# Tamil Nadu Medical Officers ... vs Union Of India on 31 August, 2020

## Author: M.R. Shah

## Bench: Aniruddha Bose, M.R. Shah, Vineet Saran, Indira Banerjee, Arun Mishra

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO. 196 OF 2018

Tamil Nadu Medical Officers Association & Ors. ..Petitioner(s)

Versus

Union of India & Others ..Respondent(s)

WITH

WRIT PETITION (CIVIL) No. 252 OF 2018
WRIT PETITION (CIVIL) No. 295 OF 2018
WRIT PETITION (CIVIL) No. 293 OF 2018
CIVIL APPEAL NO. 3025 OF 2020
(@ SLP (CIVIL) No. 26665 of 2019)
CIVIL APPEAL NOS. 3026-29 OF 2020
(@ SLP (CIVIL) Nos. 25487-25490 of 2019)
CIVIL APPEAL NOS. 3030-31 OF 2020
(@ SLP (CIVIL) Nos. 26448-26449 of 2019)
CIVIL APPEAL NOS. 3032-35 OF 2020
(@ SLP (CIVIL) Nos. 26507-26510 of 2019)
CIVIL APPEAL NO. 3036 OF 2020
(@ SLP (CIVIL) No. 26648 of 2019)
CIVIL APPEAL NO. 3037 OF 2020
(@ SLP (CIVIL) No.10289/2020 @
Diary No. 42890 of 2019)

JUDGMENT

PER M.R. SHAH, J.

Reason: Leave & permission granted in the respective special leave petitions.

2. After considering the judgment rendered by a three Judge Bench of this Court in the case of State of U.P. v. Dinesh Singh Chauhan1, another three Judge Bench, pursuant to order dated 13.4.2018 in the case of T.N. Medical Officers Association v. Union of India2, has referred the present batch of cases to a larger Bench.

2.1 In the case of Dinesh Singh Chauhan (supra), a three Judge Bench construed the provisions of Regulations 9(IV) and 9(VII) of the MCI Postgraduate Medical Education Regulations, 2000, as amended on 15.2.2012 (hereinafter referred to as the "MCI Regulations 2000"). In the case of Dinesh Singh Chauhan (supra), while considering the aforesaid Regulations, this Court held that the aforesaid Regulations do not provide for any reservation for in□service government doctors in PG degree courses, and therefore, the State Government order providing the reservation for PG degree courses for in□service government doctors is held to be illegal.

2.2 The present batch of cases came up for hearing before another Bench of three Judges. The Bench was of the opinion 1 (2016) 9 SCC 749 2 (2018) 17 SCC 478 that the present batch of cases require consideration by a larger Bench and that is how the present batch of cases are referred to a larger Bench. On the basis of the submissions made, the following reasons were mentioned:

> "(i) The decision in Dinesh Singh Chauhan1 has not considered the entries in the legislative lists of the Seventh Schedule, more particularly Entry 66 of the Union List and Entry 25 of the Concurrent List;
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> (ii) The main contention of the petitioners is that while coordination and determination of standards in institutions for higher education falls within the exclusive domain of the Union (Entry 66 List I), medical education is a subject in the Concurrent List (Entry 25 List III). Though, Entry 25 of List III is subject to Entry 66 of List I, the State is not denuded of its power to legislate on the manner and method of making admissions to postgraduate medical courses;
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> (iii) The contentions which have been raised in the present batch of petitions were not addressed before this Court in Dinesh Singh Chauhan1;
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> (iv) The judgment in Dinesh Singh Chauhan1 does not consider three decisions of the Constitution Bench in R. Chitralekha v. State of Mysore (1964) 6 SCR 368 :AIR 1964 SC 1823, Chitra Ghosh v. Union of India (1969) 2 SCC 228 and Modern Dental College & Research Centre v. State of M.P. (2016) 8 SCC 353; and
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> (v) There are decisions rendered by Benches of an equal strength as in Dinesh Singh Chauhan1." 2.3 Now so far as Civil Appeals arising out of the Special Leave Petitions(C) Nos.26448□26449 of 2019 are concerned, they arise out of the impugned judgment and order dated 01/10/2019 in MAT Nos. 1245 and 1267 of 2019 passed by the High Court at Calcutta, by which the Division Bench of the High Court has dismissed the batch of appeals confirming the order passed by the learned Single Judge holding that the State has no authority to reserve 40% seats for the in□service

doctors and 60% seats for open category doctors.

2.4 In Writ Petition (Civil) No. 196 of 2018 filed under Article 32 of the Constitution of India, the petitioners – Tamil Nadu Medical officers' Association and others, for and on behalf of the in-service doctors in the State of Tamil Nadu have prayed for the following reliefs:

> a) declare by issuance of a writ of mandamus or any other suitable writ/order/direction that Regulation 9 of the Post Graduate Medical Education Regulations, 2000 (more particularly, Regulation 9(IV) and 9(VII), does not take away the power of the States under Entry 25, List III to provide for a separate source of entry for in-service candidates seeking admission to Degree courses;
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> b) Alternatively, if Regulation 9 of the Post Graduate Medical Education Regulations, 2000 is understood to now allow for States to provide for a separate source of entry for in-service candidates seeking admission to Degree courses, declare, by issuance of a writ of mandamus or any other suitable writ/order/direction, Regulation 9 (more particularly, Regulation 9(IV) and 9(VII) as being arbitrary, discriminatory and violative of Article 14 and 19(1)(g) of the Constitution and also ultra vires the provisions of the Indian Medical Council Act, 1956.

Somewhat similar prayers are also sought for on behalf of the in-service doctors in the State of Kerala (Writ Petition (Civil) No. 252/2018); in-service doctors working in the State of Maharashtra (Writ Petition (Civil) No. 295/2018); and for and on behalf of the in-service doctors working in the State of Haryana (Writ Petition (Civil) No. 293 of 2018). 2.5 IA Nos.61442, 61443 and 61445 of 2020 have been preferred by the GMS Class II Medical Officers Association being aggrieved by the Public Notice dated 28.02.2019 as amended by the Corrigendum dated 10.03.2019, wherein, Medical Council of India has permitted the conversion of Diploma seats into Degree seats in the State of Gujarat. The said application is filed for and on behalf of in-service Medical Officers working in the State of Gujarat.

2.6 IA No.24759 of 2020 in Writ Petition (Civil) No. 258 of 2018 has been preferred by Kerala Government Insurance Medical Association and others supporting the reservation for in-service Medical Officers/Candidates in the Post-graduate Degree Courses.

3. Learned counsel appearing on behalf of the respective petitioners/parties, more particularly, Tamil Nadu Medical Association, State of Tamil Nadu, State of West Bengal and others in support of the reservation for in-service Medical Officers/ Candidates/Doctors in Post-graduate Degree Courses have made the following submissions:

> 3.1. The moot question is whether the State Government is competent to provide for a reservation for candidates who are already serving the Government. Such reservation is made for Post-graduate seats in the different medical colleges in the State.

The competence of the State Government is traceable to Article 245 r/w Entry 25 List III of the 7 th schedule to the Constitution. It cannot be said that there has to be a legislature made law to provide for such reservation. The Government can in exercise of its power as an Executive under Article 154 provide for such reservation and it has been so provided as well.

Once competence is found in favour of Government then only question is one of a possible conflict with a Central Law and the resolution of any question of repugnancy. It is submitted that said question really does not arise in the present case; 3.2. The competence of the State Government to bring about a law dealing with admissions of in□service candidates is upheld by the Constitutional Bench of this Court in the case of Modern Dental College and Research Centre and Others vs. State of Madhya Pradesh and Others3. The argument raised on behalf of the Centre that Entry 25 of List III itself would be subject to Entry 66 of List I has also been considered by this Court; 3.3. There is no question of any conflict of Entry 25 of List III and Entry 66 of List I. The subject of admission to courses is referable to Entry 25 of list III and not Entry 66 of List I. It is submitted that conflict, if any, can only be between a State Law 3 (2016) 7 SCC 353 and a Central Law both sourced to Entry 25 of List III. That no such conflict is present in the instant case; 3.4. There is no plenary law by the Centre provided for any reservation for in□service candidates. In other words, there is no Central Law governing the said aspect, therefore, it would be competent for the State Government to provide for a reservation for in□service candidates. In the absence of a Central Law, it is obviously open to the State Government to provide for a legal instrument, whether by way of a statute or by an executing order providing a reservation for in□service candidates; 3.5. The MCI Regulations, 2000, which are made under the Medical Council Act provide for a reservation in Post□graduate Diploma Courses for in□service candidates serving with the respective State Governments. There is no bar to such reservation in Post□graduate Degree Courses. The bar, if any, has to be express and cannot be implied. Clause 9(IV) of the MCI Regulations, 2000 can be construed as provided for community reservations and also a reservation for in□service candidates. Even otherwise, it does not enable explicitly the State Government to provide for a weightage in marks, amongst in□service candidates. Thus, the legislative instrument which could be sourced to the MCI, which in turn is a body established by the Central Government under the Medical Council Act itself recognizes an empowerment of the State Government, inter alia, to lay down the modalities to regulate or provide for a reservation for in□service candidates in Post□graduate seats. If that be so, then the actual prescription of a reservation for in□service candidates, in relation to Post□graduate Degree seats obviously has not come into conflict with the MCI Regulations, 2000 so as to attract Article 254 of the Constitution; 3.6. The MCI Regulations, 2000, not expressly providing for a reservation in Post□ graduate Degree seats, specifically empowering the State Government to do so, but only touches upon the reservation in Diploma seats, it does not follow that the State Government is incompetent to provide for reservation for in□service candidates in Degree seats as well. The competence of the State Government to provide for reservation for in□service candidates is not sourced to the MCI Regulations, 2000, but it is sourced to Entry 25 of List III. Thus, the absence of any mention of reservation for candidates in Post□graduate Degree seats in the Regulations, 2000 cannot support a submission by the MCI that consequently the State Government would be incompetent to provide for any reservation for in□service candidates in Degree seats;

3.7. The MCI Regulations, 2000 would become relevant only when it provides for reservation in Post-graduate Degree seats and the State Government brings about a policy of reservation in Post-graduate Decree seats at variance from the protocol laid down in the MCI Regulations. The MCI Regulations, 2000 are silent in regard to the reservation in Post-graduate Degree seats and therefore, possible repugnancy under Article 254 of the Constitution of India really cannot arise between an instrument by the State Government and an instrument by the Central Government which does not cover the subject or touch upon the subject provided for by the State Government;
3.8. Assuming without admitting that though MCI Regulations do provide for a conversion of Diploma seats into Degree seats, by the State Government with the approval of the MCI, the MCI Regulations, 2000 do not specifically mention the consequences of such conversion. When law provides for a particular event to take place then all reasonable consequences that emanates therefrom should also be inferred, should be applied to the present situation as well;

3.9. Even MCI Regulations, 2000 themselves provide for reservation for in-service candidates in Diploma and also provides for service condition to be fulfilled thereunder. The conversion of Diploma seats into Degree seats (now after 2018) would obviously result in the same permissible reservation for in-service candidates to be provided for Degree seats as well. All that would be required is the imposition of the same conditions as are provided in the Diploma seats;

3.10.The decision of this Court in the case of Dinesh Singh Chauhan (Supra) also requires re-look in view of the subsequent development viz. Notification dated 12.07.2018 by which, MCI has permitted the Medical College/Medical Institution to "seek equal number of Post-graduate Degree seats by surrendering recognized diploma seats in corresponding course". It is submitted that pursuant to the said Notification the medical colleges/institutions are/were given the option of converting the available post graduate diploma seats into Post-graduate Degree seats in a 1:1 ratio. It is submitted that pursuant to the said notification most of the medical colleges/medical institutions in the respective States have surrendered the Post-graduate Diploma seats and have converted the same to Post-graduate Degree seats. It is submitted that resultant effect is that now there shall not be any Post-graduate Diploma seats available and therefore, in-service candidates are left in a situation where even the limited benefit conferred on them in form of 50% reservations in Post-graduate Diploma Course can no longer be availed. As a result, in-service candidates have been left in a complete lurch since they would neither be able to qualify for Post-graduate Degree course in adequate numbers nor be in a position to avail the Post-graduate Diploma seats previously available in the Government Colleges. In view of the above development, the reasoning in the case of Dinesh Singh Chauhan (supra) as to the difference in the Regulations between Post-graduate Diploma and Degree courses no longer survives;

3.11. Right of the State Government to set apart a definite percentage of educational seats at Post-graduate level consisting of Degree and Diploma courses exclusively for a class of persons as a separate source of entry has been repeatedly upheld by this Court with the condition that source is properly classified – whether on territorial, geographical or other reasonable basis and has a rational nexus with the object of imparting a particular education and effective selection for the purpose. Reliance is placed upon the decision of this Court in the cases of (1) Kumari Chitra Ghosh and Anr. vs. Union of India & Ors. 4; (2) D.N. Chanchala vs. The State of Mysore and Ors.5; (3) K

Duraisamy & Anr vs. State of Tamil Nadu and Ors 6; (4) AIIMS Students Union vs. AIIMS7; and (5) State of Madhya Pradesh & Ors vs. Gopal D Tirthani and Ors8;

3.12. It has been consistently held by this Court that there is a legitimate and rational basis in providing a separate channel/source of entry for in□service candidates in order to encourage them to offer their services and expertise to the State. It is submitted that this Court has acknowledged that this has a sufficient nexus with the larger goal of equalization of educational opportunities and to sufficiently prefer the doctors serving in the various hospitals run and maintained out of public funds, in the 4 (1969) 2 SCC 228 5 (1971) 2 SCC 293 6 (2001) 2 SCC 538 7 (2002) 1 SCC 428 8 (2003) 7 SCC 83 absence of which there would be serious dearth of qualified Post□graduate doctors to meet the requirements of the common public; 3.13. Unlike reservation envisaged for Scheduled Caste/ Schedule Tribes, this is a distinct and vitally important public purpose in itself absolutely necessitated in the best of public interest. In the case of Dinesh Singh Chauhan (supra) this Court has held that no fault can be found with the method of providing a separate channel of entry for in□ service candidates for the reason that the facilities for keeping up with the latest medical literature might not be available to such in□service candidates and the nature of the work makes it difficult for them to acquire knowledge about very recent medical research, which the candidates who has come after freshly passing their graduation examination might have;

3.14.In the case of Modern Dental College and Research Centre (supra), the Constitution Bench of this Court has affirmed that even though Entry 25 List III is subject to Entry 66 List I, the power of States to enact laws concerning admissions would not stand extinguished so long as such laws did not have the effect of wiping out the law enacted by the Union under Entry 66 List I; 3.15.When the States create a separate source of entry for in□service candidates, the standards of medical education are not impinged inasmuch as;

(a). only eligible in□service candidates can qualify i.e. those have obtained minimum eligibility marks;

(b). amongst eligible in□service candidates admission is made based on inter□se□merit;

(c). The preferential weightage would merely alter the order in which in –service candidates would rant in the merit list prepared for in□service candidates. Thus, it would not be a case of 'double reservation'; 3.16.As held by this Court in the case of Yatinkumar Jasubhai Patel & Ors vs. State of Gujarat and Ors 9, which was in the context of "institutional preference" for Post□graduate Medical Admission, only obligation by virtue of introduction of NEET is that the State cannot hold any separate test for admissions to Post□graduate courses. As observed, even while giving the admission in the State quota/institutional reservation quota, the merit determined on the basis of NEET will still have to be considered. It is submitted that therefore, provision of a separate source of entry for in□service candidates shall not dilute the standards of higher education in any manner since the 9 (2019) 10 SCC 1 candidates in question would still have to obtain the minimum merit prescribed under NEET;

3.17. The reservation referred in the opening part of Regulation 9(IV) is only with respect to reservation as per the constitutional scheme i.e. SC, ST and OBCs and not for in-service candidates or Medical Officers in–service. This is also acknowledged by this Court in the case of Dinesh Singh Chauhan (supra) in para 25.4. It is submitted that therefore, there is no merit in the statement of defence by the respondent that in-service candidates for Post-graduate Degree Course are already governed by the reservation provided for in Regulation 9(IV);

3.18.It is submitted that so far as State of Tamil Nadu is concerned, the Hon'ble Chief Minister of Tamil Nadu in his letter dated 25.4.2017 to the Hon'ble Prime Minister, has highlighted that providing only 30% weightage to in-service candidates seeking admission to Post-graduate Degree Course is not enough since if this procedure is followed, out of the 557 Post-graduate government seats available under the State quota in Tamil Nadu, only 20 seats would go to in-service quota candidates. It is submitted that vide letter dated 6.2.2019, the State of Tamil Nadu wrote to the Ministry of Health and Family Welfare and highlighted the contribution of the policy to provide 50% reservation for in-service candidates in Post-graduate degree courses in attracting meritorious Doctors to Government service and also enabling the State Government to provide uninterrupted health care in rural, difficult and remote areas of the State. It is submitted that it was further highlighted that this reservation was critical for the maintenance of quality health care in the government medical facilities;

3.19.Learned counsel appearing on behalf of the State of Tamil Nadu has highlighted the benefits to be achieved by providing 50% reservation for in-service candidates in Post-graduate Degree/ Diploma Courses. It is submitted that continuance of given incentive marks and reserving 50% seats for in-service candidates who performed duty in remote, rural area, hilly terrain etc. in Post-graduate courses will sustain the achievement made by the State Government in the health sector and provide valuable medical care to the poor and vulnerable society. It is submitted that therefore, it is in the larger public interest of the State that there is a provision for 50% reservation in Post-graduate Degree/Diploma Courses/seats for in-service candidates;

3.20. So far as the State of West Bengal is concerned, learned counsel appearing on behalf of the State of West Bengal as well as Government Doctors serving in the Government Hospitals in the State of West Bengal in support of the reservation of 40% of the state quota Post-graduate Medical seats for in-service Doctors have made in addition to the following submissions:

> 3.20.1. That the State of West Bengal has enacted the West Bengal Health Services Act, 1990 for controlling the services of the in-service doctors. Under Section 21 of the said Act, the State has the Rule making power and in exercise of that power the State has enacted the West Bengal Health Service and the West Bengal Medical Education Service and the West Bengal Health and Public Administrative Service (Placement on Trainee Reserve) Rules, 2015. As per the note of Rule 3 of the said Rules, the State is empowered to make reservation in the seats of the Medical Courses of the State Universities for its officers under West Bengal Health Service and the West Bengal Medical Education Service and the West Bengal Health and Public Administrative Service. It is submitted that such note was also there in the

Rules of 2008, which came to be repealed in view of enactment of Rules 2015. That the Government vide order dated 18.4.2013 provides for the reservation of 40% of the State quota Post-graduate Medical seats for the in-service doctors in exercise of such power;

3.20.2. That the action of the State to provide in-service quota is in the discharge of its positive constitutional obligations to promote and provide better health care facilities for its citizens by upgrading the qualifications of the existing in-service doctors so that the citizens may get more specialized health care facility.

