

# **Municipal Corporation Of Greater ... vs Thukral Anjali Deokumar & Ors on 7 March, 1989**

**Equivalent citations: 1989 AIR 1194, 1989 SCR (1) 919**

**Author: M.M. Dutt**

**Bench: M.M. Dutt, T.K. Thommen**

PETITIONER:

MUNICIPAL CORPORATION OF GREATER BOMBAY & ORS.

Vs.

RESPONDENT:

THUKRAL ANJALI DEOKUMAR & Ors.

DATE OF JUDGMENT 07/03/1989

BENCH:

DUTT, M.M. (J)

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DUTT, M.M. (J)

THOMMEN, T.K. (J)

CITATION:

1989 AIR 1194                      1989 SCR (1) 919

1989 SCC (2) 249                JT 1989 (1) 468

1989 SCALE (1) 670

CITATOR INFO :

R                      1992 SC1475 (4,5)

ACT:

Constitution of India, 1950--Art. 14--Educational Institutions--Medical Colleges--Admission to--Any preference other than the merit discriminatory--Not reasonable classification.

Rules framed by Bombay Municipal Corporation--Admission to Post Graduate and diploma courses in Medical Colleges.

Rules 4A and 5--College-wise Institutional preferences for admission to M.D. Courses--Held bad--Any preference other than merit--Discriminatory and unreasonable classification.

HEADNOTE:

There are four Medical Colleges in the City of Bombay, all affiliated to the University of Bombay. Out of four,

three colleges are run by the Municipal Corporation and one is run and conducted by the State of Maharashtra. Rule 4A framed by the Municipal Corporation and Rule 5 framed by the State Govt. vide Govt. Resolution dated June 18, 1971 govern the admissions of students to post-graduate degree and diploma course in the respective Medical Colleges.

Both the aforesaid Rules provide for collegeate institutional preference for admission in the M.D. Course. In other words, in each college, candidates who passed their M.B.B.S. exam from that college were to be preferred for purposes of admission to the Post-Graduate M.D. degree, no matter whether the candidates had secured less marks than those who secured higher marks, having passed the M.B.B.S. Exam. from other colleges. On this basis some candidates who were not able to secure admission to the M.D. Course in the respective colleges from which they had passed their M.B.B.S. Examination were not also admitted in the other medical colleges in the City of Bombay, in view of college wise institutional preferences as provided by Rule 4A and Rule 5 referred to above. Those students/candidates challenged the validity of the afore-said Rule 4A and Rule 5 framed by the Municipal Corpn. and the State Govt. in the High Court, as being violative of Art. 14 of the Constitution. The High Court allowed the Writ Petition and struck

920

down the impugned Rule 4A in whole and Rule 5 in so far as it applies to the Govt. Medical College, as discriminatory and violative of Art. 14 of the Constitution and thus invalid. Hence these appeals by Special Leave.

Dismissing the appeals with some directions, the Court,

HELD: When the University is the same for all these colleges, the syllabus, the standard of examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same University except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions. In such circumstances, college-wise institutional preference cannot be supported and, this Court has not approved of such preference at all. [931F-G]

So far as educational institutions are concerned unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the test of Art. 14 of the Constitution. [932C-D]

The Rules are discriminatory and do not satisfy the test of reasonable classification and as such, cannot be sustained. The Court accordingly dismissed the appeals and directed that the students who have been admitted to post-graduate M.D. Course pursuant to the impugned Rules, their admission shall not be interfered with or disturbed. [933E]

The High Court has directed to the appellants to frame rules adopting certain alternative methods for admission in the Post-graduate M.D. Course for the next year. The said directions appear to be in the nature of suggestions by the

High Court and the appellants will be free to frame the rules for admission in the Post-graduate M.D. Course in the said four colleges in the City of Bombay in conformity with the provision of Art. 14 of the Constitution and in the light of the Judgment of this Court and in framing the Rules, the appellants may take into consideration the suggestions of the High Court. [934G-H; 935A]

Dr Pradeep Jain v. Union of India & Ors., [1984] 3 S.C.R. 942, distinguished.

Nidamarti Mahesh Kumar v. State of Maharashtra & Ors., [1986] 2 S.C.C. 534, not applicable.

