A.I.I.M.S. Students Union vs A.I.I.M.S. & Ors on 24 August, 2001

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Bench: Chief Justice, R.C. Lahoti, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 7366 of 1996

PETITIONER:
A.I.I.M.S. STUDENTS UNION

Vs.

RESPONDENT:
A.I.I.M.S. & ORS.

DATE OF JUDGMENT: 24/08/2001

BENCH:
CJI, R.C. Lahoti & Shivaraj V. Patil

JUDGMENT:

J U D G M E N T R.C. Lahoti, J.

Delhi, the National Capital of the country is also the seat of the All India Institute of Medical Sciences, better known as AIIMS, an autonomous premier institution of national importance.

AIIMS ___ an institution of excellence for excellence :

> The Health Survey and Development Committee, popularly known as the Bhore Committee, in its report published in 1946 recommended the establishment of a national medical centre at Delhi which will concentrate on training well qualified teachers and research workers in order that a steady stream of these could be maintained to meet the needs of the rapidly expanding health activities throughout

the country. After the attainment of independence, the Union Ministry of Health proceeded to implement the challenging idea. A munificent grant of one million pounds by the Government of New Zealand through the Colombo Plan helped to translate the idea into a reality. An Act of Parliament in 1956 established the All India Institute of Medical Sciences (AIIMS) as an autonomous institution of national importance and defined its objectives and functions. [see - Prospectus Postgraduate Courses, January 1996].

The All India Institute of Medical Sciences Act, 1956 (hereinafter the Act, for short) sets out the Statement of Objects and Reasons as under :-

For improving professional competence among medical practitioners, it is necessary to place a high standard of medical education, both post-graduate and under-graduate, before all medical colleges and other allied institutions in the country. Similarly, for the promotion of medical research it is necessary that the country should attain self-sufficiency in post-graduate medical education. These objectives are hardly capable of realisation unless facilities of a very high order for both under-graduate and post-graduate medical education and research are provided by a central authority in one place. The Bill seeks to achieve these ends by the establishment in New Delhi of an institution under the name of the all-India Institute of Medical Sciences. The Institute will 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 to all medical colleges and other allied institutions, will provide facilities of a high order for training of personnel in all important branches of health activities and also for medical research in its various aspects. The Institute will have the power to grant medical degrees, diplomas and other academic distinctions which would be recognised medical degress for the purpose of the Indian Medical Council Act, 1933.

A reference to a few provisions of the Act is apposite. Section 5 declares that the Institute shall be an institution of national importance. Section 13 specifies the objects of the institute as under:

(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 to all medical colleges and other allied institutions in India;

(b) to bring together 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.

With a view to promote the abovesaid objects, the functions of the Institute are specified in Section 14 which include amongst others establishment of one or more medical colleges, a dental college, a nursing college and several other institutions. The Institute is not only to produce graduates and post-graduates of outstanding excellence, it is also to train teachers who in their turn would impart instructions in the different medical colleges in India. To achieve the objects and discharging the functions, the Institute is empowered to hold examinations and grant degrees, diplomas and other academic distinctions and titles of under-graduate and post-graduate level. Section 23 opens with a non-obstante clause giving the provision an over-riding effect on the provisions of Indian Medical Council Act, 1933 and declares that the medical degrees and diplomas granted by the Institute shall be recognised medical qualifications for the purpose of that Act, thereby entitling the holders to the same privileges as those attached to the equivalent awards from the recognised Universities of India.

In the field of postgraduate education the most important function of the Institute is to provide opportunities for training teachers for medical colleges in the country in an atmosphere of research and enquiry. The postgraduate students are exposed to the newer methods of teaching and given opportunities to actively participate in teaching exercises. The other important objectives of the Institute are to bring together in one place educational facilities of the highest order for the training of personnel in all the important branches of health activity and to attain self-sufficiency in postgraduate medical education. The educational principles and practices being adopted are those which are best suited to the needs of the nation.[See - Prospectus, Postgraduate Courses, July 2000].

The claim made by the Institute in its prospectus released from time to time is not so truthful as it professes to be, is a judicial finding arrived at, in the judgment under appeal by a Division Bench of the High Court of Delhi presided over by the Chief Justice.

The controversy - an exposure into reality :

> Three meritorious students aspiring for achieving excellence in the field of medical sciences by availing opportunity of receiving instructions and doing research in the premier medical institution of the nation in the year 1996, knocked the doors of Delhi High Court by filing a writ petition and complaining that the system, as devised by the Institute, of reservations and blocking the seats in the process of allocation through counselling was resulting in sacrificing merit and prestigious post-graduation seats in creamy disciplines being usurped by such candidates who were far far below in merit compared with the petitioners. The Delhi High Court dug deep into the relevant records of the Institute and penetrated its searching eyes into correspondence exchanged between the Central Government and the Institute. All this exercise led the Delhi High Court into finding itself stunned to see, to borrow the expression employed by the learned Chief Justice of Delhi High Court and havoc being played with the laudable aims and objectives on which the premier Institute of Medical Sciences was founded and was intended to achieve.

On 3.12.1995 an all-India entrance examination for admission to post-graduate courses in AIIMS was held. Any medical graduate who had secured a minimum of 55% marks in MBBS examination was eligible to participate in the entrance examination. The three writ- petitioners who were medical graduates having qualified from colleges/universities other than AIIMS participated in the examination.

The exact number of seats available for graduate and post- graduate seats in the Institute by reference to the time when they were made available initially at the commencement of these courses of study cannot be ascertained from the record as it stands. For our purpose it would suffice to notice that in the year 1958 the Institute made provision for 40 seats for graduation and 120 seats for post- graduation. We are told that though the number of seats for graduation remains almost the same however the number of seats for post-graduation in different disciplines taken together has been increased to 132 some time in the year 1975.

The writ petitioners had sought for admission in postgraduate courses for January session. The Institute conducts examinations for admission to postgraduate courses of study twice in a year for its two sessions commencing respectively in January and July each year. The prospectus issued in September 1995 declared that the selection shall be on merits. However, 1/3rd of the seats were reserved for in-house candidates of the Institute. Two separate merit lists were to be prepared for the two categories. Each candidate was to be permitted to opt for two specialities/courses of M.D./M.S. and the allocation was to be through counselling subject to availability of seats. Not only 33% of the available P.G. seats were reserved for the Institutes in- house candidates to begin with, there was yet another level of reservation for the in-house candidates of AIIMS. Such subsequent reservation provided for reservation in favour of in-house candidates, of 50% seats discipline-wise, subject to an overall reservation of 33%. At the counselling, the Institutes in-house candidates were given a priority by being called first in point of time and they having been allotted seats in P.G. disciplines, the general category candidates - the name denoting the category of students other than in-house candidates of AIIMS ___ were then called and allocated the seats left over by the in-house candidates.