Such action is in discharge of its constitutional obligations as provided in Article 47 of the Constitution of India which is the corresponding fundamental right of the citizens protected under Article 21 of the Constitution of India; 3.20.3. The State can fix a separate source of admission as the in-service doctors are distinct class. The classification has sufficient nexus with the laudable object of meeting the requirement of qualified Post-graduate doctors for the public health service. Reliance is placed upon decision of this Court in the case of Sudhir N vs. State of Kerala and Ors.10; 3.20.4. By way of providing separate source of entry to the in-service doctors, the State has not impinged upon the minimum standards prescribed by the Medical Council of India as in-service candidates are selected on the basis of their merit assessed on the basis of their marks obtained in the NEET examination;

3.20.5. The action of providing separate quota for the in-service doctors is not violative of the Regulation 9(IV) of the MCI Regulations, 2000 as the same categorically states in an unambiguous manner, inter alia, that the reservation of seats shall be as per applicable laws prevailing in the State. By giving restrictive meaning to the term 'reservation' as only constitutional reservation, it would be putting words to the legislation which is otherwise unambiguous and includes all kinds of reservation including that of in-service;

3.20.6. In-service Doctors come with vast practical experience of serving several years in the Government Health Services and 10 (2015) 6 SCC 685 (paras 22 to 24) treating countless patients. Whereas the fresh MBBS graduates, even though may score higher because of their recent connection with the textbooks, do not have any such experience. Their marks are only reflective of their theoretical knowledge and ability to memorize and answer examination questions. It is submitted that thus, in-service Doctors having vast experience and fresh graduates having no such experience, form two different classes and cannot be equated. It is submitted that forcing in-service Doctors to compete with the fresh graduates in their theoretical knowledge will be extremely, unfair, illogical and irrational;

3.21.In addition, learned counsel appearing on behalf of the private appellants in the Civil Appeals arising out of impugned judgment and order passed by the High Court of Calcutta and in-service candidates have further submitted that the reservation notification was issued on 18.4.2013 and the writ petition has been filed after first counselling was over for 2019 admission. All admissions were completed in May 2019 and 285 doctors out of the State quota of 699 have almost completed the first semester. It is submitted that therefore, alternatively it is prayed to observe that the impugned

judgment and order passed by the High Court may not affect the admission already granted and may not affect those in-service candidates who are already admitted prior to filing of the petition / impugned judgment and order passed by the High Court;

4. The applicant of IA No.61442 of 2020 – GMS Class II Medical Officer's Association and Association of in-service Government Medical Officers in the State of Gujarat are as such aggrieved by the Public Notice dated 28.02.2019, as amended by a Corrigendum dated 10.03.2019, wherein Medical Council of India has permitted the conversion of Diploma seats into Degree seats on the ground of doctrine of Legitimate Expectation and on the ground that the same is in teeth of and to bypass the order passed by this Court dated 19.5.2017 in the matter of Special Leave Petition (Civil) No.31395 of 2017. It is submitted that in the aforesaid case this Court directed the State of Gujarat to conduct the counselling keeping in view the regulation which provides for 50% of seats to be reserved in the Post-graduate Diploma Courses for Medical Officers in the government service who have served for at least three years in remote and/or difficult areas. It is the case on behalf of those in-service Medical Officers working in the Government Colleges in the State of Gujarat that by the aforesaid vested rights in favour of those in-service candidates and to avail 50% reservation in Post-graduate Diploma Courses have been taken away. It is their case that what cannot be done directly, shall not be permitted to be done obliquely. It is also their case that so far as the State of Gujarat is concerned, there is no provision for giving 30% incentive for Post-graduate Degree Courses displaced in Clause 9(IV) of the MCI Regulations, 2000. It is submitted that therefore, on one hand Diploma seats are being decreased and on the other hand there is no provision for providing incentive marks in the Degree Courses to the in-service Medical Officers, who have worked in rural areas. It is submitted that the applicant has already filed writ petition before the Gujarat High Court being Special Civil Application No.5773 of 2019 challenging the vires of Rule 6 of the Gujarat Professional Post-graduate Medical Educational Courses (Regulation of Admission) Rules, 2018 as well as conversion of Diploma seats into Degree seats and the same is pending; 4.1. Learned counsel appearing on behalf of the respective writ petitioners – in-service doctors have made the following submissions in respect of their alternative prayer/prayers to declare Regulation 9, more particularly, Regulation 9(IV) and 9(VII) of the MCI Regulations, 2000, as arbitrary, discriminatory and violative of Article 14 and 19(1)(g) of the Constitution of India and also ultra vires the provisions of the Indian Medical Council Act, 1956;

4.2 That so far as the State of Tamil Nadu is concerned, it is submitted that since the year 1989, the State of Tamil Nadu has had a policy of providing a separate source of entry to in-service candidates to the extent of 50% of the State seats in degree courses. Further, since the year 2007, by way of a Government Order, the State of Tamil Nadu has also provided for preferential weightage to those in-service candidates who have served in rural, hilly and difficult areas. Therefore, the policy of the State Government has been adopted with a view to ensure adequate healthcare in the public sector and to further ensure filling of vacancies in government hospitals, particularly in rural, hilly and difficult areas. That the aforesaid policy following by the State of Tamil Nadu has resulted in drastic improvement in the overall public healthcare with adequate staffing across the State and improvement in health indicators, particularly when compared to other States in the country;

4.3 Learned counsel appearing on behalf of the in-service candidates working with the State of Kerala has submitted that the State of Kerala had a policy of reserving 40% of the seats available in postgraduate medical admission for in-service candidates serving in the Health Service Department, Medical College Lecturers and doctors serving in the ESI Department of the State. That MCI Regulations, 2000, however, made it mandatory for all candidates seeking admission to postgraduate medical courses to appear for a common entrance examination. The MCI Regulations, 2000, inter alia, provide that candidates who appear in the common entrance examination and secure 50% in the case of general category candidates and 40% in the case of SC/ST candidates alone shall be qualified for such admission. Consequently, even in-service candidates had to appear and qualify in the common entrance examination. Considering the hardship faced by the in-service candidates who were working round the clock for the benefit of the public could hardly find time to update their knowledge and compete with the general merit candidates, the Government of Kerala brought the Kerala Medical officers Admission to Post Graduate Courses under Service Quota Act, 2008 to overcome the difficulties faced by in-service candidates in the matter of getting admission to postgraduate courses;

4.4 Learned counsel appearing on behalf of the in-service candidates working with the State of Maharashtra has submitted that so far as the State of Maharashtra is concerned, the State of Maharashtra by a resolution dated 06.01.1990, decided to reserve 15% of postgraduate seats in Government Medical Colleges for the in-service candidates to meet the acute shortage of doctors in rural areas. The said resolution was issued to serve as an incentive for graduate doctors to take up government service at primary health centres which were suffering due to the acute shortage of doctors in rural areas. However, since the requirement of doctors was not met with, the State of Maharashtra by another Government Resolution dated 22.02.1996 increased the reservation of seats for in-service candidates from 15% to 25%. However, in view of the Regulations framed by the Medical Council of India, the in-service candidates are suffering and ultimately the public health in the rural, hilly and remote areas is being suffered and ultimate sufferer is the public at large in those areas;

4.5 So far as the State of Haryana is concerned, it is the case on behalf of the in-service candidates working with the State of Haryana that the State of Haryana had the policy of reserving 27% of the seats in the postgraduate medical courses in the Government Colleges for in-service candidates. However, the percentage of seats reserved for the in-service candidates was increased in 2001 from 27% to 40% until 2016 for admission to postgraduate medical courses for in-service doctors in Haryana out of the 50% State quota;

4.6 In respect of their alternative prayers referred to hereinabove, learned counsel appearing on behalf of the respective petitioners – in-service doctors have made the following further submissions:

> i) In catena of judgments starting from Kumari Chitra Ghosh (supra); K. Duraisamy (supra); AIIMS Students' Union (supra); and Gopal D. Tirthani (supra), this Court has repeatedly upheld the right of the State Governments to set apart a definite percentage of educational seats at postgraduate level consisting of degree and

> diploma courses exclusively for a class of persons as a separate source of entry, with the condition that the source is properly classified whether on territorial, geographical or other reasonable basis and has a rational nexus with the object of imparting a particular education and effective selection for the purpose;

It is submitted that in the aforesaid decisions, this Court has upheld providing in-service candidates a separate source of entry by accepting that the classification of candidates between in-service doctors and non-service doctors has a reasonable nexus with the objective sought to be achieved, i.e., of providing adequate and affordable healthcare in the public sector;

ii) The power of the State to provide for a separate source of entry in matters of admission in medical education flows from Entry 25, List III of the Constitution, whereas the power of the Union in matters of "coordination and determination of standards" in matters of admission in medical education is derived from Entry 66 of List I and Entry 25 of List III;

iii) This Court in the case of Modern Dental College (supra) has specifically held after considering the earlier decisions that Entry 66 of List I was a specific entry having a very specific and limited scope, i.e., dealing with "coordination and determination of standards" in institutions of higher education or research as well as scientific and technical institutions. It has been further held that the words "coordination and determination of standards" would mean laying down the said standard and thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. Insofar as medical education is concerned, the same is achieved by parliamentary legislation in the form of Medical Council of India Act, 1956 and by creating a statutory body like Medical Council of India, the functions of which take, within its sweep, determination and coordination of standards in a medical institution and that of educational institutions. It is further observed that when it comes to regulating education as such which includes medical education as well as universities (imparting higher education), that is prescribed in Entry 25 of List III, thereby giving concurrent powers to both Union as well as States. It is further held that the power of the States to enact laws under Entry 25, List III would not stand extinguished so long as such laws did not have the effect of wiping out the law enacted by the Union under Entry 66 of List I; 4.7 It is further submitted that the observations of this Court in the case of Dinesh Singh Chauhan (supra) as regards Regulation 9 prohibiting the States to provide a separate source of entry for in-service candidates require re-consideration inasmuch as:

> a) there is no express or implied bar contained in Regulation 9 which prohibits the States from exercising their power under Entry 25, List III and providing a separate channel of entry to in-service candidates. On the contrary, the fact that preference is given to in-service candidates is perceived to be a laudable objective by the Union also, is evident from the proviso to Regulation 9(IV) and Regulation 9(VII). However, Regulation 9 has not (rightly so) prescribed a uniform policy for a separate source of entry since only the State, which is fully aware of the unique and peculiar facts of that State, can, if necessary, provide for a separate source of entry for that State;

b) that this Court relied upon the findings in Sudhir N (supra), to the effect that Regulation 9 is a complete code in itself, to arrive at the conclusion that the State Governments could not provide a separate channel of entry to in-service candidates. However, this Court failed to consider that even in Sudhir N (supra), the case of Gopal D. Tirthani (supra) had been approved and the impugned law framed by the State of Kerala had been struck down on account of the State of Kerala giving the inter se merits of in-service candidates a go-bye by fixing the criteria for admission as inter se seniority. Thus, even in Sudhir N (supra), the power of the State Governments to provide a separate channel of entry to in-service candidates was affirmed;

c) that this Court did not take into account the fact that by providing a separate source of entry for in-service candidates, there would be no lowering of standards prescribed by the Medical Council of India since eligible candidates would have met the minimum qualification marks set out in NEET and moreover the admission would take place based on the inter se merits of the in-service candidates;

d) that this Court did not take into account the relevant findings in the case of Modern Dental College (supra), more particularly, paragraphs 29 and 30;

e) that this Court also did not consider that its interpretation of Regulation 9 in such a manner as to render the States powerless in the matter of creating a separate source of entry would be contrary to various decisions of this Court which have affirmed the right of the State Government to determine the admission process keeping in view their peculiar conditions with the caveat that there is no laying down of uniform standard prescribed by the Union;

f) that mere incentives as mentioned in Clauses (IV) and (VII) of Regulation 9 of the Regulations, 2000 with respect to in-service government doctors will result in less number of people opting Government services thus affecting the under-privileged and under-served population across the State. That there is an absolute dearth of doctors entering Government services since very few MBBS doctors join government service after their graduation. This situation affects the under-privileged, under-served and poorest of poor people across the country who prefer public sector/government run hospitals or primary health centres for their treatment as they are not in a financial position to afford the private hospitals. Hence, in order to retain the doctors in government services and continue with them for a longer duration, it is vitally important and absolutely necessitated in the best of public interest for the States to carve out a separate channel of entry for the in-service candidates in admission to postgraduate medical courses. Heavy reliance is placed upon the decision of this Court in the case of Pre-PG Medical Sangharsh Committee v. Dr. Bajrang Soni11;

g) that Regulation 9 of the Post Graduate Medical Education Regulations, 2000 cannot expressly or impliedly take away the power of the State Government under Entry 25, List III to provide either reservation or weightage in marks for all the in-service candidates and in no way providing such reservation for all in-service candidates, would be lowering the standard prescribed by MCI since eligible candidates would have met the minimum qualification marks set out in the NEET entrance test and moreover the admission would take place based on inter se merits of the in-service

candidates;

h) that the power of the State Government to provide for reservation or separate channel of entry for in-service candidates at the postgraduate level so long as the minimum standards of 11 (2001) 8 SCC 694 qualification is maintained has been held to be constitutionally valid by this Court in catena of decisions;

i) that even otherwise providing reservation for in-service candidates in postgraduate diploma courses (as per Regulation 9(VII)) only and not providing any specific provision for reservation for in-service candidates in postgraduate degree courses is absolutely arbitrary and colourable exercise of power. It is submitted that there is no logic and reason to provide for reservation only in postgraduate diploma courses and not in postgraduate degree courses. It is submitted that not providing for any reservation for in-service candidates in postgraduate degree courses is discriminatory and violative of Article 14 of the Constitution of India;

j) that any interpretation of Regulation 9, which allows for reservation for in-service candidates in diploma courses but prohibits a separate source of entry for in-service candidates in degree courses therefore is wholly arbitrary and without any application of mind inasmuch as it completely fails to consider that the need to adequately staff rural healthcare is not only at a basic level but more so at a specialised level since the shortage of staff in specialised healthcare is even more acute and serious;

k) that in case Regulation 9 is understood to not provide a separate channel of entry for in-service candidates seeking admission to degree courses, then the same would be ultra vires Section 20 of the Indian Medical Council Act, 956 inasmuch as Section 20 only mandates that MCI prescribes the standards of postgraduate medical education, i.e., prescribes the minimum qualification marks but does not in any way empower MCI to impede the well-recognised right of the States to create a separate channel for persons it may deem fit;

4.8 If it is understood that MCI Regulations, 2000 provide for any reservation for in-service candidates in postgraduate degree courses and do not provide a separate channel of entry for in-service candidates, then the same would be ultra vires to Section 33 of the Indian Medical Council Act, 1956 inasmuch as it would be beyond the scope and ambit of the MCI to make any provision for separate channel of entry for in-service candidates; 4.9 The MCI Regulations, 2000 do not and cannot take away the powers of the respective States to make special provision for in-service candidates, looking to the need and requirement of the particular State in exercise of the power under Entry 25 of List III of the Constitution. It is submitted that “institutional preference” for postgraduate medical admissions is held to be permissible by this Court in catena of decisions. It is submitted that therefore once the “institutional preference” for postgraduate medical admissions within the State quota is held to be permissible, similarly providing a separate channel for in-service candidates in the form of certain percentage by way of reservation, looking to the specific need and requirement of the State and that too within the State quota is certainly permissible and the MCI Regulations, 2000 cannot take away the powers/authority of the concerned States to make special provision for in-service candidates for postgraduate medical admissions within the State quota and without compromising the merits, namely, following the minimum eligibility criteria

framed by the MCI; 4.10 Learned counsel appearing on behalf of some of the in-service candidates working with the State of West Bengal, in addition, has made the following submissions:

> a) that the Indian Medical Council Act, 1956 has been enacted for the sole purpose of coordination and determination of standards in exercise of the power of the Union Legislature under Entry 66 of List I of Schedule VII. The power of regulating "Education" as such is prescribed in Entry 25 of List III giving concurrent power to both States and the Union. The entire gamut of admission is not covered under Entry 66 of List I of Schedule VII excluding Entry 25 of List III, though Entry 25 of List III is subjected to Entry 66 of List I;
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> b) that there is no conflict between the power of the Union and the States. The occupied field of Union Legislation is only related to minimum standards of medical education and the State has provided for in-service quota without impinging the prescribed minimum standards;
>
> c) that the power of the State in providing reservation has to be tested within the Constitutional framework and the State has not travelled beyond its powers in providing quota for the in-service doctors in postgraduate medical admission and the same has been provided within the framework of the Constitution of India;
>
> d) that the power of the State under Entry 6 of List II of Schedule VII to legislate in the subject matter of public health and hospital is exclusive. The State of West Bengal has enacted the West Bengal Health Services Act, 1990 under such exclusive legislative power. Under Section 21 of the said Act, the State has the Rule making power and in exercise of that power the State has enacted the West Bengal Health Service and the West Bengal Medical Education Service and the West Bengal Health and Public Administrative Service Rules, 2015. That as per Note of the Rule 3 of the said Rules, the State is empowered to make reservation in the seats of the medical courses of the State Universities for its officers under West Bengal Health Service.

