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

Author: Sujata V. Manohar

Bench: K.Venkataswami, V.N.Khare, Sujata V. Manohar

PETITIONER:
DR.PREETI SRIVASTAVA,DR.SADHNA DEVI,DR.ASHUTOSH AGRAWAL.

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH & ORS,STATE OF UTTAR PRADESH.

DATE OF JUDGMENT: 10/08/1999

BENCH:
A.S. Anand, Sujata V.Mahohar, K.Venkataswami, V.N.Khare

JUDGMENT:

Mrs. Sujata V. Manohar, J.

Leave granted in SLP(C) No.12231 of 1997.

The following issue formulated by this Court at the commencement of hearing, requires consideration: "The question is whether apart from providing reservation for admission to the Post Graduate Courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category."

> "This question certainly requires consideration of the Constitution Bench as it arises and is likely to arise in a number of cases in different institutions of the country and needs to be decided authoritatively keeping in view the observations made in three different two or three-Judge Bench judgments". These judgments are Ajay Kumar Singh & Ors. v. State of Bihar & Ors. ([1994] 4 SCC 401), Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. ([1997] 3 SCC
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> 90) and Post Graduate Institute of Medical Education & Research, Chandigarh & Ors. v. K.L. Narasimhan & Anr.

([1997] 6 SCC 283) Facts:

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

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

After the said decision, the State of U.P. issued another G.O. dated 2.4.1997 under which the cut-off percentage of marks for the reserved category candidates was restored at 35%. However, the State of U.P. moved an application before this Court, being I.A. No.2 of 1997 Dr. Sadhna Devi (Supra) in which the State of U.P. (inter alia) prayed that it should be given the liberty to reduce the cut-off percentage from 35% to 20% for the reserved category candidates who appear in the PGMEE for 1997. Without waiting for a decision, by an Ordinance dated 15.6.1997, the State of U.P. reduced the minimum qualifying marks for the reserved category candidates appearing in the PGMEE 1997 from 35% to 20%. This Ordinance is challenged in the present Writ Petition (C) No.300 of 1997. The Ordinance has now been replaced by the Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1997. The petitioners have now amended the said writ petition to challenge this Act.

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

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

Scheduled Castes : 21%, Scheduled Tribes : 2%, Backward Classes : 27% In the State of Madhya Pradesh also a common entrance examination is held for admission to the Post Graduate Courses in Medicine. Under the Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules, 1997, certain seats were reserved for the Scheduled Caste, Scheduled Tribe, BC and in-service candidates. The Rules, however, did not lay down any minimum qualifying marks for admission to the Post Graduate Courses either for the general category or for the reserved category of candidates. These Rules were challenged by a writ petition before the Madhya Pradesh High Court. By its judgment which is under challenge in these proceedings, the Madhya Pradesh High Court directed the State Government to stipulate minimum qualifying marks in the PGMEE for all categories of candidates, including the general category candidates, in view of the decision of this Court in Dr. Sadhna Devi's case (supra).

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

Scheduled Castes : 20% Scheduled Tribes : 15% Other Backward Classes : 40% This Government Order of the State of Madhya Pradesh is under challenge before us.

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

The Constitutional Imperative:

The constitutional protection of equality before the law under Article 14 of the Constitution is one of the basic tenets of the Constitution. It is a cardinal value which will govern our policies and actions, particularly policies for employment and education. Article 15(1) prohibits State discrimination on the ground (among others) of religion, race or caste. Article 16(1) prescribes equality of opportunity for all in matters relating to employment or appointment to any office under the State. Article 16(2) prohibits discrimination on the ground (among others) of religion, race, caste or descent. At the same time, the Constitution permits preferential treatment for