The result of the common entrance examination was declared on 8.1.1996 for 100 seats. The writ-petitioners nos.1 to 3 secured ranks 10, 12 and 89 respectively. The total number of seats available for allocation in January 1996 was 83. The reservation of seats, according to the prospectus, was as follows :

(1)	Scheduled Castes	15%
(2)	Scheduled Tribes	7.5%

(3) Quota for Rural/BW/FM of AIIMS (those who 33% served in rural area or belong to backward area or have worked in Family Welfare programmes) (4) MBBS students from AIIMS 33% (5) Balance for open category 39.5% The prospectus also declared

that only such candidates as have secured 65th percentile or higher marks in the entrance examination shall be eligible for admission to postgraduate courses. The SC/ST/RBF candidates of AIIMS will be considered for the Institute graduates quota and open general category if they had secured marks corresponding to the 65th percentile or higher in postgraduate entrance examination. The corresponding cut-off marks for reserved quota of SC/ST/RBF candidates shall be 60th percentile or higher in the entrance examination. The department/discipline-wise reservation was set out in the scheme of allocation as follows :-

The seats shall be allocated on the basis of merit by a process of counselling. Not more than 50% seats in any department/discipline will be reserved for AIIMS graduates subject to the overall reservation of 33% of all Post Graduate seats. A 7-year roster of seats in different departments/disciplines is prepared for allocation of seats.

The scheme contained a tabular statement described as session-wise allocation of seats for the year 1996 for reserved categories (SC,ST and Rural) at AIIMS PG Entrance Examination. How these reserved seats were distributed, it would suffice to demonstrate by setting out reservation in one of the disciplines only, by way of example. The reservation of seats made in the discipline of Obstetrics & Gynaecology was as under:-

Obst. & Gyn :	Jan. Seats	July Seats	Total
	4	2	6

S.C.		S.T.		AIIMS		Open General	
Jan.	July	Jan.	July	Jan.	July	Jan.	July
1	-	1	-	2	1	-	1

Thus for the January 1996 session the seats were four out of which two would go to SC and ST candidates and two would go to AIIMS students. No seat was thus left available for the open general category in January session and out of the two seats available in July only one could be allocated to open general category candidate.

The writ-petitioners before the High Court sought for striking down the policy of reservation in favour of institutional candidates as unconstitutional and fresh allocation of seats consequent thereupon.

The three writ-petitioners before the High Court had impleaded only the Institute as respondent. During the course of hearing the High Court felt the necessity of impleading the Medical Council of India and the Central Government also as parties before it and that was done. All India Institute of Medical Sciences Students Union sought for intervention at the hearing which was allowed.

It is not necessary to set out in details the pleadings of the parties and the several issues of law arising therefrom in very many details. It would suffice to state that the Institute, the Central Government and the Students Union all offered a vehement opposition to the reliefs sought for by the writ-petitioners on grounds more or less common to each other. Further it would serve our purpose to briefly sum up the facts found and the findings on issues of facts and law arrived at by the High Court so as to highlight the core of controversy around which the learned counsel for the parties have made their submissions before us.

Issues before, and Findings arrived at by, the High Court :

The High Court keeping in view the pleadings of the parties and the submissions made by the learned counsel for different parties appearing before it framed the following points for consideration and decision:

(1) Does AIIMS have a special status as per the AIIMS Act, 1956 and can the reservation of 33% for AIIMS students introduced in 1978 be justified on the basis of principles applicable for a Universitywise quota?

(2) Whether, in law, the principle of institutional continuity is no longer acceptable because of the judgments of the Supreme Court in Thukral Anjalis case, (1989) 2 SCC 249 and in P.K. Goels case, (1992) 3 SCC 232 ?

(3)a) Whether alternatively, even if it is permissible to have institutional quota, the 33% quota for MBBS students in P.G. Courses in a national Institute like the AIIMS, which is expected to be premier institute in medical education, teaching and research is on facts not permissible.

(b) Whether, alternatively, the events which have transpired from 1978 when the 33% quota was first introduced till it was withdrawn on 24.10.1994 and was reintroduced on 17.12.1994 have shown considerable deterioration in AIIMS standards so as to justify withdrawal of the 33% quota?

(4) In any event, is discipline/department wise quota as per the scheme of 17th January 1996 valid and is it contrary to the judgement of the Delhi High Court in Dr. Sandeep Tak Vs. AIIMS (C.W. 2347/95) dated 11.9.1995?

(5) Is the counselling procedure of 17th January 1996 valid, if it is based on discipline-wise reservation for AIIMS students (other than SC/ST students)?

(6) Whether the 65 percentile method is valid?

(7) What is the relief to be granted in the writ petition?

It will be useful to precis the detailed findings arrived at by the High Court, which we do as under :

> Point Nos. 1 & 2 : The Institution based preference on which is founded 33% reservation of postgraduate seats in favour of AIIMS students has no justification on the principle of institutional continuity or on the principle of regional requirement. Neither it can be said that the candidates falling in this category belong to a particular region nor are they going to settle down in Delhi. This Court has not recognised the principle of institutional continuity as providing reasonable basis justifying carving out of a category for the purpose of reservation nor does it help in achieving the aims and objectives with which this premier institution of the country was established rather it is counter- productive to the laudable object of achieving excellence in the field of medical sciences and heath services of the nation. After the decision of this Court in the case of Dr. Pradeep Jain etc.etc. Vs. Union of India & Ors. (1984) 3 SCC 654 there are 2000 seats available throughout the country against which the AIIMS students can also compete. Thus there is no justification left after the year 1984 for continuing this category of reservation created in the year 1978.
>
> The High Court found out the manner in which the 33% reservation in favour of AIIMS students both at the level of the entrance and then at the level of disciplinewise allocation of seats was actually working up to date. For that purpose the High Court analysed the statistics of five years, i.e., July, 1992 to January, 1996 (both inclusive) and prepared the following table :
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> TABLE Session % AIIMS SC ST Open General July92 Lowest 31.5 20.66 36.00 47.0 Jan.93 Lowest 14.7 28.16 31.5 42.6 July93 Lowest 22.16 36.16 31.33 49.50 Jan.94 Lowest 24.33 40.50 38.33 54.67 July94 Lowest 19.83 31.50 31.50 50.0 Jan.95 Lowest 31.33 41.1 31.66 47.33 July 95 Lowest 38.00 22.6 37.17 46.33 Jan.96 Lowest 46.167 46.167 45.500 61.333 (33% + Percentile 65%) The statistics so tabulised led to the following inferences being drawn by the High Court :-
>
> (i) That AIIMS students who had secured marks as low as 14% or 19% or 22% in the entrance examination got admission to PG courses while scheduled castes or scheduled tribes candidates could not secure admission in their 15% or 7% quota in PG course in spite of having obtained marks far higher than the in-

house candidates of the Institute.

(ii) The figure of 33% reservation for in-house candidates was statistically so arrived at as to secure 100% reservation for AIIMS students. There were about 40 AIIMS candidates. The PG seats being 120, 33% thereof worked out to be 40;

meaning thereby all the 40 AIIMS graduates were 100% assured of PG seats.

Point No.3 : In spite of facility of having instructions and conducting research in the premier institution of the country, the reservation in favour of AIIMS in-house candidates was resulting into complacence and deterioration of standards. During the period July 1992 to July 1995 the AIIMS in-house candidates could hardly secure notable place amongst the first 100 meritorious candidates. These were the number of AIIMS graduates securing a place amongst the first 100 in the order of merit at the entrance examination for PG courses :-

Number of candidates from AIIMS in first 100 ranks

1. July 1992 3

2. Jan.93 14

3. July, 1993 1

4. Jan. 1994 4

5. July, 1994 2

6. Jan. 1995 7

7. July, 1995 3 The above is a bare spectacle. And yet the seats in creamy discipline were being appropriated by the AIIMS in-house candidates.