The Government Order dated 18.04.2013 provides reservation of 40% of the State quota in the postgraduate medical seats for the in-service doctors. Such Note is a part of the Statute;

e) that the action of the State to provide for the in-service quota is in the discharge of its positive constitutional obligations to promote and provide better health care facilities for its citizens by upgrading the qualifications of the existing in-service doctors so that the citizens may get more specialized health care facility. Such action of the State is indeed in discharge of its constitutional obligations as provided in Article 47 of the Constitution of India which is the corresponding fundamental right of the citizens protected under Article 21 of the Constitution of India;

f) that the power of the State under Entry 6 of List II of Schedule VII is exclusive and the same is not subject to any other entry of the List I. The Court cannot give an interpretation which may make such independent entry subject to any entry of List I which was not the intention of the framers of

the Constitution of India;

g) that the State can fix a separate source of admission as the in-service doctors are distinct class. The classification has sufficient nexus with the laudable object of meeting the requirement of qualified postgraduate doctors for the public health service;

h) that the observations made by this Court in the case of Sudhir N (supra) that Regulation 9 is a complete code by itself is required to be considered with reference to the context and the controversy in the said case. It is submitted that the observations in the case of Sudhir N (supra) that Regulation 9 is a complete code in itself may not be construed with respect to providing reservation and/or making special provision like providing separate source of entry for in-service candidates within the State quota and subject to fulfilling all other eligibility criteria fixed and provided by the MCI. It is submitted that in that sense the observations made by this Court in Dinesh Singh Chauhan (supra) that as held by this Court in Sudhir N (supra) that Regulation 9 is a complete code in itself including the reservation may not be accepted and is not a good law;

i) it is further submitted that even as provided under Regulation 9(IV) of the MCI Regulations, 2000, the reservation of seats shall be fixed as per the prevailing laws in the State. Therefore, by giving restrictive meaning to the term "reservation" as only constitutional reservation, it would be putting words to the legislation which is otherwise unambiguous and includes all kinds of reservation including that of in-service; 4.11 It is submitted by the learned counsel appearing on behalf of the State of West Bengal that if Regulation 9(IV) is considered to be limited only to reservations in favour of SC/ST/OBC, then the proviso is not in the form of an exception as it is independently dealing with in-service doctors. The proviso then becomes substantive provision and is more concerned with the marks to be allocated which is the concern of Regulation 9(III). This proviso confers a discretion on the State to provide for weightage in marks for services rendered in remote or difficult areas. The proviso was required because Regulation 9(III) prescribes for the obtaining of minimum marks in the NEET exam. The States could not have relaxed or tinkered with the marking system. Therefore, proviso enables the State by conferring a discretion to provide for weightage. The proviso has nothing to do with the reservation in the postgraduate degree courses and it will not negate the States power to make reservation; 4.11.1 Regulation 9(VII) provides that 50% of the seats in postgraduate diploma courses shall be reserved for medical officers in the government service. Firstly, this Regulation merely deals with diploma courses and has no relevance to postgraduate degree courses. Secondly, this provision makes it an obligation on the part of the State to reserve 50% seats for in-service doctors. The State, is therefore, left with no discretion and is bound to make such reservations in diploma courses. This provision would not negate the discretionary power of the State Government to make reservation for in-service doctors. 4.11.2 Regulation 9 contains no specific clause or expression which would indicate that the field of making reservations for in-service doctors in the postgraduate degree courses has been covered. Hence, Regulation 9 is not a complete and exhaustive code;

4.11.3 That by making Regulation 9(IV) and 9(VII), the intention is not to exclude reservation for in-service candidates in postgraduate degree courses. If the language in the provision was instead of 'may be given', 'shall be given', the proviso could have become mandatory. Consciously such

mandatory language is not used in the proviso. However, if the mandatory language in the nature of 'shall be given' was used, then the only way the States could have recognised the in-service candidates entitlement to postgraduate courses would have been by way of granting incentive as provided therein. Since the language does not indicate that such course is mandatory and is only an enabling provision, the State Rules/Act or directions issued by the respective State Governments providing for reservation for in-service candidates in postgraduate degree courses is not incompatible with the proviso to clause IV of Regulation 9. It is submitted that unless there is express or implied prohibition of reservation of seats, contained in the MCI Regulations, for in-service candidates in admission to postgraduate degree courses, no incompatibility between the two arises.

5. Learned counsel appearing on behalf of the Medical Council of India has made the following submissions against the power of the States to make reservation of seats for in-service candidates in Post-graduate Degree Courses and also in favour of validity of the Regulation 9 of the MCI Regulations, 2000:

> 5.1. MCI has framed a comprehensive scheme for admission to Post-graduate Medicine (Degree and Diploma) Courses in the form of Regulation 9 of the MCI Regulations, 2000. The scheme envisaged under Regulation 9 for admission to Post-graduate Medicine (Degree and Diploma) is to be read as a whole. The Regulation 9 when read as a whole show that it is in-service doctors, i.e. doctors who have served in remote and difficult or rural areas notified by the State Government, are given the maximum benefit under the said scheme as compared to other candidates. The benefit given to the in-service doctors is in the form of; (1) reservation in Post-graduate diploma courses; and (2) grant of incentive marks in terms of Regulation 9(IV) of MCI Regulations, 2000. The option of availing incentive marks for Post-graduate degree courses or seeking reservation in post-graduate degree courses is only available to in-service candidates and the said option is not available to a non-service candidate;
>
> 5.2. Indian Medical Council Act, 1956 and the Regulation framed thereunder are traceable to Entry 66 of List I of Schedule VII of the Constitution of India and Entry 66 of List 1 provides for "Co-ordination and Determination of Standards" in the field of higher and technical education or research. The standard, criteria, manner and basis of granting admission in medicine courses fall within the exclusive domain of the Medical Council of India. Regulation 9(IV) prescribes the criteria for determination of merit on the basis of which admissions to be granted to students in post-graduate degree courses;
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> 5.3. The power of the State under Entry 25 of List III to make laws is subject to Entry 66 of List I of Schedule VII of the Constitution. The primacy will have to be given to Legislation framed by the Parliament or delegated legislation made in exercise of powers conferred under such Legislation on matters under Entry 25 of List III, over the Legislation/delegated legislation framed by the State Legislature or authority

designated by the State Legislature;

5.4. As held by this Court in the case of Preeti Srivastava v.

State of M.P.12 under the Indian Medical Council Act, 1956, the Medical Council of India is empowered to prescribe, inter alia, standards of post-graduate medication education. It is further observed that in exercise of its powers under Section 20 r/w Section 33 of the Indian Medical Council Act, the MCI has framed the 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 the 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. Heavy reliance is placed upon para 52 and 53 of the said decision;

12 (1999) 7 SCC 120 5.5. That in the case of Modern Dental College and Research Centre (Supra) this Court has also further observed that exercise of powers by the State Legislature on any matter under Entry 25 of List III is circumscribed by the power under Entry 66 of List I and the latter shall have primacy over the former. Reliance is placed upon paras 102 and 104 of the said decision. 6.0. Now, so far as submission on behalf of the respective petitioners on conversion of seats of Post-graduate Diploma Course into seats of Post-graduate Degree pursuant to the Notification dated 12.07.2018, it is vehemently submitted that as such when the reference was made to a Larger Bench and even in the original writ petition conversion of seats was not the issue much less any basis for the said reference. It is submitted that therefore, the issue of conversion of seats is a separate and distinct issue and a separate cause of action, which is sought to be clubbed with the present petition.

It is submitted that however as submissions have been made on this aspect, it is submitted as under:

A. Conversion of seats from post-graduate diploma to degree is optional and not mandatory. No College/Institution was compelled or forced to opt for such conversion;

B. The provisions for conversion was introduced as over the past years the students, medical colleges, State Government and other stake holders have complained about the scarcity of seats in the post-graduate degree courses which is the most preferred choice of students;

C. To give an option to the States where the requirement of doctors post-graduate degrees is more to avail the benefit of conversion;

D. This provision was not meant to take away or do away with the in-service reservation in post-graduate diploma courses. If any State/Government Medical College wants more diploma holders then it can retain those seats.

6.1. Now so far as submission on behalf of the respective petitioners and the respective States that on conversion of post-graduate diploma seats into degree

seats in-service candidates are deprived of reservation in diploma courses, it is submitted that as such Government Medical Colleges and other Medical Institutions in the State of Tamil Nadu and other States have consciously and unconditionally chosen to opt for conversion of seats. In fact, this conversion of seats helps the in-service doctors also as there are a greater number of seats in post-graduate degree courses for which they can compete;

6.2. It is submitted that any reservation for in-service candidates in post-graduate degree course at this stage will give unfair advantage to in-service candidates over other candidates by increasing their seat share in the said degree courses;

6.3. That the Government Medical Colleges/Private Medical Colleges/ Deemed Universities are keen to secure permission from Government of India for post graduate degree courses only, since post graduate diploma courses is not the preferred choice of the students. In any case, the data in the table given below indicates that not all post graduate diploma seats across the Country have not been converted to post-graduate degree course.

Many States have not opted for conversion of seats in their medical colleges;

6.4. It is important to take into consideration that if 30% reservation of seats in post-graduate degree courses is reserved for in-service candidates in State quota, then a major chunk of these seats, particularly seats in clinical subjects will be reserved for in-service candidates only;

6.5. Now so far as submission on behalf of in-service candidates that diploma seats for which reservation of in-service candidates is permitted under Regulation 9(VIII) of MCI Regulations, upon conversion into post-graduate degree seats, will continue to be reserved for in-service candidates, it is submitted that the said contention is devoid of merit and liable to be rejected since once the seats in post-graduate diploma courses are converted to post-graduate degree courses then the nature and colour of the said seat itself changes and it will be governed by Regulation 9 (IV) and not Regulation 9(VIII) of the MCI Regulations. It is submitted that grievance of the petitioners, if any, as a result of conversion is because of the action of their State Governments in applying for conversion of seats;

6.6. There is clear cut distinction in post-graduate diploma seats and post-graduate degree courses and both serve different purposes. The conversion of post-graduate diploma seats into post-graduate degree courses is only an enabling provision which gives discretion to the State Government/Medical Institutes to opt for such conversion. It is not in any manner intended to do away with the reservation in post-graduate diploma courses under Regulation 9(VIII) of the MCI Regulations, 2000; 6.7. Regulation 9(IV) of the MCI Regulations, 2000 serve a large public interest and it is an objective way of determining merit. Regulation 9(IV) of the Regulations based on the objective consideration, rational, reasonableness and balances the competing interest of in-service candidates and non-service (direct) candidates as well as the interest of State to have doctors serving in remote and difficult or rural areas of the State and at the same time also ensuring that

there is no compromise of merit;

6.8. It is submitted that therefore, as there is already provision for in□service candidates in Regulation 9 framed by the MCI framed in exercise of powers under Section 20 r/w 33 of the India Medical Council Act 1956 and the MCI Act has been enacted by the Central Government under Entry 66 of list I and even otherwise Entry 25 of List III empowers the Union also to enact the law and therefore, also in view of MCI Regulations, 2000 which were found place before the Parliament and ascent of the President, State cannot have the power on the same subject under Entry 25 of List III and any law by the State shall be repugnant to Central Act.

7.0. Shri Aman Lekhi, learned ASG appearing on behalf of the Union of India has made the following submissions:

> 7.1. That the decision of this Court in the case of Dinesh Singh Chauhan (supra) is a correct law. That the said decision is consistent with the Article 246 r/w Entry No. 66 of List I and Entry 25 of List III of 7th schedule of the Constitution; it would not be correct to say, as mentioned in the Referral Order, that the Legislative Entries were not considered in judgment of Dinesh Singh Chauhan (supra). As such in para 24, this Court has specifically approved the judgment in the case of Preeti Srivastav (supra) and has specifically referred Entry 66 of List I and has clearly held that Central Legislation and Regulations must prevail; that the judgment in the case of Dinesh Singh Chauhan( supra) does not digress from the law laid down by the Constitution Benches.

Apart from the fact that the judgment in the case of R. Chitralekha vs. State of Mysore13, specifically negative the 13 (1964) 6 SCR 368 contentions raised by the petitioner, it is to be noted that the said decision was prior to deletion of entry 11 List II and insertion of Entry 25 List III in the 7th Schedule of the Constitution; 7.2. It is submitted that at the time when the judgment in the case of R. Chitralekha (supra) was passed there was no Entry 25 in List III (which came after the 42nd Amendment) and the two Entries which were relevant for controversy in the said case were Entry 66 of List I which has not been amended till now, and Entry 11 of List II. The State therefore, had the power under Article 246(3) read with Entry 11 to legislate in respect of 'education' subject to Entry 66 of List I. The expression 'education' was held in Gujarat University v. Krishna Ranganath Mudholkar14 (para 23) to be wide important and include all matters related to imparting and regulating education. Admittedly, there was no Central Enactment or regulation framed under Entry 66 of List I which was to be considered by this Hon'ble Court in the case of R. Chitralekha (supra); 7.3. That prior to the deletion of entry 11 of List II and insertion of Entry 25 of List III, the Union Parliament could not deal with the issue of imparting and regulating of the education which 14 AIR 1963 SC 703 = 1963 Supp (1) SCR 112 vested exclusively in the State Legislature. The power of State Legislature relating to 'education' was taken away only to the extent Entry 11 of List II was made subject to relevant entries in the List I including Entry 66 and Entry 25 of List III at the relevant time dealt only with 'vocational and technical training of labour;

7.4. In facts of R. Chitralekha (supra) the Court found that the exercise of power impugned in the said case of admitting students on the basis of higher or different qualification than those prescribed by the University was not illegal as the procedure adopted only contained a criteria to limit the admission of students into colleges from amongst those who secured the minimum qualifying marks prescribed. In other words, the State Government did not transgress into any forbidden are in the said case;

7.5. The instant case however deals with the situation where Entry 11 is shifted from List II to List III as Entry 25, which Entry enlarges the field (now concurrently vested with the State Legislature and Union Parliament) beyond 'Universities' to 'technical education' and 'medical education' also while retaining 'vocational and technical training of labour' in the original Entry; 7.6. The consequence of this change is that the State Legislature does not have exclusive power over imparting and regulating of education. And where the Centre has legislated on this subject, the State Legislature would be denuded of its power subject of course to Article 254 of the Constitution (which has not been invoked). In the absence of such legislative power even executive power would not be available to the State Government; 7.7. Section 10 D has been inserted into Medical Council of India Act (on 24.5.2016) prescribing a uniform entrance examination 'in such manner as may be prescribed.' Section 10 D has to be read with Section 33 (mb) of the Act empowering the MCI to make regulation concerning the manner of conducting uniform entrance examination both at the undergraduate and post graduate level. In exercise of the power so conferred Post graduate Regulations were amended in 2018; 7.8. Regulation 9(IV) deals with "All India merit list as well as State wise merit list" on the basis of marks obtained in NEET for admission to "post graduate courses (both degree and diploma). The proviso to Regulation 9(IV) stipulates that "in determining the merit of the candidates" weightage in marks would be given as provided. This is not a substantive provision as argued and is clearly a proviso to Regulation 9 (IV);

7.9. Unlike Regulation 9(IV) which deals with both post graduate degree and diploma courses, Regulation 9(VIII) deals only with "Post graduate Diploma Courses" and provides for reservation in the manner stipulated therein. Regulation 9(VIII) is therefore, a special provision which will apply only to the subject within its scope clearly indicating that the reservation is limited to diploma courses only. Regulation 9 dealing both with 'determination and coordination of standards' and 'regulation' of education has correctly been described as a complete code. Not only can there be no interference with the standard prescribed but there also being regulation of the manner in which standards are to apply by the MCI under a Central enactment, the State Government cannot interfere with or modify the same; 7.10. In view of the specific provision for in service candidates in the MCI Regulations, 2000 framed by the Medical Council of India, more particularly, Regulation 9(IV) r/w 9(VII)/(VIII) and as Regulation 9 is held to be a complete code and even considering Entry 25 of List III, the State would not have any power to legislate anything contrary to MCI Regulations, 2000, more particularly Regulation 9 and cannot have any power to make provision for reservation for in service candidates in post graduate degree course. Any law framed and/or to be framed, therefore, would be repugnant to MCI Regulations, 2000 framed by the Medical Council of India, framed in exercise of powers under Section 20 r/w Section 33 of the MCI Act, 1956. 8.0. Learned counsel appearing on behalf of the private respondents in the case of State of West Bengal opposing the reservation for in service candidates has made the following submissions:

8.1. There is no legislation in the State of West Bengal providing for reservation for in-service candidates. The office memorandum dated 18.4.2013, is only an executive instruction, which has been relied upon by the State Government did not find any mention in the original records of the Government when perused by the Division Bench of the High Court while examining the reasons recorded by the State Government for grant of such reservation;

8.2. Further, merit has become casualty by such reservation in the State of West Bengal. The country definitely wants more doctors but moreover it needs qualified specialists. Reservation at higher level of professional courses such as medicine should be minimal. Learned counsel has taken us to submission with respect to allotment of PG seats and corresponding rank of open category and in-service candidates from the written submissions.