921

Jagdish Saran & Ors. v. Union of India & Ors., [1980] 2 S.C.R. 831, not applicable.

State of Rajasthan & Anr. v. Dr. Ashok Kumar Gupta & Ors., [1989] 1 S.C.C. 93, not applicable.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2792 of 1988 Etc. From the Judgment and Order dated 27.7.1988 of the Bombay High Court in W.P. No. 3264 of 1988.

G. Ramaswamy, Additional Solicitor General, T.R. Andya-rujuna, V.V. Vaze, V.M. Tarkude, D.N. Misra, M.D. Siodia, Pinaki Misra, P.H. Parekh, Ms. Sunita Sharma, A.M. Khanwilkar, A.S. Bhasme, Dalveer Bhandari, Vijay Thorat, Raian Karanjawala, Mrs. Manik Karanjawala, Ms. Meenakshi Arora, V.D. Khanna, Rameshwar Nath, B.R. Agarwal, P.K. Pillai, P.N. Gupta, Shri Narain, Madhuri Gokhale, Prangalia and N. Nettar for the appearing parties.

The Judgment of the Court was delivered by DUTT, J. The principal point involved in these appeals relates to the constitutional validity of rule 4(A) of the Rules framed by the Bombay Municipal Corporation for admission to post-graduate degree and diploma courses in its medical colleges framed on June 18, 1988 and rule 5 framed under the Government Resolution dated June 18, 1971 for admission to the Government Medical College, both the rules providing for collegewise institutional preference for admission in the M.D. Course. By the impugned judgment, the High Court allowed the writ petitions out of which these appeals arise, and struck down the impugned rule 4(A) in whole and rule 5 (wrongly stated as rule 6 in the High Court judgment), in so far as it applies to the Government Medical College in the city of Bombay, as discriminatory and violative of Article 14 of the Constitution and, accordingly, invalid.

Rule 4(A) is as follows:--

#### "4. PREFERENCE:

(A) While selecting candidates for admission to the postgraduate courses preference will be given in the following order:--

(a) Candidates applying for admission at the parent institution.

(Note: Parent institution means the medical college at which the candidate has passed his qualifying examination).

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

Relevant portion of rule 5 framed under the Government Resolution dated June 18, 1971 reads as follows:

"

5. .... .

While selecting from amongst eligi-

ble candidates preference will be given to the students of that college i.e. who passed their final M.B.B.S. Examination from that college in Broad specialities and their ancillary discipline."

There are four medical colleges in the city of Bombay, and affiliated to the University of Bombay. Of these four medical colleges, three are run and conducted by the Bombay Municipal Corporation, namely, Lokmanya Tilak Memorial Medical College (LTMMC), Seth G.S. Medical College (GSMC) and Topiwalla National Medical College (TNMC). The only college that is being run by the Maharashtra Government in the city of Bombay is Grant Medical College (GMC). It is not necessary to state in details the facts leading to the filing of the writ petitions before the High Court out of which these appeals arise. Suffice it to say that some candidates who were not admitted in the M.D. Course in the respective colleges from which they had passed their MBBS Examination, were not also admitted in the other medical colleges in the city of Bombay, in view of collegewise institutional preference as provided by rule 4(A) in respect of three Municipal Colleges and by rule 5 relating to GMC, the Maharashtra Government College. The High Court, as stated already, struck down rule 4(A) and rule 5 in part and allowed the writ petitions. Hence these appeals by special leave.

It is Urged by Mr. G. Ramaswamy, the learned Additional Solicitor General, that this Court in Dr. Pradeep Jain v. Union of India & Ors., [1984] 3 SCR 942 has given sufficient indication of its approval of collegewise institutional preference. While the learned Additional Solicitor General frankly concedes that he is not in a position to support cent percent institutional preference or reservation of seats for admission in the M.D. Course in the Municipal Colleges and the Government College in the city of Bombay, such preference or reservation in respect of certain percentage of seats is quite permissible and will not be hit by the provision of Article 14 of the Constitution.

