Dr. Preeti Srivastava & Anr vs The State Of Madhya Pradesh & Ors on 10 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2894, 1999 AIR SCW 2795, 1999 ALL. L. J. 1947, (1999) 5 JT 498 (SC), 1999 (5) ANDH LD 34, 1999 (3) LRI 657, 1999 (7) ADSC 149, 1999 (7) SCC 120, 1999 (5) JT 498, (1999) 3 UPLBEC 2179, (1999) 3 PAT LJR 20, (1999) 4 SCT 133, (1999) 4 ALL WC 2853, (1999) 4 SERVLR 687, (1999) 4 SCALE 579, (1999) 7 SUPREME 81, 1999 (3) KLT SN 32 (SC)

Author: S.B.Majmudar

Bench: S.B.Majmudar

PETITIONER:
DR. PREETI SRIVASTAVA & ANR.

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT: 10/08/1999

BENCH:
S.B.Majmudar

JUDGMENT:

S.B.Majmudar, J.

Leave granted.

I have carefully gone through the draft judgment prepared by our esteemed colleague Justice Sujata V. Manohar. I respectfully agree with some of the conclusions arrived at therein at pages 61 and 62, namely, conclusion nos. 1 and 4. However, so far as conclusion nos. 2 and 3 are concerned, I respectfully record my reservations and partially dissent as noted hereinafter. In my view, the common entrance examination envisaged under the regulations framed by the Medical Council of India for Postgraduate Medical Education does not curtail the power of the State Authorities, legislative as well as executive, from fixing suitable minimum qualifying marks differently for general category candidates and for SCs/STs and OBC candidates as highlighted in my present judgment.

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

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

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

> Entry 66 of List I, Old Entry 11(2) of List II and Entry 25 of List III:
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> Entry 66 of List I of the Seventh Schedule reads as under : Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
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> Old Entry 11 of List II, as earlier existing in the Constitution of India, read as under :
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> Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

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

> Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.
>
> A conjoint reading of these entries makes it clear that as per Entry 11 of List II which then existed on the statute book, all aspects of education, including university education, were within the exclusive legislative competence of the State Legislatures subject to Entries 63 to 66 of List I and the then existing Entry 25 of List III. The then existing Entry 25 of the Concurrent List conferred power on the Union Parliament and State Legislature to enact legislation with respect to vocational and technical

> training of labour. Thus, the said Entry 25 of List III had nothing to do with Medical Education. Any provision regarding Medical Education, therefore, was thus covered by Entry 11 of List II subject of course to the exercise of legislative powers by the Union Legislature as per entries 63 to 66 of List I. In the light of the aforesaid relevant entries, as they stood then, a Constitution Bench of this court in The Gujarat University, Ahmedabad vs. Krishna Ranganath Mudholkar & Ors., 1963 Suppl.(1) SCR 112, speaking through J.C.Shah, J., for the majority, had to consider whether the State Legislature could impose an exclusive medium of instruction Gujarati for the students who had to study and take examination conducted by the Gujarat University. It was held that If a legislation imposing a regional language or Hindi as the exclusive medium of instruction is likely to result in lowering of standards, it must necessarily fall within Item 66 of List I and be excluded to that extent from Item 11 of List II as it then stood in the Constitution. Medium of instruction was held to have an important bearing on the effectiveness of instruction and resultant standards achieved thereby. In this connection, pertinent observations were made at pages 142 and 143 of the aforesaid Report: If adequate text-books are not available or competent instructors in the medium, through which instruction is directed to be imparted, are not available, or the students are not able to receive or imbibe instructions through the medium in which it is imparted, standards must of necessity fall, and legislation for co-ordination of standards in such matters would include legislation relating to medium of instruction.

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

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

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

But the next question survives as to whether after laying down the basic qualifications or eligibility criteria for admission of graduate medical students to the higher medical education courses which may uniformly apply all over India as directed by the Medical Council of India, it can have further power and authority to control the intake capacity of these eligible students in a given course conducted by the institutions for higher postgraduate medical education. In other words, whether it can control the admissions of eligible candidates to such higher medical education courses or lay down any criteria for short-listing of such eligible candidates when the available seats for admission to such higher postgraduate medical education courses are limited and the eligible claimants seeking admission to such courses are far greater in number? So far as this question is concerned, it immediately projects the problem of short- listing of available eligible candidates competing for admission to the given medical education course and how such admissions could be controlled by

short-listing a number of eligible candidates out of the larger number of claimants who are also eligible for admission. In other words, there can be too many eligible candidates chasing too few available seats. So far as this question is concerned, it clearly gets covered by Entry 25 of Concurrent List III rather than Entry 66 of List I as the latter entry would enable, as seen above, the Medical Council of India only to lay down the standards of eligibility and basic qualification of graduate medical students for being admitted to any higher postgraduate medical course. Having provided for the queue of basically eligible qualified graduate medical students for admission to postgraduate medical courses for a given academic year, the role of Medical Council of India would end at that stage. Beyond this stage the field is covered by Entry 25 of List III dealing with education which may also cover the question of controlling admissions and short-listing of the eligible candidates standing in the queue for being admitted to a given course of study in institutions depending upon the limited number of seats available in a given discipline of study, the number of eligible claimants for it and also would cover the further question whether any seats should be reserved for SC,ST and OBCs as permissible to the State authorities under Article 15(4) of the Constitution of India. So far as these questions are concerned, it is no doubt true that Entry 25 of Concurrent List read with Article 15(4) of the Constitution of India may simultaneously authorise both the Parliament as well as the State Legislatures to make necessary provisions in that behalf. The State can make adequate provisions on the topic by resorting to its legislative power under Entry 25 of List III as well as by exercising executive power under Article 162 of the Constitution of India read with entry 25 of List III. Similarly, the Union Government, through Parliament, may make adequate provisions regarding the same in exercise of its legislative powers under Entry 25 of List III. But so long as the Union Parliament does not exercise its legislative powers under Entry 25 of List III covering the topic of short-listing of eligible candidates for admission to courses of postgraduate medical education, the field remains wide open for the State authorities to pass suitable legislations or executive orders in this connection as seen above. As we have noted earlier, the Union Parliament has not invoked its power under Entry 25 of List III for legislating on this topic. Therefore, the field is wide open for the State Governments to make adequate provisions regarding controlling admissions to postgraduate colleges within their territories imparting medical education for ultimately getting postgraduate degrees. However, I may mention at this stage that reliance placed by Shri Chaudhary, learned senior counsel for the State of Madhya Pradesh on a Constitution bench judgment of this Court in Tej Kiran Jain & Ors. vs. N.Sanjiva Reddy & Ors., 1970(2) SCC 272, interpreting the word in in the phrase in Parliament to mean during the sitting of Parliament and in the course of the business of Parliament cannot be of any avail to him while interpreting the phrase determination of standards in institutions for higher education as found in Entry 66 of List I. His submission, relying on the aforesaid decision that directions regarding standards in institutions mean only those directions of the Medical Council of India which regulate the actual courses of study after the students are admitted into the institutions and cannot cover the situation prior to their admission, meaning thereby, pre-admission stage for students seeking entry to the institution of higher education cannot be countenanced. The reason is obvious. Once it is held that the Medical Council of India exercising its statutory functions and powers under the Indian Medical Council Act, 1956 which squarely falls within Entry 66 of List I can lay down the eligibility and basic qualifications of students entitled to be admitted to such postgraduate courses of study, their eligibility qualification would naturally project a consideration which is prior to their actual entry in the institutions as students for being imparted higher education. That would obviously be a pre-admission stage. Therefore, the phrase

determination of standards in institutions does not necessarily mean controlling standards of education only after the stage of entry of students in these institutions and necessarily not prior to the entry point. However, as seen earlier, the real question is whether determination of standards in institutions would go beyond the stage of controlling the eligibility and basic qualification of students for taking up such courses and would also cover the further question of short-listing of such eligible students by those running the institutions in the States. For every academic year, there will be limited number of seats in postgraduate medical courses vis-a-vis a larger number of eligible candidates as per guidelines laid down by the Medical Council of India. Short-listing of such candidates, therefore, has to be resorted to. This exercise will depend upon various imponderables like i) limited number of seats for admission in a given course vis-a-vis larger number of eligible candidates seeking admissions and the question of fixation of their inter se merits so as to lay down rational criteria for selecting better candidates as compared to candidates with lesser degree of competence for entry in such courses;

ii) Whether at a given point of time there are adequate chances and scope for SC,ST and OBC candidates who can equally be eligible for pursuing of such courses but who on account of their social or economic backwardness may lag behind in competition with other general category candidates who are equally eligible for staking their claims for such limited number of seats for higher educational studies, iii) availability of limited infrastructural facilities for training in institutions for higher medical education in the State or in the colleges concerned. All these exigencies of the situations may require State authorities, either legislatively or by exercise of executive powers, to adopt rational standards or methods for short-listing eligible candidates for being admitted to such medical courses from year to year also keeping in view the requirement of Article 15(4) of the Constitution of India. While dealing with Entry 25 of List III it has also to be kept in view that the word education is of wide import. It would necessarily have in its fold (i) the taught, (ii) the teacher, (iii) the text and also (iv) training as practical training is required to be imparted to students pursuing the course of postgraduate medical education. Who is to be the taught is determined by Medical Council of India by prescribing the basic qualifications for admission of the students. Adequate number of teachers keeping in view teacher taught ratio is also relevant. Prescribing appropriate courses for study i.e. curricula is also covered by the term education. Training to be imparted to the students has a direct nexus with infrastructural facilities like number of beds of patients to be attended to by postgraduate medical students, providing appropriate infrastructure for surgical training etc. also would form part of education. Role of Medical Council of India is exclusive in the field of laying down of basic qualifications of the taught and also the requirement of qualified teachers, their numbers and qualifications, prescribing text and requisite training to be imparted to students undertaking postgraduate medical courses. All these provisions quite clearly fall within the domain of Medical Council of Indias jurisdiction. However, the only field left open by the Parliament while enacting the Indian Medical Council Act, 1956 under Entry 66 of List III of Schedule VII is the solitary exercise of short- listing of eligible taught for being admitted to such courses. That field can validly be operated upon by the State authorities so long as Parliament, in its wisdom, does not step in to block even that solitary field otherwise remaining open for State authorities to function in that limited sphere. Infrastructure facilities, therefore, for giving such practical training to the taught also would be an important part of medical education. It is of course true that not only the eligibility of students for admission to medical courses but also the

