxation neither can be said to be unreasonable, nor constitutes violation of E Article 15(1) and (2) or Article 14 of the Constitution. *The impugned order does not affect any relaxation in the standard of medical education or curriculum of studies in Medical Colleges for those candidates after their admission to the College and the standard of examination and the curriculum remains the same for all.*

F (paras 26 and 27)"

(Emphasis supplied)

The aforesaid observations of the court are well sustained on the scheme of the relevant entries in VIIth Schedule to which we have made a reference G earlier. As noticed hereinbefore, this judgment of three member Bench is approved by the Constitution Bench in its judgment in *Indra Sawhney's case* (supra). It is of course true that these observations are made with reference to admission to MBBS course and not to post-graduate medical courses. But on the constitutional scheme of the relevant entries, the very same result can follow while regulating admissions to post-graduate medical courses also. H Before parting with discussion on the topic regarding role of Medical Council

of India, we may also usefully refer to the observations of *Jeevan Reddy,* J., in the case of *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.,* (supra). Jeevan Reddy, J., speaking for the three Judge Bench in para 18 of the Report on the review and relevant provisions of the Indian Medical Council Act has made the following pertinent observations in the said para of the Report at page 415 :

> "A review of the provisions of the Act clearly shows that among other things, the Act is concerned with the determination and coordination of standards of education and training in medical institutions. Sections 16, 17, 18 and 19 all speak of `the courses of study and examinations to be undergone" to obtain the recognised medical qualification. They do not speak of admission to such courses. Section 19-A expressly empowers the council to `prescribe the minimum standards of medical education" required for granting undergraduate medical qualification. So does Section 20 empower the council to prescribe standards of post-graduate medical education but "for the guidance of universities" only. It further says that the council *"may also advise* universities in the matter of securing uniform standards for post-graduate medical education throughout India". (The distinction between the language of Section 19-A and Section 20 is also a relevant factor, as would be explained later.) Clause (j) of Section 33 particularises the subjects with respect to which Regulations can be made by the council. It speaks of the courses and period of study and the practical training to be undergone by the students, the subjects of examination which they must pass and the standards of proficiency they must attain to obtain the recognised medical qualifications but it does not speak of admission to such courses of study. Indeed, none of the sections aforementioned empower the council to regulate or prescribe qualifications or conditions for admission to such courses of study. No other provision in the Act does. It is thus clear that the Act does not purport to deal with, regulate or provide for admission to graduate or post-graduate medical courses. Indeed, insofar as post-graduate courses are concerned, the power of the Indian Medical Council to `prescribe the minimum standards of medical education" is only advisory in nature and not of a binding character. In such a situation, it would be rather curious to say that the Regulations made under the Act are binding upon them. The Regulations made under the Act cannot also provide for or regulate admission to post-graduate courses in any event."

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A In our view, these observations are clearly borne out from the statutory scheme of the Indian Medical Council Act, as seen earlier.

III. Role of States for short-listing of admissions to post-graduate courses:

As seen earlier, so far as the field consisting of the short-listing of
B admission out of eligible and duly qualified medical graduates for being admitted to post-graduate medical courses in institutions is concerned, as the Union Parliament has not said anything about the same, the field is wide open for the State authorities to regulate such admissions by short-listing the available candidates keeping in view the concept of reservation of seats as permitted by Article 15(4) of the Constitution.

C

In the case of *R. Chitralekha and Anr.* v. *State of Mysore and Ors.*, [1964] 6 SCR 368, a Constitution Bench of this Court while dealing with Entry 66 of List I and Article 15(4) of the Constitution of India had to consider the question whether the State Government could prescribe the criteria for selection of students having minimum qualifications laid down by the University for
D admission to medical courses and whether it would affect the central legislation enacted under Entry 66 of List I of the Constitution? Answering this question in favour of the State authorities, it was observed at page 379 of the Report by Subba Rao, J., speaking on behalf of the Constitution Bench as under :

E ``...If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of
F admission to colleges, it would be directly encroaching on the field covered by Entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law.

G It is then said that the Mysore University Act conferred power to prescribe rules for admission to Colleges on the University and the Government cannot exercise that power. It is true that under S.23 of the Mysore University Act, 1956, the Academic Council shall have the power to prescribe the conditions for admission of students to the University and, in exercise of its power, it has prescribed the percentage
H of marks which a student shall obtain for getting admission in medical

or engineering colleges. The orders of the Government do not contravene the minimum qualifications prescribed by the University; what the Government did was to appoint a selection committee and prescribe rules for selection of students who have the minimum qualifications prescribed by the University. The Government runs most of the medical and engineering colleges. Excluding the State aided colleges for a moment, the position is as follows :

The Colleges run by the Government, having regard to financial commitments and other relevant considerations, can only admit a specific number of students to the said Colleges. They cannot obviously admit all the applicants who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis. The aforesaid orders of the Government only prescribed criteria for making admissions to Colleges from among students who secured the minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power."

At page 381 of the same Report, the following observations are made by the Constitution Bench, speaking through Subba Rao, J. :

"We, therefore, hold that the Government has power to prescribe a machinery and also the criteria for admission of qualified students to medical and engineering colleges run by the Government and, with the consent of the management of the Government aided colleges, to the said colleges also."

Another decision of the Constitution Bench of this Court was rendered in the case of *Chitra Ghosh and Anr.* v. *Union of India and Ors.*, 1970 (1) SCR 413. Grover, J., speaking for the Constitution Bench observed at page 418 as under:

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources

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A the admission will be made. That essentially is a question of policy and depends *inter-alia* on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification."

B

At page 419 of the Report it has been further stated as under:

"The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In *Minor P. Rajendran* v. *State of Madras* it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose."

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In the case of *State of Andhra Pradesh and Anr.* v. *Lavu Narendranath and Ors.etc.*, [1971] 1 SCC 607, a four Judge Bench of this Court had to consider whether the entrance test prescribed by the Government for short-listing eligible candidates for being admitted to medical courses in colleges was legally permissible or not. Upholding the power of the State Government on the anvil of the Constitution, Mitter, J., speaking on behalf of the four Judge Bench held that:

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"Merely because the University had made regulations regarding the admission of students to its degree courses, it did not mean that any one who had passed the qualifying examination such as the P.U.C. or H.S.C. was *ipso facto* to be entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available, the University can have to

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make its choice out of the applicants to find out who should be admitted and if instead of judging the candidates by the number of marks obtained by them in the qualifying examination the University thinks fit to prescribe another test for admission no objection can be taken thereto. What the University can do in the matter of admissions to the degree courses can certainly be done by the Government in the matter of admission to the M.B.B.S. course.

9. In our view the test prescribed by the Government in no way militates against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. The said entry provides:

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

The above entry gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It has no relation to a test prescribed by a Government or by a University for selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject."