historically disadvantaged groups in the context of entrenched and clearly perceived social inequalities. That is why Article 16(4) permits reservation of appointments or posts in favour of any backward class which is not adequately represented in the services under the State. Reservation is linked with adequate representation in the services. Reservation is thus a dynamic and flexible concept. The departure from the principle of equality of opportunity has to be constantly watched. So long as the backward group is not adequately represented in the services under the State, reservations should be made. Clearly, reservations have been considered as a transitory measure that will enable the backward to enter and be adequately represented in the State services against the backdrop of prejudice and social discrimination. But finally, as the social backdrop changes ? and a change in the social backdrop is one of the constitutional imperatives, as the backward are able to secure adequate representation in the services, the reservations will not be required. Article 335 enters a further caveat. While considering the claims of Scheduled Castes and Scheduled Tribes for appointments, the maintenance of efficiency of administration shall be kept in sight.

Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, inter alia, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of non- discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. As a result of the combined operation of these Articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government. Marc Galanter, in his book, "Competing Equalities" has described the constitutional scheme of compensatory discrimination thus: "These compensatory discrimination policies entail systematic departures from norms of equality (such as merit, evenhandedness, and indifferences of ascriptive characteristics). These departures are justified in several ways: First, preferential treatment may be viewed as needed assurance of personal fairness, a guarantee against the persistence of discrimination in subtle and indirect forms. Second, such policies are justified in terms of beneficial results that they will presumably promote: integration, use of neglected talent, more equitable distribution, etc. With these two - the anti-discrimination theme and the general welfare theme - is entwined a notion of historical restitution or reparation to offset the systematic and cumulative deprivations suffered by lower castes in the past. These multiple justifications point to the complexities of pursuing such a policy and of assessing its performance." Since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That is its final constitutional justification.

Therefore, programmes and policies of compensatory discrimination under Article 15(4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public polices, therefore, in this area have to be tested on the anvil of reasonableness and ultimate public good. In the case of Article 16(4) the Constitution makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration. Article 15(4) also must be used, and policies under it framed, in a reasonable manner consistently with the ultimate public interests.

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

The Court, however, rejected the argument that the absence of any limitation on the State's power to make an adequate special provision under Article 15(4) indicates that if the problem of backward classes of citizens and Scheduled Castes and Scheduled Tribes in any given State is of such a magnitude that it requires the reservation of all seats in the higher educational institutions, it would be open to the State to take that course. This Court said: "When Article 15(4) refers to the special provisions for the advancement of certain classes or Scheduled Castes or Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character so that, in looking after the advancement of those classes the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored." This Court struck down a reservation of 68% made for backward classes for admission to Medical and Engineering Courses in the university. This Court further observed, (at page 407) "A special provision

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

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

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

The same reasoning runs through Dr. Pradeep Jain & Ors. v. Union of India & Ors. ([1984] 3 SCC 654). It dealt with reservation of seats for the residents of the State or the students of the same university for admission to the medical colleges. The Court said, (at page 676) "Now, the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere ideal indentation but it must become a living reality for the large masses of people..... It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed in order to bring about real equality." The Court after considering institutional and residential preferences for admission to the M.B.S.S. course, said that different considerations would prevail in considering such reservations for admission to the Post Graduate Courses such as M.D., M.S. and the like. It said, (at page 691) "There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation." Quoting the observation of Justice Krishna Iyer in Dr. Jagdish Saran case (supra) the Court said, "This proposition has far greater importance when we reach the higher levels of education like Post Graduate Courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise." (underlining ours) A similar strand of thought runs through Indra Sawhney & Ors. v. Union of India & Ors. ([1992] Supp.(3) SCC

217), where a Bench of nine Judges of this Court considered the nature, amplitude and scope of the constitutional provisions relating to reservations in the services of the State. Jeevan Reddy J. speaking for the majority (in paragraph 836) stated that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid if the constitutional promise of social justice is to be redeemed. We also formally believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with ? and may in some cases excel ? members on open competition. Having said this, the Court went on to add, (in paragraph 838) "We are of the opinion that there are certain services and positions where either on account of nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained herein above alone counts. In such situations it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/departments/institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical science and mathematics, in defence services and in the establishments connected therewith." (underlining ours) A similar view has been taken in Mohan Bir Singh Chawla v. Punjab University, Chandigarh & Anr. ([1997] 2 SCC 171) where this Court said that at higher levels of education it would be dangerous to depreciate merit and excellence. The higher you go in the ladder of education, the lesser should be the reservation. In Dr. Sadhna Devi's case (supra) also this Court has expressed a doubt as to whether there can be reservations at the Post Graduate level in Medicine.