quality of students seeking to get medical education especially postgraduate medical education with a view to turning out efficient medical practitioners for serving the suffering humanity would all be covered by the term education. So far as the quality of admitting students to the courses of higher medical education i.e. postgraduate medical courses is concerned, the admission of students may get sub-divided into two parts; i) basic eligibility or qualification for being permitted to enter the arena of contest for occupying the limited number of seats available for pursuing such education; and ii) the quality of such eligible candidates for being admitted to such courses. As we have seen earlier, the first part of exercise for admission can be covered by the sweep of the parliamentary legislation i.e. the Indian Medical Council Act, 1956 enabling the delegate of the Parliament namely, Medical Council of India to lay down proper criteria for that purpose as per regulations framed by it under Section 33 of the Indian Medical Council Act. This aspect is clearly covered by Entry 66 of List I but so far as the second part of admissions of eligible students is concerned, it clearly remains in the domain of Entry 25 of List III and it has nothing to do with Entry 66 of List I and as this field is wide open till the Parliament covers it by any legislation under Entry 25 of List III, the State can certainly issue executive orders and instructions or even pass appropriate legislations for controlling and short-listing the admissions of eligible candidates to such higher postgraduate medical courses in their institutions or other institutions imparting such medical education in the States concerned. A three Judge bench of this Court in Ajay Kumar Singh & Ors. vs. State of Bihar & Ors., 1994(4) SCC 401, has taken the same view on these entries which commands acceptance. Jeevan Reddy, J., speaking for the three Judge bench placing reliance on an earlier three Judge bench judgment of this Court in State of M.P. vs. Nivedita Jain, 1981(4) SCC 296, and agreeing with the view expressed therein observed in para 22 of the Report as under : The power to regulate admission to the courses of study in medicine is traceable to Entry 25 in List III. (Entry 11 in List II, it may be remembered, was deleted by the 42nd Amendment to the Constitution and Entry 25 of List III substituted). The States, which establish and maintain these institutions have the power to regulate all aspects and affairs of the institutions except to the extent provided for by Entries 63 to 66 of List I. Shri Salve contended that the determination and coordination of standards of higher education in Entry 66 of List I takes in all incidental or ancillary matters, that Regulation of admission to courses of higher education is a matter incidental to the determination of standards and if so, the said subject- matter falls outside the field reserved to the States. He submits that by virtue of Entry 66 List I, which overrides Entry 25 of List III, the States are denuded of all and every power to determine and coordinate the standards of higher education, which must necessarily take in regulating the admission to these courses. Even if the Act made by parliament does not regulate the admission to these courses, the States have no power to provide for the same for the reason that the said subject-matter falls outside their purview. Accordingly, it must be held, says Shri Salve, that the provision made by the State Government reserving certain percentage of seats under Article 15(4) is wholly incompetent and outside the purview of the field reserved to the States under the Constitution. We cannot agree. While Regulation of admission to these medical courses may be incidental to the power under Entry 66 List I, it is integral to the power contained in Entry 25 List III. The State which has established and is maintaining these institutions out of public funds must be held to possess the power to regulate the admission policy consistent with Article 14. Such power is an integral component of the power to maintain and administer these institutions. Be that as it may, since we have held, agreeing with the holding in Nivedita Jain that Entry 66 in List I does not take in the selection of candidates or regulation of admission to institutions of higher education, the

argument of Shri Salve becomes out of place. The States must be held perfectly competent to provide for such reservations.

It is also pertinent to note that decision of this Court in Kumari Nivedita Jain (supra) is approved by a Constitution bench of nine Judges of this court in Indra Sawhney vs. Union of India, 1992 Supp. 3 SCC 217 at page 751, to which I will make a detailed reference later on. II. Role of the Medical Council of India: As noted earlier, the Indian Medical Council Act, 1956 was enacted by the Union Parliament in exercise of its powers under Entry 66 of List I of the Seventh Schedule of the Constitution. The statement of objects and reasons of the said Act read as under : The objects of this Bill are to amend the Indian Medical Council Act, 1933 (Act XXVII of 1933) - (a) to give representation to licentiate members of the medical profession, a large number of whom are still practising in the country; (b) to provide for the registration of the names of citizens of India who have obtained foreign medical qualifications which are not at present recognised under the existing Act; (c) to provide for the temporary recognition of medical qualifications granted by medical institutions in countries outside India with which no scheme of reciprocity exists in cases where the medical practitioners concerned are attached for the time being to any medical institution in India for the purpose of teaching or research or for any charitable object; (d) to provide for the formation of a Committee of Postgraduate Medical Education for the purpose of assisting the Medical Council of India to prescribe standards of postgraduate medical education for the guidance of Universities and to advise Universities in the matter of securing uniform standards for postgraduate medical education throughout India; (e) to provide for the maintenance of an all-India register by the Medical Council of India, which will contain the names of all the medical practitioners possessing recognised medical qualifications.

Amongst others, the object and reason no.(d) clearly indicated that the Act was to provide for the formation of a Committee of Postgraduate Medical Education for the purpose of assisting the Medical Council of India to prescribe standards of postgraduate medical education for the guidance of Universities. This necessarily meant conferring power on Medical Council of India to be the approving body for the universities for enabling them to prescribe standards of postgraduate medical education. Naturally that referred to the courses of study to be prescribed and the types of practical training to be imparted to the admitted students for such courses. We may now refer to the relevant statutory provisions of the Act. Section 10-A empowers the Central Government to give clearance for establishing medical colleges at given centres and the statutory requirements for establishing such colleges. It is the Medical Council of India which has to recommend in connection with such proposed scheme for establishing medical colleges. Sub-section (7) of Section 10-A lays down the relevant considerations to be kept in view by the Medical Council of India while making such recommendations in connection with any scheme proposing to establish a medical college. They obviously refer to the types of education to be imparted to admitted students and the basic requirement of infrastructure for imparting such education which only would enable the proposed college to be established. None of these requirements has anything to do with the controlling of admissions out of qualified and eligible students who can take such education. Section 11 deals with medical qualifications granted by any University or medical institution which can be recognised as medical qualifications for the purpose of the Act. Meaning thereby, only such qualified persons can be registered as medical practitioners under the Act. None of the other provisions of the Act deal

with the topic of short-listing of eligible and otherwise qualified candidates for being admitted to medical courses either at MBBS level or even at post- graduate level. As we are concerned with minimum standards for medical education at postgraduate level, Section 20 of the Act becomes relevant. It reads as under : 20. Postgraduate Medical Education Committee for assisting Council in matters relating to postgraduate medical education - (1) The Council may prescribe standards of postgraduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for postgraduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Postgraduate Medical Education Committee (hereinafter referred to as the Postgraduate Committee). (2) The Postgraduate Committee shall consist of nine members all of whom shall be, persons possessing postgraduate medical qualifications and experience of teaching or examining postgraduate students of medicine. (3) Six of the members of the Postgraduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members. (4) For the purpose of considering Postgraduate studies in a subject, the Postgraduate Committee may co-opt, as and when necessary, one or more members qualified to assist it in that subject. (5) The views and recommendations of the Postgraduate Committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the Postgraduate Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision.

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

studies in institutions, the general power to make regulations cannot cover such a topic. So far as the express topics enumerated in Section 33 on which regulations can be framed are concerned, the relevant topics for our purpose are found in clauses (fc) and (j). So far as clause (fc) is concerned, it deals with the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of Section 10B. When we turn to Section 10B, we find that it deals with those students who are admitted on the basis of the increase in its admission capacity without previous permission of the Central Government. Any medical qualification obtained by such student will not enable him or her to be treated as duly medically qualified. The medical qualification is obviously obtained by the student who has successfully completed his course of study and obtained the requisite degree. It is the obtaining of such requisite medical degree and qualification that entitles him to get enrolled as per Section 15 on any State Medical Register so that he can act as a Registered Medical Practitioner. That obviously has nothing to do with the admission of students desirous of obtaining medical degrees after undergoing requisite educational training at the institutions. Therefore, no regulation framed under Section 33(fc) can cover the topic of short-listing of eligible candidates for admission. Then remains in the filed clause (j) which provides as under : [(j)the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications; A mere look at the said provision shows that regulations under this provision can be framed by the Medical Council of India for laying down the courses and period of study and of practical training to be undertaken, the subjects of examination and the standard of proficiency therein to be obtained by the admitted students for obtaining recognised medical qualifications. They all deal with post- admission requirements of eligible students in the medical courses concerned. That has nothing to do with pre-entry stage of such students eligible for admission. Consequently, any regulation framed by the Medical Council of India under Section 33 which seeks to give any guidelines in connection with the method of admission of such eligible students to medical courses would obviously remain in the realm of a mere advise or guidance and can obviously therefore, not have any binding force qua admitting authorities. It, therefore, must be held that once the Medical Council of India has laid down basic requirements of qualifications or eligibility criteria for a student who has passed his MBBS examination for being admitted to postgraduate courses for higher medical education in institutions and once these basic minimum requirements are complied with by eligible students seeking such admissions the role of Medical Council of India comes to an end. As seen earlier, the question of short-listing falls squarely in the domain of State authorities as per entry 25 of List III till Parliament steps in to cover this field. We may now briefly deal with decisions of this Court rendered from time to time in connection with this question. A three Judge bench of this Court in D.N. Chanchala vs. State of Mysore & Ors.etc., 1971 Supp. SCR 608, speaking through Shelat, J., emphasised the necessity for a screening test and short-listing of eligible candidates for being admitted to medical courses in view of the fact that claimants are many and seats are less. Dealing with three universities set up in the territories of the then State of Mysore catering to medical education, the following relevant observations were made at page 619 of the Report : The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the

candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centres for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Similar observations were made at page 628 of the Report :