This deterioration in academic standards was contributed by the students as well as the teachers. Because of the students being assured of a seat in PG course of study, they were not working hard and the teachers too were not putting in their best while imparting instructions. The reservation was thus proving to be counter- productive.

The High Court found that the reservation of 33% PG seats in favour of AIIMS in-house candidates was not an objective policy decision arrived at on considerations of public good. In the year 1978 this reservation was introduced on account of demand made by the students union which was resorting to agitation and dharnas. The Central Government found such reservation not in public interest and hence it was withdrawn on 24.10.1994. The withdrawal sparked off once again agitations and dharnas by the members of the Union and the Central Government had to kneel down before the students within two months of the withdrawal resulting into the reservation being restored on 17.12.1994. The reservation in favour of AIIMS candidates was, thus, not a decision taken with objectivity and by due application of mind to all relevant facts but only under pressure of agitating AIIMS Students Union.

Point Nos.4 & 5 : The High Court prepared a chart and set out the same in its judgment showing disciplinewise allotment of seats from July 1992 to July 1995, also showing the percentage of marks and rank in the merit secured by the AIIMS in-house candidates who could succeed in securing allocation of seats mostly in creamy disciplines compared with the percentage of marks and the high

ranks secured by open general category candidates and yet either denied a seat or allocated a seat in lesser important disciplines. We need not burden this judgment by reproducing the long table running into pages set out in the judgment of the High Court. We would just highlight the deductions drawn by the High Court, culled out from its judgment, and briefly set out as under:-

> (i) The petitioner no.1, having secured rank 10 and marks 68.667%, had opted for M.D. Obstetrics and Gynaecology and MD Physiology while petitioner no.2 having got rank 12 with 66.667% marks had opted for MS Orthopaedics and M.D. Medicines. At the counselling none of the two got the seat of his choice. At the same time AIIMS students with marks 52% and 46.167% respectively and rank beyond 450 and 900 respectively got PG seats in such disciplines. At another allocation a general category candidate having secured 75.67% marks and the top rank, i.e., the first was denied a discipline of his choice.

(ii) All the creamy discipline such as Obstetrics and Gynaecology, Medicines, Orthopaedics and Opthalomology were being appropriated by the AIIMS in-house candidates though lower in merit while the meritorious open general candidates were either being denied a seat or were being pushed to the left-over disciplines. Such reservation was working havoc and was indeed a very sorry state of affairs.

Point 6 : The percentile method along with 33% quota and 50% quota disciplinewise subject to an overall 33% quota for AIIMS students was arbitrary and unreasonable. In January 1996 session, an AIIMS student with 46.167 marks got admission; that being the lowest mark for the AIIMS students who got admission in PG course. At the same time, an SC candidate with 46.167 marks got admission that was also the lowest mark among SC candidates who secured admission. Candidates with as low as 52%, 48%, 48.333% and 46.167% from AIIMS got admission and also got the creamy disciplines such as Obstetrics & Gynaecology, Medicine and Ophthalomology while SC students with 52%, 51.333%, 50.167%, 47.833%, 47.167%, 46.667%, 46.500% and 46.167%, 47.833%, 47.167%, 46.667%, 46.500% and 46.667% got admission. While SC candidate of 46.167% got Community Medicine, AIIMS candidate with 46.167% was given the creamy subject of Obstetrics and Gynaecology. Twelve AIIMS candidates were selected even though they got less marks than the SC candidate who secured 60.33% marks. Similarly sixteen AIIMS students got admission to PG courses even though they got less marks than the ST student who got 62.167%.

Under the 65% percentile method, even if we take the 35% candidates who are at the top of the merit list, the AIIMS students are able to get in even though their marks are less than or comparable to marks of SC/ST students. Further, there being no minimum qualifying marks, in the top 35% even if the lowest is quite a low mark, yet he would get in. That is not what is expected of an Institute like AIIMS. For the above reasons, the High Court was of the view that the percentile system does not also assure an equitable, fair or reasonable result.

Point 7 : In view of the findings arrived at, the High Court struck down 33% quota carved out in favour of the AIIMS in-house candidates both at the entry level as also disciplinewise. However, the High Court made incidental directions excluding rigorous application of its decision to the January

1996 session so as not to prejudice the career of such AIIMS students who had already got in. The High Court also made it clear that the reservation in favour of SC, ST students being constitutional, as also the reservation in favour of rural/backward/family welfare students, were left untouched as they were not under challenge.

Appeals and Points for Decision :

Feeling aggrieved by the judgment of Delhi High Court, AIIMS Students Union and the Institute have filed these appeals by special leave. We place on record at the very outset that correctness of the factual findings arrived at by the High Court has not been disputed by any of the parties before us. At the hearing, though the learned counsel for the appellants have raised several contentions they can be crystallised into two. Firstly, it is contended that what has been provided for the institutes candidates is not a reservation in the sense in which it is understood in Constitution. The term reservation has been loosely employed here; what has been provided for is merely a source of entry or a channel for admission the validity whereof is not required to be tested on the principles having relevance for Articles 15 and 16 of the Constitution. Secondly, it was submitted that reservation, if that be so, in favour of the students who graduated from the Institute, is justified while seeking admission to post-graduate courses of study on the well accepted principle of institutional continuity. It was submitted that appropriation of 33% of the total post-graduate seats exclusively for the institutes candidates does not harm the general or open category candidates. If this protection was withdrawn, the institutes candidates who had proved their all-India excellence while seeking admission in under-graduate level of study in the Institute, shall be thrown once again to swim into deep waters of all-India quota pooled from medical educational institutions of the country and the requirements of domicile, bonafide residence and institutional reservations applied by various universities and colleges of the country would create obstacles in their way and they may sink for good. We will test the validity and worth of the submissions so made.

Reservation or only a source of entry :

Placing reliance on K. Duraisamy and Anr. etc.etc. Vs. The State of Tamil Nadu and Ors. - JT 2001 (2) SC 48 it was contended by the learned counsel for the appellants that the reservation of 33% post-graduation seats in favour of AIIMS students is not a reservation and use of the expression reservation in this context is misplaced. In fact, there are two sources of entry to P.G. courses of study in AIIMS which are: (i) in-house candidates of AIIMS, and (ii) open- category candidates i.e. students other than from AIIMS. The ratio of entry between the two sources is 33:67, that is to say, for admission as against 33% PG seats there is a competition as amongst the students who have passed MBBS examination from AIIMS and they get admission in accordance with the order of merit within their category. The remaining 67% PG seats are available for open category candidates, that is, left open for students other