In Pradeep Jain's case, the question that has been considered by this Court as noted by Bhagwati, J. (as he then was) is whether, consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a State can be confined to those who have their domicile within the State or who are resident within the State for a specified number of

years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess domicile or residential qualification within the State, irrespective of merit. The question that has been formulated and considered does not show, on the face of it, that collegewise institutional preference was also involved as a part of the question. It has been ruled in Pradeep Jain's case that effort must always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country, and that it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available. So, wholesale reservation on the basis of domicile or residential requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the University or the State excluding all students not satisfying this requirement, regardless of merit, has been condemned. The Court took the view that reservation of seats based on residential requirement within the State or on institutional preference should, in no event, exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservation validly made, the 70 per cent reservations needs to be reduced if the Indian Medical Council determines a shorter outer limit.

The institutional preference that has been referred to in the observation of Bhagwati, J. does not at all relate to collegewise institutional preference, with which we are concerned. The learned Additional Solicitor General has, however, placed strong reliance on the following observation made by Bhagwati, J. in Pradeep Jain's case which is extracted below:--

"We are therefore of the view that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical colleges or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the M.B.B.S. course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis."

It is urged by the learned Additional Solicitor General that in Pradeep Jain's case collegewise institutional preference has been recognised and upheld, as is apparent from the above observation, particularly from the observation "a certain percentage of seats may, in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS Course from a medical college or University may be given preference for admission to the post-graduate course in the same medical colleges or university, but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course." It is true the expression "institutional preference" has been used in the said observation in respect of a medical college or a university, but we do not think that in making that observation Bhagwati, J. had in his mind collegewise institutional preference. Any observation in a judgment has to be read and understood in the context of facts of that particular case in respect of which such observation has been made. As has been pointed out, the question that has been considered in Pradeep Jain's case relates to reservation of seats in medical colleges on the ground of domicile or residential qualification within the State irrespective of merit. It was not the case of anybody that reservation of seats should be made on the ground of collegewise institutional preference. The institutional preference that was considered in the case was university-wise institutional preference and not collegewise institutional preference. It is also apparent from the judgment of Amarendra Nath Sen, J., who delivered a separate but concurring judgment, that the Court had no occasion to consider the question of collegewise institutional preference in matters of admission to M.D. Course. In the circumstances, we are unable to accept the contention of the learned Additional Solicitor General that this Court in Pradeep's Jain's case has upheld or recognised collegewise institutional preference of seats in medical colleges for admission in M.D. Course.

The position is clarified in a subsequent decision of this Court in *Nidamarti Mahesh Kumar v. State of Maharashtra and others*, [1986] 2 SCC 534 which related to the constitutional validity of regionwise reservation of seats in medical colleges. It has been observed by Bhagwati, C.J. that where the region from which the students of a university are largely drawn is backward either from the point of view of opportunities for medical education or availability of competent and adequate medical services, it will be constitutionally permissible, without violating the mandate of the equality clause to provide a high percentage of reservation or preference for students coming from that region because without reservation or preference students from such backward region will hardly be able to compete with those from advanced regions, since they would not have adequate opportunity for development so as to be in a position to compete with others. Further, it has been observed that it would not be unconstitutional for the State to provide for reservation or preference in respect of a certain percentage of seats in the medical college or colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the State Government is on the higher side, it would not fall foul of the constitutional mandate of equality.

In respect of such reservation of preference the reasons that have been given are that it would cause considerable hardship and incon-

venience if students residing in the region of a particular university are compelled to move to the region of another university for medical education which they might have to do if selection for admission to the medical colleges in the entire State were to be based on merit without any reservation or preference regionwise. There may be a large number of students who, if they do not get admission in the medical college near their residence and are assigned admission in a college in another region on the basis of relative merit, may not be able to go to such other medical college on account of lack of resources and facilities and in the result, they would be effectively deprived of real opportunity for pursuing the medical course even though on paper they would have got admission in the medical college. Further, it has been pointed out that some difficulty would arise in case of girls because if they are not able to get admission in the medical college near the place where they reside they might find it difficult to pursue medical education in a medical college situated in another region where hostel facilities may not be available and even if hostel facilities are available, the parents may hesitate to send them to the hotels.