Similar observations were found in para 15 of the Report, wherein it was observed that:

``....The University Act, as pointed out, merely prescribed a minimum qualification for entry into the higher courses of study. There was no regulation to the effect that admission to higher course of study was guaranteed by the securing of eligibility. The Executive have a power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the field and the Government order in this case in no way affected the rights of candidates with regard to eligibility for admission : the test prescribed was a further hurdle by way of competition when mere eligibility could not be made the determining factor."

The aforesaid observations of the four Judge Bench, in our view, correctly bring out the permissible scheme of short-listing of eligible candidates in the light of the relevant provisions with which we are concerned.

In the case of *Dr. Ambesh Kumar* v. *Principal, L.L.R.M.Medical College,*

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Meerut and Ors., [1986] Supp. SCC 543, a two Judge Bench of this court had to consider the question whether out of the eligible candidates qualified for being considered for admission to medical education imparted in medical colleges of the State, looking to the limited number of seats available, the State could resort to the process of weeding out by laying down further criteria for short-listing such candidates. Upholding such an exercise undertaken by the State in the light of the relevant provisions of the Constitution, B.C.Ray, J., speaking for the court, made the following observations at pages 544 and 545 of the Report as under :

> "The State Government can in exercise of its executive power under Article 162 make an order relating to matters referred to in Entry 25 of the Concurrent List in the absence of any law made by the State Legislature. The impugned order made by the State Government pursuant to its executive powers was valid and it cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in Entry 66 of List I.
>
> The order in question merely specified a further eligibility qualification for being considered for selection for admission to the post-graduate courses (degree and diploma) in the Medical Colleges in the State in accordance with the criteria laid down by Indian Medical Council. The number of seats for admission to various post-graduate courses both degree and diploma in Medical Colleges is limited and a large number of candidates apply for admission to these courses of study. In such circumstances the impugned order cannot be said to be in conflict with or repugnant to or encroach upon the Regulations framed under the provisions of Section 33 of the Indian Medical Council Act. On the other hand by laying down a further qualification of eligibility it promotes and furthers the determination of standards in institutions for higher education."

In this connection, we may also refer to a later Constitution Bench Judgment of this Court in *Indra Sawhney and Ors.* v. *Union of India and Ors.*, (supra). As noted earlier, judgment of this Court in *Kumari Nivedita Jain's* case (supra) was approved therein. Jeevan Reddy, J., speaking on behalf of the Constitution Bench, at page 751 of the Report in para 837 has referred to, with approval, the observations of this Court in *State of Madhya Pradesh* v. *Kumari Nivedita Jain,* (Supra) to the effect that admission to medical courses

was regulated by an entrance test for general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For SC/ ST candidates, however, it was 40% and 30% respectively. The said deviation was upheld in *Kumari Nivedita Jain's* case (supra) and the same was also approved by the Constitution Bench in the aforesaid decision.

In this connection, we may also usefully refer to the relevant observations in the case of *State of Madhya Pradesh and Anr.* v. *Kumari Nivedita Jain and Ors.* (supra) which got imprimatur of the Constitution Bench of this court in *Indra Sawhney's* case (supra). At page 751 of the Report in *Indra Sawhney's* case (supra), the following pertinent observations are found in the majority judgment wherein Jeevan Reddy, J., in paragraph 837 of the Report observed as under:

> "Having said this, we must append a note of clarification. In some cases arising under Article 15, this Court has upheld the removal of minimum qualifying marks, in the case of Scheduled Caste/Scheduled Tribe candidates, in the matter of admission to medical courses. For example, in State of *M.P.* v. *Nivedita Jain* admission to medical course was regulated by an entrance test (called Pre-Medical Test). For general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For Scheduled Caste/Scheduled Tribe candidates, however, it was 40% and 30% respectively. On finding that Scheduled Caste/Scheduled Tribe candidates equal to the number of the seats reserved for them did not qualify on the above standard, the Government did away with the said minimum standard altogether. The Government's action was challenged in this Court but was upheld. Since it was a case under Article 15, Article 335 had no relevance and was not applied. But in the case of Article 16, Article 335 would be relevant and any order on the lines of the order of the Government of Madhya Pradesh (in *Nivedita Jain*) would not be permissible, being inconsistent with the efficiency of administration. To wit, in the matter of appointment of Medical Officers, the Government or the Public Service Commission cannot say that there shall be no minimum qualifying marks for Scheduled Caste/Scheduled Tribe candidates, while prescribing a minimum for others. It may be permissible for the Government to prescribe a reasonably lower standard for Scheduled Castes/Scheduled Tribes/Backward Classes - consistent with the requirements of efficiency of administration - it would not be permissible not to prescribe any such minimum standard at all. While

A prescribing the lower minimum standard for reserved category, the nature of duties attached to the post and the interest of the general public should also be kept in mind."

In para 20 of the Report in the case of *State of Madhya Pradesh and Anr.* v. *Kumari Nivedita Jain and Ors.* (supra) the following pertinent observations B are found:

"Undoubtedly, under Section 33 of the Act, the Council is empowered to make regulations with the previous sanction of the Central Government generally to carry out the purposes of the Act and such regulations may also provide for any of the matters mentioned in C Section 33 of the Act. We have earlier indicated what are the purposes of this Act. Sub-sections (j), (k), (l) and (m) of the Act which we have earlier set out clearly indicate that they have no application to the process of selection of a student out of the eligible candidates for admission into the medical course. Sub- sections (j), (k) and (l) relate D to post-admission stages and the period of study after admission in Medical Colleges. Sub-section (m) of Section 33 relates to a post-degree stage. Sub-section (n) of Section 33 which has also been quoted earlier is also of no assistance as the Act is not concerned with the question of selection of students out of the eligible candidates for admission into Medical Colleges. It appears to us that the E observations of this Court in the case of *Arti Sapru* v. *State of Jammu & Kashmir* which we have earlier quoted and which were relied on by Mr. Phadke, were made on such consideration, though the question was not very properly finally decided in the absence of the Council."

F The aforesaid observations are also well borne out from the scheme of the Indian Medical Council Act to which we have made a detailed reference earlier. But even apart from that, once these observations have been approved by a Constitution Bench of nine learned Judges of this Court, there is no scope for any further debate on this aspect in the present proceedings.