than AIIMS and they get admission in the order of merit prepared out of the candidates belonging to such open category, subject to reservations within that category. The learned counsel for the appellants further submitted that in K. Duraisamys case, this Court has upheld the legality and permissibility of defining and laying down such two sources of entry and the principles applicable to constitutional reservations for scheduled caste, scheduled tribe and backward candidates cannot be applied to test the validity of two sources of entry to PG courses of study by treating one of the sources of entry as reservation in favour of AIIMS candidates. We are not impressed. K. Duraisamy and Anr.s case was one where limited seats available for post-graduation were equally divided between in-service candidates, i.e., doctors already in the employment (of Government and Semi-Government bodies) and open category candidates which included all candidates, other than those falling within the definition of in-service candidates. This Court held that the State Government had undoubted power, as a matter of policy, insofar as the admissions to super-speciality and P.G. Diploma/Degree/M.D.S. courses are concerned to devise scheme or pattern of two sources of entry based upon a broad classification into two categories, i.e. in-service candidates and non-service or private candidates with each one of them allocated exclusively for their own category of candidates 50% of the seats; the ultimate selection for admission depending upon the inter-se merit performance amongst their own category of candidates. A candidate belonging to one category could not move across to the other category and seek entry therefrom. The PG seats available for candidates in each of the two categories were limited and the aspirants in each category were much more than the number of seats allocated to each source of entry. There was competition amongst the candidates belonging to each category. It is not as if all the candidates belonging to any of the two categories were completely assured of availability of seats so as to take away the element of competition and chances of failure for anyone in its entirety. Such scheme envisaged not reservation but classification of the sources from which admissions have to be accorded. This Court also opined that the meaning, content and purport of the expression reservation will necessarily depend upon purpose and object with which it is used. It is to be noted that in K. Duraisamys case in-service candidates did not belong to any weaker section of the society nor were one who deserved or needed to be protected. The candidates in both the categories were medical graduates. Some of them had done graduation sometime in the past and were either picked up in the government service or had sought for joining government service because, may be, they could not get a seat in post-graduation and thereby continue their studies because of shortage of seats in higher level of studies. On account of their having remained occupied with their service obligations they became detached or distanced from theoretical studies and therefore could not have done so well as to effectively compete with fresh medical graduates at the P.G. Entrance Examination. Permitting in-service candidates to do post-graduation by opening a separate channel for admittance would enable their continuance in government service after post-graduation which would enrich health services of the nation. Candidates in open category having qualified in post-graduation may not necessarily feel attracted to public services.

Providing two sources of entry at the post-graduate level in certain proportion between in-service candidates and otherwise candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. The object sought to be achieved is to benefit two segments of the same society by enriching both at the end and not so much as to provide protection and encouragement to one at the entry level.

Reservation is guided by consideration of ensuring allotment of a privilege or quota to, or conferral of state largesse on, a defined class or category of limited persons dispensing with the need of competition with another defined class of persons or remaining persons. Beneficiary of reservation is necessarily a minor or smaller group of persons which deservedly stands in need of protection or push up because of historical, geographical, economic, social, physical or similar such other handicaps. Persons consisting in reserved category are found to be an under-privileged class who cannot be treated on par with a larger and more privileged class of persons and shall be denied social justice and equality unless protected and encouraged. Sources of recruitment or entry are carved out for the purpose of achieving a defined proportion of intermingling at the target or destination between two or more categories of such persons who though similarly situated or belonging to one class to begin with, have stood divided into two or more categories by fortuitous circumstances and unless allowed entry from two separate sources one would exclude or block the other. No one of the two classes can be said to be weaker than the other. The factor impelling provision of different or separate sources of entry may not provide justification for reservation. Two source of entry ensure an equal distribution between two segments of one society. The emphasis in reservation is on the subjects; the emphasis in providing sources of entry is on the subject matter. Reservation is protective discrimination; provision for sources of entry is aimed at securing equal or proportionate distribution. The characteristics of the two may to some extent be over lapping yet the distinction is perceptible though fine.

In Kumari Chitra Ghosh & Anr. Vs. Union of India & Ors., (1969) 2 SCC 228, the test laid down for determining validity of sources of admission are that the sources are properly classified whether on territorial, geographical or other reasonable basis and must have a rational nexus with the object of imparting a particular education and effective selection for the purpose. In laying down sources of entry there is no question of any preferential treatment being accorded to any particular category or class of persons desirous of receiving medical education over the other.

In our opinion, reliance by the learned counsel for the appellant on the decision in K. Duraisamys case (supra) is entirely misconceived inasmuch as the questions which are arising for decision in the case before us are different and attract applicability of different considerations. Institutes in-house candidates do not bear any similarity with in-service candidates considered in K. Duraisamys case so as to claim analogy with them and have the benefit of the ratio of K. Duraisamys case. Secondly, the question whether merit can be sacrificed to such an extent as to be bidden almost a good-bye

resulting into candidates too low in merit being preferred to candidates too high in merit and the margin of difference between the two being too wide, did not arise for consideration before this Court in K. Duraisamys case. We are dealing with a case where the division of seats between two classes coupled with two level reservation and unique percentile method has been so carved out, as if tailor-made, as is resulting into a reservation which ensures allotment to the extent of 100% of PG seats followed by guaranteed placement in the choicest of creamy disciplines to the candidates belonging to one category (i.e. Institutes in-house candidates) without regard to their competitive merit. This is not a reservation but a super-reservation and certainly not a source of entry. The first submission of the learned counsel for the appellants therefore fails.

Reservation for institutional continuity at the cost of merit - if sustainable and how far?

The principle of institutional continuity while seeking admission to higher levels of study as propounded by the learned counsel for the appellants though argued at length does not have much room available for innovative judicial zeal to play, for the ground already stands almost occupied by set of precedents, more so when we are dealing with professional or technical courses of study. It would suffice to have a brief resume thereof noticing the details wherever necessary.

In The State of Andhra Pradesh & Ors. Vs. U.S.V. Balaram & Ors. - (1972) 1 SCC 660 common entrance test was held for admission to the first year integrated MBBS course and no distinction was drawn between Pre-University course candidates (PUC) and Higher Secondary Course candidates(HSC), both of whom had to get at least 50% marks to be eligible for admission. But the discrimination was made only after the entrance test was over by denying admission to the PUC candidates who may have got higher marks than some of the HSC candidates who got admission because of the 40% reservation. This Court held that the State could prescribe the sources for admission to the medical college but when once a common entrance test was prescribed for all the candidates on the basis of which selection was to be made the rule providing further that 40% of the seats will have to be reserved for the HSC candidates was arbitrary; firstly, because after a common test had been prescribed there could not be a valid classification dividing the participants, and secondly, even assuming that such a classification was valid it had no reasonable relation to the object sought to be achieved, that is, selecting best candidates for admission to the medical colleges; and hence it was held to be violative of Article 14 and struck down.

In A. Peeriakaruppan Vs. State of Tamilnadu & Ors. - (1971) 1 SCC 38 unit-wise distribution of seats said to have been adopted for administrative convenience was struck down as it obstructed achieving the intended object which was to select the best candidates for being admitted to medical colleges.

In M.R. Balaji & Ors. Vs. State of Mysore & Ors., (1963) Supp.1 SCR 439 what was put in issue was an order of Mysore Government dated 31.7.1962 reserving 68% seats in technical institutions for backward classes. The Constitution Bench of this court held that the order fell foul of the Constitution as the classification was based solely on considerations of castes, and secondly, because reservation of 68% was not in consonance of Article 15(4) of the Constitution. The Constitution Bench held __ if admission to professional and technical colleges is unduly liberalised, the quality of

our graduates will suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of the society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Art. 15(4), like reservation of posts and appointments contemplated by Art. 16(4), must be within reasonable limits. The Constitution Bench held that if under the guise of making special provision, practically all the seats available were to be reserved by the State, that clearly would be subverting the object of Article 15(4). Speaking generally and in broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case.