Even with regard to regionwise reservation of certain percentage of seats in medical colleges, except for the reasons mentioned above, this Court in Nidamarti's case has turned down the contention that the provision of the impugned rule, that is, students from a school or college situate within the jurisdiction of a particular university would not be eligible for admission to medical college or colleges situate in the jurisdiction of another university, but would be confined only to medical college or colleges within the jurisdiction of the same university, was intended to give protection to students in certain rural areas, the population of which is socially, economically and educationally backward, for otherwise they would have not been able to compete with students from advanced regions and, consequently, the classification made by the provision was constitutionally permissible. Thus, except in certain circumstances, even regionwise reservation of seats in medical colleges has not been approved by this Court. In Pradeep Jain's case, merely because the expression "institutional preference" has been used with reference to a student passing the MBBS Course from a medical college or a university, it does not necessarily follow that the Court had in its contemplation or was laying down collegewise institutional preference.

In support of the contention that collegewise institutional preference or reservation of seats was in the contemplation of this Court, reliance has been placed on behalf of the appellants on an earlier decision of this court in Jagdish Saran & Ors. v. Union of India & Ors., [1980] 2 SCR 831. In that case, of the three learned Judges, Krishna Iyer, J. delivered the judgment for himself and for Chinnappa Reddy, J. Pathak, J. (as he then was) agreed with the judgment of Krishna Iyer, J. that the writ petition should be dismissed, but he gave his own reasons. The reasons of Pathak, J. are, inter alia, contained in the following observations:

"It is not beyond reason that a student who enters a medical college for his graduate studies and pursues them for the requisite period of years should prefer on graduation to continue in the same institution for his post-graduate studies. There is the strong argument of convenience, of stability and familiarity with an educational environment which in different parts of the country is subject to varying economic and psychological pressures. But much more than convenience is involved. There are all the advantages of a continuing frame of educational experience in the same

educational institution. It must be remembered that it is not an entirely different course of studies which is contemplated; it is a specialised and deeper experience in what has gone before. The student has become familiar with the teaching techniques and standards of scholarship, and has adjusted his responses and reactions accordingly. The continuity of studies ensures a higher degree of competence in the assimilation of knowledge and experience. Not infrequently some of the same staff of Professors and Readers may lecture to the post-graduate classes also. Over the under-graduate years the teacher has come to understand the particular needs of the student, where he excels and where he needs an especial encouragement in the removal of deficiencies. In my judgment, there is good reason in an educational institution extending a certain degree of preference to its graduate for admission to its post-graduate classes. The preference is based on a reasonable classification and bears a just relationship to the object of the education provided in the post-graduate classes. The concept of equality codified in our constitutional system is not violated. It has been said sometimes that classification contradicts equality. To my mind, classification is a feature of the very core of equality. It is a vital concept in ensuring equality, for those who are similarly situated alone from a class between themselves, and the classification is not vulnerable to challenge if its constituent basis is reasonably related to achieving the object of the concerned law. An institutional preference of the kind considered here does not offend the constitutional guarantee of equality."

The above observations or reasons should not be read or understood dehors the facts and the questions involved for the determination of this Court. The facts of that case will be stated presently. The University of Delhi has many post-graduate and diploma courses in the faculty of medicine providing in all 250 seats. The three medical colleges in Delhi turn out annually 400 medical graduates who get house-jobs in the local hospitals and qualify themselves for postgraduate course. As the graduates from the Delhi University could not be accommodated fully or even in part for the post-graduate course in Medicine and as these graduates were not considered for admission into other universities, Delhi University had earmarked some seats at the post-graduate level in Medicine for the medical graduates of Delhi University. By the impugned rule, 70 per cent of the seats at the post-graduate level was reserved for Delhi graduates and 30 per cent of the seats was kept open to all including graduates of Delhi. It was, therefore, not a case of collegewise reservation, but 70 per cent reservation of seats in the medical colleges under the Delhi University for the medical graduates of that University. The question of collegewise institutional preference or reservation of seats did not at all arise, nor was it argued or sought to be decided in Jagdish Saran's case. It is true that the observation of Pathak, J., without reference to the context of the facts and the question involved in that case, may support to some extent the contention of the appellants, but the contention has to be rejected on a reference to the facts and the question involved in that case.