We are, however, not directly concerned with the question of reservations at the Post Graduate level in Medicine. We are concerned with another special provision under Article 15(4) made at the stage of admission to the Post Graduate Medical Courses, namely, providing for lesser qualifying marks or no qualifying marks for the members of the Scheduled Castes and Scheduled Tribes for admission to the Post Graduate Medical Courses. Any special provision under Article 15(4) has to balance the importance of having, at the higher levels of education, students who are meritorious and who have secured admission on their merit, as against the social equity of giving compensatory benefit of admission to the Scheduled Caste and Scheduled Tribe candidates who are in a disadvantaged position. The same reasoning which propelled this Court to underline reasonableness of a special provision, and the national interest in giving at the highest level of education, the few seats at the top of the educational pyramid only on the basis of merit and excellence, applies equally to a special provision in the form of lower qualifying marks for the backward at the highest levels of education.

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

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

This Court has repeatedly said that at the level of superspecialisation there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level of a super speciality, something more than a mere professional competence as a doctor is required. A super-specialist acquires expert knowledge in his speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. For example,

specialised sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even ability to innovate and device new lines of treatment in critical situations, requires high levels of intelligent understanding of medial knowledge or skill and a high ability to learn from technical literature and from experience. These high abilities are also required for absorbing highly specialised knowledge which is being imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz. the best brains in the country, irrespective of the class to which they belong.

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

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

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

Entrance Examination for post-graduate courses and qualifying marks:

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

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

The submission, therefore, that there need not be any qualifying marks prescribed for the common entrance examination has to be rejected. We have, however, to consider whether different qualifying marks can be prescribed for the open merit category of candidates and the reserved category of candidates. Normally passing marks for any examination have to be uniform for all categories of candidates. We are, however, informed that at the stage of admission to the M.B.B.S. course, that is to say, the initial course in medicine, the Medical Council of India has permitted the reserved category candidates to be admitted if they have obtained the qualifying marks of 35% as against the qualifying marks of 45% for the general category candidates. It is, therefore, basically for an expert body like the Medical Council of India to determine whether in the common entrance examination viz. PGMEE, lower qualifying marks can be prescribed for the reserved category of candidates as against the general category of candidates; and if so, how much lower. There cannot, however, be a big disparity in the qualifying marks for the reserved category of candidates and the general category of candidates at the post-graduate level. This level is only one step below the apex level of medical training and education where no reservations are permissible and selections are entirely on merit. At only one step below this level the disparity in qualifying marks, if the expert body permits it, must be minimal. It must be kept at a level where it is possible for the reserved category candidates to come up to a certain level of excellence when they qualify in the speciality of their choice. It is in public interest that they have this level of excellence.

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

Standard of Education:

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

It is, therefore, wrong to say that the standard of education is not affected by admitting students with low qualifying marks, or that the standard of education is affected only by those factors which come into play after the students are admitted. Nor will passing a common final examination guarantee a good standard of knowledge. There is a great deal of difference in the knowledge and skills of those passing with a high percentage of marks and those passing with a low percentage of marks. The reserved category of students who are chosen for higher levels of university education must be in a position to benefit and improve their skills and knowledge and bring it to a level comparable with the general group, so that when they emerge with specialised knowledge and qualifications, they are able to function efficiently in public interest. Providing for 20% marks as qualifying marks for the reserved category of candidates and 45% marks for the general category of candidates, therefore, is contrary to the mandate of Article 15(4). It is for the Medical Council of India to prescribe any special qualifying marks for the admission of the reserved category candidates to the post-graduate medical courses. However, the difference in the qualifying marks should be at least the same as for admission to the under-graduate medical courses, if not less.