> On account of paucity of institutions imparting training in technical studies and the increasing number of candidates seeking admission therein, there is obviously the need for classification to enable fair and equitable distribution of available seats. The very decisions relied on by counsel for the petitioner implicitly recognise the need for classification and the power of those who run such institutions to lay down classification.
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> A three Judge bench of this Court in State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors., (supra) had to consider the legality of order passed by the State of Madhya Pradesh completely relaxing the conditions relating to the minimum qualifying marks for SC,ST candidates for admission to medical courses of study on non- availability of qualified candidates from these categories. Such an exercise was held permissible under Articles 14 and 15 of the Constitution of India. A.N. Sen, J., speaking for the Court in this connection referred to Entry 25 of the Concurrent List and also the constitutional scheme of Entry 66 of List I and held that: By virtue of the authority conferred by the Medical Council Act, the Medical Council may prescribe the eligibility of a candidate who may seek to get admitted into a Medical College for obtaining recognised medical qualifications. But as to how the selection has to be made out of the eligible candidates for admission into the Medical College necessarily depends on circumstances and conditions prevailing in particular States and does not come within the purview of the Council. Regulation I which lays down the conditions or qualifications for admission into medical course comes within the competence of the Council under Section 33 of the Act and is mandatory, whereas Regulation II which deals with the process or procedure for selection from amongst eligible candidates for admission is outside the authority of the Council under Section 33 of the Act, and is merely in the nature of a recommendation and is directory in nature. (paras 19 and 21) Entry 25 in List II is wide enough to include within its ambit the question of selection of candidates to Medical Colleges and there is nothing in the Entries 63, 64 and 65 of List I to suggest to the contrary. (para 22) As there is no legislation covering the field of selection of candidates for admission to Medical Colleges, the State Government would, undoubtedly, be competent to pass executive orders in this regard under Article 162. (para 24) Thus Regulation II of the Council which is merely directory and in the nature of a recommendation has no such statutory force as to render the Order in question which contravenes the said Regulation illegal, invalid and unconstitutional. The Order can therefore be supported under Article 15(4). (paras 22 and

> 25) The State is entitled to make reservations for the Scheduled Castes and Scheduled Tribes in the matter of admission to medical and other technical institutions. In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservations have been made. In any particular situation, taking into consideration the realities and circumstances prevailing in the State it will be open to the State to vary and modify the conditions regarding selection for admission, if such modification or variation becomes necessary for achieving the purpose for which reservation has been made and if there be no law to the contrary. Note
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> (ii) of Rule 20 of the Rules for admission framed by the State Government specifically empowers the Government to grant such relaxation in the minimum qualifying marks to the extent considered necessary. Such relaxation neither can be said to be unreasonable, nor constitutes violation of Article 15(1) and (2) or Article 14 of the Constitution.

The impugned order does not affect any relaxation in the standard of medical education or curriculum of studies in Medical Colleges for those candidates after their admission to the College and the standard of examination and the curriculum remains the same for all. (paras 26 and 27) (Emphasis supplied) The aforesaid observations of the court are well sustained on the scheme of the relevant entries in VIIth Schedule to which we have made a reference earlier. As noticed herein before, this judgment of three member bench is approved by the Constitution bench in its judgment in Indra Sawhneys case (supra). It is of course true that these observations are made with reference to admission to MBBS course and not to postgraduate medical courses. But on the constitutional scheme of the relevant entries, the very same result can follow while regulating admissions to postgraduate medical courses also. Before parting with discussion on the topic regarding role of Medical Council of India, we may also usefully refer to the observations of Jeevan Reddy, J., in the case of Ajay Kumar Singh & Ors. vs. State of Bihar & Ors., (supra). Jeevan Reddy, J., speaking for the three Judge Bench in para 18 of the Report on the review and relevant provisions of the Indian Medical Council Act has made the following pertinent observations in the said para of the Report at page 415 : A review of the provisions of the Act clearly shows that among other things, the Act is concerned with the determination and coordination of standards of education and training in medical institutions. Sections 16, 17, 18 and 19 all speak of the courses of study and examinations to be undergone to obtain the recognised medical qualification. They do not speak of admission to such courses. Section 19-A expressly empowers the council to prescribe the minimum standards of medical education required for granting undergraduate medical qualification. So does Section 20 empower the council to prescribe standards of postgraduate medical education but for the guidance of universities only. It further says that the council may also advise universities in the matter of securing uniform standards for postgraduate medical education throughout India. (The distinction between the language of Section 19-A and Section 20 is also a relevant factor, as would be explained later.) Clause (j) of Section 33 particularises the subjects with respect to which Regulations can be made by the council. It speaks of the courses and period of study and the practical training to be undergone by the students, the subjects of examination which they must pass and the standards of

proficiency they must attain to obtain the recognised medical qualifications but it does not speak of admission to such courses of study. Indeed, none of the sections aforementioned empower the council to regulate or prescribe qualifications or conditions for admission to such courses of study. No other provision in the Act does. It is thus clear that the Act does not purport to deal with, regulate or provide for admission to graduate or postgraduate medical courses. Indeed, insofar as postgraduate courses are concerned, the power of the Indian Medical Council to prescribe the minimum standards of medical education is only advisory in nature and not of a binding character. In such a situation, it would be rather curious to say that the Regulations made under the Act are binding upon them. The Regulations made under the Act cannot also provide for or regulate admission to postgraduate courses in any event.

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

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

> As seen earlier, so far as the field consisting of the short- listing of admission out of eligible and duly qualified medical graduates for being admitted to postgraduate medical courses in institutions is concerned, as the Union Parliament has not said anything about the same, the field is wide open for the State authorities to regulate such admissions by short-listing the available candidates keeping in view the concept of reservation of seats as permitted by Article 15(4) of the Constitution. In the case of R. Chitralekha & Anr. vs. State of Mysore & Ors., 1964 (6) SCR 368, a Constitution bench of this Court while dealing with Entry 66 of List I and Article 15(4) of the Constitution of India had to consider the question whether the State Government could prescribe the criteria for selection of students having minimum qualifications laid down by the university for admission to medical courses and whether it would affect the central legislation enacted under Entry 66 of List I of the Constitution? Answering this question in favour of the State authorities, it was observed at page 379 of the Report by Subba Rao, J., speaking on behalf of the Constitution bench as under :
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> If the impact of the State law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to colleges, it would be directly encroaching on the field covered by entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law. It is then said that the Mysore University Act conferred power to prescribe rules for admission to Colleges on the University and the Government cannot exercise that power. It is true that under s.23 of the Mysore University Act, 1956, the Academic Council shall have the power to

prescribe the conditions for admission of students to the University and, in exercise of its power, it has prescribed the percentage of marks which a student shall obtain for getting admission in medical or engineering colleges. The orders of the Government do not contravene the minimum qualifications prescribed by the University; what the Government did was to appoint a selection committee and prescribe rules for selection of students who have the minimum qualifications prescribed by the University. The Government runs most of the medical and engineering colleges. Excluding the State aided colleges for a moment, the position is as follows : The Colleges run by the Government, having regard to financial commitments and other relevant considerations, can only admit a specific number of students to the said Colleges. They cannot obviously admit all the applicants who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis. The aforesaid orders of the Government only prescribed criteria for making admissions to Colleges from among students who secured the minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power.

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

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

Another decision of the Constitution bench of this Court was rendered in the case of Chitra Ghosh & Anr. vs. Union of India & Ors., 1970 (1) SCR 413. Grover, J., speaking for the Constitution bench observed at page 418 as under : It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter-alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.

At page 419 of the Report it has been further stated as under : The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In Minor P.Rajendran v. State of Madras it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.

In the case of State of Andhra Pradesh & Anr. vs. Lavu Narendranath & Ors.etc., 1971(1) SCC 607, a four Judge bench of this Court had to consider whether the entrance test prescribed by the Government for short-listing eligible candidates for being admitted to medical courses in colleges was legally permissible or not. Upholding the power of the State Government on the anvil of the Constitution, Mitter, J., speaking on behalf of the four Judge bench held that : Merely because the University had made regulations regarding the admission of students to its degree courses, it did not mean that any one who had passed the qualifying examination such as the P.U.C. or H.S.C. was ipso facto to be entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available the University can have to make its choice out of the applicants to find out who should be admitted and if instead of judging the candidates by the number of marks obtained by them in the qualifying examination the University thinks fit to prescribe another test for admission no objection can be taken thereto. What the University can do in the matter of admissions to the degree courses can certainly be done by the Government in the matter of admission to the M.B.B.S. course. 9. In our view the test prescribed by the Government in no way militates against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. The said entry provides :

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

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

Similar observations were found in para 15 of the Report, wherein it was observed that : .The University Act, as pointed out, merely prescribed a minimum qualification for entry into the higher courses of study. There was no regulation to the effect that admission to higher course of study was guaranteed by the securing of eligibility. The Executive have a power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the field and the Government order in this case in no way affected the rights of candidates with regard to eligibility for admission : the test prescribed was a further hurdle by way of competition when mere eligibility could not be made the determining factor.