It is, however, submitted by the learned Additional Solicitor General that there are some special facts and circumstances which justify collegewise reservation as provided by the impugned rules 4(A) and 5. It is stated by him that while the theoretical examinations in MBBS Course are conducted by the University, the practical examinations involving 50 per cent of the total marks are



held by the individual colleges. Counsel submits that in such circumstances the merits of the candidates passing the MBBS Examination from these four colleges are difficult to be compared and evaluated for the purpose of admission in the M.D. Course. This submission has also been made by Mr. Baze, learned Counsel appearing on behalf of the University of Bombay.

We regret, we are unable to accept such a contention. It is not disputed that in each college the practical examinations are conducted by a set of four examiners consisting of one internal examiner from the same college, one external examiner from one of the other three colleges and two external examiners from outside Bombay. Thus, excepting one internal examiner, three other examiners are external examiners and all those examiners are presumably appointed by the University. These examiners are of high academic qualifications and we fail to understand why they would deviate from the standard prescribed by the University for the assessment and evaluation of the merits of the students in the practical examinations. There is, therefore, no substance in the contention that the standard of examination and evaluation of the merits of students in such practical examinations differ from college to college. Indeed, no material has been placed before us in support of the contention that different standards are adopted by the colleges in MBBS practical examinations. Equally untenable is the contention that because of institutional preference, the different marks given by different colleges do not affect the students, as it is the relative merit of the student in the same college which matters in the selection of post-graduate students. We do not find any justification for the apprehension that if the institutional preference is removed and all the candidates from the University are pooled together, a process of dilution and undesirable racing are likely to start making a mockery of the examination system and creating mad race of overtaking the other colleges. This apprehension has been expressed by the Dean of Lokmanya Tilak Memorial Medical College in his affidavit filed before the High Court.

Another ground in justification of collegewise institutional preference which has been relied on by the Dean in his affidavit and urged before us on behalf of the appellants is that the facilities differ from college to college in respect of the pattern of patients coming to the hospital attached to each college. By way of illustration, it is stated that in the hospital attached to Lokmanya Tilak Memorial Medical College there is maximum load of trauma cases (accidents and injuries), the number of such cases is much higher than that in the hospital attached to the three other colleges. The under-graduate students in Lokmanya Tilak Memorial Medical College will have a wider exposure to these cases and will be far more suitable for seat in the post-graduate course in Surgery where he will have to actually deal with these cases than a student of any other college. Even assuming that the facts stated above are correct, we do not think that the same constitute any ground in support of institutional preference. It is the university which is required to maintain a standard in respect of the subjects in the colleges affiliated to it. It is not the case of the University that the standard prescribed by it is not maintained in different colleges or that any particular college is higher in standard in a particular subject than that in another college. It may be that the number of accident and injury cases in the hospital attached to Lokmanya Tilak Memorial Medical College is higher than the number of such cases in the hospitals attached to other colleges, but that does not prove or lead to the conclusion that the students of other colleges will be deficient in surgery or less meritorious than the students of Lokmanya Tilak Memorial Medical College. The contention in this regard is without substance and is rejected.

Let us now examine the question of collegewise institutional preference from the point of view of Article 14 of the Constitution. By the impugned rules, a classification has been sought to be made with the students of each particular college passing their MBBS Examination from that college to the exclusion of all other students obtaining their MBBS Degree from the other colleges. In order that a classification is a permissible one within the meaning of Article 14 of the Constitution, two tests are to be satisfied, namely, (1) that there is an intelligible differentia which distinguishes persons grouped together from those who are left out of the group; and (2) that there is a rational nexus to the object sought to be achieved by the impugned rules. The object sought to be achieved by the impugned rules is obviously to prefer merit for the post-graduate course and to exclude less meritorious candidates. It will be presently demonstrated that both the tests are not satisfied in the instant case. In this connection, we give below following tabular statement showing the number of seats available in each of the said four colleges in some of the disciplines.