G We may now refer to a two Judge Bench decision of this Court in *Dr. Sadhna Devi and Ors.* v. *State of U.P. and Ors.*, [1997] 3 SCC 90. The court was concerned with the short-listing of eligible candidates who have got basic qualification for admission to post-graduate medical courses. Reservation of seats for SC and ST candidates in post-graduate courses was not challenged but providing zero percent marks for them for passing the entrance examination H for admission to post-graduate course was questioned before the Bench. It

was held that once minimum qualifying marks for passing the entrance examination for admission to postgraduate courses was a pre- requisite, in the absence of prescription of any minimum qualifying marks for reserved category of candidates, admitting such students who did not get any marks at the entrance test amounted to sacrificing merit and could not be countenanced. In para 21 of the Report, the following observations are made:

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

A cursory reading of these observations seems to indicate that once the minimum qualifying marks are prescribed for otherwise eligible candidates for short-listing them for admission to post-graduate courses, minimum qualifying marks prescribed for general category candidates and reserved category candidates must be uniform. But then follows para 22 which relies on the decision of this court in State of *Madhya Pradesh* v. *Kumari Nivedita Jain* (supra) wherein prescription of lesser minimum qualifying marks in the entrance test for SC, ST and Other Backward Class candidates as compared to the minimum qualifying marks for general category candidates was approved. Even in earlier para 18 it is observed that if in the entrance test special category candidates obtain lesser marks than general category candidates even then they will be eligible for admission within their reserved quota. These observations indicate that for reserved category of candidates there can be separate minimum qualifying marks. Thus, on a conjoint reading of observations in paras 18, 21 and 22 of the Report it has to be held that the ratio of the decision in *Sadhna Devi's case* (supra) is that even for reserved category candidates there should be some minimum qualifying marks if not the same as prescribed as bench marks for general category candidates. Thus, there cannot be any zero qualifying marks for reserved category candidates in the entrance test for admission to post-graduate courses. Hence, this judgment cannot be taken to have laid down that there cannot be lesser qualifying marks for reserved category candidates as compared to the general category candidates who are otherwise eligible and qualified for being considered for admission to post-graduate medical courses.

. That takes us to the consideration of a three Judge Bench decision of

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this Court in *Postgraduate Institute of Medical Education & Research, Chandigarh and Ors.*, v. *K.L. Narasimhan and Anr.*, [1997] 6 SCC 283. Ramaswamy, J., speaking for the Bench had mainly to consider two questions; 1) whether there can be reservation under Articles 15(4) and 16(4) of the Constitution in connection with only one post in a discipline; and 2) whether reservation of seats in post-graduate courses was permissible as per Articles 14, 15 and 16 of the Constitution. Both the aforesaid questions were answered in the affirmative in favour of the schemes of reservations. So far as the question of reservation of seats when there is only one post in the discipline is concerned, decision rendered thereon by the three Judge Bench is expressly overruled by a Constitution Bench judgment of this Court in *Postgraduate Institute of Medical Education & Research, Chandigarh* v. *Faculty Association and Ors.*, [1998] 4 SCC 1. However, so far as the second question is concerned, in the aforesaid judgment it was held that there can be reservation of seats in post-graduate courses as per the mandate of Articles 15(4) and 16(4). In the present proceedings, there is no dispute on this score. Hence the said judgment on the second point is not required to be reconsidered. However, certain observations are found in para 21 of the report wherein Ramaswamy, J., has observed that diluting of minimum qualifying marks in an entrance test for entry into post-graduate courses for reserved category of candidates cannot be said to be unauthorised or illegal. It has been observed that:

> ``Equally, a student, admitted on reservation, is required to pass the same standard prescribed for speciality or a super speciality in a subject or medical science or technology. In that behalf, no relaxation is given nor sought by the candidates belonging to reserved categories. What is sought is a facility or opportunity for admission to the courses, Ph.D., speciality or super speciality or high technology by relaxation of a lesser percentage of marks for initial admission than the general candidates. For instance, if the general candidate is required to get 80% as qualifying marks for admission into speciality or super speciality, the relaxation for admission to the reserved candidates is of 10 marks less, i.e., qualifying marks in his case would be 70%. A doctor or a technologist has to pass the post-graduation or the graduation with the same standard as had by general candidate and has also to possess the same degree of standard. However, with the facility of possessing even lesser marks the reserved candidate gets admission....''

Now, so far as these observations are concerned, as the court was not called

upon to consider the question whether prescription of lesser qualifying marks for SC,ST and other reserved category candidates for admission to post-graduate or super speciality courses in medicine was permissible, they are clearly *obiter*. So far as admission to super speciality courses are concerned, in the present reference we are not concerned with the said question, hence, we need not say anything about the same. However, so far as admission to post-graduate courses is concerned the question of providing of lesser qualifying marks for reserved category candidates for admission to these courses directly arises for our consideration. Hence, the *obiter* observations in the aforesaid case on this aspect do require consideration for their acceptance or otherwise.

As per the scheme of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution of India, as discussed earlier goes, it is not possible to countenance the submission of Shri Salve, learned senior counsel for the Medical Council of India and other counsel canvassing the same view that the question of short-listing of eligible candidates who were otherwise duly qualified for being admitted to post-graduate courses in Medicine is not within the domain of State authorities especially in view of the fact that the Parliament, in exercise of its legislative powers under Entry 25 of List III, has still not spoken on the point nor does the Indian Medical Council Act, 1956 enacted under Entry 66 of List I covers this question. Hence, while providing for entrance test as an additional requirement for eligible candidates for being short-listed in connection with admission to smaller number of seats available in post-graduate courses, it cannot be said that the State authorities in exercise of their constitutional right under Article 15(4) cannot give additional facilities to reserved category of candidates *vis-a-vis* their requirement of getting minimum qualifying marks at such entrance tests so that seats reserved for them may not remain unfilled and the reserved category of candidates do get adequate opportunity to fill them up and get post-graduate education on the seats reserved for them which in their turn would not detract from the availability of remaining seats for general category candidates. Thus, the observations in para 21 of the aforesaid judgment that there can be lesser qualifying marks for admission to post-graduate courses for reserved category of candidates cannot be found fault with. It is made clear that similar observations for admission to super speciality courses and the relaxation of minimum qualifying marks for candidates appearing at the entrance test for such courses are not being approved by us as we are not required to consider that aspect of the matter, as noted earlier. As it will be presently shown, once reservation of seats in post-graduate courses under

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A Article 15(4) is accepted then even lesser bench marks being prescribed for reserved category of candidates in the common entrance examination which they undertake along with general category of candidates would in substance make no difference so far as the un-reserved seats available to general category of candidates are concerned.

B In a later three Judge Bench Judgment of this Court in *Medical Council of India* v. *State of Karnataka and Ors.*, [1998] 6 SCC 131, it was held that in the light of Sections 10-A, 10-B, 10-C, 19-A and 33(fa), (fb), (fc), (j), (k) and (l) of the Indian Medical Council Act, 1956 fixation of admission capacity in medical colleges/institutions is the exclusive function of Medical Council of C India and increase in number of admissions can only be directed by the Central Govt. on the recommendation of the Medical Council of India. This function of the Medical Council of India was upheld in the light of Entries 66 List I and 25 of List III thereof. Now it becomes at once obvious that providing for number of seats to be filled up by eligible candidates in any D medical course imparted by medical colleges or medical institutions will have a direct nexus with `coordination and determination of standards in medical education", as larger the seats in medical colleges wherein students can be admitted to MBBS or even higher courses in medicine, larger infrastructure would be required by way of beds and eligible and efficient teachers and all other infrastructure for imparting proper training to the admitted students. E Once this exercise is clearly within the domain of the Medical Council of India in the light of the aforesaid statutory provisions it becomes obvious that Entry 66 of List I of the Seventh Schedule would hold the field and consequently States will not be empowered under Entry 25 of List III to legislate on this topic as such an exercise would be subject to legislation F under Entry 66 of List I which would wholly occupy the field. However, a moot question remains whether given the permissible intake capacity for admitting students in any medical college as laid down by the Medical Council of India can the available intake capacity of students be regulated at the admission stage when the number of eligible candidates aspiring to be G admitted is larger than the available intake capacity? This question will remain outside the domain of the Medical Council of India under the aforesaid Act. As we have discussed earlier, there being no parliamentary legislation on this aspect even under Entry 25 of List III of the Seventh Schedule, the short-listing of eligible candidates for being admitted to the available permitted intake capacity in medical colleges will obviously remain in the domain of H State legislature and State executive on the combined reading of Entry 25 of