It is submitted that therefore, merit has become casualty by such reservation in the State; that the NEET-PG Notification for admission to PG Medical Courses throughout the country was published on 07.09.2018. NEET-PG 2019 result was published on 31.1.2019. As per the MCI Regulations, State quota counselling to commence from 25.3.2019. Before that open category candidates made a representation to the State as well as WBUHS (University) on 5.3.2019 citing Regulation 9(IV) of the MCI Regulations, 2000 as well as judgment of this Court in the case of Dinesh Singh Chauhan (supra) and the order of the Constitution Bench of this Court in the case of Tamil Nadu Medical Officers Association v. Union of India 15 requesting Government not to reserve any seats for in-service candidates. That the said representation has neither been annexed nor referred to in the special leave petition by the State . That the counselling notice by the university was dated 12.03.2019, in which, there was no mention of any reservation for in-service candidates. There was specific mention for SC/ST/OBC/PH reservation. Result of round -1 counselling was published on 3.4.2019. Again, a legal notice and the representation was made on 18.4.2019 to make admissions in accordance with MCI Regulations and decision of this Court in the case of Dinesh Singh Chauhan (supra). Provisional List for 2nd round was published on 20.4.2019 without considering the representation. Immediately on 23.4.2019 writ petition was filed. On 26.4.2019 learned Single Judge granted stay on further counselling. On 1.5.2019 the learned Single Judge modified the interim order that counselling may take place but no admission. That thereafter, the interim order passed by the learned Single Judge was modified by the Division Bench and direction was issued to complete admission in view of cut-off date of 30.05.2019 but directed that all 15 (2018) 17 SCC 426 admissions shall be subject to final outcome of writ petition; all admitted students to file an undertaking; no equities to be claimed. SLP was preferred against the interim order passed by the Division Bench dated 30.05.2019 before this Court. In that MCI supported and submitted that there cannot be any reservation of seats for in-service candidates. This Court disposed of the SLP with a request to the learned Single Judge to hear the case on day to day basis and decide it expeditiously. That by judgment and order dated 19.08.2019 the learned Single Judge allowed the writ petitions and quashed the reservation of seats in PG-Degree Courses for in-service candidates. Consequently, the admission of in-service candidates made against 40% reserved seats came to be cancelled and directed preparation of fresh combined list. That thereafter, impugned judgment and order came to be passed by the Division Bench. It is submitted that therefore, the general category

candidates made their grievance against the reservation for in□service candidates from the very beginning and well in advance and therefore, there is no delay on their part and therefore, the direction issued by the Division Bench be directed to be complied with. As directed by the learned Single Judge and thereafter confirmed by the Division Bench, in□service candidates now cannot be permitted to claim equity; 8.3. That in□service candidates are not meritorious and by such reservation the meritorious general category candidates and non□service candidates who have secured more marks in NEET and competitive examination will have to suffer; (a) Medical Council of India has been constituted as an expert body to control the minimum standards of medical education and to regular their observance; (b) Compliance with regulations framed by MCI are mandatory inasmuch as enforcement of these regulations are directly relatable to quality of medical professionals; (c) Regulations framed by the MCI are with prior approval of the Central Government in terms of Section 33 of the Indian Medical Council Act, 1956 and are binding in nature; (d) Aforesaid binding nature is apparent from a perusal of constitutional scheme for enactment of the Indian Medical Council Act, 1956. Entry 66 of List I of the seventh schedule provides for 'co□ ordination and determination of standards in institutions for higher education or research and scientific and technical institution'. Entry 25 of List III in the seventh schedule of the Constitution provides for 'Education including technical education, medical education and universities, subject to the provisions of entries 63,64,65 and 66 of List I'; It emerges from a conjoint reading of Entry 66 of List I and Entry 25 of List III that because the Parliament occupies the field earmarked for it under Entry 66 of List I or its concurrent powers as per Entry 25 in the concurrent list, the question of admission of students to any medical course would mandatorily have to be in compliance of the said law framed with reference to Entry 66 of List I which is the MCI Act, 1956;

8.4. As per catena of decisions, norms of admission including reservation directly affect the standards of education and therefore, the State cannot frame a law breaching the standards laid down by the MCI. Hence reliance is placed on the following decisions:

(1) Preeti Srivastava (supra);

(2) Narayan Sharma (Dr) vs. Pankaj Kr. Lekhar (Dr)16;

(3). Modern Dental College and Research Centre (supra); (4). Dinesh Singh Chauhan (supra); and 16 (2000) 1 SCC 44 (5). Tamil Nadu Medical Officers Association vs. Union of India reported in (2018) 17 SCC 426.

8.5. That selection to Post□graduate Courses stands completely covered by Regulation 9 of the MCI Regulations, 2000. In support of the above, followings submissions are made:

I. MCI Regulations, 2000 were notified after prior approval from Central Government under Section 33 of the MCI Act.

The objective of the regulations is to produce competent specialists and/ or Medical teachers;

II. Regulation 9 prescribes for manner and mode of selection of Post-graduate students which affirms the primacy of merit in selection of candidates to Post-graduate Courses by way of common entrance examination, i.e. NEET;

III. Regulation 9 further makes a distinction in manner and mode of selection for candidates to 'Post-graduate Diploma' courses and 'Post-graduate Degree' courses;

IV. Manner of determination of academic merit is prescribed under Regulation 9(4);

V. Proviso to Regulation 9(4) provides as under:

"Provided that that in determining the merit of candidates who are in service of Government/ Public Authority, weightage in the marks may be given by the Government / Competent Authority, as an incentive up to 10% of the marks obtained for each year of service in remote and / or difficult areas or rural areas up to maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and / or difficult areas or rural areas shall be as notified by State Government /Competent Authority from time to time." VI. It emerges from a perusal of the above regulation that (i) PG Degree is distinct and different from a PG diploma which is clear from perusal of Regulation 9(VIII) wherein 50% seats are reserved for aforesaid Government medical officers who fulfil the requirements of service in notified areas (ii) In matters of selection to PG Courses, inter-se merit is the determinative factor, (iii) In determination of merit, the State Government may, with a view to incentivize such service, give weightage in the marks for service in 'remote' or 'difficult' areas and (iv), the remote and difficult areas shall be notified by State Government from time to time;

VII. There is no provision for 'reservation' of seats for such candidates who may have rendered service in remote or difficult areas. At best, and strictly as a policy measure, the State Government may provide weightage as incentive and nothing more;

VIII. Therefore, Regulation 9 as per its letter and purport clearly provides only for weightage, and not reservation. The same has been so done, in order to incentivize the candidates to render service in 'remote' and 'difficult' areas and at the same time, ensure that requirement of 'inter-se merit' is not diluted by introduction of a scheme of reservation;

8.6. That Regulation 9 is a 'complete code' governing selection to PG Courses. In support of the above, following submissions are made:

A. There is no provision in the Indian Medical Council Act, 1956 and MCI Regulations, 2000 stipulating reservation for in-service candidates against the 30% seats in "Post-graduate Degree Course';

B. However, the provision is only to give weightage of marks to in-service candidates who had worked for specified period in notified remote, difficult or backward areas of the State;

C. The State Governments in view of the fact that MCI Regulations have statutory primacy in matters of medical education, could not have framed any statutory Rules or notify a contrary provision by an executive fiat;

D. After having examined the entire Regulation 9 as a whole, in the case of Sudhir N (supra), it is held that Regulation 9 is a complete code in relation to selection to Post-graduate course.

8.7. That when Regulations prescribe for selection in a certain manner, it must be done in that manner alone and not otherwise.

The MCI Regulations governed the field of admission to PG Courses and Regulation 9 of the MCI Regulations, 2000 is a self-contained code and Regulation 9 does not provide for anything other than weightage, and that too, upon identification of remote & difficult areas by the State Government, the State could not have provided for any reservation for in-service candidates contrary to the Central Act and the MCI Regulations, 2000; 8.8. Thus, the State is not competent to separately reserve a specific number of seats for candidates who have served in notified areas. Such candidates who had rendered services in notified rural and difficult areas are entitled to weightage in terms of proviso to Regulation 9(IV);

8.9. Regulations have been framed with a conscious decision to not provide any reservation, as the same shall invariably have an adverse effect on the inter-se merit and many candidates merely by virtue of being in–service candidates may steal a march over candidates higher in merit;

8.10.That the provisions regarding giving weightage to the in-service candidates by way of incentive marks has been introduced in larger public interest and the same is just, rational and proper and there was no occasion to enlarge the scope and provide for reservation, when the regulation itself does not contemplate any such reservation;

8.11.The State is obliged to adopt a procedure as stipulated by the Central Act and Regulation framed thereunder; 8.12.That when there is categorical expression of weightage, it would automatically exclude reservation in cases of admission to PG Degree courses;

8.13.Regulation 9 even if read liberally does not provide for reservation for in-service candidates, but only for giving a weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified remote and difficult areas in the State);

8.14.Any reservation at the stage of Post-graduate Medical education will necessarily result in dilution of minimum standards and merit and will therefore, be contrary to the objective of the regulation itself;

8.15.Providing any reservation despite the same not being provided for in the Regulations would be akin to redrafting the Regulations itself. After due deliberations and keeping in mind the past experience, Medical Council of India has framed Regulations inter alia providing for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, and providing any reservation contrary to the regulation would undo the regulation itself.

9. In the case of Dinesh Singh Chauhan (supra), the very Regulation 9(IV) and 9(VII) fell for consideration. In the case of Dinesh Singh Chauhan (supra), after considering the decision of this Court in the case of Preeti Srivastava (supra), in para 24, it is held as under:

> "24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see Preeti Srivastava v. State of M.P. [1999) 7 SCC 120]). The procedure for selection of candidates for the postgraduate degree courses is one such area on which the Central legislation and regulations must prevail." (emphasis supplied) 9.1 Thereafter Regulation 9 has been considered in detail, the relevant paras are paras 26, 27, 29, 30, 31, 32, 33, 35, 39, 47, which read as under:
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> "26. From the plain language of this proviso, it is amply clear that it does not envisage reservation for in-service candidates in respect of postgraduate "degree" courses with which we are presently concerned. This proviso postulates giving weightage of marks to "specified in-service candidates" who have worked in notified remote and/or difficult areas in the State—both for postgraduate "degree" courses as also for postgraduate "diploma" courses. Further, the weightage of marks so allotted is required to be reckoned while preparing the merit list of candidates.
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> 27. Thus understood, the Central enactment and the regulations framed thereunder do not provide for reservation for in-service candidates in postgraduate "degree" courses.

As there is no express provision prohibiting reservation to in-service candidates in respect of admission to postgraduate "degree" courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates. This argument does not commend to us. In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the regulations in force at the relevant time. The admission process in the present case is governed by the regulations which have come into force from the academic year 2013-2014. This Regulation is a self-contained

code. There is nothing in this Regulation to even remotely indicate that a separate channel for admission to in-service candidates must be provided, at least in respect of postgraduate "degree" courses. In contradistinction, however, 50% seats are earmarked for the postgraduate "diploma" courses for in-service candidates, as is discernible from clause (VII). If the regulation intended a similar separate channel for in-service candidates even in respect of postgraduate "degree" courses, that position would have been made clear in Regulation 9 itself. In absence thereof, it must be presumed that a separate channel for in-service candidates is not permissible for admission to postgraduate "degree" courses. Thus, the State Government, in law, had no authority to issue a Government Order such as dated 28-2-2014, to provide to the contrary. Hence, the High Court was fully justified in setting aside the said government order being contrary to the mandate of Regulation 9 of the 2000 Regulations, as applicable from the academic year 2013-2014.

29. In the present case, we have held that providing 30% reservation to in-service candidates in postgraduate "degree" courses is not permissible. It does not, however, follow that giving weightage or incentive marks to in-service candidates for postgraduate "degree" courses entails in excessive or substantial departure from the rule of merit and equality. For, Regulation 9 recognises the principle of giving weightage to in-service candidates while determining their merit. In that sense, incentive marks given to in-service candidates is in recognition of their service reckoned in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in NEET. Weightage or incentive marks specified in Regulation 9 are thus linked to the marks obtained by the in-service candidate in NEET and reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage the medical graduates/doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is permissible differentiation whilst determining their merit. It is an objective method of determining their merit.

30. Coming to the next decision pressed into service in State of M.P. v. Gopal D. Tirthani (2003) 7 SCC 83, it was a case of conducting separate entrance test for in-service candidates. That was frowned upon by this Court. The Court, however, suggested modality of preparing two separate merit list for the two categories and merit inter se of the successful candidates to be assessed separately in the two respective categories. The Court had examined the question as to whether weightage can be given to doctors for having rendered specified number of years of service in rural/tribal areas to determine the inter se merit. The Court analysed four earlier decisions of this Court; to wit, Dinesh Kumar v. Motilal Nehru Medical College (1986) 3 SCC 727, Snehelata Patnaik v. State of Orissa (1992) 2 SCC 26, Narayan Sharma v. Pankaj Kr. Lehkar (2000) 1 SCC 44 and State of U.P. v. Pradip Tandon (1975) 1 SCC 267. The Court in para 33 observed thus: (Tirthani case (2003) 7 SCC 83, SCC p. 106) "33. ... The case at hand presents an entirely different scenario. Firstly, it is a case of postgraduation within the State and not an all-India quota. Secondly, it is not a case of reservation, but one of only assigning weightage for service rendered in rural/tribal areas. Thirdly, on the view of the law we have taken hereinabove, the assigning of weightage for service rendered in rural/tribal areas does not at all affect in any manner the candidates in open category. The

weightage would have the effect of altering the order of merit only as amongst the candidates entering through the exclusive channel of admissions meant for in-service candidates within the overall service quota. The statistics set out in the earlier part of the judgment provide ample justification for such weightage being assigned. We find merit and much substance in the submission of the learned Advocate General for the State of Madhya Pradesh that Assistant Surgeons (i.e. medical graduates entering the State services) are not temperamentally inclined to go to and live in villages so as to make available their services to the rural population; they have a temptation for staying in cities on account of better conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite schools which are to be found only in cities. In-service doctors being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of earning higher professional qualifications, and consequently eligibility for promotion, acts as a motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. In the set-up of health services in the State of Madhya Pradesh and the geographical distribution of population, no fault can be found with the principle of assigning weightage to the service rendered in rural/tribal areas while finalising the merit list of successful in-service candidates for admission to PG courses of studies. Had it been a reservation, considerations would have differed. There is no specific challenge to the quantum of weightage and in the absence of any material being available on record we cannot find fault with the rule of weightage as framed. We hasten to add that while recasting and reframing the rules, the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis."

31. However, in the present case, the Medical Council of India itself has framed a regulation predicating one merit list by adding the weightage of marks assigned to in-service candidates for determining their merit in NEET.

32. The imperative of giving some incentive marks to doctors working in the State and more particularly serving in notified remote or difficult areas over a period of time need not be underscored. For, the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in public healthcare units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. This problem is faced by all States across India. This Court in Snehelata case (1992) 2 SCC 26 had left it to the authorities to evolve norms regarding giving incentive marks to the in-service candidates. The Medical Council of India is an expert body. Its assessment about the method of determining merit of the competing candidates must be accepted as final [State of Kerala v. T.P. Roshana (1979) 1 SCC 572 (SCC para 16); also see Medical Council of India v. State of Karnataka (1998) 6 SCC 131]. After due deliberations and keeping in mind the past experience, Medical Council of India has framed regulations, inter alia, providing for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, is an attempt to undo the mischief.

33. As aforesaid, the real effect of Regulation 9 is to assign specified marks commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State linked to the marks obtained in NEET. That is a procedure prescribed in the Regulation for determining

merit of the candidates for admission to the postgraduate "degree" courses for a single State. This serves a dual purpose. Firstly, the fresh qualified doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to postgraduate "degree" courses of their choice. Secondly, the rural healthcare units run by the public authority would be benefited by doctors willing to work in notified rural or difficult areas in the State. In our view, a Regulation such as this subserves larger public interest. Our view is reinforced from the dictum in Snehelata Patnaik case (1992) 2 SCC 26. The three-Judge Bench by a speaking order opined that giving incentive marks to in-service candidates is inexorable. It is apposite to refer to the dictum in the said decision which reads thus:

> (SCC pp. 26-27, paras 1-2) "1. We have already dismissed the writ petition and special leave petitions by our order dated 5-12-1991. We would, however, like to make a suggestion to the authorities for their consideration that some preference might be given to in-service candidates who have done five years of rural service. In the first place, it is possible that the facilities for keeping up with the latest medical literature might not be available to such in-service candidates and the nature of their work makes it difficult for them to acquire knowledge about very recent medical research which the candidates who have come after freshly passing their graduation examination might have. Moreover, it might act as an incentive to doctors who had done their graduation to do rural service for some time. Keeping in mind the fact that the rural areas had suffered grievously for non-availability of qualified doctors giving such incentive would be quite in order. The learned counsel for the respondents has, however, drawn our attention to the decision of a Division Bench of two learned Judges of this Court in Dinesh Kumar v. Motilal Nehru Medical College (1986) 3 SCC 727. It has been observed there that merely by offering a weightage of 15% to a doctor for three years' rural service would not bring about a migration of doctors from the urban to rural areas. They observed that if you want to produce doctors who are MD or MS, particularly surgeons, who are going to operate upon human beings, it is of utmost importance that the selection should be based on merit. The learned Judges have gone on to observe that no weightage should be given to a candidate for rural service rendered by him so far as admissions to postgraduate courses are concerned (see Dinesh Kumar case (1986) 3 SCC 727, SCC para 12 at p. 741).
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> 2. In our opinion, this observation certainly does not constitute the ratio of the decision. The decision is in no way dependent upon these observations. Moreover, those observations are in connection with all-India selection and do not have equal force when applied to selection from a single State. These observations, however, suggest that the weightage to be given must be the bare minimum required to meet the situation. In these circumstances, we are of the view that the authorities might well consider giving weightage up to a maximum of 5% of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities. We also clarify that these suggestions do not in any way confer any legal right on in-service students who have done rural service nor do the suggestions have any application to the selection of the

students up to the end of this year."

35. As aforesaid, the Regulations have been framed by an expert body based on past experience and including the necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit.

Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks @ 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks; and if the candidate has worked for two years, the candidate would get another 15 marks. Similarly, if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200 marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks en bloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, much less reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational.

39. Reverting to the recent decision of this Court in Sudhir N. (2015) 6 SCC 685, the two-Judge Bench was dealing with the question of selection of in-service medical officers for postgraduate medical education under Section 5(4) of the Kerala Medical Officers Admission to Postgraduate Courses under the Service Quota Act, 2008. The said provision has been extracted in para 5 of the reported decision. It deals with the finalisation of select list by the Postgraduate Course Select Committee strictly on the basis of seniority in service of the medical officers and following such other criteria as may be prescribed. Dealing with that challenge the Court noticed that Regulation 9 is a complete code by itself and then proceeded to answer the question whether the State was competent to enact law on the matter of admission on the basis of inter se seniority of candidates. In that context, the Court noted that the basis of selection must be strictly as per norms specified in the MCI Regulations. Any law with regard to that will be beyond legislative competence of the State Legislature. The Court noted that weightage for in-service candidates is made permissible by Regulation 9. That is the limited departure from the merit list criteria permitted by the Regulation itself. Neither in Sudhir N. (2015) 6 SCC 685 nor Tirtha (2003) 7 SCC 83 the Court had the occasion to deal with the question regarding challenge to the proviso to clause (IV) of Regulation

9.