M.R. Balajis case (supra) dealt with constitutional reservation under Article 15(4). In Dr. Pradeep Jain Vs. Union of India, (1984) 3 SCC 654, a 3-Judges Bench of this court had an occasion to examine the validity of reservation based on residence requirement within the State or on institutional preference. P.N. Bhagwati, J. (as His Lordship then was) during the course of the judgment held:

> . . . . . 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 MBBS course from a medical college or university, may be given preference for admission to the post-
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> graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 percent 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 MBBS 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 admission should be granted purely on merit on all India basis.
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> [Underlining by us] It is thus clear that as far back as in 1984 this court has disapproved reservations in postgraduate courses on the ground of institutional preference though justified a reasonable institutional preference being allowed, for the present, having regard to (i) broader considerations of equality of opportunity; and (ii) institutional continuity in education.

The facts of Dr. Jagdish Saran and Ors. Vs. Union of India

- (1980) 2 SCC 768 are very near to the present case. Several facts treated as relevant considerations which persuaded the Court in laying down principles relating to such reservation bear a close resemblance to those before us and it will therefore be relevant to notice the case in somewhat details. The rule for selection of candidates for post-graduation from amongst medical graduates until April, 1978 provided for 52% seats of the total available being left open for a combined merit list of Delhi University and other universities medical graduates while 48% seats were reserved for Delhi University graduates only. This rule was changed so as to reserve 70% of the seats to Delhi graduates leaving the remaining 30% open to all including graduates of Delhi. The petitioner a medical graduate from Madras University took the common entrance test and secured enough marks to qualify for admission but was turned down because of inflation in quota, from 48% to 70% plus, for Delhi graduates exclusively. The University of Delhi contended that an institutional quota is not a constitutional anathema because of many universities adopting the exclusionary or segregative device of de facto monopoly of seats for higher medical courses to its own alumni which had persuaded Delhi University to reciprocate with such inflated reservation. The students went on a fast unto death and the Government had to intervene and save the situation by providing larger reservation. Krishna Iyer, J. speaking for himself and O. Chinnappa Reddy, J. placed on record admission of the Attorney General agreeing that hunger strike cannot amend the Constitution though it may set in motion changes in the basic law which must withstand scrutiny on constitutional anvil. All grievance are not constitutional. The primary imperitive of Articles 14 and 15 is equal opportunity for all across the nation to attain excellence and this has burning relevance to our times. Vide para 17, Krishna Iyer, J. speaking for the majority posed a question to himself __ What if non- Delhi students start a rival starvation exercise? That will lead to testing the rule of law on the immolative or masochist capabilities of affected groups and not on the articles of the Constitution or provisions of the legislation. We cannot uphold the Delhi Universitiys reservation strategy merely because government was faced with student fasts and ministers desired a compromise formula and the University bodies simply said Amen. The constitutionality of institutional reservation must be founded on facts of educational life and the social dynamics of equal opportunity. Political panic does not ipso facto make constitutional logic.

Vide para 17, it was held that reservation for students of a particular university is not sanctioned either by Article 14 or by Article

15. Delhi University students, as such, are not an educationally backward class and, indeed, institution-wise segregation or reservation has no place in the scheme of Article 15, although social and educational destitution may be endemic in some parts of the country where a college or university may be started to remedy this glaring imbalance and reservation for those alumni for higher studies may be permissible.

> Speaking generally, unless there is vital nexus with equal opportunity, broad validation of university-based reservation cannot be built on the vague ground that all other universities are practising it - a fact not fully proved before the court either. University of illegality, even if the artists of discrimination are universities, cannot convert such praxis into constitutionality. Nor, indeed, can the painful circumstance that a batch of medical graduates demonstratively fasted in front of the Health Ministers house, ipso facto legalise reservation of seats in their favour.

Krishna Iyer, J. opined that even in the areas where reservation is constitutionally permissible it should be as an exception and not a rule and subject to a few rules of caution : (i) that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent;

(ii) all the best talent cannot be completely excluded by wholesale reservation; (iii) need for protecting and giving a preferential push in the interests of basic medical needs of a region or a handicapped group cannot prevail at the highest scales of speciality where the best skill or talent must be handpicked by selecting according to capability. At the level of Ph.D, M.D. or levels of higher proficiency, where international measure of talent is made, losing one great scientist or technologist in-the-making is a national loss, the considerations prevailing at the lower levels of education justifying protective discrimination for locals and the handicapped group lose their potency and importance. Here equality measured by matching excellence, has more meaning and cannot be diluted much without grave risk for pampering local feeling will boomerang; (iv) backward regions and universities situated miles away from forward cities with sophisticated institutions cannot be equated. The former, for equalisation, need crutches and extra facilities to overcome injustice while the latter already enjoy all the advantages of the elite and deserve no fresh props. Else there will be double injury to claims of equality of the capable candidates coming from less propitiously circumstanced universities and societies. In conclusion the majority opinion held that university-wise preferential treatment may be consistent with the rule of equality of opportunity where it is calculated to correct an imbalance or handicap and permit equality in the larger senses.

When protective discrimination for promotion of equalisation is pleaded, the burden is on the party who seeks to justify the ex facie deviation from equality. The basic rule is equality of opportunity for every person in the country which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels and education like post-graduate courses. Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped - the reservation geared up to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage. Even there the quantum of reservation should not be excessive or societally injurious. The higher the level of the speciality the lesser the role of reservation.

Dealing with Delhi, the majority opinion in Dr. Jagdish Sarans case noted that it being the capital of the country, population therein is drawn from all over the country because of the vast official, political, parliamentary, judicial, educational, commercial and other gravitational pulls. Movements, transfers and a host of other factors contribute fluidity to Delhi population. Delhi University is not made up so much by the sons of the soil as in universities in other places. Delhi is in no sense a educationally or commercially backward human region, measured against the rest of our country. Delhi or the Delhi University, regard being had to overall Indian conditions is neither backward nor serves through the medical colleges of its university regional demands of Delhi.

Reservation in Delhi University for Delhiites, i.e., Delhi alumni on ground of educational or economic or regional handicaps was refused to be sustained by this Court; however, some measure of reservation on the ground of institutional continuity was given a recognition guided by the consideration that until the signpost of no admission for outsiders is removed from other universities and some fair percentage of seats in other universities is left for open competition the Delhi students cannot be made martyrs of the Constitution. The conclusions drawn up by the majority in Dr. Jagdish Sarans case can be crystallised as under :-

> 1) It is difficult to denounce or renounce the merit criterion when selection is for post-graduate or post-doctoral courses in specialised subjects. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. Relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral;
>
> 2) So long as other universities are out of bounds for Delhi graduates, discrimination needs to be anti-doted by some percentage of reservation or other legitimate device;
>
> 3) There is justification for some measure of reservation for institutional continuity in education. Parents and teachers will usually prefer such continuity and it has its own value. But institutional-wise reservation may become ultra vires if recklessly resorted to;
>
> 4) Such reservation, that is, one securing institutional continuity in education must be administered in moderation if it is to be constitutional.

R.S. Pathak, J. recording his concurring but separate opinion held that the issue before the Court did not raise the question of backward classes, scheduled castes and scheduled tribes nor was there the need for invoking the test of territorial nexus. The question was one of institutional continuity, that is, graduates from the medical colleges run by the Delhi university being favoured for admission to post-graduate classes in Delhi university. His Lordship opined :-

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 undergraduate 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 graduates for admission to its post-graduate classes. The preference is based on a reasonable classification and bears a just relationship to the object of the education provided in the post-graduate classes. . . . . An institutional preference of the kind considered here does not offend the constitutional guarantee of equality.