List III as well as Article 162 of the Constitution of India. A

In view of the aforesaid discussion, it therefore, becomes clear that once seats in post-graduate medical courses are reserved for SC, ST and OBC candidates as per Article 15(4) of the Constitution the question as to how admission to limited number of general seats and reserved seats are to be regulated, will remain in the domain of the State authorities running these B institutions. They can, therefore, legitimately resort to the procedure of short-listing of otherwise eligible candidates. While undertaking this exercise of short-listing, the State authorities have to see how best in a given academic year the reserved seats and general category seats can be filled in by available and eligible candidates. The question is while undertaking the task of short-C listing of available eligible candidates *vis-a-vis* limited number of seats that may be available for being filled in a given academic year, uniform qualifying bench marks for passing the entrance test should be prescribed for both the general category candidates as well as reserved category candidates or there can be lesser bench marks for the latter category of students. If due to non-availability of reserved category candidates who could obtain minimum D qualifying marks prescribed for all the examinees whether there can be any legitimate dilution of minimum qualifying marks for these reserved category of candidates and if so, to what extent is the moot question.

In the case of *M.R. Balaji & Ors.* v. *State of Mysore,* [1963] Supp. 1 SCR 439, a Constitution Bench of this court was concerned with the extent of E reservation which could be legally permissible under Article 15(4) of the Constitution of India. Gajendragadkar, J., speaking for the Constitution Bench held that reservation of 68% seats in educational institutions was inconsistent with the concept of special provision authorised by Article 15(4). It was then observed as under :

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> "Reservation should and must be adopted to advance the prospects of weaker sections of society, but while doing so, care should be taken not to exclude admission to higher educational centres of deserving and qualified candidates of other communities. Reservations under Arts. 15(4) and 16(4) must be within reasonable limits. The interests of weaker sections of society, which are a first charge on the G States and the Centre, have to be adjusted with the interests of the community as a whole. Speaking generally and in a broad way, a special provision should be less than 50%. The actual percentage must depend upon the relevant prevailing circumstances in each case.
>
> The object of Art. 15(4) is to advance the interests of the society H

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A as a whole by looking after the interests of the weaker elements in society. If a provision under Art. 15(4) ignores the interests of society, that is clearly outside the scope of Art. 15(4). It is extremely unreasonable to assume that in enacting Art.15(4), Parliament intended to provide that where the advancement of the backward classes or the Scheduled Castes and Tribes were concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored. Considerations of national interest and the interests of the community and the society as a whole have already to be kept in mind."

Thus, even accepting that when seats are reserved for SC and ST and Other Backward Classes for admission to be given to such reserved category of eligible candidates in post-graduate medical courses, the concession or facility given to them cannot exceed 50% of the facility otherwise available to members of the general public. Keeping the aforesaid ratio of the Constitution Bench in view, therefore, even proceeding on the assumption that 50% of the available seats in post-graduate medical courses in a given year may be reserved for SC, ST and OBCs, further concession that may be given to them by State authorities by diluting the minimum qualifying marks at the entrance test so that seats reserved for them may not remain unfilled by the reserved categories of persons for whom they are meant, the dilution of such marks cannot exceed 50% of the general standards of qualifying bench marks laid down for the general categories of candidates. Otherwise even the said dilution would become unreasonable and would be hit by Articles 14 and 15(1) of the Constitution of India. In the case of *Minor P. Rajendran* v. *State of Madras and Ors.*, [1968] 2 SCR 786, another Constitution Bench of this court had to consider whether district-wise distribution of reserved seats in medical courses for granting admission to reserved category of candidates was violative of Article 15 (1) read with Article 14 of the Constitution of India. Answering the question in the affirmative it was observed by Wanchoo, J., speaking for the Constitution Bench at pages 792 and 793 of the Report as under :

"The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district. It cannot be and has not been denied that the object of

selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors`."

Relying on these observations of the Constitution Bench Shri P.P. Rao and Shri Chaudhary, learned senior counsel appearing for the State of Madhya Pradesh, submitted that when there is a pool of eligible candidates who have all passed MBBS examination and are duly qualified and eligible to pursue post-graduate medical courses of study, and if in a given institution there are seats reserved for them, then the selection out of the reserved category candidates for filling up of these reserved posts can be done in a selective manner and that would permit reasonable dilution of the uniform qualifying marks at the entrance test as required to be obtained by the examinees concerned. This submission is amply borne out from the aforesaid observations of the Constitution Bench decision of this court.

However, a further question survives as to whether in diluting the minimum qualifying marks for reserved category of candidates who are otherwise eligible for being admitted to post-graduate courses on the seats reserved for them, whether Article 335 can get attracted. It is of course true that candidates appointed or admitted to post-graduate medical course have to work as Registrars, some posts of the Registrars are fully paid posts while others may be stipendary resident's posts. However, it is not possible to accept the contention of learned counsel for the Special Leave Petitioners that admission to post-graduate courses would amount to recruitment to any posts. Concept of recruitment to posts is entirely different from the concept of admission to the course of study which in its turn may require the students concerned to take practical training by functioning as Registrars attached to wards where patients are treated. Even though such students work as Registrars during the course of study as post-graduate students, they essentially remain students and their working as Registrars would be a part of practical training. They would all the same remain trainee Registrars and not as directly recruited Registrars through any recruitment process held by the Public Service Commission for filling up full-fledged medical officer's posts. They work as Registrars as a part of post-graduate educational training only because they are admitted to the course of study as post-graduate students in concerned disciplines. It is easy to visualise that calling for applications from open market by advertisement for appointment of full-fledged medical officers to be recruited through the process of selection to be undertaken by Public Service Commission or other departmental selection committees will stand entirely on a different footing as compared to the process of admitting eligible students