47. We must hold that the High Court was justified in quashing the stated government order providing for reservation to in□service candidates, being violative of Regulation 9 as in force. However, we modify the operative direction given by the High Court and instead direct that admission process for academic year 2016□2017 onwards to the postgraduate degree course in the State should proceed as per Regulation 9 including by giving incentive marks to eligible in□service candidates in terms of proviso to clause (IV) of Regulation 9 [equivalent to third proviso to Regulation 9(2) of the old Regulations reproduced in the interim order dated 12□5□2016]. We, accordingly, mould the operative order of the High Court to bring it in conformity with the direction contained in the interim order dated 12□5□2016 but to be made applicable to academic year 2016□ 2017 onwards on the basis of Regulation 9 as in force. We are conscious of the fact that this arrangement is likely to affect some of the direct candidates, if not a large number of candidates whose applications were already processed by the competent authority for postgraduate degree course concerned for academic year 2016□2017. However, their admissions cannot be validated in breach of or disregarding the mandate of Regulation 9, as in force. The appeals against the judgment of the High Court of Judicature at Allahabad dated 7□4□2016 are disposed of accordingly." (emphasis supplied) 9.2. The present batch of cases came up for hearing before another Bench of three Judges. The Bench was of the opinion that the present batch of cases require consideration by a larger Bench and that is how the present batch of cases are referred to a larger Bench. On the basis of the submissions made, the following reasons were mentioned:

> (i). The decision in Dinesh Singh Chauhan (supra) has not considered the entries in the legislative lists of the Seventh Schedule, more particularly, Entry 66 of the Union List and Entry 25 of the Concurrent List;
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> (ii). The main contention of the petitioners is that while coordination and determination of standards in institutions for higher education falls within the exclusive domain of the Union (Entry 66 List I), medical education is a subject in the Concurrent List (Entry 25 List III). Though, Entry 25 of List III is subject to Entry 66 of List I, the State is not denuded of its power to legislate on the manner and method of making admission to postgraduate medical courses.

(iii). The contentions which have been raised in the present batch of petitions were not addressed before this Court in Dinesh Singh Chauhan (supra).

(iv). The judgment in Dinesh Singh Chauhan (supra) does not consider three decisions of the Constitution Bench in R. Chitralekha (supra), Chitra Ghosh (supra) and Modern Dental College & Research Center (supra); and

(v) There are decisions rendered by Benches of an equal strength as in Dinesh Singh Chauhan (supra). 9.3 Therefore, the following issues arise for consideration and determination of this Court in the present batch of writ petitions/appeals:

1. What is the scope and ambit of Entry 66 of List I?

2. What will be the impact/effect of MCI Regulations, 2000 framed by the Medical Council of India in exercise of its powers under Section 33 of the Indian Medical Council Act, 1956?

3. Whether in view of Entry 66 of List I, the State is denuded of its power to legislate on the manner and method of the postgraduate medical courses, more particularly, making special provisions for in-service candidates in the postgraduate degree/diploma courses?

4. Whether Regulation 9 of MCI Regulations, 2000, more particularly, Regulation 9(IV) and 9(VII) takes away the power of the States under Entry 25 of List III to provide for a separate source of entry for in-service candidates seeking admission to postgraduate medical courses?

5. Whether Regulation 9 of MCI Regulations, 2000 is understood to not allow for the States to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses, the same is arbitrary, discriminatory and violative of Articles 14 and 19(1)

(g) of the Constitution of India, and also ultra vires of the provisions of the Indian Medical Council Act, 1956?

6. Whether Regulation 9 is a complete code in itself, as observed by this Court in the case of Dinesh Singh Chauhan (supra) affecting the rights/authority of the States to provide for reservation and/or separate source of entry for in-service candidates seeking admission to postgraduate degree courses?

10. While considering the aforesaid issues, let us first consider the scope and ambit of Entry 66 of List I – legislative competence of the Union in exercise of powers under Entry 66, List I of Schedule VII of the Constitution of India. 10.1 In the case of Modern Dental College & Research Centre (supra), a Constitution Bench of this Court again had an occasion to deal with and consider Entry 66 List I and Entry 25 List III. After considering catena of decisions of this Court, more particularly, the decisions of this Court in the cases of Gujarat University (supra); R. Chitralekha (supra); Preeti Srivastava (supra); and Bharati Vidyapeeth v. State of Maharashtra 17, it is held by this Court that Entry 66 in List I is a specific entry having a very specific and limited scope. It is further observed by this Court that it deals with “coordination and determination of standards” in institution of higher education or research as well as scientific and technical institutions. The words “coordination and determination of standards” would mean laying down the said standards. It is observed that thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. The relevant observations are in paragraphs 101 to 105, which read as under:

"101. To our mind, Entry 66 in List I is a specific entry having a very specific and limited scope. It deals with coordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words "coordination and determination of standards" would 17 (2004) 11 SCC 755 mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such coordination and determination of standards, insofar as medical education is concerned, is achieved by parliamentary legislation in the form of the Indian Medical Council Act, 1956 and by creating the statutory body like Medical Council of India (for short "MCI") therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as coordination of standards and that of educational institutions. When it comes to regulating "education" as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in List III Entry 25, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject□matter of List II Entry 11 ["11. "Education" including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III"]. Thus, power to this extent was given to the State Legislatures. However, this entry was omitted by the Constitution (Forty□second Amendment) Act, 1976 with effect from 3□7□1977 and at the same time List II Entry 25 was amended [Unamended Entry 25 in List III read as:

"Vocational and technical training of labour"]. Education, including university education, was thus transferred to the Concurrent List and in the process technical and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 completely otiose. When two entries relating to education, one in the Union List and the other in the Concurrent List, coexist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to coordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by List III Entry 25 is wide enough and as circumscribed to the limited extent of it being subject to List I Entries 63, 64, 65 and 66.

102. Most educational activities, including admissions, have two aspects: the first deals with the adoption and setting up the minimum standards of education. The objective in prescribing minimum standards is to provide a benchmark of the calibre and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education

determined nationwide is ancillary to the very determination of standards.

Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was thought desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the Constitution-makers provided for List I Entry 66 with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

103. The second/other aspect of education is with regard to the implementation of the standards of education determined by Parliament, and the regulation of the complete activity of education. This activity necessarily entails the application of the standards determined by Parliament in all educational institutions in accordance with the local and regional needs. Thus, while List I Entry 66 dealt with determination and coordination of standards, on the other hand, the original List II Entry 11 granted the States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to education was removed and deleted, and the same was replaced by amending List III Entry 25 granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of education, except that which was specifically covered by List I Entries 63 to 66.

104. No doubt, in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] it has been observed that the entire gamut of admission falls under List I Entry 66. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions. In Gujarat University [Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703 :

> 1963 Supp (1) SCR 112] , a Bench of five Judges examined the scope of List II Entry 11 (which is now List III Entry 25) with reference to List I Entry 66. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by List I Entry 66 must prevail over power of the State. Validity of a State legislation depends upon whether it prejudicially affects “coordination or determination of standards”, even in absence of a Union legislation. In R. Chitralekha v. State of Mysore [R. Chitralekha v. State of Mysore, AIR 1964 SC 1823 :

(1964) 6 SCR 368] , the same issue was again considered. It was observed that if the impact of the State law is heavy or devastating as to wipe out or abridge the Central field, it may be struck down. In State of T.N. v. Adhiyaman Educational & Research Institute [State of T.N. v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104 : 1 SCEC 682] , it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 :

1 SCEC 742] and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya [State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1 : 5 SCEC 637] . Though the view taken in State of M.P. v. Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] and Ajay Kumar Singh v. State of Bihar [Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401] to the effect that admission standards covered by List I Entry 66 could apply only post admissions was overruled in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] , it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] .

105. We do not find any ground for holding that Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 :

1 SCEC 742] excludes the role of States altogether from admissions. Thus, observations in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] that entire gamut of admissions was covered by List I Entry 66 cannot be upheld and overruled to that extent. No doubt, List III Entry 25 is subject to List I Entry 66, it is not possible to exclude the entire gamut of admissions from List III Entry 25. However, exercise of any power under List III Entry 25 has to be subject to a Central law referable to Entry 25." (emphasis supplied) In the concurring judgment, Bhanumati, J. in paragraphs 131 to 134 and 147 to 149, has held as under:

"131. In order to answer the concern of other Constitution Framers, Dr Ambedkar went on to clarify the limited scope of List I Entry 66 (as in the present form), as proposed by him in the following words: (CAD Vol. 9, p. 796) "Entry 57□A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "why this entry?" I shall show why it is necessary. Take for instance, the BA Degree examination which is conducted by the different universities in India. Now, most provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the BA Examination, if he obtained 15% of the total marks shall be deemed to have passed that examination;

> and suppose the Bihar University says that a candidate who has obtained 20% of marks shall be deemed to have passed the BA degree examination; and some other university fixes some other standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless. Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously, you cannot permit the results of these technical and scientific institutes to deteriorate from the normal standard and yet allow them to be recognised either for the Central purposes, for all□India purposes or the purposes of the State."
>
> 132. The intent of our Constitution Framers while introducing Entry 66 of the Union List was thus limited only to empowering the Union to lay down a uniform standard of higher education throughout the country and not to bereft the State Legislature of its entire power to legislate in relation to "education" and organising its own common entrance examination.
>
> 133. If we consider the ambit of the present Entry 66 of the Union List; no doubt the field of legislation is of very wide import and determination of standards in institutions for higher education. In the federal structure of India, as there are many States, it is for the Union to coordinate between the States to cause them to work in the field of higher education in their respective States as per the standards determined by the Union.

Entry 25 in the Concurrent List is available both to the Centre and the States. However, power of the State is subject to the provisions of Entries 63, 64, 65, and 66 of the Union List; while the State is competent to legislate on the education including technical education, medical education and universities, it should be as per the standards set by the Union.

134. The words "coordination" and "determination of the standards in higher education" are the preserve of Parliament and are exclusively covered by Entry 66 of the Union List. The word "coordination" means harmonisation with a view to forge a uniform pattern for concerted action. The term "fixing of standards of institutions for higher education" is for the purpose of harmonising coordination of the various institutions for higher education across the country. Looking at the present distribution of legislative powers between the Union and the States with regard to the field of "education", that State's power to legislate in relation to "education, including technical education, medical education and universities" is analogous to that of the Union. However, such power is subject to Entries 63, 64, 65 and 66 of the Union List, as laid down in Entry 25 of the Concurrent List. It is the responsibility of the Central Government to determine the standards of higher education and the same should not be lowered at the hands of any particular State.

xxx xxx xxx xxx

147. Another argument that has been put forth is that the power to enact laws laying down process of admission in universities, etc. vests in both Central and State Governments under Entry 25 of the

Concurrent List only. Under Entry 25 of the Concurrent List and erstwhile Entry 11 of the State List, the State Government has enacted various legislations that inter alia regulate admission process in various institutions. For instance, Jawaharlal Nehru Krishi Vishwavidyalaya Adhiniyam, Rajiv Gandhi Prodyogiki Vishwavidyalaya Adhiniyam, Rashtriya Vidhi Sansathan Vishwavidyalaya Adhiniyam, etc. were established by the State Government in exercise of power under Entry 25 of the Concurrent List. Similarly, the Central Government has also enacted various legislations relating to higher education under Entry 25 of the Concurrent List pertaining to Centrally funded universities such as the Babasaheb Bhimrao Ambedkar University Act, 1994, the Maulana Azad National Urdu University Act, 1996, the Indira Gandhi National Tribal University Act, 2007, etc. The Central Government may have the power to regulate the admission process for Centrally funded institutions like IITs, NIT, JIPMER, etc. but not in respect of other institutions running in the State.

148. In view of the above discussion, it can be clearly laid down that power of the Union under Entry 66 of the Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country. Thus, the scope of Entry 66 must be construed limited to its actual sense of "determining the standards of higher education" and not of laying down admission process. In no case is the State denuded of its power to legislate under List III Entry 25. More so, pertaining to the admission process in universities imparting higher education.

149. I have no hesitation in upholding the vires of the impugned legislation which empowers the State Government to regulate admission process in institutions imparting higher education within the State. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of "higher education" being one such field which directly affects the growth and development of the State, it becomes prerogative of the State to take such steps which further the welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and fee, etc. governing the institutions running in that particular State except the Centrally funded institutions like IIT, NIT, etc. because no one can be a better judge of the requirements and inequalities □in □opportunity of the people of a particular State than that State itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams." (emphasis supplied) Thus, as held by the Constitution Bench of this Court in the case of Modern Dental College (supra), in which this Court considered catena of earlier decisions of this Court dealing with the scope and ambit of Entry 66 List I, Entry 66 of List I is a specific entry having a very specific and limited scope; it deals with "Coordination and Determination of Standards" in institutions of higher education or research as well as scientific and technical institutions. It is further observed that the words "Coordination and Determination of Standards" would mean laying down the said standards and therefore when it comes to prescribe the standards for such institutions of higher learning, exclusive domain is given to the Union. It is specifically further observed that that would not include conducting of examination etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. Thus, in exercise of powers under Entry 66 List I, the Union cannot provide for anything with respect to reservation/percentage of reservation and/or even mode of admission within the State quota, which powers are conferred upon the States under Entry 25 of List III. In

exercise of powers under Entry 25 List III, the States have power to make provision for mode of admissions, looking to the requirements and/or need in the concerned State. 10.2 We note that as per catena of decisions of this Court, "institutional preference" in the postgraduate medical courses is held to be permissible by the concerned States, (see D.N. Chanchala (supra); Pradeep Jain v. Union of India 18; Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad 19; Gujarat University v. Rajiv Gopinath Bhatt20; AIIMS Students' Union (supra); Saurabh Chaudri v. Union of India 21; and Yatinkumar Jasubhai Patel (supra)).

18 (1984) 3 SCC 654 19 (1986) 3 SCC 727 20 (1996) 4 SCC 60 21 (2003) 11 SCC 146 10.3 In a recent decision of this Court in the case of Yatinkumar Jasubhai Patel (supra), the issue of "institutional preference" within the State quota was considered in which the Gujarat University framed the rules for the purpose of governing admission to postgraduate courses. One of the rules provided that 50% of the seats shall be filled in as per the All India 50% quota and the remaining seats will be available for the candidates passing from the Gujarat University. That was provided to the candidates graduating from the Gujarat University. The aforesaid rule of "institutional preference" was challenged before the High Court. The vires of the afore□stated rules providing "institutional preference" giving preference to the candidates graduated from the Gujarat University was challenged on the ground that in view of introduction of the NEET and the admissions are given solely on the basis of the merit and the marks obtained in NEET, the rules providing "institutional preference" shall be violative of the Indian Medical Council Act, 1956 and the MCI Regulations, 2000 framed under the Indian Medical Council Act, 1956. The High Court dismissed the writ petition upholding the "institutional preference". The same was the subject matter before this Court. It was submitted on behalf of the writ petitioners that even the MCI Regulations for postgraduate admissions, MCI Regulations, 2000, do not permit the "institutional preference" and that the MCI Regulations, 2000 held by this Court to be a complete code and therefore no reservation is to be provided unless the same is permitted under the MCI Regulations, 2000. The decision of this Court in the case of Dinesh Singh Chauhan (supra) was also placed into service. However, considering the plethora of decisions of this Court, referred to hereinabove, this Court has again held that "institutional preference" is permissible and even the introduction of NEET would not affect the "institutional preference". This Court has noted that "institutional preference" up to 50% seats is permissible.

11. Now let us consider the scope and ambit of the MCI Regulations, 2000, and whether MCI Regulations, 2000 take away the power of the States under Entry 25 List III to provide for separate source of entry for in□service candidates seeking admission to postgraduate degree courses? 11.1 At this stage, Regulation 9 of MCI Regulations, 2000, as amended on 15.2.2012, is required to be referred to, which reads as under:

> "9. Regulation 9, as amended on 15□2□2012, reads as follows:
>
> "9. Procedure for selection of candidate for postgraduate courses shall be as follows:
>
> (I) There shall be a single eligibility□cum□entrance examination, namely, "National Eligibility□cum□Entrance Test for admission to Postgraduate Medical Courses" in

each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India.

(II) 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%:

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% before they are included in the annual sanctioned seats for general category candidates:

Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions. (III) In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test for Postgraduate courses" held for the said academic year. However, in respect of candidates belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause (II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile.

The percentile shall be determined on the basis of highest marks secured in the all-India common merit list in "National Eligibility-cum-Entrance Test" for postgraduate courses:

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to postgraduate courses, the Central Government in consultation with the MCI may at its discretion lower the minimum marks required for admission to postgraduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

(IV) The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories.

An all-India merit list as well as Statewise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to postgraduate courses from the said merit lists only:

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the government/competent authority as an incentive at the rate of 10% of the marks

obtained for each year of service in remote and/or difficult areas up to the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by the State Government/competent authority from time to time.

(V) No candidate who has failed to obtain the minimum eligibility marks as prescribed in clause (II) above shall be admitted to any postgraduate courses in the said academic year.

(VI) In non-governmental medical colleges/institutions, 50% (fifty per cent) of the total seats shall be filled by the State Government or the Authority appointed by them, and the remaining 50% (fifty per cent) of the seats shall be filled by the medical colleges/institutions concerned on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

(VII) 50% of the seats in postgraduate diploma courses shall be reserved for medical officers in the government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG diploma, the medical officers shall serve for two more years in remote and/or difficult areas as defined by State Government/competent authority from time to time.

(VIII) The Universities and other authorities concerned shall organise admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super speciality courses each year. For this purpose, they shall follow the time schedule indicated in Appendix III.

(IX) There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super speciality courses under any circumstances. The universities shall not register any student admitted beyond the said date.