The aforesaid observations of the four Judge bench, in our view, correctly bring out the permissible scheme of short-listing of eligible candidates in the light of the relevant provisions with which we are concerned. In the case of Dr. Ambesh Kumar vs. Principal, L.L.R.M.Medical College, Meerut & Ors., 1986 (Supp) SCC 543, a two Judge bench of this court had to consider the question whether out of the eligible candidates qualified for being considered for admission to medical education imparted in medical colleges of the State, looking to the limited number of seats available, the State could resort to the process of weeding out by laying down further criteria for short-listing such candidates. Upholding such an exercise undertaken by the State in the light of the relevant provisions of the Constitution, B.C.Ray, J., speaking for the court, made the following observations at pages 544 and 545 of the Report as under : The State Government can in exercise of its executive power under Article 162 make an order relating to matters referred to in Entry 25 of the Concurrent List in the absence of any law made by the State Legislature. The impugned order made by the State Government pursuant to its executive powers was valid and it cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in Entry 66 of List I. The order in question merely specified a further eligibility qualification for being considered for selection for admission to the postgraduate courses (degree and diploma) in the Medical Colleges in the State in accordance with the criteria laid down by Indian Medical Council. The number of seats for admission to various postgraduate courses both degree and diploma in Medical Colleges is limited and a large number of candidates apply for admission to these courses of study. In such circumstances the impugned order cannot be said to be in conflict with or repugnant to or encroach upon the Regulations framed under the provisions of Section 33 of the Indian Medical Council Act. On the other hand by laying down a further qualification of eligibility it promotes and furthers the determination of standards in institutions for higher education.

In this connection, we may also refer to a later Constitution bench Judgment of this Court in Indra Sawhney & Ors. vs. Union of India & Ors., (supra). As noted earlier, judgment of this Court in Kumari Nivedita Jains case (supra) was approved therein. Jeevan Reddy, J., speaking on behalf of the Constitution bench, at page 751 of the Report in para 837 has referred to, with approval, the

observations of this Court in State of Madhya Pradesh vs. Kumari Nivedita Jain, (Supra) to the effect that admission to medical courses was regulated by an entrance test for general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For SC/ST candidates, however, it was 40% and 30% respectively. The said deviation was upheld in Kumari Nivedita Jains case (supra) and the same was also approved by the Constitution Bench in the aforesaid decision. In this connection, we may also usefully refer to the relevant observations in the case of State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors. (supra) which got imprimatur of the Constitution bench of this court in Indra Sawhneys case (supra). At page 751 of the Report in Indra Sawhneys case (supra), the following pertinent observations are found in the majority judgment wherein Jeevan Reddy, J., in paragraph 837 of the Report observed as under :

> Having said this, we must append a note of clarification. In some cases arising under Article 15, this Court has upheld the removal of minimum qualifying marks, in the case of Scheduled Caste/Scheduled Tribe candidates, in the matter of admission to medical courses. For example, in State of M.P. v. Nivedita Jain admission to medical course was regulated by an entrance test (called Pre-Medical Test). For general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For Scheduled Caste/Scheduled Tribe candidates, however, it was 40% and 30% respectively. On finding that Scheduled Caste/Scheduled Tribe candidates equal to the number of the seats reserved for them did not qualify on the above standard, the Government did away with the said minimum standard altogether. The Governments action was challenged in this Court but was upheld. Since it was a case under Article 15, Article 335 had no relevance and was not applied. But in the case of Article 16, Article 335 would be relevant and any order on the lines of the order of the Government of Madhya Pradesh (in Nivedita Jain) would not be permissible, being inconsistent with the efficiency of administration. To wit, in the matter of appointment of Medical Officers, the Government or the Public Service Commission cannot say that there shall be no minimum qualifying marks for Scheduled Caste/Scheduled Tribe candidates, while prescribing a minimum for others. It may be permissible for the Government to prescribe a reasonably lower standard for Scheduled Castes/Scheduled Tribes/Backward Classes - consistent with the requirements of efficiency of administration - it would not be permissible not to prescribe any such minimum standard at all. While prescribing the lower minimum standard for reserved category, the nature of duties attached to the post and the interest of the general public should also be kept in mind.
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> In para 20 of the Report in the case of State of Madhya Pradesh & Anr. vs. Kumari Nivedita Jain & Ors. (supra) the following pertinent observations are found :
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> Undoubtedly, under Section 33 of the Act, the Council is empowered to make regulations with the previous sanction of the Central Government generally to carry out the purposes of the Act and such regulations may also provide for any of the matters mentioned in Section 33 of the Act. We have earlier indicated what are the purposes of this Act. Sub-sections (j), (k), (l) and (m) of the Act which we have earlier

> set out clearly indicate that they have no application to the process of selection of a student out of the eligible candidates for admission into the medical course. Sub-sections (j), (k) and (l) relate to post-admission stages and the period of study after admission in Medical Colleges. Sub-section (m) of Section 33 relates to a post-degree stage. Sub-section (n) of Section 33 which has also been quoted earlier is also of no assistance as the Act is not concerned with the question of selection of students out of the eligible candidates for admission into Medical Colleges. It appears to us that the observations of this Court in the case of Arti Sapru v.

State of Jammu & Kashmir which we have earlier quoted and which were relied on by Mr. Phadke, were made on such consideration, though the question was not very properly finally decided in the absence of the Council.

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

We may now refer to a two Judge Bench decision of this Court in Dr. Sadhna Devi & Ors. vs. State o f U.P. & Ors., 1997(3) SCC 90. The court was concerned with the short-listing of eligible candidates who have got basic qualification for admission to postgraduate medical courses. Reservation of seats for SC and ST candidates in postgraduate courses was not challenged but providing zero percent marks for them for passing the entrance examination for admission to postgraduate course was questioned before the Bench. It was held that once minimum qualifying marks for passing the entrance examination for admission to postgraduate courses was a pre- requisite, in the absence of prescription of any minimum qualifying marks for reserved category of candidates, admitting such students who did not get any marks at the entrance test amounted to sacrificing merit and could not be countenanced. In para 21 of the Report, the following observations are made: In our view, the Government having laid down a system for holding admission tests, is not entitled to do away with the requirement of obtaining the minimum qualifying marks for the special category candidates. It is open to the Government to admit candidates belonging to the special categories even in a case where they obtain lesser marks than the general candidates provided they have got the minimum qualifying marks to fill up the reserved quota of seats for them.

A cursory reading of these observations seems to indicate that once the minimum qualifying marks are prescribed for otherwise eligible candidates for short-listing them for admission to postgraduate courses, minimum qualifying marks prescribed for general category candidates and reserved category candidates must be uniform. But then follows para 22 which relies on the decision of this court in State of Madhya Pradesh vs. Kumari Nivedita Jain (supra) wherein prescription of lesser minimum qualifying marks in the entrance test for SC,ST and Other Backward Class candidates as compared to the minimum qualifying marks for general category candidates was approved. Even in earlier para 18 it is observed that if in the entrance test special category candidates obtain lesser marks than general category candidates even then they will be eligible for admission within their reserved quota. These observations indicate that for reserved category of candidates there can be

separate minimum qualifying marks. Thus, on a conjoint reading of observations in paras 18, 21 and 22 of the Report it has to be held that the ratio of the decision in Sadhna Devis case (supra) is that even for reserved category candidates there should be some minimum qualifying marks if not the same as prescribed as bench marks for general category candidates. Thus, there cannot be any zero qualifying marks for reserved category candidates in the entrance test for admission to postgraduate courses. Hence, this judgment cannot be taken to have laid down that there cannot be lesser qualifying marks for reserved category candidates as compared to the general category candidates who are otherwise eligible and qualified for being considered for admission to postgraduate medical courses. That takes us to the consideration of a three Judge Bench decision of this Court in Postgraduate Institute of Medical Education & Research, Chandigarh & Ors., vs. K.L. Narasimhan & Anr., 1997 (6) SCC 283. Ramaswamy, J., speaking for the Bench had mainly to consider two questions; 1) whether there can be reservation under Articles 15(4) and 16(4) of the Constitution in connection with only one post in a discipline; and 2) whether reservation of seats in postgraduate courses was permissible as per Articles 14, 15 and 16 of the Constitution. Both the aforesaid questions were answered in the affirmative in favour of the schemes of reservations. So far as the question of reservation of seats when there is only one post in the discipline is concerned, decision rendered thereon by the three Judge Bench is expressly overruled by a Constitution Bench judgment of this Court in Postgraduate Institute of Medical Education & Research, Chandigarh vs. Faculty Association & Ors., 1998(4) SCC 1. However, so far as the second question is concerned, in the aforesaid judgment it was held that there can be reservation of seats in postgraduate courses as per the mandate of Articles 15(4) and 16(4). In the present proceedings, there is no dispute on this score. Hence the said judgment on the second point is not required to be reconsidered. However, certain observations are found in para 21 of the report wherein Ramaswamy, J., has observed that diluting of minimum qualifying marks in an entrance test for entry into postgraduate courses for reserved category of candidates cannot be said to be unauthorised or illegal. It has been observed that: Equally, a student, admitted on reservation, is required to pass the same standard prescribed for speciality or a superspeciality in a subject or medical science or technology. In that behalf, no relaxation is given nor sought by the candidates belonging to reserved categories. What is sought is a facility or opportunity for admission to the courses, Ph.D., speciality or superspeciality or high technology by relaxation of a lesser percentage of marks for initial admission than the general candidates. For instance, if the general candidate is required to get 80% as qualifying marks for admission into speciality or superspeciality, the relaxation for admission to the reserved candidates is of 10 marks less, i.e., qualifying marks in his case would be 70%. A doctor or a technologist has to pass the postgraduation or the graduation with the same standard as had by general candidate and has also to possess the same degree of standard. However, with the facility of possessing even lesser marks the reserved candidate gets admission.