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A to post-graduate medical courses of studies. Thus, keeping in view the nature of working as trainee Registrars by admitted students to post-graduate medical courses it cannot be said that such admitted students are recruited to any posts of Registrars. Consequently, Article 335 of the Constitution of India which has relevance while considering reservation of posts under Article 16(4) cannot have any direct impact on reservation of seats in educational B institutions as permitted under Article 15(4). Learned counsel for the petitioners had invited our attention to a decision of two Judge Bench of this Court in *S. Vinod Kumar and Anr.* v. *Union of India and Ors.*, [1996] 6 SCC 580, wherein it was held that while providing for reservations to posts in the hierarchy by invoking powers under Article 16(4), making a provision for C lower qualifying marks or lesser level of evaluation for members of reserved category was impermissible on account of Article 335 of the Constitution of India. The aforesaid decision obviously cannot be pressed in service while considering the question of giving facilities to reserved category of candidates for being admitted to the seats reserved for them in educational institutions wherein they can undertake courses of studies for ultimately obtaining post-D graduate degrees in medicine. In the case of *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, (supra), this aspect of the matter has been correctly highlighted by Jeevan Reddy, J., speaking for the court in para 14 of the Report. It has been held therein that:

> E "We see absolutely no substance in the third submission of Shri Singh. The argument taxes one's credulity. We are totally unable to appreciate how can it be said that admission to post-graduate medical course is a promotional post just because such candidate must necessarily pass MBBS examination before becoming eligible for admission to post-graduate medical course or for the reason that some F stipend - it is immaterial whether Rs.1000 or Rs.3000 p.m. - is paid to post-graduate students. *Admission to such course cannot be equated to appointment to a post* and certainly not to an appointment by promotion. The argument is accordingly rejected."
>
> (Emphasis supplied)

G It is obvious that only because a person who has passed MBBS examination and is made eligible for admission to post-graduate course is paid stipend during the course of his studies at post-graduate level, he cannot be said to have been appointed to the post of a Registrar. It may be that he has to work as a trainee Registrar during the course of his study to obtain practical H training but that is a part of the curriculum of studies and not because he is

appointed to the post of the Registrar after undergoing selection process whereunder a person from open market is recruited as a medical officer and whose recruitment as medical officer would be subject to rules and regulations and would not terminate only because his training period is over. In fact such a full-fledged medical officer has no training period. He has if at all probation period. In case of a trainee Registrar who has to work as such during the course of his studies as a post-graduate student on the other hand, his work as Registrar would be *co-terminus* with his passing the post-graduate examination as M.D. or M.S./M.D.S. as the case may be. He is also not liable to be transferred as a full-fledged Registrar, duly appointed as such, who is liable to be transferred due to exigencies of service. Thus, the working of such students during the course of study as residents whether on full payment or on stipendary payment would make no difference and they cannot be said to be holding any civil post in any hospital as full-fledged medical officers. Consequently, Article 335 of the Constitution of India cannot by itself be applied for regulating the admission of eligible reserved category students to post-graduate medical courses in the seats reserved for them under Article 15(4) of the Constitution of India.

The next question that falls for consideration that even assuming that Article 335 cannot be pressed in service while considering the question of admission of eligible and qualified candidates for enabling them to pursue courses of post-graduate medical studies the guidelines laid down by the Medical Council of India pursuant to the regulations made under Section 33 of the Indian Medical Council Act, even though persuasive in nature and not mandatory, can be totally by-passed or ignored by the State authorities concerned with short-listing of candidates for admission to limited seats available in medical institutions imparting post-graduate medical education? The answer obviously would be in the negative. The guidelines laid down by the Medical Council of India though persuasive have to be kept in view while deciding as to whether the concession or facility to be given to such reserved category of candidates should remain within the permissible limits so as not to amount to arbitrary and unreasonable grant of concessions wiping out the concept of merit in its entirety. Consequently, it cannot be said that even though short-listing of eligible candidates is permissible to the State authorities, while doing so, the State authorities can completely give a go-by to the concept of merit and can go to the extent of totally dispensing with qualifying marks for SC, ST and OBC candidates and can short-list them for being considered for admission to reserved categories of seats for them in post-graduate studies by reducing the qualifying marks to even zero. That was

A rightly frowned upon by this court in *Sadhana Devi's* case (supra) as that would not amount to short-listing, but on the contrary would amount to completely long listing of such reserved category candidates for the vacancies which are reserved for them and on which they would not be entitled to be admitted if they did not qualify according to even reduced bench marks or qualifying marks fixed for them. As seen earlier, keeping in view the ratio of the Constitution Bench of this court in *M.R. Balaji's* case (supra) it must be held that along with the permissible reservation of 50% of seats for reserved category of candidates in institutions imparting post-graduate studies, simultaneously if further concessions by way of facilities are to be given for such reserved category of candidates so as to enable them to effectively occupy the seats reserved for them, such concessions by way of dilution of qualifying marks to be obtained at the entrance test for the purpose of short-listing, can also not go beyond the permissible limits of 50% of the qualifying marks uniformly fixed for other candidates belonging to general category and who appear at the same competitive test along with the reserved category of candidates. It is found from the records of these cases that qualifying marks at the entrance test for general category of candidates are fixed at 50%. In fact such is the general standard of qualifying marks suggested by the Medical Council of India even at the stage of entrance examination to MBBS course which is at the gross-root level of medical education after a student has completed his secondary education. Thus it would be proper to proceed on the basis that minimum qualifying marks for clearing the entrance test by way of short-listing for getting admitted to post-graduate medical courses uniformly for all candidates who appear at such examination should be 50% but so far as reserved category of candidates are concerned, who are otherwise eligible for competing for seats in the post-graduate medical courses, 50% reduction at the highest of the general bench marks by way of permissible concession would enable the State authorities to reduce the qualifying marks for passing such entrance examination up to 50% of 50% i.e. 25%. In other words, if qualifying marks for passing the entrance examination for being admitted to post-graduate medical courses is 50% for a general category candidate, then such qualifying marks by way of concession can be reduced for reserved category candidates to 25% which would be the maximum permissible limit of reduction or deviation from the general bench marks. Meaning thereby, that a reserved category candidate even if gets 25% of the marks at such a common entrance test he can be considered for being admitted to the reserved vacancy for which he is otherwise eligible. But below 25% of bench marks for reserved category of candidates, no further dilution can be permitted. In other words, concession or facility for reserved category

of candidates can remain permissible under Article 15(4) up to only 50% of bench marks prescribed for general category candidates. The State cannot reduce the qualifying marks for a reserved category of candidates below 25% nor can it go up to zero as tried to be suggested by Shri P.P.Rao, learned senior counsel for the State of Madhya Pradesh as that would not amount to the process of short-listing but would in fact amount to long listing or comprehensive listing of such reserved category of candidates as seen earlier. Any such attempt to further dilute the qualifying marks or bench marks for reserved category of candidates below 25% of the general passing marks would be violative of the provisions of Article 15(4) as laid down by the Constitution Bench in *M.R. Balaji's* case (supra) and would also remain unreasonable and would be hit by Article 14 of the Constitution of India. Within this sliding scale of percentages between 25% and 50% passing marks appropriate bench marks for passing the entrance test examination can be suitably fixed for SC/ST and OBC candidates as exigencies of the situation may require. But in no case the qualifying marks for any of these reserved categories of students can go below 25% of the general passing marks. Any reserved category candidate who gets less than 25% of marks at the entrance examination or less than prescribed reduced percentage of marks for the concerned category between 50% and 25% of passing marks cannot be called for counselling and has to be ruled out of consideration and in that process if any seats reserved for reserved categories concerned remains unfilled by candidates belonging to that category it must go to the general category and can be filled in by the general category candidate who has already obtained 50% or more marks at the entrance examination, but who could not be accommodated because of lesser percentage of marks obtained by him *qua* other general category candidates in the limited number of seats available to them in a given institution in post-graduate studies.