[Underlining by us] The Court by its unanimous verdict struck down the reservation to the extent of 70% plus, followed by relief to the petitioner before the Court, but refused to lay down any alternate reservation replacing the invalidated reservation for want of requisite material being available on record and left the same to be formulated by a committee of experts representing constitutional and medical expertise.

In Municipal Corporation of Greater Bombay & Ors. Vs. Thukral Anjali, (1989) 2 SCC 249, the impugned rule provided for college-wise institutional preference for admission in the M.D. courses. This court agreed with the High Court which had struck down the rule and observed that 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 of India.

In P.K. Goel & Ors. Vs. U.P. Medical Council & Ors., (1992) 3 SCC 232, a combined entrance examination for admission for postgraduate medical courses for all the seven medical colleges was held by the University of Lucknow. A merit list was prepared based thereon. However, the University reserved 75% of total seats available for postgraduate degree/diploma courses in an institution, after excluding 25% seats to be filled by open all-India Entrance Examination, for the institutional candidates. Institutional candidate was defined as a student who had obtained

> MBBS/MDS degree of that University/institution. This court refused to uphold the rule as it resulted in sacrificing merit and depriving meritorious candidates of getting a speciality of their choice.

In State of M.P. Vs. Nivedita Jain, (1981) 4 SCC 296, the State Government completely relaxed the condition relating to the minimum qualifying marks for scheduled caste and scheduled tribe candidates. So was the case in Dr. Sadhna Devi & Ors. Vs. State of U.P. & Ors., (1997) 3 SCC 90, wherein the State of U.P. had laid down that it will not be necessary for special category candidates, i.e. ST, SC and OBC, to obtain even the minimum qualifying marks in the admission tests in order to gain admission to the postgraduate medical courses. On both the occasions this court held that need for such category candidates to take the admission test to postgraduate medical courses was rendered an idle formality because they would qualify for admission even though they did not secure any marks in the test and candidates belonging to such categories were sure to get an admission so long as their quota of seats were not filled up. It was held that merit could not be allowed to be sacrificed altogether. In Dr. Sadhna Devi this court expressed grave doubts if the policy of reservation could at all be extended to postgraduate level. However, that line of enquiry was not perused further as it did not pertain to the case. Yet, the court made it clear that the candidates belonging even to special categories were required to secure the minimum qualifying marks in the admission tests in order to gain admission to postgraduate medical courses and in the event of their failing to do so the vacant seats should be made available to general category candidates; else it will be a national loss.

In Mohan Bir Singh Chawla Vs. Panjab University, Chandigarh & Anr., (1997) 2 SCC 171, this court having reviewed the judicial opinion declared the rule __ the higher you go, in any discipline, lesser should be the reservation __ of whatever kind and added in the larger interest of the nation, it is dangerous to depreciate merit and excellence in any field.

Dr. Preeti Srivastava & Anr. Vs. State of M.P. & Ors., (1999) 7 SCC 120, is a landmark decision of recent times delivered by a Constitution Bench. The principles laid down by the Constitution Bench and so far as relevant for our purpose are culled out and briefly stated hereunder:

> (i) The spread of primary education has to be wide enough to cover all sections of the society whether forward or backward.

A larger percentage of reservations for the backward would be justified at this level. These are required in individual as well as national interest;

(ii) At the stage of postgraduate education in medical specialities, the element of public interest in having the most meritorious students at this level of education demands selection of students of right caliber. This supervening public interest outweighs 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 postgraduate learning. However, the extent of reservations and the extent of lowering the qualifying marks, consistent with the broader public interest in having the most competent people for specialised training, should be left to be determined by a body of experts (such as the Medical

Council of India) - whether reservation or lower qualifying marks, at such level have to be minimised. At the same time there cannot be a wide disparity between the minimum qualifying marks for reserved category candidates and the minimum qualifying marks for general category candidates.

(iii) At the level of superspecialisation there cannot be any reservation because any dilution of merit at this level would adversely effect the national goal of having the best people at the highest levels of professional and educational stream.

Majmudar, J. recorded his separate opinion partly dissenting with the majority opinion. However, he agreed that,

i) there cannot be a wide disparity between the minimum qualifying marks for reserved category candidates and for general category candidates at the speciality level;

ii) there cannot be dilution of minimum qualifying marks for such reserved category candidates up to almost a vanishing point. What would be a reasonable extent? His Lordship held that maximum dilution could be up to 50% of the minimum qualifying marks prescribed for the general category candidates and any dilution below this rock bottom would not be permissible under Article 15(4) of the Constitution of India.

Before we leave this topic and move ahead, to be fair to the learned counsel for the appellants, we may deal with two decisions relied on by them. State of Tamil Nadu Vs. T. Dhilipkumar & Ors., 1995 (5) Scale 67, is a brief decision of this court affirming a judgment of the Madras High Court. Reservation to the extent of 60% in favour of in-service candidates for seats in post-graduate medical courses was struck down by the High Court directing it to keep it confined to 50%. This court left it to the appellants to appoint a highly qualified committee to determine from year to year what, in fact, is the percentage-wise reservation requisite for in-service candidates having regard to the then prevailing situation and that the percentage of 50% was, if found appropriate, be reduced accordingly. Question of institutional reservation was not the one posed before the Court. Needless to say, the court was dealing with a case of two sources of entry, though, called reservation, a situation we have already dealt with hereinabove.

D.N. Chanchala Vs. The State of Mysore & Ors., (1971) 2 SCC 293, is a case where three universities (with medical colleges) were set up in three different places, presumably for the purpose of catering to the educational and academic needs of those areas. So far as the scheme for selection adopted in the relevant rules was concerned, this court clearly held, vide para 22, that the scheme did not make it possible for less meritorious students obtaining admission at the cost of the better candidates. The court noted that a preference to one attached to one university in its own institutions for post-graduate or technical training is not uncommon. However, the preference dealt with by the court did not amount to reservation as is the case before us. As a broad principle, this court recognised that the Government which bears the financial burden of running these institutions can lay down criteria for admissions and to decide the sources from which admissions would be made and hastened to add, lest its observations be misunderstood, __ provided of course, such classification is not

arbitrary and has a rational basis and a reasonable connection with the object of the rules. The test validating classification, we have held from the material available on record accepting the factual findings arrived at by the High Court, is not satisfied in the present case. Further, the classification resulting into appropriation of seats by way of laying down sources for selection necessitated by certain over-riding considerations, was held to he neither excessive nor unreasonable (vide para 23).

None of the two cases really throws any light on the issues before us and certainly none runs counter to the view we are taking.