(X) The MCI may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognised qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year." 11.2 Regulations, 2000 are framed by the MCI in exercise of its powers conferred under Section 33 of the Indian Medical Council Act, 1956. The Indian Medical Council Act, 1956 has been enacted/passed by the Union in exercise of powers conferred under Entry 66, List I. Therefore, the main source of power of the MCI would be from Entry 66 List I. As per Section 33 of the MCI Act, the Council may with the previous sanction of the Central Government

make regulations generally to carry out the purpose of the said Act. Therefore, in exercise of powers under Section 33 of the MCI Act, Regulations 2000 are made by the MCI. As observed hereinabove, the MCI draws the power from Entry 66 List I. As observed hereinabove, Entry 66 List I is a specific entry having a very specific and limited scope which deals with "Coordination and Determination of Standards" of higher education for research as well as scientific and technical institutions. In fact, such "Coordination and Determination of Standards", insofar as medical education is concerned, is achieved by parliamentary legislation in the form of Indian Medical Council Act, 1956 and by creating the statutory body like MCI. The functions that are assigned to MCI include within its sweep "Determination of Standards" in a medical institution as well as "Coordination of Standards" and that of educational institutions. As discussed hereinabove, when it comes to regulating "education" as such, which includes even medical education as well as universities, that is prescribed in List III, Entry 25.

11.3 If one considers the Statement of Objects and Reasons of the Indian Medical Council Act, 1956, it cannot be said that the Medical Council of India would have any authority or jurisdiction to frame any regulations with respect to reservation and/or making special provision like providing for a separate source of entry for in□service candidates seeking admission to postgraduate degree courses. Regulations, 2000 have been made in exercise of powers under Section 33 of the MCI Act. Section 33 of the MCI Act reads as under:

"33. Power to make Regulations.The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for—

(a) the management of the property of the Council and the maintenance and audit of its accounts;

(b) the summoning and holding of meetings of the Council, the times and places where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;

(c) the resignation of members of the Council;

(d) the powers and duties of the President and Vice□President;

(e) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings, and the conduct of business of such Committees;

(f) the tenure of office, and the powers and duties of the Registrar and other officers and servants of the Council;

(fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of Section 10-A; (fb) any other factors under clause (g) of sub-section (7) of Section 10-A;

(fc) the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of Section 10-B;

(g) the particulars to be stated, and the proof of qualifications to be given in applications for registration under this Act;

(h) the fees to be paid on applications and appeals under this Act;

(i) the appointment, powers, duties and procedure of medical inspectors and visitors;

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

(k) the standards of staff, equipment, accommodation, training and other facilities for medical education;

(l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and (ma) the modalities for conducting screening tests under sub-section (4-A), and under the proviso to sub-section (4-B), and for issuing eligibility certificate under sub-section (4-B), of Section 13; (mb) the designated authority, other languages and the manner of conducting of uniform entrance examination to all medical educational institutions at the undergraduate level and postgraduate level;

(n) any matter for which under this Act provision may be made by regulations." On a fair reading of entire Section 33 of the MCI Act, it does not confer any authority and/or power to the MCI to frame the regulations with respect to reservation in the medical courses, more particularly, to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses, as sought to be contended on behalf of the MCI and counsel opposing for providing for a separate source of entry for in-service candidates.

12. In light of the above observations, we shall consider the relevant provisions of MCI Regulations, 2000, more particularly, Regulation 9. The title of Regulation 9 is "Procedure for selection of candidate for postgraduate courses". Regulation 9(I) provides that there shall be a single eligibility-

cum-entrance examination, namely, NEET. Regulation 9(II) further provides that 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability. Regulation 9(III) provides for the eligibility criteria. It provides that in order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in NEET for postgraduate courses. However, in respect of candidates belonging to SC/ST/OBC, the minimum marks shall be at 40 th percentile. Thus, it can be seen that Regulation 9(III) can be said to be providing the standards which shall be within the domain and legislative competence of the Union and the MCI, in exercise of powers under Entry 66, List I. The first part of Regulation 9(IV) speaks for the reservation of seats in medical colleges/institutions. It provides that the reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. It further provides for preparing all-India merit list as well as State-wise merit list of the eligible candidates on the basis of the marks obtained in NEET and candidates shall be admitted to postgraduate courses from the said merit lists only. To that stage, it can be said that the same is within the legislative competence of the Union/MCI, in exercise of powers under Entry 66 List I. However, proviso to Regulation 9(IV) further provides that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/competent authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to the maximum of 30% of the marks obtained in NEET. It further provides that the remote and difficult areas shall be as defined by the State Government/competent authority from time to time. Thus, it can be seen that even the proviso can be said to be with respect to preparing the merit list only.

12.1 As held by this Court in earlier decisions, Regulation 9(IV) is limited only to reservation in favour of SC/ST/OBC and as per the prevailing laws in the States. If that be so, then the proviso which as such is not dealing with the reservation cannot be said to be in the form of an exception to first part of Regulation 9(IV) and it can be seen that it is an independent provision dealing with the in-service candidates and that too for the purpose of preparing the merit list. Thus, the proviso becomes the substantive provision and is more concerned with the marks to be allocated which is the concern of Regulation 9(III). It is also required to be noted that even this proviso confers a discretion on the State to provide for weightage in marks for the services rendered in remote or difficult areas. The proviso only enables the States by conferring the discretion for weightage. The proviso has nothing to do with the reservation in the postgraduate degree courses and therefore it shall not negate the State's power to make reservation and/or make special provision to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses. Thus, Regulation 9(IV) as such cannot be said to be taking away the power of the States under Entry 25, List III, to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses. Any contrary view would affect the right of the States to make reservation and/or to make special provision for admission in exercise of powers under Entry 25 List III. If it is construed that Regulation 9 of the MCI Regulations, 2000, more particularly Regulation 9(IV) provides for reservation and/or deals with the reservation for in-service candidates, in that case, it will be beyond the legislative competence of the Union as well as it will be ultra vires to the Indian Medical Council Act, 1956. As observed hereinabove, Section 33 of the Indian Medical Council Act, 1956 does not confer any power on the MCI to make regulations with

respect to reservation. At the cost of repetition, it is observed that "institutional preference", despite MCI Regulations, 2000, has been upheld and held to be permissible by the concerned States.

13. The sum and substance of the above discussion would be that,

1) that Entry 66 List I is a specific entry having a very limited scope;

2) it deals with "coordination and determination of standards" in higher education;

3) the words "coordination and determination of standards would mean laying down the said standards;

4) the Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of powers under Entry 66 List I and has no power to make any provision for reservation, more particularly, for in□service candidates by the concerned States, in exercise of powers under Entry 25 List III;

5) that Regulation 9 of MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the concerned States to make reservation and/or make special provision like the provision providing for a separate source of entry for in□service candidates seeking admission to postgraduate degree courses and therefore the concerned States to be within their authority and/or legislative competence to provide for a separate source of entry for in□service candidates seeking admission to postgraduate degree courses in exercise of powers under Entry 25 of List III; and

6) if it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in□ service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under Entry 66 List I.

14. Now so far as the law for in□service candidates and the object and purpose to provide reservation and/or to make special provision for admission for in□service candidates is concerned, few decisions of this Court are required to be considered. 14.1 In the case of K. Duraisamy (supra), the Court was considering the following provisions of the Government Order dated 9.2.1999 issued by the State of Tamil Nadu:

"7. xxx xxx xxx "1. (iii)(a) The reservation will be confined to and kept at 50% in favour of the in□ service candidates on merit basis.

(b) 50% of the seats available in each of the specialities shall be allotted exclusively to the service candidates.

(c) If a sufficient number of eligible service candidates are not available for the seats reserved exclusively for them, such vacancies shall be filled up by the non□service candidates from the merit list/waiting list in the respective reserved compartments. If vacancies exist even after this, such

vacancies shall be filled up applying the order of preference indicated in the prospectus.

(d) The following categories of Medical Officers only will be treated as service candidates and considered for selection against 50% of seats allocated exclusively for service candidates:

> (1) All Medical Officers selected by the TNPSC and appointed in the Tamil Nadu Medical Services on regular basis, who have put in minimum of 2 years' continuous service as on 1□2□1999. (2) Medical Officers (or) Health Officers in the Public Health Department who have been selected by the TNPSC and working under the control of DPH and PM and who apply for Public Health course i.e. diploma in Public Health can be considered as service candidates for DPH as the above qualification namely diploma in Public Health is essential for declaration of probation. However, to consider under service quota for MD (SPM), the candidates must have completed 2 years of service like the other postgraduate courses. (3) Medical Officers who have put in 2 years of continuous service and who are working in:
>
> (i) Local bodies/municipalities in Tamil Nadu.
>
> (ii) Government of India institutions in Tamil Nadu.
>
> (iii) Public sector undertaking and organisation under the control of the Government of India in Tamil Nadu.
>
> (iv) Undertakings and organisations of the Government of Tamil Nadu. These Medical Officers should produce bona fide certificates from the authorities concerned with the declaration to serve in the respective institutions for a minimum period of 5 years after completion of the course.

In that case, the Government of Tamil Nadu issued G.O dated 9.2.1999 laying down the procedure for selection of candidates for admission to postgraduate diploma, degree, MDS and higher speciality courses. The Government Order envisaged reservation confining up to 50% in favour of the in□service candidates on merit basis and further stipulated that 50% of the seats available in each of the speciality shall be allotted exclusively to the service candidates. The Government Order also enumerated various categories of Medical Officers, who alone will be treated as in□service candidates and considered for selection against the 50% of the seats allocated exclusively for service candidates. The aforesaid Government Order was challenged before the High Court. The learned Single Judge, while allowing the writ petitions held that reservation of 50% of seats for non□service candidates have to be given effect to or worked out by selecting candidates from in□service and non□service, on the basis of merit in the first instance and thereafter the 50% seats reserved for in□service candidates shall be filled up by the in□service candidates who could not gain selection on the basis of merit as against the other 50% earmarked as “open”. The learned Single Judge was further of the view that there is no category as “non□service candidates”, and it is only the in□service candidates who form a separate class. Aggrieved, some of the selected candidates filed writ appeals, which came to be dismissed summarily. The appeals filed by the State came up subsequently before

another Division Bench and finding themselves unable to agree with the order of dismissal of the earlier appeals, the matters were referred for consideration by a larger Bench. Thereupon the matters were placed before the Full Bench, which, in turn, reversed the judgment of the learned Single Judge and dismissed the writ petitions. The judgment of the Full Bench was the subject matter before this Court. While considering the aforesaid provisions, this Court answered the question, namely, "could the State Government have legitimately made a provision allocating 50% of seats exclusively in favour of in-service candidates and keep open the avenue for competition for them in respect of the remaining 50% along with others", in affirmative. In paragraphs 8 to 12, it is held as under:

> "8. That the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion, is well established and by now a proposition well settled, too. It has been the consistent and authoritatively-settled view of this Court that at the super-speciality level, in particular, and even at the postgraduate level reservations of the kind known as "protective discrimination" in favour of those considered to be backward should be avoided as being not permissible. Reservation, even if it be claimed to be so in this case, for and in favour of the in-service candidates, cannot be equated or treated on par with communal reservations envisaged under Articles 15(4) or 16(4) and extended the special mechanics of their implementation to ensure such reservations to be the minimum by not counting those selected in open competition on the basis of their own merit as against the quota reserved on communal considerations.
>
> 9. Properly speaking, in these cases, we are concerned with the allocation of seats for admission in the form of a quota amongst in-service candidates on the one hand, and non-service or private candidates on the other and the method or manner of working out in practice the allocation of seats among the members of the respective category. Could the State Government have legitimately made a provision allocating 50% of seats exclusively in favour of the in-service candidates and keep open the avenue for competition for them in respect of the remaining 50% along with others, denying a fair contest in relation to a substantial or sizeable number of other candidates, who are not in service and who fall under the category of non-service candidates, will itself be open to serious doubt. One such attempt seems to have been put in issue before the Madras High Court which held that reservation in favour of the in-service candidates for the academic year 1992-93 should be confined to 50% and awarding of two additional marks, instead of one additional mark for each completed year of service in primary health centres was unconstitutional and when the matter was brought to this Court, in the decision reported in State of T.N. v. T. Dhilipkumar [(1995) 5 Scale 208 (2)] the decision of the High Court has been upheld. This Court also further observed that the Government should appoint a highly-qualified committee to determine from year to year what, in fact, should be the percentage-wise reservation required for the in-service candidates, having regard to the then prevailing situation and that the percentage of fifty per cent shall, if found

appropriate, be reduced.

10. The stipulations governing the selection for admissions in these cases have got to be viewed and construed in the above backdrop of events and legal position. The learned Single Judge, in our view, was certainly not right in equating the provisions made for allocation of seats in the form of fixation of quota in this case with the usual form of communal reservations and allowing himself to be carried away by the peculiar method of working out such reservations in order to ensure adequate representation to such candidates, and applying those principles to construe a provision of the nature involved in these cases. Yet another error in the reasoning of the learned Single Judge lies in his assumption that "open quota" seats have to be thrown open to all and are meant only to be filled up purely on the basis of merit performance and no one from even the class of candidates in whose favour a special quota has already been provided can be excluded from consideration as against the "open quota". This reasoning of the learned Single Judge not only ignores the object and scheme underlying the allocation of seats for admissions for the academic year 1999–2000, but has the consequence of rewriting the prospectus and introducing altogether a different pattern of admissions, overriding the policy of the Government aimed at meeting out equal justice and affording equality of opportunity to the different categories classified for the purpose. If the Government can be said to possess the power to fix a quota for the exclusive benefit of "in-service" candidates, it is beyond comprehension or dictates of either reason or logic as to why the Government cannot equally exclusively earmark the remaining seats in favour of "non-service" or private candidates, thereby confining the claims of service candidates to the number of seats earmarked and allocated to them. As there can be a classified category of "service candidates", it is open to the Government to make classification of all those other than those falling in the category of service candidates as non-service candidates and allocate the remaining seats after allotment to the service candidates for exclusive benefit of the source of non-service or private candidates. There is nothing in law which deprives the Government of any such powers and no such impediment has either been brought to our notice at the time of hearing or seems to have been brought to the notice of the learned Single Judge to warrant any such construction, as has been adopted by him. We are also of the view that it does not lie in the mouth of the writ petitioners to raise a bogey of selection based on merit alone, only in respect of a portion of the seats available for admission to non-service candidates, when they belong to and are part of a category or class who have got in their favour fifty per cent of the number of seats in each of the disciplines allocated to their category of "in-service" candidates to be filled up exclusively from such "in-service" candidates on the basis of their own inter se merit and not on the overall merit performance of all the candidates — both in-service and non-service put together. The writ petitioners are found to have applied as in-service candidates and merely because they could not be selected within the number of seats earmarked for their category or class on the basis of the inter se merits among their own class, they cannot be allowed to contend to the contrary in

retrospect and on hindsight experience of having obtained more marks, than those who got selected as against the seats earmarked and allocated to the non-service candidates. The justification, both in law and on facts for exclusive allocation and stipulation of a definite quota or number of seats for non-service or private candidates, in our view, lies in the very principle which warranted or enabled the fixation of a quota of fifty per cent of seats and exclusively allotted to the in-service candidates. Any countenance of such claims of the appellants is likely to also endanger the very allocation of 50% of the seats exclusively to the category of in-service candidates, too.

11. On a consideration of the reasoning of the Full Bench as also the construction placed upon the Government Order and the prospectus, we are of the view that the State Government, in the undoubted exercise of its power, has rightly decided, as a matter of policy, so far as the admissions to super-speciality and post-graduate diploma/degree/MDS courses for the academic session 1999-2000 are concerned to have scheme or pattern of two sources of candidates based upon a broad classification into two categories, i.e., in-service candidates and non-service or private candidates with each one of them allocated exclusively for their own respective category of candidates fifty per cent of the seats, the ultimate selection for admission depending upon the inter se merit performance amongst their own category of candidates. As pointed out by the Full Bench, the change in the nomenclature of the categorisation from "open competition" in 1998-1999, to "open quota" in 1999-2000 and the conspicuous omission in the scheme and the prospectus for 1999-2000 of a specific stipulation like the one contained in clause X (5) in the prospectus for 1998-1999 that the 50% of the seats available for open competition shall be made available for selection and admission of both service and non-service candidates, as also the stipulation contained in the Government Order and the prospectus for 1999-2000 under the caption "Criteria for selection under 50% open quota", which specifically reads that all other eligible Medical Officers except those specified in clause

(iii)(d) above (meaning thereby Medical Officers who will be treated as service candidates and allowed to apply as such) are eligible to apply under 50% of the open quota, supports the stand of the State Government and the Selection Committee and justifies the selections for admission already made by them. The further stipulation that the reservation will be confined to and kept at 50% in favour of the in-service candidates on merit basis, coupled with the other provisions noticed above make it abundantly clear that the selection of the in-service candidates is confined to and has to be kept at 50% only of the total seats and not against any of the other seats, exclusively earmarked for the non-service or private candidates.

12. The mere use of the word "reservation" per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially- and-

> educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes, to enable them to enter and adequately represent in various fields. The meaning, content and purport of that expression will necessarily depend upon the purpose and object with which it is used.