As we will presently show even if minimum passing marks in the entrance test for admission to post-graduate courses is either reduced to 25% uniformly for all the candidates or is reduced and diluted only for reserved category of candidates, the net result would remain substantially the same. This aspect can be highlighted by taking an illustration. Suppose there are six seats in a given post-graduate medical course, then applying the ratio of 50% permissible reservation of seats for reserved category of candidates like SC/ST and OBCs three seats get reserved, one each for SC, ST and OBC while three seats will remain available to general category of candidates passing the common entrance test. On the basis of this illustration let us take a hypothetical case of 13 eligible candidates who have passed basic MBBS examination and

A are duly qualified to compete for the six seats in a given course of post-graduate study. These 13 candidates undertake the same entrance test and all of them as a result of the said test obtained marks as under : A 75 out of 100, B 70, C (SC) 65, D 60, E (SC) 55, F 51, G 50, H (OBC) 48, I 42, J (ST) 40, K 35, L 30, M 25, N (SC) 21. In the aforesaid illustration C, E and N are SC candidates, H is OBC and J is a ST candidate. Now if 50% passing marks B are uniformly applied to all of them as tried to be suggested by learned counsel for the petitioners, the following picture will emerge :

Situation No.1:

C Seat numbers 1,2, and 3 are general seats, 4 reserved for SC, 5 reserved for ST and 6 reserved for OBC.

If 50% passing marks are uniformly applied to seat nos.1,2,3,4,5 & 6 : Seat no.1 will go to A, 2 to B, 3 to C (SC), 4 to E (SC), seat nos.5&6 will not get filled in by the reserved category candidates as there are no ST or OBC D candidates who have obtained 50% and more marks. These two seats which remain unfilled will go to D and F general category candidates who have obtained more than 50% marks, but who could not be accommodated in the seats available to general category of candidates as the last candidate in the general category who got admission though SC, was having 65% marks. Thus the situation would be the two seats i.e. seat nos. 5 and 6 which are reserved E for ST and OBC and were otherwise not available to general category of candidates would not go to eligible and qualified ST and OBC candidates namely, H and J even though they had obtained MBBS degrees and had the basic qualification and eligibility for being admitted to the seats reserved for them. That may affect the real purpose underlying reservation under Article F 15(4).

Situation No.2:

We may now take the alternative situation for consideration : If the minimum qualifying marks are reduced to 25% for all categories of candidates G to the rock-bottom permissible limit including SC/ST and other reserved category candidates, then the following picture would emerge : Seat no.1 will go to A, seat no.2 will go to B, seat no.3 will go to C(SC), seat no.4 which is reserved for SC candidate will go to E, seat no.5 which is reserved for ST will go to J, seat no.6 which is reserved for OBC will go to H. All six seats will be filled up by A,B, C,E,J & H. Thus even if the minimum passing marks H are uniformly reduced to 25% which is the permissible rock- bottom as seen

earlier the general category candidates will get the same seats which would have been available to them even if the minimum qualifying marks for admission would have been uniformly kept at 50% for all candidates at the entrance test. But what will happen is, that by reduction of these qualifying marks to 25% all the reserved category seats 4 to 6 will get filled in by otherwise eligible and qualified reserved category candidates E,J and H and there will remain no occasion for making any of such seats available to left out general category candidates like D and F for whom they were not meant even otherwise and reservation of seats under Article 15(4) would get fully fructified.

Situation no. 3:

Now let us assume that for general category candidates minimum passing marks at the entrance test are kept at 50% but for reserved category candidates the passing marks are reduced to the permissible rock-bottom limit of 25%. If that happens, the result would remain the same, namely, as found in situation no.2, i.e. A will be admitted to seat no.1, B will be admitted to seat no. 2, C (SC) will be admitted to seat no.3, E will be admitted to seat no.4 reserved for SC, J will be admitted to seat no.5 reserved for ST and H will be admitted to seat no.6 reserved for OBC. Then the net result would be that because of the limited deviation of minimum qualifying marks only for reserved category candidates, E, J & H who would have otherwise been admitted to reserved category seats even if there was universal and uniform reduction of qualifying marks at 25%, will get the same benefit without affecting the admission of general category candidates.

Situation No. 4:

As minimum qualifying marks for reserved category of candidates are kept at 25% and are not reduced below the same, candidate N who is a SC candidate and who has obtained only 21% passing marks at the entrance test will be totally ruled out of consideration, but even if the qualifying marks are reduced to below the permissible limit of 25%, N will not get any seat as the seat reserved for such candidates is only one being no. 4 in the said course of study and is already occupied by E who is a more meritorious SC candidate *qua N.*

Situation No. 5:

Now let us consider a situation wherein E a SC candidate, who is entitled to reserved category seat no.4 and has excluded D who is a general

A category candidate who has obtained more marks than him because of such permissible reservation of a seat for him, for any reason does not join the course of study and his seat becomes vacant, then in such a situation, the following picture may emerge in different categories of cases where minimum passing marks are fixed differently :

B (i) In case E is not available and 50% minimum passing marks are fixed for all categories of candidates then seat no.1 will go to A, seat no.2 will go to B, seat no.3 will go to C, seat no.4 would not go to N who is the next eligible SC candidate who has qualified for being admitted but has got less than passing marks at the entrance test. That seat will remain unoccupied and will C go to the general category candidate D. Seat no. 5 which is reserved for ST person also cannot go to J as he has got less than the passing marks. Seat no.5 will therefore, go to F. Seat no.6 reserved for OBC also will not go to H as he has got only 48% marks, less than the minimum passing marks. His seat will D go to general category candidates who are in the waiting list and will be offered to G who has just got the passing marks. Thus in the absence of availability of E the six seats will go as under: A,B,C,D,F & G. Thus all the reserved category seats will remain unfilled by reserved category candidates and will be added to general category seats. Result will be reservation under Article E 15(4) will totally fail.

(ii) Now let us take another category of situation where minimum passing marks are fixed at 25% for all candidates. In that case even if E is not available then the first three general category seats will go to A,B,C and the 4th seat reserved for SC candidate F will remain unfilled as the next available eligible SC candidate is N who has got less than 25% minimum marks. So his seat will go to the general category candidate who is in the waiting list namely, D. While seat no.4 reserved for ST candidate will go to J and seat no.6 reserved for OBC candidate will go to H. Therefore, G the net result will be as under : 1 to 6 seats will go to A,B,C,D,J & H.