Preamble to the Constitution of India secures, as one of its objects, fraternity assuring the dignity of the individual and the unity and integrity of the nation to we the people of India. Reservation unless protected by the constitution itself, as given to us by the founding fathers and as adopted by the people of India, is sub-version of fraternity, unity and integrity and dignity of the individual. While dealing with Directive Principles of State Policy, Article 46 is taken note of often by overlooking Articles 41 and 47. Article 41 obliges the State inter alia to make effective provision for securing the right to work and right to education. Any reservation in favour of one, to the extent of reservation, is an inroad on the right of others to work and to learn. Article 47 recognises the improvement of public health as one of the primary duties of the State. Public health can be improved by having the best of doctors, specialists and super specialists. Under-graduate level is a primary or basic level of education in medical sciences wherein reservation can be understood as the fulfilment of societal obligation of the State towards the weaker segments of the society. Beyond this, a reservation is a reversion or diversion from the performance of primary duty of the State. Permissible reservation at the lowest or primary rung is a step in the direction of assimilating the lesser fortunates in mainstream of society by bringing them to the level of others which they cannot achieve unless protectively pushed. Once that is done the protection needs to be withdrawn in the own interest of protectees so that they develop strength and feel confident of stepping on higher rungs on their own legs shedding the crutches. Pushing the protection of reservation beyond the primary level betrays bigwigs desire to keep the crippled crippled for ever. Rabindra Nath Tagores vision of a free India cannot be complete unless knowledge is free and tireless striving stretches its arms towards perfection. Almost a quarter century after the people of India have given the Constitution unto themselves, a chapter on fundamental duties came to be incorporated in the Constitution. Fundamental duties, as defined in Article 51A, are not made enforceable by a writ of court just as the fundamental rights are, but it cannot be lost sight of that duties in Part IVA - Article 51A are prefixed by the same word fundamental which was prefixed by the founding fathers of the Constitution to rights in Part III. Every citizen of India is fundamentally obligated to develop the scientific temper and humanism. He is fundamentally duty bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State. Any reservation, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability one of the factors to be taken into consideration would be __ whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the nation constantly rising to higher levels. In the era of globalisation, where the nation as a whole has to

compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, peoples wish as manifested through Article 51A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values.

Conclusion The upshot of the above discussion is that institutional reservation is not supported by the Constitution or constitutional principles. A certain degree of preference for students of the same institution intending to prosecute further studies therein is permissible on grounds of convenience, suitability and familiarity with an educational environment. Such preference has to be reasonable and not excessive. The preference has to be prescribed without making an excessive or substantial departure from the rule of merit and equality. It has to be kept within limits. Minimum standards cannot be so diluted as to become practically non-existent. Such marginal institutional preference is tolerable at post-graduation level but is rendered intolerable at still higher levels such as that of super- speciality. In the case of institutions of national significance such as AIIMS additional considerations against promoting reservation or preference of any kind destructive of merit become relevant. One can understand a reasonable reservation or preference being provided for at the initial stage of medical education, i.e., under-graduate level while seeking entry into the institute. It cannot be forgotten that the medical graduates of AIIMS are not sons of the soil. They are drawn from all over the country. They have no moorings in Delhi. They are neither backward nor weaker sections of the society by any standards

- social, economical, regional or physical. They were chosen for entry into the Institute because of their having displayed and demonstrated excellence at all-India level competition where thousands participate but only a mere 40 or so are chosen. Their achieving an all-India merit and entry in the premier institution of national importance should not bring in a brooding sense of complacence in them. They have to continue to strive for achieving still higher scales of excellence. Else there would be no justification for their continuance in a premier institution like AIIMS. In AIIMS where the best of facilities are available for learning with best of teachers, best of medical services, sophistication, research facilities and infrastructure, the best entrants selected from the length and breadth of the country must come out as best of all-India graduates. We fail to understand why those who were assessed to be best in the country before entering the portals of the Institute fall down to such low levels as having perceptibly ceased to be best, not remaining even better, within a period of a few years spent in the Institute. They trail behind even such candidates as fall in constitutionally reserved categories and yet steal a march over them in claiming creamy disciplines. The only reason which logically follows from the material available on record is that being assured of allotment of post-graduation seats in the same institution, the zeal for preserving excellence is lost. The students lose craving for learning. Those who impart instructions also feel that their non-seriousness would not make any difference for their taughts. If that is so, there is no reason why at the point of clearing graduation and seeking entry in post-graduation courses of study they should not give way for those who deserve better, and much better, than them. AIIMS holds and conducts a

common entrance examination for post-graduation wherein graduates of AIIMS and graduates from all over the country participate and are tested by common standards. The AIIMS students trail in the race and yet are declared winners, thanks to the ingenious reservation in their favour. One who justifies reservation must place on record adequate material enough, to satisfy an objective mind judicially trained, to sustain the reservation, its extent and qualifying parameters. In the case at hand no such material has been placed on record either by the institute or by the AIIMS Students Union. The facts found by Delhi High Court, well articulated by the learned Chief Justice speaking for the Division Bench of the High Court of Delhi, visibly demonstrate the arbitrariness and hence unsustainability of such a reservation. It was an outcome of agitation-generated- pressure depriving application of mind, reason and objectivity of those who took the decision. No material has been placed on record to show that Institute graduates, if asked to face all-India competition while seeking PG seats, would get none or face feeble opportunities because of the policies of other universities. The way merit has been made a martyr by institutional reservation policy of AIIMS, the high hopes on which rests the foundation of AIIMS are belied. No sound and sensible mind can accept scorers of 15-20% being declared as passed, crossing over the queue and arraigning themselves above scorers of 60-70% and that too to sit in a course where they will be declared qualified to fight with dreaded and complicated threats to human life. Will a less efficient post graduate or specialist doctor be a boon to society? Is the human life so cheap as to be entrusted to mediocres when meritorious are available? If the answer is yes, we are cutting at the roots of nations health and depriving right to equality of its meaning. We have no hesitation in holding, and thereby agreeing with the Division Bench of High Court, that reserving 33% seats for institutional candidates was in effect 100% reservation for subjects. Coupled with 50% reservation in allocation of specialities not exceeding over-all 33% reservation integrated with 65 percentile__ a complex method, the actual working whereof even the learned senior counsel for the parties frankly confessed their inability in demonstrating before us at the time of hearing __is a conceited gimmick and accentuated politics of pampering students, weak in merit but mighty in strength. Such a reservation based on institutional continuity in the absence of any relevant evidence in justification thereof is unconstitutional and violative of Article 14 of the Constitution and has therefore to be struck down. The impugned reservation, obnoxious to merit, fails to satisfy the twin test under Article 14. Having taken a common entrance test, there is no intelligible differentia which distinguishes the institutional candidates from others; and there is no nexus sought to be achieved with the objects of AIIMS by such reservation. Can the court sustain and uphold such reservation? Justice is the earnest and constant will to render every man his due. The precepts of the law are these: to live honorably, to injure no other man, to render to every man his due __ said Justinian. Giving a man his due, one of the basics of justice, finds reflected in right to equality. Mediocracy over meritocracy cuts at the roots of justice and hurts right to equality. Protective push or prop, by way of reservation or classification must withstand the test of Article 14. Any over-generous approach to a section of the beneficiaries if it has the effect of destroying anothers right to education, more so, by pushing a mediocre over a meritorious belies the hope of our Founding Fathers on which they structured the great document of Constitution and so must fall to the ground. To deprive a man of merit of his due, even marginally, no rule shall sustain except by the aid of Constitution; one such situation being when deprivation itself achieves equality subject to satisfying tests of reason, reasonability and rational nexus with the object underlying deprivation.