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

for the reserved category candidates as against the general category candidates; and the very low level of qualifying marks prescribed. Thirdly, at the post-graduate level the course of studies is relatively shorter and the course is designed to give high quality speciality education to the qualified doctors to enable them to excel in their chosen field of speciality. Therefore, unless there is a proper control at the stage of admission, on the different categories of the students who are admitted, and unless the differences are kept to a minimum, such differences will not disappear in the course of time if the course of study is a specialised course such as a post-graduate course.

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

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

The legislative competence of the Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List-II gave to the States an exclusive power to legislate on "Education including universities subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List-III." Entry 11 of List-II was deleted and Entry 25 of List-III was amended with effect from 3.1.1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"Entry 25, List III: Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I: vocational and technical training of labour."

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

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

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) The calibre of the teaching staff; (2) A proper syllabus designed to achieve a high level of education in the given span of time; (3) The student-teacher ratio; (4) The ratio between the students and the hospital beds available to each student; (5) The calibre of the students admitted to the institution; (6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges; (7) Adequate accommodation for the college and the attached hospital; and (8) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit

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

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

The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66, List I. At times, in some of the judgments, the words "eligibility" and "qualification" have been used interchangeably, and in some cases a distinction has been made between the two words ? "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central Statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central Statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

In Chitra Ghosh & Anr. v. Union of India & Ors. ([1970] 1 SCR 413), the Constitution Bench of this Court considered, inter alia, reservation of nine seats for the nominees of the Government of India in a Government Medical College under Article 14 of the Constitution. This Court upheld the reservation as a reasonable classification under Article 14 on the ground that the candidates for these seats had to be drawn from different sources and it would be difficult to have uniformity in the matter of selection from amongst them. The background and the course of studies undertaken by these candidates would be different and divergent and, therefore, the Central Government was the appropriate authority which could make a proper selection out of these categories. The questions before us, did not arise in that case.

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

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

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

On the facts before us, the PGMEE is not just a screening test. Candidates who have qualified from different universities and in courses which are not necessarily identical, have to be assessed on the

basis of their relative merit for the purpose of admission to a post-graduate course. It is for proper assessment of relative merit of candidates who have taken different examinations from different universities in the State that a uniform entrance test is prescribed. Such a test necessarily partakes of the character of an eligibility test as also a screening test. In such a situation, minimum qualifying marks are necessary. The question of minimum qualifying marks is not addressed at all in Levu Narendranath (supra) since it did not arise in that case.

In Dr. Ambesh Kumar v. Principal, L.L.R.M. Medical College, Meerut and Ors. ([1986] Supp. SCC 543), a State order prescribed 55% as minimum marks for admission to post-graduate medical courses. The Court considered the question whether the State can impose qualifications in addition to those laid down by the Medical Council of India and the Regulations framed by the Central Government. The Court said that any additional or further qualifications which the State may lay down would not be contrary to Entry 66 of List-I since additional qualifications are not in conflict with the Central Regulations but are designed to further the objective of the Central Regulation which is to promote proper standards. The Court said, (at page 552) "The State Government by laying down the eligibility qualification, namely, the obtaining of certain minimum marks in the M.B.B.S. examination by the candidates has not in any way encroached upon the Regulations made under the Indian Medical Council Act nor does it infringe the central power provided in the Entry 66 of List-I of the Seventh Schedule to the Constitution. The order merely provides an additional eligibility qualification." None of these judgments lays down that any reduction in the eligibility criteria would not impinge on the standards covered by Entry 66 of List-I. All these judgments dealt with additional qualifications ? qualifications in addition to what was prescribed by the Central Regulations or Statutes.