Now, so far as these observations are concerned, as the court was not called upon to consider the question whether prescription of lesser qualifying marks for SC,ST and other reserved category candidates for admission to postgraduate or super speciality courses in medicine was permissible, they are clearly obiter. So far as admission to super speciality courses are concerned, in the present reference we are not concerned with the said question, hence, we need not say anything about the same. However, so far as admission to postgraduate courses is concerned the question of providing of lesser qualifying marks for reserved category candidates for admission to these courses directly

arises for our consideration. Hence, the obiter observations in the aforesaid case on this aspect do require consideration for their acceptance or otherwise. As per the scheme of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution of India, as discussed earlier goes, it is not possible to countenance the submission of Shri Salve, learned senior counsel for the Medical Council of India and other counsel canvassing the same view that the question of short-listing of eligible candidates who were otherwise duly qualified for being admitted to postgraduate courses in Medicine is not within the domain of State authorities especially in view of the fact that the Parliament, in exercise of its legislative powers under Entry 25 of List III, has still not spoken on the point nor does the Indian Medical Council Act, 1956 enacted under Entry 66 of List I covers this question. Hence, while providing for entrance test as an additional requirement for eligible candidates for being short-listed in connection with admission to smaller number of seats available in postgraduate courses, it cannot be said that the State authorities in exercise of their constitutional right under Article 15(4) cannot give additional facilities to reserved category of candidates vis-a-vis their requirement of getting minimum qualifying marks at such entrance tests so that seats reserved for them may not remain unfilled and the reserved category of candidates do get adequate opportunity to fill them up and get postgraduate education on the seats reserved for them which in their turn would not detract from the availability of remaining seats for general category candidates. Thus, the observations in para 21 of the aforesaid judgment that there can be lesser qualifying marks for admission to postgraduate courses for reserved category of candidates cannot be found fault with. It is made clear that similar observations for admission to super speciality courses and the relaxation of minimum qualifying marks for candidates appearing at the entrance test for such courses are not being approved by us as we are not required to consider that aspect of the matter, as noted earlier. As it will be presently shown, once reservation of seats in postgraduate courses under Article 15(4) is accepted then even lesser bench marks being prescribed for reserved category of candidates in the common entrance examination which they undertake along with general category of candidates would in substance make no difference so far as the un-reserved seats available to general category of candidates are concerned. In a later three Judge Bench Judgment of this Court in Medical Council of India vs. State of Karnataka & Ors., 1998(6) SCC 131, it was held that in the light of Sections 10-A, 10-B, 10-C, 19-A and 33(fa), (fb), (fc), (j), (k) and (l) of the Indian Medical Council Act, 1956 fixation of admission capacity in medical colleges/institutions is the exclusive function of Medical Council of India and increase in number of admissions can only be directed by the Central Govt. on the recommendation of the Medical Council of India. This function of the Medical Council of India was upheld in the light of Entries 66 List I and 25 of List III thereof. Now it becomes at once obvious that providing for number of seats to be filled up by eligible candidates in any medical course imparted by medical colleges or medical institutions will have a direct nexus with coordination and determination of standards in medical education, as larger the seats in medical colleges wherein students can be admitted to MBBS or even higher courses in medicine, larger infrastructure would be required by way of beds and eligible and efficient teachers and all other infrastructure for imparting proper training to the admitted students. Once this exercise is clearly within the domain of the Medical Council of India in the light of the aforesaid statutory provisions it becomes obvious that Entry 66 of List I of the Seventh Schedule would hold the field and consequently States will not be empowered under entry 25 of List III to legislate on this topic as such an exercise would be subject to legislation under Entry 66 of List I which would wholly occupy the field. However, a moot question remains whether given the permissible intake capacity for

admitting students in any medical college as laid down by the Medical Council of India can the available intake capacity of students be regulated at the admission stage when the number of eligible candidates aspiring to be admitted is larger than the available intake capacity? This question will remain outside the domain of the Medical Council of India under the aforesaid Act. As we have discussed earlier, there being no parliamentary legislation on this aspect even under entry 25 of List III of the Seventh Schedule, the short-listing of eligible candidates for being admitted to the available permitted intake capacity in medical colleges will obviously remain in the domain of State legislature and State executive on the combined reading of entry 25 of List III as well as Article 162 of the Constitution of India. In view of the aforesaid discussion, it therefore, becomes clear that once seats in postgraduate medical courses are reserved for SC, ST and OBC candidates as per Article 15(4) of the Constitution the question as to how admission to limited number of general seats and reserved seats are to be regulated will remain in the domain of the State authorities running these institutions. They can, therefore, legitimately resort to the procedure of short-listing of otherwise eligible candidates. While undertaking this exercise of short-listing, the state authorities have to see how best in a given academic year the reserved seats and general category seats can be filled in by available and eligible candidates. The question is while undertaking the task of short-listing of available eligible candidates vis-a-vis limited number of seats that may be available for being filled in in a given academic year, uniform qualifying bench marks for passing the entrance test should be prescribed for both the general category candidates as well as reserved category candidates or there can be lesser bench marks for the latter category of students. If due to non-availability of reserved category candidates who could obtain minimum qualifying marks prescribed for all the examinees whether there can be any legitimate dilution of minimum qualifying marks for these reserved category of question. candidates and if so, to what extent is the moot In the case of M.R. Balaji & Ors. vs. State of Mysore,@@ IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII 1963 Supp.(1) SCR 439, a Constitution bench of this court was concerned with the extent of reservation which could be legally permissible under Article 15(4) of the Constitution of India. Gajendragadkar, J., speaking for the Constitution bench held that reservation of 68% seats in educational institutions was inconsistent with the concept of special provision authorised by Article 15(4). It was then observed as under : Reservation should and must be adopted to advance the prospects of weaker sections of society, but while doing so, care should be taken not to exclude admission to higher educational centres of deserving and qualified candidates of other communities. Reservations under Arts.15(4) and 16(4) must be within reasonable limits. The interests of weaker sections of society, which are a first charge on the States and the Centre, have to be adjusted with the interests of the community as a whole. Speaking generally and in a broad way, a special provision should be less than 50%. The actual percentage must depend upon the relevant prevailing circumstances in each case. The object of Art.15(4) is to advance the interests of the society as a whole by looking after the interests of the weaker elements in society. If a provision under Art.15(4) ignores the interests of society, that is clearly outside the scope of Art.15(4). It is extremely unreasonable to assume that in enacting Art.15(4), Parliament intended to provide that where the advancement of the backward classes or the Scheduled Castes and Tribes were concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored. Considerations of national interest and the interests of the community and the society as a whole have already to be kept in mind.

Thus, even accepting that when seats are reserved for SC and ST and Other Backward Classes for admission to be given to such reserved category of eligible candidates in postgraduate medical courses, the concession or facility given to them cannot exceed 50% of the facility otherwise available to members of the general public. Keeping the aforesaid ratio of the Constitution Bench in view, therefore, even proceeding on the assumption that 50% of the available seats in postgraduate medical courses in a given year may be reserved for SC,ST and OBCs, further concession that may be given to them by State authorities by diluting the minimum qualifying marks at the entrance test so that seats reserved for them may not remain unfilled by the reserved categories of persons for whom they are meant, the dilution of such marks cannot exceed 50% of the general standards of qualifying bench marks laid down for the general categories of candidates. Otherwise even the said dilution would become unreasonable and would be hit by Articles 14 and 15(1) of the Constitution of India. In the case of Minor P. Rajendran vs. State of Madras & Ors., 1968 (2) SCR 786, another Constitution bench of this court had to consider whether district-wise distribution of reserved seats in medical courses for granting admission to reserved category of candidates was violative of Article 15 (1) read with Article 14 of the Constitution of India. Answering the question in the affirmative it was observed by Wanchoo, J., speaking for the Constitution bench at pages 792 and 793 of the Report as under : The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district. It cannot be and has not been denied that the object of selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors.