Since reservation has diverse natures and may be brought about in diverse ways with varied purposes and manifold objects, the peculiar principles of interpretation laid down by the courts for implementing reservations envisaged under the Constitution in order to ensure adequate and effective representation to the backward classes as a whole cannot be readily applied out of context and unmindful of the purpose of reservations as the one made in this case, more to safeguard the interest of candidates who were already in service to enable such in-service candidates to acquire higher and advanced education in specialised fields to improve their professional talents for the benefit of the patients to be treated in such medical institutions where the in-service candidates are expected to serve. That apart, where the scheme envisaged is not by way of a mere reservation but is one of classification of the sources from which admissions have to be accorded, fixation of respective quota for such classified groups, the principles at times applied in construing provisions relating to reservation simpliciter will have no relevance or application. Though the prescription of a quota may involve in a general sense reservation in favour of the particular class or category in whose favour a quota is fixed, the concepts of reservation and fixation of quota drastically differ in their purport and content as well as the object. Fixation of a quota in a given case cannot be said to be the same as a mere reservation and whenever a quota is fixed or provided for one or more of the classified group or category, the candidates falling in or answering the description of different classified groups in whose favour a respective quota is fixed have to confine their respective claims against the quota fixed for each of such category, with no one in one category having any right to stake a claim against the quota earmarked for the other class or category. Since we are of the view that the Full Bench has correctly come to the conclusion that the scheme adopted for selection of candidates for admissions in question provided for a definite and fixed quota for the respective classified sources of admission and the reasons assigned therefor do not suffer from any infirmity whatsoever to call for any interference at our hands, these appeals fail and are dismissed." (emphasis supplied) 14.2 The question with respect to reservation for in-service candidates in medical colleges – post graduate courses again fell for consideration before this Court in the case of Gopal D. Tirthani (supra). In the aforesaid case, the State of Madhya Pradesh, while making the Madhya Pradesh Medical and Dental PG Entrance Examination Rules, 2002, provided for reservation of 20% seats in PG degree/diploma courses for employees of the Government of Madhya Pradesh (in-service). The Rules further provided that such in-service candidates are exempted from pre-PG Entrance Examination and shall be nominated for doing postgraduation in various degree/diploma courses as per selection criteria, terms and conditions of employer Department. The Rules further provided that selection will be done on the basis of the individual cumulative performance at the first, second and third MBBS examinations if such examinations have been passed from the same university. The Rules which were under challenge before the High Court further provided that only those candidates who have completed five years of service under the Government of Madhya Pradesh and who are not serving on contractual basis will be eligible for selection as candidates who are in-service. The Rules further provided that for the purpose of selection of candidates who are in-service, 40% of the marks as weightage would be given. The High Court struck down as ultra vires the PG admission

(In-service) Rules, 2002 based on the following findings arrived at by it:

"11. xxx xxx xxx "(a) There can be reservation for in-service employees for postgraduate medical courses and reservation made for the said employees in the 2002 Rules does not suffer from any constitutional invalidity.

(b) There has to be a common entrance examination for admission in postgraduate medical courses so as to test the comparative merit.

(c) The 'In-Service Rules' which provide for separate and limited examination for in-service candidates contravene the basic tenet and principle enunciated in the Regulations framed by the Medical Council of India and, therefore, the same are ultra vires.

(d) Conferral of benefit by grant of weightage to some in-service candidates/employees on the basis of their rendering services in rural areas is hit by Article 14 of the Constitution as well as stands in oppugnation to the Regulations framed by the Medical Council of India and hence, is invalid and is liable to be struck down.

(e) The distinction made between the in-service women employees/women candidates who have served in rural areas for three years and other women candidates who have rendered service in other areas is discriminatory.

(f) The stance put forth by some of the petitioners that there has to be some reservation for the category of employees who are Assistant Surgeons from amongst the quota meant for 'in-service candidates' is devoid of any substance and hence, deserves rejection.

(g) The limited and separate examination which has already been held cannot be given the stamp of approval because we have already held that In-Service Candidates Rules, 2002 are unconstitutional."

12. In substance, the High Court upheld the validity of reservation of 20% seats out of the total in favour of in-service candidates. It held that the in-service candidates and open category candidates had to be subjected to one common entrance test for determining the comparative merit for entrance into the postgraduate courses of study, and that the holding of two separate tests — one for in-service candidates and one for open category candidates — was unsustainable, being in contravention of the Regulations framed by the Medical Council of India...." (emphasis supplied) Having noted the laudable purpose sought to be achieved by making special provisions for in-service candidates and having noted, in-service candidates on attaining higher academic achievements would be available to be posted in rural areas by the State Government, this Court upheld the Rules providing reservation for in-service candidates in PG courses. The relevant observations are in paragraphs 19 to 21, which read as under:

> "19. The controversy in the present litigation does not concern the open category candidates; it is confined to the in-service candidates. We, therefore, propose to

preface our discussion by determining the nature of 20% seats allocated to the in□ service candidates — whether it is by way of reservation or quota or is a channel of entry. Our task stands simplified by the law laid down by a three□Judge Bench decision of this Court recently in K. Duraisamy v. State of T.N. [(2001) 2 SCC 538] The question arose for decision in almost a similar factual background. The seats were at the State level and not all□India quota seats. The State Government had allocated 50% of the seats exclusively for in□service candidates and left the remaining 50% seats as open quota i.e. to be filled in from out of such candidates as were not in State Government service. The classification was made as "service quota" and "open quota", for in□service candidates and other candidates respectively, confining the respective class/cadre candidates to the respective percentages earmarked for the two of them exclusively. The Court held:

(i) the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion;

(ii) that such allocation of seats in the form of fixation of quota is not to be equated with the usual form of communal reservation and, therefore, the constitutional and legal considerations relevant to communal reservations are out of place while deciding the case based on such allocation of seats;

(iii) that such exclusive allocation and stipulation of a definite quota or number of seats between in□service and non□service or private candidates provided two separate channels of entry and a candidate belonging to one exclusive quota cannot claim to steal a march into another exclusive quota by advancing a claim based on merit. Inter se merit of the candidates in each quota shall be determined based on the merit performance of the candidates belonging to that quota;

(iv) that the mere use of the word "reservation" per se is not decisive of the nature of allocation. Whether it is a reservation or an allocation of seats for the purpose of providing two separate and exclusive sources of entry would depend on the purpose and object with which the expression has been used and that would be determinative of the meaning, content and purport of the expression. Where the scheme envisages not a mere reservation but is one for classification of the sources from which admissions are to be accorded, fixation of respective quota for such classified groups does not attract applicability of considerations relevant to reservation simpliciter.

20. K. Duraisamy case [(2001) 2 SCC 538] was considered and explained by another three□Judge Bench of this Court in AIIMS Students' Union v. AIIMS [(2002) 1 SCC 428] . The following observation is appropriate and apposite for the purpose of the case at hand and is, therefore, extracted and reproduced hereunder. The Court was considering the question of allocation of seats between in□service and open category candidates, the candidates in both the categories being medical graduates, and not a reservation in favour of the weaker sections of society or those who

deserve or need to be affirmatively discriminated. The Court then said: (SCC pp. 447□48, para 31) "Some of them had done graduation sometime in the past and were either picked up in the government service or had sought for joining government service because, maybe, they could not get a seat in postgraduation and thereby continue their studies because of shortage of seats in higher level of studies. On account of their having remained occupied with their service obligations, they became detached or distanced from theoretical studies and therefore could not have done so well as to effectively compete with fresh medical graduates at the PG entrance examination. Permitting in□ service candidates to do postgraduation by opening a separate channel for admittance would enable their continuance in government service after postgraduation which would enrich health services of the nation. Candidates in open category having qualified in postgraduation may not necessarily feel attracted to public services. Providing two sources of entry at the postgraduation level in a certain proportion between in□service candidates and other candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. The object sought to be achieved is to benefit two segments of the same society by enriching both at the end and not so much as to provide protection and encouragement to one at the entry level."

21. To withstand the test of reasonable classification within the meaning of Article 14 of the Constitution, it is well settled that the classification must satisfy the twin tests: (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differentia must have a rational relation with the object sought to be achieved. It is permissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. We have, in the earlier part of the judgment, noted the relevant statistics as made available to us by the learned Advocate□ General under instructions from Dr Ashok Sharma, Director (Medical Services), Madhya Pradesh, present in the Court. The rural health services (if it is an appropriate expression) need to be strengthened. 229 community health centres (CHCs) and 169 first□referral units (FRUs) need to be manned by specialists and block medical officers who must be postgraduates. There is nothing wrong in the State Government setting apart a definite percentage of educational seats at postgraduation level consisting of degree and diploma courses exclusively for the in□service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In□service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. In□service candidates, on attaining higher academic achievements, would be available to be posted in rural areas by the State Government. It is not that an in□service candidate would leave the service merely on account of having secured a postgraduate degree or diploma though secured by virtue of being in the service of the State Government. If there is any misapprehension, the same is allayed by the State Government obtaining a bond from such candidates as a condition precedent to their taking admission that after completing PG degree/diploma course they would serve the State Government for another five years. Additionally, a bank guarantee of rupees three lakhs is required to be submitted along with the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved." (emphasis supplied) However, this Court has further held that there shall be only one common entrance test. In paragraphs 25 to 28, it is held as under:

"25. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification consistently with the afore-quoted observation of this Court in Dayanand Medical College and Hospital case [(2001) 8 SCC 664] .

27. The in-service candidates may have been away from academics and theories because of being in service. Still they need to be assessed as eligible for entrance in PG. For taking up such examination, they must either keep updating themselves regularly or concentrate on preparatory studies to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services.

28. Clearly, the State of Madhya Pradesh was not justified in holding and conducting a separate entrance test for in-service candidates. Nor could it have devised a formula by combining clauses (i) and (iii) of Regulation 9(1) by resorting to clause (iv). Recourse can be had to clause (iii) when there is only one university. When there is only one university in one State, the standard of assessment can reasonably be assumed to have been the same for assessing the academic merit of the students passing from that university. When there are more universities than one in a State, the standards of different universities and their assessment methods cannot obviously be uniform and may differ. Then it would be futile to assess the comparative merit of individual performances by reference to clause (iii). The High Court is, therefore, right in forming an opinion that in the State of Madhya Pradesh, where five universities exist, the method of evaluation contemplated by clause (iii) is

not available either in substitution of or in addition to clause (i). The candidates qualified at the pre-PG or PG entrance test held in common for in-service and open category candidates, would then be divided into two separate merit lists to be prepared for the two categories and merit inter se of the successful candidates shall be available to be assessed separately in the two respective categories." (emphasis supplied) Ultimately, in paragraph 36, this Court concluded as under:

"36. We sum up our conclusions as under:

1. In the State of Madhya Pradesh allocation of 20% seats in post-graduation in the universities of Madhya Pradesh for in-service candidates is not a reservation; it is a separate and exclusive channel of entry or source of admission, the validity whereof cannot be determined on the constitutional principles applicable to communal reservations. Such two channels of entry or two sources of admission is a valid provision.

2. There can be only one common entrance test for determining eligibility for postgraduation for in-service candidates and those not in service. The requirement of minimum qualifying marks cannot be lowered or relaxed contrary to the Medical Council of India Regulations framed in this behalf.

3. In the State of Madhya Pradesh there are five universities i.e. there are universities more than one.

Regulation 9(2)(iii) cannot be made use of in the State of Madhya Pradesh either singly or in combination with clause (i) for determining the eligibility for entrance into PG courses.

4. It is permissible to assign a reasonable weightage to services rendered in rural/tribal areas by the in-service candidates for the purpose of determining inter se merit within the class of in-service candidates who have qualified in the pre-PG test by securing the minimum qualifying marks as prescribed by the Medical Council of India.

(emphasis supplied) 14.3 The question with respect to reservation and/or special provisions for admission to PG courses with respect to in-service candidates again fell for consideration before this Court in the case of Sudhir N (supra). In the said decision, this Court also considered Regulation 9 of the MCI Regulations, 2000, which provided that general category candidates must secure 50% marks in the common entrance examination. In the aforesaid case of Sudhir N (supra), 40% of the seats available in the State of Kerala for postgraduate medical admission were reserved for in-service doctors serving in the Health Service Department, Medical College Lecturers and doctors serving in the ESI department of the State. However, it was further provided that the admission shall be made strictly on the basis of inter se seniority of the in-service candidates who have appeared in the common entrance examination for the postgraduate medical admission and have obtained the minimum eligibility benchmark in the test in terms of the Regulations framed by the MCI. Writ petitions were filed before the High Court on the ground that the State legislature could

not enact a law that would make selection for admission to the PG courses dependent solely on the seniority of the in-service candidates without prescribing the minimum conditions of eligibility for the candidates concerned. The High Court in principle agreed that the admission to PG courses should be made only on the basis of inter se seniority provided the candidates appear in the common entrance examination and qualify.

After considering various decisions of this Court, ultimately, this Court upheld the decision of the High Court that inasmuch as the provision of Section 5(4) of the 2008 Act which provides for selection of candidates to be from the one stipulated by the MCI Regulations, was beyond the legislative competence of the State Legislature. However, upheld the reservation for in-service candidates after considering the decision of this Court in the case of Gopal D. Tirthani (supra) holding that in-service candidates to be treated as a separate channel for admission to postgraduate courses within that category. Also, admission can be granted only on the basis of merit. It is to be noted that in the said decision, this Court observed that Regulation 9 of the Regulations 2000 is a complete code by itself. However, the said observation can be said to be confined to the controversy before the Court and the reference which was made shall be considered and dealt with hereinbelow at an appropriate stage.

Thus, making special provision for in-service candidates and the provisions for providing reservation for in-service candidates in postgraduate medical courses have been upheld and approved by this Court in the aforesaid decisions. 14.4 Even in the case of Dinesh Singh Chauhan (supra) also, while upholding Regulation 9(IV) which provides weightage to the extent of 10% of the marks obtained by the candidates in the competition test and to the extent of maximum 30% marks, this Court has in paragraph 44 has observed as under:

> "44. Dealing with this contention, we find that the setting in which the proviso to clause (IV) has been inserted is of some relevance. The State Governments across the country are not in a position to provide healthcare facilities in remote and difficult areas in the State for want of doctors. [Rural Health Statistics for 2014-2015 published by the Government of India, Ministry of Health & Family Welfare depicting the shortage of doctors in rural areas particularly State of Uttar Pradesh, which reads thus:
>
> Qualification Required Sanctioned In Vacant Short s position fall MBBS 3497 4509 2209 2300 1288 Doctors at Primary Health Centres (PHCs) Specialists 3092 2099 484 1615 2608 at Community Health Centres (CHCs) In fact there is a proposal to make one-year service for MBBS students to apply for admission to postgraduate courses, in remote and difficult areas as compulsory. That is kept on hold, as was stated before the Rajya Sabha. The provision in the form of granting weightage of marks, therefore, was to give incentive to the in-service candidates and to attract more graduates to join as medical officers in the State healthcare sector. The provision was first inserted in 2012. To determine the academic merit of candidates, merely securing high marks in NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good.

> Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing healthcare facilities in rural areas, deserve incentive marks to be reckoned for determining merit. Notably, the State Government is posited with the discretion to notify areas in the given State to be remote, tribal or difficult areas.

That declaration is made on the basis of decision taken at the highest level; and is applicable for all the beneficial schemes of the State for such areas and not limited to the matter of admissions to postgraduate medical courses. Not even one instance has been brought to our notice to show that some areas which are not remote or difficult areas has been so notified. Suffice it to observe that the mere hypothesis that the State Government may take an improper decision whilst notifying the area as remote and difficult, cannot be the basis to hold that Regulation 9 and in particular proviso to clause (IV) is unreasonable. Considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and the proviso to clause (IV) in particular is just, proper and reasonable and also fulfils the test of Article 14 of the Constitution, being in larger public interest." (emphasis supplied)

15. The object and purpose of providing separate source of admission for in-service candidates is noted by this Court in the cases of K. Duraisamy (supra); Gopal D. Tirthani (supra); and Sudhir N (supra). Even the same is noted by this Court in the case of Dinesh Singh Chauhan (supra) while upholding the reservation for in-service doctors in postgraduate diploma courses. It has been consistently held by this Court that there is a legitimate and rational basis in providing a separate channel/source of entry for in-service candidates in order to encourage them to offer their services and expertise to the State. There is a sufficient nexus with the larger goal of equalization of educational opportunities and to sufficiently prefer the doctors serving in the various hospitals run and maintained out of public funds, in the absence of which there would be serious dearth of qualified Post-graduate doctors to meet the requirements of the common public. It is stated that the Government is facing public health crisis. The effective and competent medical treatment is not available in the rural and difficult areas. In-service doctors who pursue higher studies would naturally serve in rural and difficult areas if such incentive in the form of reservation is provided.

15.1 The action of the State to provide for the in-service quota is in the discharge of its positive constitutional obligations to promote and provide better health care facilities for its citizens by upgrading the qualifications of the existing in-service doctors so that the citizens may get more specialized health care facility. Such action is in discharge of its constitutional obligations as provided in Article 47 of the Constitution of India, which is the corresponding fundamental right of the citizens protected under Article 21 of the Constitution of India. 15.2 It is settled law that Article 21 of the Constitution of India confers on the citizens of India a fundamental right to life and personal liberty. Right to health is integral part of the Right to life and is a facet of Article 21. In the case of Devika Biswas v. Union of India22, after considering its earlier decisions in the case of CESC Ltd. v. Subhash Chandra Bose 23 and in the case of Paschim Banga Khet Mazdoor Samity v. State of West Bengal 24, it is observed in paras 107, 108 and 109 as under:

22 (2016) 10 SCC 726 23 (1992) 1 SCC 441 24 (1996) 4 SCC 37 "107. It is well established that the right to life under Article 21 of the Constitution includes the right to lead a dignified and meaningful life and the right to health is an integral facet of this right. In CESC Ltd. v. Subhash Chandra Bose (1992) 1 SCC 441 dealing with the right to health of workers, it was noted that the right to health must be considered an aspect of social justice informed by not only Article 21 of the Constitution, but also the Directive Principles of State Policy and international covenants to which India is a party. Similarly, the bare minimum obligations of the State to ensure the preservation of the right to life and health were enunciated in Paschim Banga Khet Mazdoor Samity v. State of W.B. (1996) 4 SCC 37.

108. In Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161, this Court underlined the obligation of the State to ensure that the fundamental rights of weaker sections of society are not exploited owing to their position in society.

109. That the right to health is an integral part of the right to life does not need any repetition." (emphasis supplied) 15.3 In a recent decision in the case of Association of Medical Superspeciality Aspirants & Residents v. Union of India 25, it is observed and held by this Court in paragraphs 25 and 26 as under:

"25. It is for the State to secure health to its citizens as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities to employ best of talents and tone up its administration to give effective contribution, which is also the duty of the government (State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117).

26.Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities 25 (2019) 8 SCC 607 (state of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83).

The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings." (emphasis supplied) 15.4 A healthy body is the very foundation for all human activities. In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community

and on the betterment of these depends the building of the society of which the Constitution makers envisaged. It is observed by this Court in the case of Vincent Panikurlangara v. Union of India 26 that "attending to public health is of high priority, perhaps the one at the top". It is the primary duty of a welfare State to ensure that medical facilities are adequate and available to provide treatment. 26 AIR 1987 SC 990 15.5 In the case of CESC Ltd. (supra), this Court has observed and held that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness. The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity.