There are, however, two cases where there are observations to the contrary. One is the case of the State of Madhya Pradesh & Anr. v. Kumari Nivedita Jain & Ors. ([1981] 4 SCC 296), a judgment of a Bench of three judges. In this case the Court dealt with admission to the M.B.B.S. course in the medical colleges of the State of Madhya Pradesh. The Rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks were prescribed as 40%. Later on, the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court observed, (paragraph 17) "That it was not in dispute and it could not be disputed that the order in question was in conflict with the provisions contained in Regulation 2 of the Regulations framed by the Indian Medical Council." But it held that Entry 66 of List-I would not apply to the selection of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation 2 of the Regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the Regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria

for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Although this judgment is referred to in the Constitution Bench judgment of Indra Sawhney & Ors. v. Union of India & Ors. (supra) the question of standards being lowered at the stage of post-graduate medical admissions was not before the court for consideration. The court merely said that since Article 16 was not applicable to the facts in Kumari Nivedita Jain's case (supra), Article 335 was not considered there. Fort post- graduate medical education, where the "students" are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in Nivedita Jain is approved in all its aspects by Indra Sawhney v. Union of India.

The other case where a contrary view has been taken is Ajay Kumar Singh & Ors. v. State of Bihar & Ors. ([1994] 4 SCC 401) decided by a Bench of three Judges. It also held, following Kumari Nivedita Jain & Ors.(supra) (at page

417) that "Entry 66 in List-I does not take in the selection of candidates or regulation of admission to institutes of higher education. Because standards come into the picture after admissions are made." For reasons stated above we disagree with these findings.

In this connection, our attention is also drawn to the emphasis placed in some of the judgments on the fact that since all the candidates finally appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra) this Court, relying on Kumari Nivedita Jain (supra), said that everybody has to take the same post-graduate examination to qualify for a post-graduate degree. Therefore, the guarantee of quality lies in everybody passing the same final examination. The quality is guaranteed at the exit stage. Therefore, at the admission stage, even if students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in Post Graduate Institute of Medical Education & Research, Chandigarh & Ors. v. K.L. Narasimhan & Anr. (supra). This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If excellence is to be promoted at post- graduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs - calibre of students, calibre of teachers, teaching facilities, hospital facilities, standard of examinations etc. that

will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in Ajay Kumar Singh & Ors. v. Stage of Bihar & Ors. (supra) and Post Graduate Institute of Medical Education & Research, Chandigarh & Ors. v. K.L. Narasimhan & Anr. (supra).

The Indian Medical Council Act, 1956 and standards:

> Has the Union Government, by Statute or Regulations laid down the standards at the post-graduate level in medicine in the exercise of its legislative powers under Entry 66, List I? the appellants/petitioners rely upon the Indian Medical Council Act, 1956 and the Regulations framed under it. The respondents contend that, in fact, no standards have been laid down by the Medical Council of India. Also the standards laid down are only directory and not mandatory.
>
> Now, one of the objects and reasons contained in the Statement of Objects and Reasons accompanying the Indian Medical Council Act of 1956 is:".....(d) to provide for the formation of a Committee of Post-Graduate Medical Education for the purpose of assisting the Medical Council of India in prescribing standards of post-graduate medical education for the guidance of universities and to advice universities in the matter of securing uniform standards of post-graduate medical education throughout India." Section 20 of the Indian Medical Council Act, 1956 deals with post-graduate medical education. The relevant provisions under Section 20 are as follows:-
>
> "20. Postgraduate medical education committee for assisting council in matters relating to postgraduate medical education:-
>
> (1) The Council may prescribe standards of postgraduate medical education for the guidance of universities, and advise universities in the matter of securing uniform standards for postgraduate medical education throughout India, and for this purpose the Central government may constitute from among the members of the council a postgraduate medical education committee (hereinafter referred to as the postgraduate medical education committee).
>
> (2).....
>
> (3).....
>
> (4).....
>
> (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."