Suggestion of Academic Committee of AIIMS As already noted some accommodation to AIIMS graduates within reasonable bounds and without entirely sacrificing the merit is permissible and that too for the present. We say so because no material has been placed on record before us to justify if AIIMS graduates are placed in such a disadvantageous position that if left to compete against all-India P.G. seats in the country, carved out pursuant to the decision of this Court in Dr. Pradeep Jains case, they would be in a lurch. Rightly the High Court left the issue to be resolved by a well-thought of scheme providing for some institutional preference being framed by a committee of experts. We too, at one stage, after hearing learned counsel for the parties, felt that we shall have to stop short only at invalidating the rule because the facts are imperfect and Judges should not rush in where specialists fear to tread - to borrow the expression from Dr. Jagdish Sarans case. On 22.2.2001 the learned Additional Solicitor General appearing for the Institute informed us that certain suggestions had come for streamlining the issue involved in these appeals relating to quota for internal students. He submitted that it would be appropriate for the Academic Committee of AIIMS to apply its mind to those suggestions in the light of the law settled by this Court and to consider whether any constitutionally relevant criteria could be formulated for the future in this behalf. We deferred the judgment taking on record the submission and suggestion so made at the Bar. As the Academic Committee could not meet within three weeks __ the time as originally appointed, the judgment was further deferred. Then an affidavit dated 11.4.2001 sworn in by the Director of AIIMS was filed stating that the Academic Committee of the Institute met on three different dates to consider the issue in all its aspects, and having considered alternatives which would ensure fairness to all, the prevailing situation through the country, the judgment of Delhi High Court under appeal and the proceedings in this Court __ as stated in the affidavit, made a few recommendations. The special features taken into consideration by the Academic Committee included the following:-

a) integrated teaching in both __ in the pre as well as the para clinicals,

b) problem based learning included in the teaching schedule.

c) Small group studies as for example the case studies included in the teaching schedule.

d) The undergraduate is supposed to work in two scientific study projects during his or her under graduation.

e) The syllabus which gives a cutting edge to the AIIMS graduates as it covers the entire spectrum of current medicine together with that needed to work at the basic level. This is as opposed to the pattern being followed elsewhere which often covers only the bare minimum recommended by the Medical Council of India.

The Academic Committee felt that a degree of assurance of continuing post-graduate education had to be offered to AIIMS students for the following reasons :-

a) to place them on par with other students who had the benefit of state and institutional preference as AIIMS students lost both domicile and eligibility in their states of origin upon admission to the institute;

b) to ensure that the best students at the undergraduate level continued to come to AIIMS after national competition as otherwise the absence of protection would make the best opt for courses where institutional state continuity was assured;

c) In the interest of the institute developing patterns of education in all disciplines of medicine since some specialities were available only in the institute and not elsewhere and it was desirable that some candidates who had been observed right from inception as doctors be trained even at the post-graduate stage;

d) Since a comparison based solely on marks in one-off written examination would not accurately reflect the already assessed quality of AIIMS undergraduates.

The Academic Committee has been bold enough to admit that some anomalies had crept in to the selection procedure due to the quota being implemented without insistence on any minimum qualifying marks and therefore the committee proposed to immediately add minimum qualifying marks as pre-requisites to eligibility for the AIIMS quota which was also to be reduced from 1/3rd to 1/4th of the available seats. The committee felt that the quota be implemented disciplinewise in accordance with the pattern all over India and also to obviate any challenges on the basis of one speciality being more in demand than the other in any particular year. The committee therefore decided :-

1) to recommend a 25% quota disciplinewise out of the total post-

graduate seats for AIIMS under-graduates;

2) a uniform minimum cut-off of 50% marks in the competitive entrance test as a condition of eligibility for all candidates;

3) 75% compulsory attendance during the course shall be made mandatory for AIIMS students.

We regret our inability to endorse the abovesaid decision of the Academic Committee in its entirety and for all times. What we had expected was formulation of any constitutionally relevant criteria but what has been handed down to us is more of a justification for institutional reservation. The grounds of justification set out in the affidavit were, generally speaking, not taken up in the pleadings either before the High Court or before this Court. The justifications pleaded are not supported by any factual data so as to enable relationship of relevancy being judicially spelled out between facts and reasons. We may quickly test the reasons assigned. For example, as to reason (a) it is difficult to subscribe to the view that a student coming from a place other than Delhi would lose his domicile status merely because he has come to study in an Institute at Delhi. So also we cannot subscribe to reason (b) that meritorious students would come to Institute foregoing admissions in other better

institutions only because they are assured of PG seats. And if that is the impression that they would assuredly be getting a PG seat inspite of their performance stooping down too low then that impression must vanish and earlier the better it would be. As to reason (c) how much time would it take for even a fresh entrant in PG to assimilate himself with Institutes developing pattern of education once he has dedicated himself to his studies and learning? Accepting the content of reason (d) would be depriving the entrance examination of its efficacy to make assessment. Without dwelling further, for we are not joining any issue with the Academic Committee, which is entitled to our esteem for its expertise, we record our disagreement with the Academic Committee. Yet for the present, and until a better alternative is found out, we do not deem it proper to strike down the proposal of the Academic Committee of AIIMS as incorporated in the affidavit of the Director dated 11.4.2001 in its entirety and we are inclined to sustain the same with some modifications.

The End Result :

The following directions in our opinion will meet the ends of justice :-

1) The institutional reservation for AIIMS candidates is declared ultra vires the Constitution and, hence, is struck down.

2) By way of institutional preference the institutional candidates, i.e., those who have graduated from the institute shall be preferred for admission against 25% seats available to open category candidates and not 25% seats disciplinewise out of the total post-graduate seats for AIIMS undergraduates as suggested by the Academic Committee.

3) An uniform minimum cut-off of 50% marks in the competitive entrance test as a condition of eligibility for all candidates may be adopted subject to further rider (i) that the last student to qualify for admission as AIIMS graduate cannot be one who has secured marks at the common entrance P.G. test less than the one secured by any other candidate belonging to a reserved category enjoying constitutional protection such as SC, ST etc., and (ii) that the margin of difference between the qualifying marks for Institutes candidate shall not be too wide with the one for general category candidate.

4) Any seat left vacant out of the preferential seats for AIIMS graduates consequent upon the abovesaid directions, shall be diverted to and made available for open general category candidates.

5) The preference for institute candidates to the extent of 25% as abovesaid shall remain confined to admission in P.G. course of study. There shall be no further reservation in the matter of allotment of seats disciplinewise which allotment shall be made solely on the basis of merit out of a common list drawn up pursuant to the result of common entrance examination placing the selected candidates strictly as per their ranking.

So we drop the curtain on the controversy for the present. Before parting it is necessary to place on record certain observations by way of clarifications lest our judgment should be misunderstood or misapplied. Our judgment shall not come in the way of the Academic Committee or any other competent body of experts devising a better alternative scheme of admissions to the post-graduate level of study in the Institute which may revise and further scale down the reservation or preference by giving more weight to merit and excellence. We have not touched and not dealt with other reservations made by the Institute and therefore our judgment is not an implied approval of other reservations as to which we have grave doubts if they would be sustainable if challenged and we do not say any more as the present case does not provide an occasion for testing the validity of other reservations. Further, this judgment of ours shall not have the effect of invalidating such admissions as have already been given. The directions made hereinabove shall operate for future, i.e. today onwards. The appeals are disposed of in terms of the directions made hereinabove. No order as to the costs.

. . . . . .CJI.

. . . . . .J. (R.C. Lahoti) . . . . . .J. (Shivaraj V. Patil) August 24, 2001.