COLLEGE	LTMMC	TNMC	GSMC	GMS
Students Intake		100	100	100
DISCIPLINE				
1. M.D. Obs. & Gyn.	2	1	5	3+ I(R)
2. M.S. Orthopaedics	2	1	2	1
3. M.S. General Surgery	4	2	3	3+ I(R)
4. M.D. General Medicine	4	3	3	3+ I(R)

In Seth G.S. Medical College (GSMC), there are five seats in Obstetrics and Gynaecology and one seat in Topiwala National Medical College (TNMC). In view of the impugned rules providing collegewise institutional preference, five seats in Obstetrics and Gynaecology in Seth G.S. Medical College were allotted to five of its students. Of these five students, Dr. Ganpat Sawant secured 150 marks and the four other candidates secured marks between 118 and 128 in the MBBS Examination. The respondents Dr. Anjali Deokumar Thukral and Dr. Sumeet Godambe, both students of Topiwala National Medical College obtained respectively 140 and 143 marks in the MBBS examination. They, however, were not admitted in their college, for there was only one seat in Obstetrics and Gynaecology and that seat was allotted to a student of that college who secured 156 marks in the MBBS examination. Thus, although Dr. Anjali Deokumar Thukral and Dr. Sumeet Godambe secured more marks than the students admitted in the post-graduate course in Obstetrics and Gynaecology in the said G.S. Medical College, except the said Dr. Ganpat Sawant, they were refused admission in view of collegewise institutional preference. Similarly, in respect of other disciplines many meritorious students could not get admission even though they secured higher marks than those admitted in the post-graduate degree course by virtue of the impugned rules. Thus, there is a patent discrimination inasmuch as students obtaining lesser marks have been preferred to those obtaining higher marks. There is no intelligible differentia for the classification by way of collegewise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each college from those excluded from such classification. By such classification or collegewise institutional preference, merit has been sacrificed, far less it has been preferred. When the university is the same for all these colleges, the syllabus, the standard of examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same university, except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions. In such circumstances, collegewise

institutional preference cannot be supported and, it has already been noticed that this Court has not approved of such preference at all.

State of Rajasthan and another v. Dr. Ashok Kumar Gupta and others, [1989] 1 SCC 93 is a case of college-based institutional preference in respect of five medical colleges in Rajasthan under the same University. The impugned Ordinance of the University provided for addition of 5 per cent of the aggregate of marks which work out to be to 137.5 marks by way of institutional preference in the sense of preference dependant on the particular medical college at which the concerned candidate has passed his final MBBS Examination. This collegewise institutional preference has been disapproved by this Court in that case and the impugned Ordinance has been struck down. The learned Additional Solicitor General sought to distinguish Dr. Ashok Kumar Gupta's case from the instant case. We do not think that the said case is distinguishable from the case with which we are concerned, inasmuch as in both the cases the question of collegewise or college-based institutional preference is involved. It is stated that mode or method adopted for giving collegewise institutional preference in Dr. Ashok Kumar Gupta's case is different from the instant case but, in our opinion, nothing turns out of that. So far as educational institutions are concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the test of Article 14 of the Constitution. So, the impugned rules are discriminatory and do not satisfy the tests of reasonable classification and, as much, cannot be sustained. It is next contended on behalf of the appellants that as the Bombay Municipal Corporation has to spend a lot of money for the running of the three colleges sponsored by it, seats for the postgraduate course should be reserved in these three colleges for the students passing the MBBS Examination from any of these colleges. If such reservation is allowed, the students of the Maharashtra Government College, namely, the Grant Medical College, will not get any admission in any of the three Municipal Colleges, even if the students or some of them passing the MBBS Course from the Government College are more meritorious than the students for whom the seats will be kept reserved in the Municipal Colleges. It is urged that it will not be a case of collegewise institutional preference so far as the Municipal Colleges are concerned and there should be no objection for the Bombay Municipal Corporation to give preference to the students of the Municipal Colleges, of course, to the exclusion of the students of the Government College. This contention, in our opinion, is without any substance. It may be that the Bombay Municipal Corporation has to spend a lot of money for the colleges run by it, but that will be no ground for making a discrimination between the students of the Municipal Colleges and those of the Government College affiliated to the same university, for the purpose of admission in the post-graduate degree course. Such discrimination will not serve any object which can be justified on any rational basis. Such reservation or preference also cannot be allowed, for if allowed, rule 5 of the Rules framed under the Government Resolution dated June 18, 1971 will survive inasmuch as the students of the Grant Medical College will only be admitted in the M.D. Course. But, those students who could not be admitted in that College, will not be eligible for admission in the Municipal Colleges. We are unable to permit such discrimination in the matter of admission in the M.D. Course.