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

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

> "The student-teacher ratio should be such that the number of post-graduate teachers to the number of post-graduate students admitted per year, be maintained at one to one.
>
> For the proper training of the post- graduate students there should be a limit to the number of students admitted per year. For this purpose every unit should consist of at least three full time post-graduate teachers and can admit not more than three students for post- graduate training per year. If the number of post-graduate teachers in the unit is more than three then the number of students can be increased proportionately. For this purpose, one student should associate with one post-graduate teacher".

Condition 5 says:

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

Condition 6 is as follows:-

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

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

> "Clause (1): There would be two types of post- graduate students:
>
> (a) Those holding posts in the same Department like Resident, Registrar, Demonstrator etc. Adequate number of paid posts should be created for this purpose.
>
> (b) Those receiving stipends. The stipends should normally be Rupees 300/- per month payable for the duration of the course."

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

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

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

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

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

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

Mr. Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of post-graduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed Regulations which govern post-graduate medical education. These Regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List-III, make rules and regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for post- graduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List-I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List-III is

subject to Entry 66 of List-I. Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List-III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254.

In Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra), this Court examined the powers of the Indian Medical Council under Section 20 of the Indian Medical Council Act, 1956 and held that the power of the Council to prescribe standards of post-graduate medical education under Section 20 are only for the guidance of the universities. Since Section 20 also refers to the power of the Council to advice universities in the matter of securing uniform standards for post-graduate medical education throughout India, the Court said that the entire power under Section 20 was purely advisory. Therefore, the power of the Indian Medical Council to prescribe the minimum standards of medical education at the post- graduate level was only advisory in nature and not of a binding character (page

415).

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

education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. We, therefore, disagree with and overrule the finding given in Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (supra), to the effect that the standards of post-graduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed.

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

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

The Regulations governing post-graduate medical education already referred to earlier, provide for admission on the basis of merit. The Regulations, however, have not clearly spelt out whether there can or cannot be, any reservations for Scheduled Castes, Scheduled Tribes and/or backward class candidates at the stage of post-graduate medical admissions. Whether such a reservation would impinge on the standards or not would depend upon the manner in which such reservation is made, and whether the minimum qualifying marks for the reserved categories are properly fixed or not. It is for the Medical Council of India to lay down proper norms in this area and to prescribe whether the minimum qualifying marks for the admission of students in the reserved category can be less than the minimum qualifying marks for the general category students at the post-graduate level; and if so, to what extent. Even if we accept the contention of the respondents that for the reserved category candidates also, their inter se merit is the criterion for selection, although for the reserved category of candidates lower minimum qualifying marks are prescribed, the merit which is envisaged under the Indian Medical Council Act or its Regulations is comparative merit for all categories of candidates. For admission to a post-graduate course in medicine, the merit criterion cannot be so diluted by the State as to affect the standards of post-graduate medical education as prescribed under the Regulations framed by the Indian Medical Council. It is for the Indian Medical

Council to consider whether lower minimum qualifying marks can be prescribed at the post-graduate level for the reserved category candidates. We have already opined that the minimum qualifying marks of 20% as compared to 45% for the general category candidates appear to be too low. This would make it difficult for the reserved category candidates to bring their performance on a par with general category candidates in the course of post-graduate studies and before they qualify in the post-graduate examination. It is also necessary in public interest to ensure that the candidates at the post- graduate level have not just passed the examination, but they have profited from their studies in a manner which makes them capable of making their own contribution, that they are capable of diagnosing difficult medical conditions with a certain degree of expertise, and are capable of rendering to the ill, specialised services of a certain acceptable standard expected of doctors with specialised training.