Relying on these observations of the Constitution bench Shri P.P. Rao and Shri Chaudhary, learned senior counsel appearing for the State of Madhya Pradesh, submitted that when there is a pool of eligible candidates who have all passed MBBS examination and are duly qualified and eligible to pursue postgraduate medical courses of study, and if in a given institution there are seats reserved for them then the selection out of the reserved category candidates for filling up of these reserved posts can be done in a selective manner and that would permit reasonable dilution of the uniform qualifying marks at the entrance test as required to be obtained by the examinees concerned. This submission is amply borne out from the aforesaid observations of the Constitution bench decision of this court. However, a further question survives as to whether in diluting the minimum qualifying marks for reserved category of candidates who are otherwise eligible for being admitted to postgraduate courses on the seats reserved for them, whether Article 335 can get attracted. It is of course true that candidates appointed or admitted to postgraduate medical course have to work as registrars, some posts of the registrars are fully paid posts while others may be stipendary residents posts. However, it is not possible to accept the contention of learned counsel for the Special Leave Petitioners that admission to postgraduate courses would amount to recruitment to any posts. Concept of recruitment to posts is entirely different from the concept of admission to the course of study which in its turn may require the students concerned to take practical training by functioning as registrars attached to wards where patients are treated. Even though such students work as registrars during the course of study as postgraduate students, they essentially remain students and

their working as registrars would be a part of practical training. They would all the same remain trainee registrars and not as directly recruited registrars through any recruitment process held by the Public Service Commission for filling up full-fledged medical officers posts. They work as registrars as a part of postgraduate educational training only because they are admitted to the course of study as postgraduate students in concerned disciplines. It is easy to visualise that calling for applications from open market by advertisement for appointment of full-fledged medical officers to be recruited through the process of selection to be undertaken by Public Service Commission or other departmental selection committees will stand entirely on a different footing as compared to the process of admitting eligible students to postgraduate medical courses of studies. Thus, keeping in view the nature of working as trainee registrars by admitted students to postgraduate medical courses it cannot be said that such admitted students are recruited to any posts of registrars. Consequently, Article 335 of the Constitution of India which has relevance while considering reservation of posts under Article 16(4) cannot have any direct impact on reservation of seats in educational institutions as permitted under Article 15(4). Learned counsel for the petitioners had invited our attention to a decision of two Judge bench of this Court in S. Vinod Kumar & Anr. vs. Union of India & Ors., 1996(6) SCC 580, wherein it was held that while providing for reservations to posts in the hierarchy by invoking powers under Article 16(4), making a provision for lower qualifying marks or lesser level of evaluation for members of reserved category was impermissible on account of Article 335 of the Constitution of India. The aforesaid decision obviously cannot be pressed in service while considering the question of giving facilities to reserved category of candidates for being admitted to the seats reserved for them in educational institutions wherein they can undertake courses of studies for ultimately obtaining postgraduate degrees in medicine. In the case of Ajay Kumar Singh & Ors. vs. State of Bihar & Ors.(supra), this aspect of the matter has been correctly highlighted by Jeevan Reddy, J., speaking for the court in para 14 of the Report. It has been held therein that : We see absolutely no substance in the third submission of Shri Singh. The argument taxes ones credulity. We are totally unable to appreciate how can it be said that admission to postgraduate medical course is a promotional post just because such candidate must necessarily pass MBBS examination before becoming eligible for admission to postgraduate medical course or for the reason that some stipend - it is immaterial whether Rs.1000 or Rs.3000 p.m. - is paid to postgraduate students. Admission to such course cannot be equated to appointment to a post and certainly not to an appointment by promotion. The argument is accordingly rejected.

(Emphasis supplied) It is obvious that only because a person who has passed MBBS examination and is made eligible for admission to postgraduate course is paid stipend during the course of his studies at postgraduate level, he cannot be said to have been appointed to the post of a registrar. It may be that he has to work as a trainee registrar during the course of his study to obtain practical training but that is a part of the curriculum of studies and not because he is appointed to the post of the registrar after undergoing selection process whereunder a person from open market is recruited as a medical officer and whose recruitment as medical officer would be subject to rules and regulations and would not terminate only because his training period is over. In fact such a full-fledged medical officer has no training period. He has if at all probation period. In case of a trainee registrar who has to work as such during the course of his studies as a postgraduate student on the other hand, his work as registrar would be co-terminus with his passing the postgraduate examination as M.D. or M.S./M.D.S. as the case may be. He is also not liable to be transferred as a

full-fledged registrar, duly appointed as such, is liable to be transferred due to exigencies of service. Thus, the working of such students during the course of study as residents whether on full payment or on stipendary payment would make no difference and they cannot be said to be holding any civil post in any hospital as full- fledged medical officers. Consequently, Article 335 of the Constitution of India cannot by itself be applied for regulating the admission of eligible reserved category students to postgraduate medical courses in the seats reserved for them under Article 15(4) of the Constitution of India. The next question that falls for consideration that even assuming that Article 335 cannot be pressed in service while considering the question of admission of eligible and qualified candidates for enabling them to pursue courses of postgraduate medical studies the guidelines laid down by the Medical Council of India pursuant to the regulations made under Section 33 of the Indian Medical Council Act, even though persuasive in nature and not mandatory, can be totally by-passed or ignored by the State authorities concerned with short-listing of candidates for admission to limited seats available in medical institutions imparting postgraduate medical education? The answer obviously would be in the negative. The guidelines laid down by the Medical Council of India though persuasive have to be kept in view while deciding as to whether the concession or facility to be given to such reserved category of candidates should remain within the permissible limits so as not to amount to arbitrary and unreasonable grant of concessions wiping out the concept of merit in its entirety. Consequently, it cannot be said that even though short-listing of eligible candidates is permissible to the State authorities, while doing so, the State authorities can completely give a go-by to the concept of merit and can go to the extent of totally dispensing with qualifying marks for SC,ST and OBC candidates and can short-list them for being considered for admission to reserved categories of seats for them in postgraduate studies by reducing the qualifying marks to even zero. That was rightly frowned upon by this court in Sadhana Devis case (supra) as that would not amount to short-listing but on the contrary would amount to completely long listing of such reserved category candidates for the vacancies which are reserved for them and on which they would not be entitled to be admitted if they did not qualify according to even reduced bench marks or qualifying marks fixed for them. As seen earlier, keeping in view the ratio of the Constitution bench of this court in M.R. Balajis case (supra) it must be held that along with the permissible reservation of 50% of seats for reserved category of candidates in institutions imparting postgraduate studies, simultaneously if further concessions by way of facilities are to be given for such reserved category of candidates so as to enable them to effectively occupy the seats reserved for them, such concessions by way of dilution of qualifying marks to be obtained at the entrance test for the purpose of short-listing, can also not go beyond the permissible limits of 50% of the qualifying marks uniformly fixed for other candidates belonging to general category and who appear at the same competitive test along with the reserved category of candidates. It is found from the records of these cases that qualifying marks at the entrance test for general category of candidates are fixed at 50%. In fact such is the general standard of qualifying marks suggested by the Medical Council of India even at the stage of entrance examination to MBBS course which is at the gross-root level of medical education after a student has completed his secondary education. Thus it would be proper to proceed on the basis that minimum qualifying marks for clearing the entrance test by way of short-listing for getting admitted to postgraduate medical courses uniformly for all candidates who appear at such examination should be 50% but so far as reserved category of candidates are concerned who are otherwise eligible for competing for seats in the postgraduate medical courses, 50% reduction at the highest of the general bench marks by way of permissible

concession would enable the State authorities to reduce the qualifying marks for passing such entrance examination up to 50% of 50% i.e. 25%. In other words, if qualifying marks for passing the entrance examination for being admitted to postgraduate medical courses is 50% for a general category candidate, then such qualifying marks by way of concession can be reduced for reserved category candidates to 25% which would be the maximum permissible limit of reduction or deviation from the general bench marks. Meaning thereby, that a reserved category candidate even if gets 25% of the marks at such a common entrance test he can be considered for being admitted to the reserved vacancy for which he is otherwise eligible. But below 25% of bench marks for reserved category of candidates, no further dilution can be permitted. In other words, concession or facility for reserved category of candidates can remain permissible under Article 15(4) up to only 50% of bench marks prescribed for general category candidates. The State cannot reduce the qualifying marks for a reserved category of candidate below 25% nor can it go up to zero as tried to be suggested by Shri P.P.Rao, learned senior counsel for the State of Madhya Pradesh as that would not amount to the process of short-listing but would in fact amount to long listing or comprehensive listing of such reserved category of candidates as seen earlier. Any such attempt to further dilute the qualifying marks or bench marks for reserved category of candidates below 25% of the general passing marks would be violative of the provisions of Article 15(4) as laid down by the Constitution Bench in M.R.Balajis case (supra) and would also remain unreasonable and would be hit by Article 14 of the Constitution of India. Within this sliding scale of percentages between 25% and 50% passing marks appropriate bench marks for passing the entrance test examination can be suitably fixed for SC/ST and OBC candidates as exigencies of the situation may require. But in no case the qualifying marks for any of these reserved categories of students can go below 25% of the general passing marks. Any reserved category candidate who gets less than 25% of marks at the entrance examination or less than prescribed reduced percentage of marks for the concerned category between 50% and 25% of passing marks cannot be called for counselling and has to be ruled out of consideration and in that process if any seats reserved for reserved categories concerned remains unfilled by candidates belonging to that category it must go to the general category and can be filled in by the general category candidate who has already obtained 50% or more marks at the entrance examination but who could not be accommodated because of lesser percentage of marks obtained by him qua other general category candidates in the limited number of seats available to them in a given institution in postgraduate studies. As we will presently show even if minimum passing marks in the entrance test for admission to postgraduate courses is either reduced to 25% uniformly for all the candidates or is reduced and diluted only for reserved category of candidates, the net result would remain substantially the same. This aspect can be highlighted by taking an illustration. Suppose there are six seats in a given postgraduate medical course. Then applying the ratio of 50% permissible reservation of seats for reserved category of candidates like SC/ST and OBCs three seats get reserved, one each for SC,ST and OBC while three seats will remain available to general category of candidates passing the common entrance test. On the basis of this illustration let us take a hypothetical case of 13 eligible candidates who have passed basic MBBS examination and are duly qualified to compete for the six seats in a given course of postgraduate study. These 13 candidates undertake the same entrance test and all of them as a result of the said test obtained marks as under : A 75 out of 100, B 70, C(SC) 65, D 60, E(SC) 55, F51, G50, H(OBC) 48, I 42, J(ST) 40, K35, L30, M25, N (SC) 21. In the aforesaid illustration C, E and N are SC candidates, H is OBC and J is a ST candidate. Now if 50% passing marks are uniformly applied to all of them as tried to be suggested by