Another ground on which collegewise institutional preference has been sought to be justified by the learned Additional Solicitor General is on the basis of institutional continuity. In support of this ground of institutional continuity, the learned Additional Solicitor General has placed much reliance

on the observations of Pathak, J. in Jagdish Sa- ran's case, which has already been extracted above. It was not a case of collegewise institutional preference or insti- tutional continuity, and the said observations should not be understood in that sense, but in the sense of institutional continuity in the same university.

After giving our thoughtful consideration to the question of collegewise institutional preference, we are of the view that such preference or reservation of seats is not permissible and the High Court has rightly struck down both the impugned rule 4(A) framed by the Bombay Municipal Corpo- ration and part of rule 5 framed under the Government Reso- lution, that is to say, only in respect of its application to the Grant Medical College in the city of Bombay relating to admission to post-graduate M.D. Course. We, however, make it clear that the students who have been admitted to post- graduate M.D. Course pursuant to the impugned rules, their admission shall not be interfered with or disturbed.

At this state, we may consider the submission of Mr. Lalit, learned Counsel appearing on behalf of the applicants in C.M.P. No. 20748 of 1988 praying for their impleadment as party-respondents to Civil Appeal No. 2792 of 1988. We do not think that any useful purpose will be served by implead- ing them as party-respondents to the appeal. The only prayer that has been made by Mr. Lalit is that the applicants who have passed the diploma course from the Municipal Colleges should be held to be eligible for admission in the M.D. Course with credit for the diploma course in any of the Municipal Colleges. We are told by the learned Counsel appearing for the State Government and the Bombay Municipal Corporation that if the impugned rules are struck down, they will have to frame fresh rules consistent with the judgment of this Court and, as we have directed not to disturb admission of the candidates in the post-graduate M.D. Course pursuant to the impugned rules, we consider the prayer made by the applicants as quite reasonable and, accordingly, direct that the applicants who have passed the diploma course in the Municipal Colleges after passing the MBBS Examination, will be eligible for admission in the post-graduate M.D. Course in any one of the Municipal Col- leges with credit for the diploma course.

Mr. Tarkunde, learned Counsel appearing on behalf of the respondents-writ petitioners, submits that the cases of admission of some of the respondents, who have not been admitted to the postgraduate degree course in certain spe- cialities of their choice in view of the impugned rules, may be considered by the State of Maharashtra and the Municipal Corporation of Greater Bombay, in case seats are available, either in the Municipal Colleges or in the Grant Medical College, which is a Government College. In our opinion, the prayer is quite reasonable and the State of Maharashtra and the Bombay Municipal Corporation are directed to consider the question of their admission, provided seats are avail- able. The names of the said respondents and the respective disciplines of their choice are given below:

1. Dr. Anjali Deokumar Thukral M.D. Gynaecology and Obstetrics
2. Dr. Atul Jaywant Galtonde M.S. Orthopaedics
3. Dr. Naresh Kanayalal Navani M.S. General Surgery

4. Dr. Anna Koshy Joseph M.D. General Medicine

5. Dr. Vaishali Ramnik Doshi M.D. General Medicine Before we part with these cases, we may dispose of one submission made on behalf of the appellants. Our attention has been drawn to the fact that while striking down the impugned rule 4(A) and impugned rule 5 in part, the High Court has directed the appellants to frame rules adopting certain alternative methods for dismissal in the post-

graduate M.D. Course for the next year, as stated in the judgment. The said directions appear to be in the nature of suggestions by the High Court, and the appellants will be free to frame rules for admission in the post-graduate M.D. Course in the said four colleges in the city of Bombay in conformity with the provision of Article 14 of the Constitution and in the light of the judgment of this Court and in framing the rules, the appellants may take into consideration the suggestions of the High Court.

In the result, Subject to the directions given above, the appeals are dismissed. There will, however, be no order as to costs.

SPECIAL LEAVE PETITION (CML) NO. 8883 OF 1988 WRIT PETITION (CIVIL) NO. 1253 OF 1988 For the reasons aforesaid, Special Leave Petition and Writ Petition fail and are dismissed without any order as to costs.

Y.L.  
peals dismissed.

Ap-