The States of U.P. and Madhya Pradesh have contended that if the minimum qualifying marks are raised in the case of the reserved category candidates, they will not be able to fill all the seats which are reserved for them. The purpose, however, of higher medical education is not to fill the seats which are available by lowering standards; nor is the purpose of reservation at the stage of post-graduate medical education merely to fill the seats with the reserved category candidates. The purpose of reservation, if permissible at this level, is to ensure that the reserved category candidates having the requisite training and calibre to benefit from post-graduate medical education and rise to the standards which are expected of persons possessing post- graduate medical qualification, are not denied this opportunity by competing with general category candidates. The general category candidates do not have any social disabilities which prevent them from giving of their best. The special opportunity which is provided by reservation cannot, however, be made available to those who are substantially below the levels prescribed for the general category candidates. It will not be possible for such candidates to fully benefit from the very limited and specialised post-graduate training opportunities which are designed to produce high calibre well trained professionals for the benefit of the public. Article 15(4) and the spirit of reason which permeates it, do not permit lowering of minimum qualifying marks at the post-graduate level to 20% for the reserved category as against 45% for the general category candidates. It will be for the Medical Council of India to decide whether such lowering is permissible and if so to what extent. But in the meanwhile at least the norms which are prescribed for admission to the M.B.B.S. courses ought not to be lowered at the post-graduate level. The lowering of minimum qualifying marks for admission to the M.B.B.S. courses has been permitted by the Indian Medical Council upto 35% for the reserved category as against 45% for the general category. The marks cannot be lowered further for admission to the post-graduate medical courses, especially when at the super speciality level it is the unanimous view of all the judgments of this Court that there should be no reservations. This would also imply that there can be no lowering of minimum qualifying marks for any category of candidates at the level of admission to the super-specialities courses.

In Mohan Bir Singh Chawla v. Punjab University, Chandigarh & Anr. (supra) also this Court has taken the view that the higher you go the less should be the extent of reservation or weightage and it would be dangerous to depreciate merit and excellence at the highest levels. In S. Vinod Kumar & Anr. v. Union of India & Ors. ([1996] 6 SCC 580) this Court while considering Articles 16(4) and 335 held that for the purpose of promotion lower qualifying marks for the reserved category candidates

were not permissible. Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. (supra) has rightly prescribed minimum qualifying marks for the common entrance examination for post-graduate medical courses. The Court left open the question whether there could be any reservation at the post-graduation level and to what extent lesser qualifying marks could be prescribed, assuming the reservations can be made. As we have said earlier, these are matters essentially of laying down appropriate standards and hence to be decided by the Medical Council of India. However, the disparity in the minimum qualifying marks cannot be substantial.

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

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

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

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

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

4. At the level of admission to the super speciality courses, no special provisions are permissible, they being contrary to national interest. Merit alone can be the basis of selection.

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

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

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

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

In the group of civil appeals decided by Post Graduate Institute of Medical Education & Research, Chandigarh and Ors. v. K.L. Narasimhan & Anr. (supra), the appeal of the present petitioners had challenged an Admission Notice No.15/90 issued in the Indian Express of 25.11.1990, under which six seats for the super speciality courses of D.M./M.C.H. were kept reserved for the Scheduled Caste and the Scheduled Tribe candidates. The petitioners rightly contend that at the super speciality level there cannot be any relaxation in favour of any category of candidates. Admissions should be entirely on the basis of open merit.

The ambit of special provisions under Article 15(4) has already been considered by us. While the object of Article 15(4) is to advance the equality principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and be able to compete equally with others more fortunate, one cannot also ignore the wider interests of society while devising such special provisions. Undoubtedly, protective discrimination in favour of the backward, including

scheduled castes and scheduled tribes is as much in the interest of society as the protected groups. At the same time, there may be other national interests, such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to society, which have also to be borne in mind. Special provisions must strike a reasonable balance between these diverse national interests.

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

Indra Sawhney & Ors. v. Union of India & Ors.

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

The Post-graduate Institute of Medical Education and Research, Chandigarh, has been set up as an institution of national importance. The Post-graduate Institute of Medical Education and Research, Chandigarh Act, 1966, under Section 2 provides that the object of the said institution is to make the

institution one of national importance. Section 12 sets out the objects of the Institute. These are as follows:-

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

and

(c) to attain self-sufficiency in post- graduate medical education to meet the country's needs for specialists and medical teachers."

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

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

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

of accordingly.

All the interlocutory applications also stand disposed of.