learned counsel for the petitioners, the following picture will emerge : Situation No.1: Seat numbers 1,2, and 3 are general seats, 4 reserved for SC, 5 reserved for ST and 6 reserved for OBC. If 50% passing marks are uniformly applied to seat nos.1,2,3,4,5 & 6 : Seat no.1 will go to A, 2 to B, 3 to C (SC), 4 to E (SC), seat nos.5&6 will not get filled in by the reserved category candidates as there are no ST or OBC candidates who have obtained 50% and more marks. These two seats which remain unfilled will go to D and F general category candidates who have obtained more than 50% marks, but who could not be accommodated in the seats available to general category of candidates as the last candidate in the general category who got admission though SC, was having 65% marks. Thus the situation would be the two seats i.e. seat nos. 5 and 6 which are reserved for ST and OBC and were otherwise not available to general category of candidates would not go to eligible and qualified ST and OBC candidates namely, H and J even though they had obtained MBBS degrees and had the basic qualification and eligibility for being admitted to the seats reserved for them. That may affect the real purpose underlying reservation under Article 15(4). Situation No.2: We may now take the alternative situation for consideration : If the minimum qualifying marks are reduced to 25% for all categories of candidates to the rock-bottom permissible limit including SC/ST and other reserved category candidates, then the following picture would emerge : Seat no.1 will go to A, seat no.2 will go to B, seat no.3 will go to C(SC), seat no.4 which is reserved for SC candidate will go to E, seat no.5 which is reserved for ST will go to J, seat no.6 which is reserved for OBC will go to H. All six seats will be filled up by A,B, C,E,J & H. Thus even if the minimum passing marks are uniformly reduced to 25% which is the permissible rock- bottom as seen earlier the general category candidates will get the same seats which would have been available to them even if the minimum qualifying marks for admission would have been uniformly kept at 50% for all candidates at the entrance test. But what will happen is, that by reduction of these qualifying marks to 25% all the reserved category seats 4 to 6 will get filled in by otherwise eligible and qualified reserved category candidates E,J and H and there will remain no occasion for making any of such seats available to left out general category candidates like D and F for whom they were not meant even otherwise and reservation of seats under Article 15(4) would get fully fructified.

Situation no.3: Now let us assume that for general category candidates minimum passing marks at the entrance test are kept at 50% but for reserved category candidates the passing marks are reduced to the permissible rock-bottom limit of 25%. If that happens, the result would remain the same, namely, as found in situation no.2, i.e. A will be admitted to seat no.1, B will be admitted to seat no.2, C (SC) will be admitted to seat no.3, E will be admitted to seat no.4 reserved for SC, J will be admitted to seat no.5 reserved for ST and H will be admitted to seat no.6 reserved for OBC. Then the net result would be that because of the limited deviation of minimum qualifying marks only for reserved category candidates, E, J & H who would have otherwise been admitted to reserved category seats even if there was universal and uniform reduction of qualifying marks at 25%, will get the same benefit without affecting the admission of general category candidates. Situation No.4: As minimum qualifying marks for reserved category of candidates are kept at 25% and are not reduced below the same, candidate N who is a SC candidate and who has obtained only 21% passing marks at the entrance test will be totally ruled out of consideration, but even if the qualifying marks are reduced to below the permissible limit of 25%, N will not get any seat as the seat reserved for such candidates is only one being no. 4 in the said course of study and is already occupied by E who is a more meritorious SC candidate qua N. Situation No.5: Now let us consider a situation wherein E a

SC candidate, who is entitled to reserved category seat no.4 and has excluded D who is a general category candidate who has obtained more marks than him because of such permissible reservation of a seat for him, for any reason does not join the course of study and his seat becomes vacant, then in such a situation, the following picture may emerge in different categories of cases where minimum passing marks are fixed differently : i) In case E is not available and 50% minimum passing marks are fixed for all categories of candidates then seat no.1 will go to A, seat no.2 will go to B., seat no.3 will go to C, seat no.4 would not go to N who is the next eligible SC candidate who has qualified for being admitted but has got less than passing marks at the entrance test. That seat will remain unoccupied and will go to the general category candidate D. Seat no.5 which is reserved for ST person also cannot go to J as he has got less than the passing marks. Seat no.5 will therefore, go to F. Seat no.6 reserved for OBC also will not go to H as he has got only 48% marks, less than the minimum passing marks. His seat will go to general category candidates who are in the waiting list and will be offered to G who has just got the passing marks. Thus in the absence of availability of E the six seats will go as under

: A,B,C,D,F & G. Thus all the reserved category seats will remain unfilled by reserved category candidates and will be added to general category seats. Result will be reservation under Article 15(4) will totally fail. ii) Now let us take another category of situation where minimum passing marks are fixed at 25% for all candidates. In that case even if E is not available then the first three general category seats will go to A,B,C and the 4th seat reserved for SC candidate will remain unfilled as the next available eligible SC candidate is N who has got less than 25% minimum marks. So his seat will go to the general category candidate who is in the waiting list namely, D. While seat no.4 reserved for ST candidate will go to J and seat no.6 reserved for OBC candidate will go to H. Therefore, the net result will be as under : 1 to 6 seats will go to A,B,C,D,J & H. iii) The same result would follow for general category candidates even if the minimum passing marks are fixed at 50% and for the reserved category candidates the minimum qualifying marks are reduced to 25%. Then the first three seats will go to A,B,C, and seat no.4 not occupied by E a SC candidate cannot go to N the next SC candidate who has got less than 25% marks. It will be occupied by D from the general category candidates. While seat no.5 will go to J a ST candidate who has more than 25% marks and seat no.6 will go to H who is a OBC candidate having got 48% marks. Thus the six seats will go to A,B,C,D,J & H. Thus it is clear that where the minimum passing marks are uniformly reduced for all candidates or they are reduced only for backward class candidates but to the same extent, the result regarding occupation of these seats by general category candidates and reserved candidates would remain the same if E does not occupy the seat available to him as an SC candidate. iv) If for any reason the minimum qualifying marks for reserved category candidates are still further reduced to 20% then in the absence of availability of a SC candidate E, the next SC candidate N having 21% may get it and occupy the seat reserved for a SC candidate. In such a situation the following picture will emerge : 1 to 3 will go to A,B,C; seat no.4 reserved for SC candidate will go to N and seat no.5 will go to ST candidate J and seat no.6 reserved for OBC candidate will go to H. Resultantly no seat will be left for being made available to general category candidate

D and he will get excluded. But as we have seen earlier, if concession or dilution of minimum qualifying marks at the entrance test for admission to postgraduate medical courses is kept within the permissible limit of 50% dilution and can go down only up to 25% minimum qualifying marks for reserved category candidates then N in no case would get in to displace D who is a general category candidate and who had an opportunity to get in vis-a-vis the seat reserved for SC candidate as E the eligible SC candidate is not available at a given point of time. The aforesaid illustration shows that as C (SC candidate) has got the seat in general category on his own merit his occupancy is not to be considered while granting admission to the seat reserved for SC candidate as held by a Constitution bench decision of this Court in R.K. Sabharwal & Ors. vs. State of Punjab & Ors., 1995(2) SCC 745. We may at this stage refer to decision of a three Judge bench of this court in Dr. Pradeep Jain & Ors. vs. Union of India & Ors., 1984(3) SCC 654, wherein in the context of reservation in medical education courses on the basis of territorial or institutional preference, Bhagwati, J., speaking for the court in para 22 of the Report observed as under : But as far as admissions to postgraduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. There the excellence cannot be compromised by any other considerations because that would be detrimental to the interest of the nation. It is of course true that the aforesaid observations were made not with reference to any reservations as per Article 15(4). However, while considering the extent of dilution of minimum passing marks in the entrance examination for admission of reserved category candidates to postgraduate medical courses, the permissible limit below which the concessions available to reserved category of candidates cannot be permitted to go, would require serious consideration, otherwise merit would be totally by-passed and jeopardised. It is also pertinent to note that in the aforesaid decision the permissible limit of reservation by way of institutional preference was held to be only up to 50% of the total available seats. While dealing with the scope and ambit of reservation under Article 15(4) in postgraduate courses, which of course is not in challenge before us, we have also to keep in view, the observations of the nine Judge bench of this Court in Indra Sawhneys case (supra). In para 146 of the Report at page 401 Pandian, J., concurring with the main majority decision rendered by Jeevan Reddy, J., observed that : The basic policy of reservation is to off-set the inequality and remove the manifest imbalance, the victims of which for bygone generations lag far behind and demand equality by special preferences and their strategies. Therefore, a comprehensive methodological approach encompassing jurisprudential, comparative, historical and anthropological conditions is necessary. Such considerations raise controversial issues transcending the routine legal exercise because certain social groups who are inherently unequal and who have fallen victims of societal discrimination require compensatory treatment. Needless to emphasise that equality in fact or substantive equality involves the necessity of beneficial treatment in order to attain the result which establishes an equilibrium between two sections placed unequally.