(iii) The same result would follow for general category candidates even if the minimum passing marks are fixed at 50% and for the reserved category candidates the minimum qualifying marks are H reduced to 25%. Then the first three seats will go to A,B,C, and

seat no.4 not occupied by E a SC candidate cannot go to N the next SC candidate who has got less than 25% marks. It will be occupied by D from the general category candidates. While seat no.5 will go to J a ST candidate who has more than 25% marks and seat no.6 will go to H who is a OBC candidate having got 48% marks. Thus the six seats will go to A,B,C,D,J & H. Thus it is clear that where the minimum passing marks are uniformly reduced for all candidates or they are reduced only for backward class candidates but to the same extent, the result regarding occupation of these seats by general category candidates and reserved candidates would remain the same if E does not occupy the seat available to him as an SC candidate.

(iv) If for any reason the minimum qualifying marks for reserved category candidates are still further reduced to 20% then in the absence of availability of a SC candidate E, the next SC candidate N having 21% may get it and occupy the seat reserved for a SC candidate. In such a situation the following picture will emerge: 1 to 3 will go to A,B,C; seat no.4 reserved for SC candidate will go to N and seat no.5 will go to ST candidate J and seat no.6 reserved for OBC candidate will go to H. Resultantly no seat will be left for being made available to general category candidate D and he will get excluded. But as we have seen earlier, if concession or dilution of minimum qualifying marks at the entrance test for admission to post-graduate medical courses is kept within the permissible limit of 50% dilution and can go down only up to 25% minimum qualifying marks for reserved category candidates then N in no case would get in to displace D who is a general category candidate and who had an opportunity to get in *vis-a-vis* the seat reserved for SC candidate as E the eligible SC candidate is not available at a given point of time. The aforesaid illustration shows that as C (SC candidate) has got the seat in general category on his own merit his occupancy is not to be considered while granting admission to the seat reserved for SC candidate as held by a Constitution Bench decision of this Court in *R.K. Sabharwal and Ors.* v. *State of Punjab and Ors.*, [1995] 2 SCC 745.

We may at this stage refer to decision of a three Judge Bench of this court in *Dr. Pradeep Jain and Ors.* v. *Union of India and Ors.*, [1984] 3 SCC

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654, wherein in the context of reservation in medical education courses on the basis of territorial or institutional preference, Bhagwati, J., speaking for the court in para 22 of the Report observed as under :

> `But as far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. There the excellence cannot be compromised by any other considerations because that would be detrimental to the interest of the nation`."

It is of course true that the aforesaid observations were made not with reference to any reservations as per Article 15(4). However, while considering the extent of dilution of minimum passing marks in the entrance examination for admission of reserved category candidates to post-graduate medical courses, the permissible limit below which the concessions available to reserved category of candidates cannot be permitted to go, would require serious consideration, otherwise merit would be totally by-passed and jeopardised. It is also pertinent to note that in the aforesaid decision the permissible limit of reservation by way of institutional preference was held to be only up to 50% of the total available seats.

While dealing with the scope and ambit of reservation under Article 15(4) in post-graduate courses, which of course is not in challenge before us, we have also to keep in view, the observations of the nine Judge Bench of this Court in *Indra Sawhney's* case (supra). In para 146 of the Report at page 401 Pandian, J., concurring with the main majority decision rendered by Jeevan Reddy, J., observed that :

> `The basic policy of reservation is to off-set the inequality and remove the manifest imbalance, the victims of which for bygone generations lag far behind and demand equality by special preferences and their strategies. Therefore, a comprehensive methodological approach encompassing jurisprudential, comparative, historical and anthropological conditions is necessary. Such considerations raise controversial issues transcending the routine legal exercise because certain social groups who are inherently unequal and who have fallen victims of societal discrimination require compensatory treatment. Needless to emphasise that equality in fact or substantive equality involves the necessity of beneficial treatment in order to attain the

result which establishes an equilibrium between two sections placed unequally." A

Same learned Judge at pages 402-403 of the Report considered a passage by Allan P. Sindler in his book *Bakke, Defunis and Minority Admissions (The Quest for Equal Opportunity)* which dealt with a running race between two persons i.e. one who has his legs shackled and another not. In such a race between unequals it was found necessary to remove the inequality between the two runners by giving compensatory edge to the shackled runner. The learned Judge also noted the submission of learned counsel for the petitioners who demonstrably explained that as unwatered seeds do not germinate, unprotected backward class citizens will whither away. B C

In the earlier Constitution Bench judgment in *M.R. Balaji* v. *State of Mysore,* (supra), Gajendragadkar, J., at page 467 of the Report, this Court made the following pertinent observations with reference to Article 15(4) :

> "When Art.15(4) refers to the special provision for the advancement of certain classes or scheduled castes or scheduled tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Art.15(4) authorises special provision to be made`." D E

We may also refer to the contention of learned senior counsel Shri Rajendra Sachar, placing reliance on page 474 of the Report in *M.R.Balaji's* case (supra) to the effect that "the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration and that it was undoubtedly the effect of Article 335. Therefore, what is true in regard to Art. 15(4) is equally true in regard to Art.16(4)." These observations, strongly relied upon by Shri Sachar for importing the impact of Article 335 on the reservations under Article 15(4) cannot be treated to be of any real assistance to him. The aforesaid observations were made by the Constitution Bench while considering the reasonableness of reservation of seats in educational institutions and for highlighting the point that such reservation of seats should not be more than 50% and reservation of 68% of seats was not within F G H

A the permissible limit of special provision under Article 15(4). From these observations, it cannot necessarily follow that admission to such reserved seats can tantamount to appointments to any posts to which Article 335 would get directly attracted. While considering the permissible limits of dilution of minimum passing marks for reserved category candidates appearing at the entrance test for being called for counselling for admissions to postgraduate B medical courses, we have to keep in view the salient fact that different universities examining students for obtaining MBBS degrees on the basis of the same syllabus may have different yardsticks and standards of assessment of papers and, therefore, students passing their MBBS examinations from different universities cannot *ipso facto* be treated to be equally meritorious C and consequently, the common entrance test for admission to post-graduate courses cannot be said to be totally uncalled for. However, because reservation of seats at post-graduate educational level is countenanced, as a logical corollary, to make effective the reservations and with a view to seeing that the reserved category students do not get excluded from getting admitted as far as possible, provision for lesser qualifying marks for reserved category D candidates at the common entrance test cannot be said to be totally illegal. However, with a view to seeing that crutches provided to such weaker sections of society do not cripple them for ever, the dilution of passing marks at the common entrance test at which such reserved category candidates appear after obtaining their MBBS degrees from different universities cannot be E totally arbitrary and must have a permissible rock-bottom limit below which it cannot go and that is why it is reasonable to hold that when reservation of seats under Article 15(4) in post-graduate medical courses cannot exceed 50% as held by the Constitution Bench in *M.R. Balaji's* case (supra) then on the same line of reasoning additional facilities to be given to such reserved category candidates for being admitted to the seats reserved for them in the F post-graduate medical courses also should not exceed the permissible limit of 50% dilution from the general cut-off marks provided uniformly for general category of candidates competing for admission to such limited number of seats at post-graduate level. While dealing with the question of dilution of minimum passing marks for reserved category of candidates appearing at the G entrance tests for admission to post-graduate courses it has to be kept in view that general category students form a separate class as compared to reserved category candidates for whom seats are reserved under Article 15(4). Once that is kept in view, as a logical corollary, it must follow that to make such reservations effective appropriate dilution of the minimum cut-off marks for students belonging to the reserved category would become permissible H subject to the rider that such dilution should not be so unreasonable as to