Same learned Judge at pages 402-403 of the Report considered a passage by Allan P. Sindler in his book Bakke, Defunis and Minority Admissions (The Quest for Equal Opportunity) which dealt with a running race between two persons i.e. one who has his legs shackled and another not. In such a race between unequals it was found necessary to remove the inequality between the two runners by giving compensatory edge to the shackled runner. The learned Judge also noted the submission of learned counsel for the petitioners who demonstrably explained that as unwatered seeds do not germinate, unprotected backward class citizens will whither away. In the earlier Constitution bench judgment in M.R.Balaji vs. State of Mysore (supra), Gajendragadkar, J., at page 467 of the Report, this Court made the following pertinent observations with reference to Article 15(4) : When Art.15(4) refers to the special provision for the advancement of certain classes or scheduled castes or scheduled tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Art.15(4) authorises special provision to be made.

We may also refer to the contention of learned senior counsel Shri Rajendra Sachar, placing reliance on page 474 of the Report in M.R.Balajis case (supra) to the effect that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration and that it was undoubtedly the effect of Article 335. Therefore, what is true in regard to Art.15(4) is equally true in regard to Art.16(4). These observations, strongly relied upon by Shri Sachar for importing the impact of Article 335 on the reservations under Article 15(4) cannot be treated to be of any real assistance to him. The aforesaid observations were made by the Constitution bench while considering the reasonableness of reservation of seats in educational institutions and for highlighting the point that such reservation of seats should not be more than 50% and reservation of 68% of seats was not within the permissible limit of special provision under Article 15(4). From these observations, it cannot necessarily follow that admission to such reserved seats can tantamount to appointments to any posts to which Article 335 would get directly attracted. While considering the permissible limits of dilution of minimum passing marks for reserved category candidates appearing at the entrance test for being called for counselling for admissions to postgraduate medical courses, we have to keep in view the salient fact that different universities examining students for obtaining MBBS degrees on the basis of the same syllabus may have different yardsticks and standards of assessment of papers and, therefore, students passing their MBBS examinations from different universities cannot ipso facto be treated to be equally meritorious and consequently the common entrance test for admission to postgraduate courses cannot be said to be totally uncalled for. However, because reservation of seats at postgraduate educational level is countenanced, as a logical corollary, to make effective the reservations and with a

view to seeing that the reserved category students do not get excluded from getting admitted as far as possible, provision for lesser qualifying marks for reserved category candidates at the common entrance test cannot be said to be totally illegal. However, with a view to seeing that crutches provided to such weaker sections of society do not cripple them for ever, the dilution of passing marks at the common entrance test at which such reserved category candidates appear after obtaining their MBBS degrees from different universities cannot be totally arbitrary and must have a permissible rock-bottom limit below which it cannot go and that is why it is reasonable to hold that when reservation of seats under Article 15(4) in postgraduate medical courses cannot exceed 50% as held by the Constitution bench in M.R. Balajis case (supra) then on the same line of reasoning additional facilities to be given to such reserved category candidates for being admitted to the seats reserved for them in the postgraduate medical courses also should not exceed the permissible limit of 50% dilution from the general cut-off marks provided uniformly for general category of candidates competing for admission to such limited number of seats at postgraduate level. While dealing with the question of dilution of minimum passing marks for reserved category of candidates appearing at the entrance tests for admission to postgraduate courses it has to be kept in view that general category students form a separate class as compared to reserved category candidates for whom seats are reserved under Article 15(4). Once that is kept in view, as a logical corollary, it must follow that to make such reservations effective appropriate dilution of the minimum cut-off marks for students belonging to the reserved category would become permissible subject to the rider that such dilution should not be so unreasonable as to go out of the beneficial protective umbrella of Article 15(4) as seen earlier. If that happens it would squarely get hit by Article 15(1) read with Article 14 of the Constitution of India. However, within such permissible limits such dilution for different reserved categories of candidates who may be given benefit of sliding scales of reduced passing marks as required by exigencies of situation would remain legal and valid. In this connection, observations in the Constitution bench judgment of this court in Chitra Ghosh & Anr. vs. Union of India & Ors. (supra), wherein Grover, J., spoke for the Constitution bench as to which we have made a detailed reference earlier are required to be kept in view. To recapitulate, it has been held that selection of eligible candidates for admission to medical courses can be made by classifying such candidates category-wise keeping in view the services from which they are drawn. The aforesaid decision of the Constitution bench was directly concerned with the admissions in medical colleges. It would squarely get attracted while deciding the present controversy. It is obvious that if for admission to a medical education course at gross-root level of MBBS, different rules for selecting candidates from different sources from which they are to be drawn are countenanced, then even at the stage of admission at postgraduate level, the ratio of the aforesaid decision of the Constitution bench would squarely get attracted and would permit separate treatment for students drawn from different sources. It is of course true that in the said case, the Constitution bench was concerned with the nominations made by the Central Government on seats reserved for such nominees. However, that would not

> whittle down the decision of the Constitution bench to the effect that while imparting education in theory and practice in medical courses of study, the source from which candidates are drawn can be a relevant classificatory criterion and there can be different rules in the matter of selection of candidates drawn from different sources. It is axiomatic that reserved category candidates competing for being selected to the seats reserved for them in postgraduate medical courses as per the mandate of Article 15(4) of the Constitution have to compete inter se with their own colleagues from the same categories and not necessarily have to compete with general category candidates who form entirely a different class.

Once such classification is countenanced, as a necessary concomitant, separate provision for reserved category of candidates forming a separate class for which reservation of seats in postgraduate medical courses is permitted cannot be faulted and hence the dilution of minimum qualifying marks for reserved category of candidates cannot by itself be treated to be unauthorised or illegal from any view point. Otherwise the very purpose of reserving seats for such class of candidates at postgraduate level of medical education would be denuded on its real content and the purpose of reservation would fail. The seats reserved for such category of persons would go unfilled and will swell the admission of general category of candidates for whom these seats are not at all meant to be made available, once the scheme of reservation of seats under Article 15(4) is held applicable. In the light of the aforesaid discussion, the following conclusions emerge : 1) It is permissible to the@@ JJJJJJJJJJJJJJJJJJJJ State authorities which are running and/or controlling the medical institutions in the States concerned to short-list the eligible and qualified MBBS doctors for being considered for admission to postgraduate medical courses in these institutions. For the purpose of such short-listing full play is available to the State authorities to exercise legislative or executive power as the field is not occupied till date by any legislation of the Parliament on this aspect in exercise of its legislative powers under Entry 25 of List III of the Constitution of India and this topic is also not covered by any legislation under Entry 66 of List I of the Constitution. 2) The Indian Medical Council Act and the regulations framed thereunder do not cover the question of short-listing of admission of eligible and duly qualified MBBS doctors who seek admission to different medical institutions imparting postgraduate education run or controlled by the States concerned. 3) The regulations and guidelines given by the Medical Council of India in this connection, though persuasive and not having any binding force, cannot be totally ignored by the State authorities but must be broadly kept in view while undertaking the exercise of short-listing of eligible candidates for being admitted to postgraduate medical courses. 4) While short-listing candidates having basic qualifications of MBBS for being considered for admission to limited number of vacancies in postgraduate courses available at the medical institutions in the Sates, it is permissible for the State authorities to have common entrance tests and to prescribe minimum qualifying marks for passing such tests to enable the examinees who pass such test to be called for counselling. That would be in addition to the basic qualification by way of MBBS degree. The performance of the candidate concerned during the time he or she undertook the study at MBBS level for ultimately getting the MBBS degree also would be a relevant consideration for the State authorities to be kept in view. 5) It is equally permissible for the State authorities while undertaking the aforesaid exercise of short-listing to fix 50% minimum qualifying marks at the entrance test for general category of candidates and to dilute and prescribe lesser percentage of passing marks for

reserved category of candidates as exigencies of situation may require in a given year but in no case the minimum qualifying marks as reduced for reserved category of candidates can go below 25% of passing marks for such reserved category of candidates. In other words, a play is available to the State authorities to prescribe different minimum passing marks for SC/ST and OBC eligible candidates between 50% and 25% as the prevailing situation at a given point of time may require. In such categories for SC, ST & OBC candidates different diluted passing marks can be prescribed, but this exercise has to be within the permissible limits of less than 50% & up to minimum 25% passing marks for each of such reserved categories. No eligible candidate belonging to reserved category who does not obtain minimum percent of passing marks as diluted for such category of candidates by the State authorities can be considered to be eligible for undertaking postgraduate medical courses in a given year for which he has offered his candidature and if any seat reserved for such categories of candidates remain unfilled due to non-availability of such eligible reserved category candidate to fill up such seat, then the said seat would go to general category candidates and will be available in the order of merit in the light of marks obtained by such wait-listed general category candidates having obtained requisite passing marks who otherwise could not get admitted due to non-availability of general category seats earlier. The ratio of various decisions of this court considered herein above will have to be implemented in the light of the aforesaid conclusions to which we have reached. The aforesaid practice has to be followed and should hold the field from year to year so long as the Parliament does not pass any legislation for regulating admission to postgraduate medical courses either by separate legislation or by appropriately amending Indian Medical Council Act by empowering the Medical Council of India to prescribe such regulations. The writ petitions and the civil appeal arising out of the special leave petition as well as the review petitions would stand disposed of accordingly in the aforesaid terms and the judgments rendered by the High Courts will stand modified and the impugned orders passed by the State authorities will also stand set aside accordingly. However, the present judgment will operate purely prospectively and will not affect the admissions already granted by the concerned authorities in the postgraduate medical courses prior to the date of this judgment. In other words, the State authorities will have to comply with the directions contained in this judgment and put their house in order for regulating the admissions to postgraduate medical courses starting hereinafter in the medical institutions concerned.