go out of the beneficial protective umbrella of Article 15(4) as seen earlier. If that happens it would squarely get hit by Article 15(1) read with Article 14 of the Constitution of India. However, within such permissible limits such dilution for different reserved categories of candidates who may be given benefit of sliding scales of reduced passing marks as required by exigencies of situation would remain legal and valid. In this connection, observations in the Constitution Bench judgment of this court in *Chitra Ghosh and Anr.* v. *Union of India and Ors.*, (supra), wherein Grover, J., spoke for the Constitution Bench as to which we have made a detailed reference earlier are required to be kept in view. To recapitulate, it has been held that selection of eligible candidates for admission to medical courses can be made by classifying such candidates category-wise keeping in view the services from which they are drawn. The aforesaid decision of the Constitution Bench was directly concerned with the admissions in medical colleges. It would squarely get attracted while deciding the present controversy. It is obvious that if for admission to a medical education course at gross-root level of MBBS, different rules for selecting candidates from different sources from which they are to be drawn are countenanced, then even at the stage of admission at post-graduate level, the ratio of the aforesaid decision of the Constitution Bench would squarely get attracted and would permit separate treatment for students drawn from different sources. It is of course true that in the said case, the Constitution Bench was concerned with the nominations made by the Central Government on seats reserved for such nominees. However, that would not whittle down the decision of the Constitution Bench to the effect that while imparting education in theory and practice in medical courses of study, the source from which candidates are drawn can be a relevant classificatory criterion and there can be different rules in the matter of selection of candidates drawn from different sources. It is axiomatic that reserved category candidates competing for being selected to the seats reserved for them in post-graduate medical courses as per the mandate of Article 15(4) of the Constitution have to compete *inter se* with their own colleagues from the same categories and not necessarily have to compete with general category candidates who form entirely a different class. Once such classification is countenanced, as a necessary concomitant, separate provision for reserved category of candidates forming a separate class for which reservation of seats in post-graduate medical courses is permitted cannot be faulted and hence the dilution of minimum qualifying marks for reserved category of candidates cannot by itself be treated to be unauthorised or illegal from any view point. Otherwise the very purpose of reserving seats for such class of candidates at post-graduate level of medical education would be denuded on its real content and

A B C D E F G H

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A the purpose of reservation would fail. The seats reserved for such category of persons would go unfilled and will swell the admission of general category of candidates for whom these seats are not at all meant to be made available, once the scheme of reservation of seats under Article 15(4) is held applicable.

In the light of the aforesaid discussion, the following conclusions B emerge :

(1) It is permissible to the State authorities which are running and/ or controlling the medical institutions in the States concerned to short-list the eligible and qualified MBBS doctors for being considered for admission to post-graduate medical courses in C these institutions. For the purpose of such short-listing full play is available to the State authorities to exercise legislative or executive power as the field is not occupied till date by any legislation of the Parliament on this aspect in exercise of its legislative powers under Entry 25 of List III of the Constitution D of India and this topic is also not covered by any legislation under Entry 66 of List I of the Constitution.

(2) The Indian Medical Council Act and the regulations framed thereunder do not cover the question of short-listing of admission of eligible and duly qualified MBBS doctors who seek admission E to different medical institutions imparting post-graduate education run or controlled by the States concerned.

(3) The regulations and guidelines given by the Medical Council of India in this connection, though persuasive and not having any binding force, cannot be totally ignored by the State authorities F but must be broadly kept in view while undertaking the exercise of short-listing of eligible candidates for being admitted to post-graduate medical courses.

(4) While short-listing candidates having basic qualifications of MBBS for being considered for admission to limited number of G vacancies in post-graduate courses available at the medical institutions in the Sates, it is permissible for the State authorities to have common entrance tests and to prescribe minimum qualifying marks for passing such tests to enable the examinees who pass such test to be called for counselling. That would be in addition to the basic qualification by way of MBBS degree. H The performance of the candidate concerned during the time he

or she undertook the study at MBBS level for ultimately getting the MBBS degree also would be a relevant consideration for the State authorities to be kept in view.

(5) It is equally permissible for the State authorities while undertaking the aforesaid exercise of short-listing to fix 50% minimum qualifying marks at the entrance test for general category of candidates and to dilute and prescribe lesser percentage of passing marks for reserved category of candidates as exigencies of situation may require in a given year but in no case the minimum qualifying marks as reduced for reserved category of candidates can go below 25% of passing marks for such reserved category of candidates. In other words, a play is available to the State authorities to prescribe different minimum passing marks for SC/ST and OBC eligible candidates between 50% and 25% as the prevailing situation at a given point of time may require. In such categories for SC, ST & OBC candidates different diluted passing marks can be prescribed, but this exercise has to be within the permissible limits of less than 50% & up to minimum 25% passing marks for each of such reserved categories. No eligible candidate belonging to reserved category who does not obtain minimum percent of passing marks as diluted for such category of candidates by the State authorities can be considered to be eligible for undertaking post-graduate medical courses in a given year for which he has offered his candidature and if any seat reserved for such categories of candidates remain unfilled due to non-availability of such eligible reserved category candidate to fill up such seat, then the said seat would go to general category candidates and will be available in the order of merit in the light of marks obtained by such wait-listed general category candidates having obtained requisite passing marks who otherwise could not get admitted due to non-availability of general category seats earlier. The ratio of various decisions of this court considered hereinabove will have to be implemented in the light of the aforesaid conclusions to which we have reached. The aforesaid practice has to be followed and should hold the field from year to year so long as the Parliament does not pass any legislation for regulating admission to post-graduate medical courses either by separate legislation or by appropriately amending Indian Medical Council Act by empowering the

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A Medical Council of India to prescribe such regulations.

The writ petitions and the civil appeal arising out of the special leave petition as well as the review petitions would stand disposed of accordingly in the aforesaid terms and the judgments rendered by the High Courts will stand modified and the impugned orders passed by the State authorities will B also stand set aside accordingly. However, the present judgment will operate purely prospectively and will not affect the admissions already granted by the concerned authorities in the post-graduate medical courses prior to the date of this judgment. In other words, the State authorities will have to comply with the directions contained in this judgment and put their house in order C for regulating the admissions to post-graduate medical courses starting hereinafter in the medical institutions concerned.

S.M. Petitions allowed.