15.6 In the case of Municipal Council, Ratlam v. Vardhichand 27, this Court through Justice Krishna Iyer observed: "The State will realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties.

15.7 Even otherwise, the power of the State under Entry 6, List II of Schedule VII to legislate in the subject matter of public health and hospital is exclusive.

27 1980 Cri LJ 1075 = 1981 SCR (1) 97 = AIR 1980 SC 1622 15.8 Article 47 of the Constitution reiterates the constitutional obligation imposed on the State to improve public health. The Directive Principle provides as follows:

> "47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health – The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." 15.9 As observed hereinabove, Article 21 of the Constitution of India imposes an obligation on the State to safeguard the life of every person. Preservation of human life is thus of paramount importance. Thus, when the State provides a separate source of admission for in□service doctors as a distinct class and within the State quota and the object is laudable, the State is within its power to provide such separate source of admission in exercise of the powers under Entry 25 List III, read with Entry 6, List II. It cannot be said that there is no nexus with the laudable object of meeting the requirement of qualified postgraduate doctors for the public health services, more particularly, in the rural, tribal and difficult areas. As such, there is no conflict between the power of the Union and the State. As observed hereinabove, the occupied filed of Union legislation in exercise of power under Entry 66, List I is related to minimum standards of medical education and the State is providing the in□service quota without impinging the prescribed minimum standards. It is a settled proposition of law that in case of two entries might be overlapping, in that case, the interpretation must be in furtherance of achieving the ultimate object, in the present case to provide better health care in the rural, tribal and difficult areas. Any interpretation which would negate and/or

become nugatory the other entry, is to be avoided.

There must be a harmonious reading between the two entries. In the present case, as such and as observed hereinabove, there shall not be any conflict between the power of the Union and the State, while exercising the powers under Entry 66 List I by the Union and under Entry 25 List III by the States. Therefore, as such, the State is within its power and is empowered to make reservation in the seats of the postgraduate medical courses, more particularly, for in-service doctors. 15.10 In the federal structure, the State, as well as the Parliament, have a constitutional directive for the upliftment of Scheduled Castes, Scheduled Tribes, and socially and backward classes. Therefore, the State Government have the right to provide reservation and in the field of employment and education, looking to the specific/special need of public requirement in the particular area. There is no constitutional bar to take further affirmative action as taken by the State Government in the cases to achieve the goal. Therefore, by allotting a specific percentage within its State quota and to provide preferential treatment to a particular class, cannot be said to be beyond the legislative competence of the State. On the contrary, as observed hereinabove, the State is within its power and authority to provide such a preferential treatment to provide a better public health in the rural, tribal and hilly areas.

16. It is to be noticed that earlier also the concerned States did provide reservation for in-service government medical officers/doctors and the concerned States, as such, achieved the goal of meeting the public health services in the rural, tribal and difficult areas. However, because of the misinterpretation of the MCI Regulations, 2000, the problems have arisen.

17. Even otherwise, Regulation 9 of the MCI Regulations, 2000 to the extent not providing for any reservation for in-service candidates working in the rural, tribal and difficult areas can be declared ultra vires on the ground of being arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India. It is required to be noted that Regulation 9, more particularly Regulation 9(VII) makes provision for reservation for in-service candidates for admission to postgraduate diploma courses only. However, there is no reason coming out of either from the Regulations or in any form of material produced by the MCI showing as to on what basis MCI takes a stand that similar in-service reservation is not permissible for admission to postgraduate degree courses. Therefore, if the very concept of in-service reservation is permissible and incorporated in the MCI Regulations, 2000, opposition to similar reservation for postgraduate degree courses is unreasonable and irrational.

18. Now so far as the observations made by this Court in the cases of Sudhir N (supra) and Dinesh Singh Chauhan (supra) that the MCI Regulations, 2000 is a complete code is concerned, it is clear that the observations made by this Court in the case of Sudhir N (supra) that Regulation 9 of the MCI Regulations, 2000 is a complete code is required to be considered with reference to the context and controversy before the Court. 18.1 In the case of Sudhir N (supra), the State law which was under consideration by the Court provided that the seniority list of selected candidates to be prepared directly based on seniority of in-service doctors, irrespective of marks obtained by such in-service candidates in common PG entrance examination. In that context, this Court held that Regulation 9 of MCI Regulations, 2000 is the only effective and permissible basis for granting

admission to postgraduate medical courses and therefore it was observed that Regulation 9 of MCI Regulations, 2000 is a complete code. Therefore, the observations in the case of Sudhir N (supra) that Regulation 9 is a complete code in itself may not be construed with respect to providing reservation and/or making special provision like providing separate source of entry for in-service candidates within the State quota and subject to fulfilling of other criteria fixed and provided by the MCI. Therefore, the observations made by this Court in the case of Dinesh Singh Chauhan (supra) and as held by this Court in the case of Sudhir N (supra) that Regulation 9 is a complete code in itself cannot be accepted and is held to be not a good law.

19. When we consider the subsequent amendment in the year 2018, as made by notification dated 12.07.2018, it is provided that a medical college/medical institution shall be entitled to seek equal number of Post Graduate Degree (MD/MS) seats by surrendering recognised diploma seats in corresponding course. In view of the above, it has so happened that by and large in every State the diploma seats are converted in PG Degree (MD/MS) seats by surrendering recognised diploma seats. The resultant effect is that in-service candidates/doctors shall not be entitled to any seat even in PG Diploma courses which has been provided under Regulation 9(VII) of MCI Regulations 2000, as amended from time to time. Therefore, ultimately, it will affect the public health and the common people in the rural, tribal and hilly areas where there is a dearth of good and highly qualified doctors. Therefore, if the rights of the States to provide such reservation for in-service doctors in postgraduate degree/diploma courses is not recognised, in that case, the ultimate sufferer would be the public health and the common people, particularly the people residing in rural, tribal and hilly areas. Conclusions:

20. The sum and substance of the above discussion and conjoint reading of the decisions referred to and discussed hereinabove, our conclusions are as under:

1) that Entry 66 List I is a specific entry having a very limited scope;

2) it deals with “coordination and determination of standards” in higher education;

3) the words “coordination and determination of standards would mean laying down the said standards;

4) the Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of powers under Entry 66 List I and has no power to make any provision for reservation, more particularly, for in-service candidates by the concerned States, in exercise of powers under Entry 25 List III;

5) that Regulation 9 of MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the concerned States to make reservation and/or make special provision like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the concerned States to be

within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under Entry 25 of List III;

6) if it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under Entry 66 List I.;

7) Regulation 9 of MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India;

8) that the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned in-service doctors obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper;

and

9) it is specifically observed and clarified that the present decision shall operate prospectively and any admissions given earlier taking a contrary view shall not be affected by this judgment.

27. In view of our above discussions and conclusions, the Civil Appeals are allowed in the aforesaid terms and the impugned judgment of the High Court at Calcutta dated 01.10.2019 passed in MAT No. 1222 of 2019, connected with, MAT No. 1223 of 2019, MAT 1224 of 2019, MAT 1239/2019, MAT 1245/2019, MAT 1267 of 2019 and MAT 1333 of 2019 is hereby set aside. Writ Petition Nos. 196/2018 connected with Writ Petition No.252/2018, Writ Petition No. 295/2018 and Writ Petition No. 293/2018 stand allowed in the aforesaid terms. All connected interlocutory applications stand disposed of.

Before parting we acknowledge and appreciate the cooperation by the learned Senior Counsels and other Advocates appearing on behalf of their respective parties and assisting the Court in concluding hearing in such an important matter, through virtual court in a time when the entire world is facing pandemic and difficult time. Such a gesture and cooperation is highly appreciable.

PER ANIRUDDHA BOSE, J.

Permission to file petition for special leave to appeal is granted in the matter registered as D-42890/19. Leave granted in all the petitions for special leave to appeal.

2. There are altogether seventeen main proceedings which are before us, all involving a common question of law. That question is as to whether under the scheme of our Constitution and the provisions of the Postgraduate Medical Education Regulations, 2000 (Regulations, 2000) made by the Medical Council of India (Council) under Section 33 of the Indian Medical Council Act, 1956, a State has any power to reserve seats for admission in postgraduate medical degree courses for the medical professionals working in governmental organisations within that State. Such medical professionals we shall refer to henceforth in this judgment as "in- service doctors". We find that this is the term commonly used to describe them in medico- administrative parlance in different parts of the country. Legislations pertaining to medical education in this country is primarily guided by two entries of the Seventh Schedule to the Constitution of India, being Entry 66 of List I (Union List) and Entry 25 of List III (Concurrent List). These entries read:-

> "Entry 66 of List I- Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." "Entry 25 of 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." The conflict between the power of the Union and the State in this set of cases does not arise out of any primary legislation, but emerges out of subordinate or delegated legislations. The respective States have issued Executive Orders to introduce such reservation.
>
> The States of Kerala and West Bengal, have, however traced their power of reservation to certain State legislations and Rules made in that behalf. But these factors are not of much significance for adjudication of these matters.

We shall deal with the subject-controversy applying the established principles for resolving disputes arising out of interpretation of statutory instruments in

relation to legislative competence of the Union and the States.

3. Reference has also been made in course of hearing of these matters before us to two other entries in the State list for tracing the source of State's power to effect such reservation. Entry 6 in the State List covers "Public Health and Sanitation; hospitals and dispensaries". Entry 32 of the same List specifies "Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities, unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies." Learned counsel appearing for some of the parties defending

the reservation have sought to anchor the legislative power of the States to make reservation of this nature on these entries as well. But we do not accept this submission. We are of the view that admission to postgraduate degree courses in medical education cannot be linked to the subject-heads specified against the said two entries. The consequence of reservation of this nature may have impact on functioning of the institutes vis-à-vis the items referred to in the said two entries, but the said entries cannot be linked to any statutory instrument originating from a State providing for reservation of in-service doctors in postgraduate medical degree courses. We also would like to make it clear here that the expression "reservation" we are using in this judgment is not "reservation" in the manner the same is referred to in the Constitution, providing for compensatory discrimination. But so far as the subject-controversy is concerned, this expression really implies a separate source of entry to the postgraduate medical degree courses. We shall explain this distinction in greater detail later in this judgment.

4. Under the 1956 Act, different Rules and Regulations have been made to carry out the purposes of the said statute. Section 10D thereof mandates a common entrance examination both at the undergraduate and postgraduate level. What concerns us in the present set of proceedings is Clause 9 of the 2000 Regulations which contains procedures for selection of candidates for postgraduate medical courses. This clause along with its sub-clauses has undergone certain amendments from time to time and has been brought in its present shape by way of a notification published on 5th April, 2018. The said clause, as it stands now, stipulates:-

> "9. Procedure for selection of candidate for postgraduate courses shall be as follows:-
>
> (1) There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely `National Eligibility-cum-Entrance Test' for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.
>
> (2) The "designated authority" to conduct the `National Eligibility-

cum-Entrance Test' shall be the National Board of Examination or any other body/organization so designated by the Ministry of Health and Family Welfare, Government of India.

(3) In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the `National Eligibility-Cum-Entrance Test for Postgraduate courses held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC.

The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility-cum-Entrance Test for Postgraduate courses.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only.

(4) The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-

wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only.

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."

(5) 5% seats of annual sanctioned intake capacity shall be filled up by persons with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, based on the merit list of National Eligibility-Cum-Entrance Test for admission to Postgraduate Medical Courses.

In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50thpercentile in the `National Eligibility-Cum-Entrance Test' for Postgraduate courses held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC.

(6) No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub-Clause (3) above shall be admitted to any Postgraduate courses in the said academic year.

(7) In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned medical colleges/institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test."

(8) 50% of the seats in Postgraduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and /or difficult areas and /

or Rural areas. After acquiring the Postgraduate Diploma, the Medical Officers shall serve for two more years in remote and /or difficult areas and / or Rural areas as defined by State Government/Competent authority from time to time.

(9) The Universities and other authorities concerned shall organize admission process in such a way that teaching in broad speciality postgraduate courses starts by 1st May and for super speciality courses by 1st August each year. For this purpose, they shall follow the time schedule indicated in Appendix-III.

(10) There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 31st August for super speciality courses under any circumstances.

The Universities shall not register any student admitted beyond the said date.

(11) No authority / institution shall admit any candidate to any postgraduate medicine course in contravention of the criteria / procedure as laid down by these Regulations and / or in violation of the judgements passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention / violation of aforesaid shall be discharged by the Council forthwith. The authority / institution which grants admission to any student in contravention / violation of the Regulations and / or the judgements passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year / years.]"

5. The disputes in these matters largely centre around sub-clause (4) and (8) of the said clause. The content thereof subsisted in the said Regulations in the form of sub-clauses (IV) and (VII) of Clause 9 of the 2000 Regulations in substantially same form, when the said clause was earlier amended, by a Notification dated 15th February, 2012. Sub- clauses (IV) and (VII) of Clause 9 of the 2000 Regulations stood in terms of the aforesaid notification as:

> "IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum- Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only.
>
> Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum- Entrance Test. The remote and difficult areas shall be as defined by State Government/Competent authority from time to time.

> VII. 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government Service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as defined by State Government/Competent authority from time to time."
>
> 6. There has been another development impacting the prospects of in-service doctors in pursuing higher educational qualifications.

The Medical Council of India (MCI) has started permitting conversion of seats in post-graduate diploma course to "degree-seats" from July, 2018. So far as the State of Tamil Nadu is concerned, (who are the respondent no.3 in Writ post-graduate diploma seats, 542 seats have been converted into seats for post-graduate degree courses. This has been brought to our notice by the learned Senior Counsel for the State of Tamil Nadu, Mr. C.S. Vaidyanathan and Mr. V. Giri. Such conversion, we are apprised, is being permitted by virtue of an amendment brought by the MCI to "The Opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including Post-graduate Course of Study or Training) Regulations 2000." This amendment permits medical colleges or institutions to surrender their postgraduate diploma seats to be replaced by postgraduate degree seats. The said amendment was brought about by a notification No.MCI-18(1)/2018- Med./122294 dated 12th July 2018, in exercise of power under Section 33 of the 1956 Act.

7. These proceedings originate from five states, being Haryana, Kerala, Maharashtra, West Bengal and Tamil Nadu. These States have subsisting provisions for reservation of in- service doctors on the basis of different forms of statutory instruments. In Writ Petition (Civil) No.196 of 2018, in which the petitioners are Tamil Nadu Medical Officers' Association and two in-service doctors of that State who had appeared in the National Eligibility-cum-Entrance Test (NEET) in the year 2018 for admission to postgraduate degree course for the academic year 2018-19. This writ petition was filed in the month of March 2018, before the 2018 amendment of 2000 Regulations came into operation. But sub-clause IV thereof, as it prevailed then remains unaltered. Clause VII of the then subsisting Regulations have been incorporated in Clause 9 of the 2000 Regulations as sub-clause (8) in substance. This Court has permitted intervention of G.M.S. Class II Medical Officers' Association in this Writ Petition. The latter entity represents in- service doctors of the State of Gujarat. The said Association had asked for transfer of a petition pending in the High Court of Gujarat, registered as SCA No.5773/2019 (GMS Class II Medical Officers Association vs. State of Gujarat & Ors.) to this Court in Transfer Petition (Civil)No. 633 of 2020. This Court, by an order passed on 22nd June, 2020, considering urgency of the matter, did not consider appropriate to transfer the matter. The petitioner for transfer, however, was permitted to intervene in the matter. Ms. Meenakshi Arora, learned Senior Advocate argued for them before us. Their grievances, as outlined in their application, is over, inter-alia, change in the policy in the State of Gujarat by effecting reservation for in-service candidates sponsored by the State Government of 50 per cent seats in the diploma courses only, excluding the degree courses from such reservation or separate source of entry. This has been done under Rule 6 of the Gujarat Professional Postgraduate Medical Educational Courses

(Regulation of Admission) Rules, 2018. These Rules have been framed under the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007. Subsequently, all the medical colleges in the State of Gujarat have applied for conversion of their diploma seats into degree courses. The applicants contend that such conversion would nullify the effect of Clause 9(8) of the 2000 Regulations. The Association's concern is that such conversion would further shrink future academic pursuit of the in-service doctors from that State. It appears that the State of Gujarat had provision for 25 per cent reservation for in- service candidates in postgraduate degree courses before the MCI brought in the amended Regulations. The Association seeks invalidation of said Rule 6 as also direction upon the State to implement policy of granting incentive marks in terms of proviso to Clause 9(4) of the 2000 Regulations.

8. Reservation for in-service candidates in postgraduate medical courses has been prevalent in various States in different forms for quite some time now, though the extent of such reservation has varied, from State to State, year to year. In the State of Maharashtra, reservation of this category of doctors in post-graduate degree seats had been subsisting since 6th January, 1990 on the basis of Government Resolutions, and the reservation percentage stood at 25 per cent on the basis of a Resolution dated 22nd February, 1996. This has been pleaded in Writ Petition(C)No. 295 of 2018. This Writ Petition, as also Writ Petition (Civil) No. 293 of 2018 and Writ Petition (Civil) No. 252 of 2018 deal with Clause 9 of the 2000 Regulations prior to its amendment effected on 5th April 2018. The petitioner in that proceeding is a State appointed medical officer seeking the benefit of in-service candidates' reservation. The Writ Petition registered as W.P.(C) No.293/2018 relates to similar question of reservation in the State of Haryana. The quota for in-service doctors in the State of Haryana was increased from 27 per cent to 40 per cent with effect from the 2001 session. The petitioners being in-service doctors aspiring to undertake post-graduate degree courses seek declaration to the effect that the State retains power to reserve postgraduate degree seats for the in-service doctors even after coming into operation of Clause 9(IV) of the 2000 Regulations in the form we have already referred to. Their alternative prayer is for invalidation of sub- clauses (IV) and (VII) of Clause 9 of the 2000 Regulations.

9. The State of Kerala had enacted the Kerala Medical Officers Admission to Postgraduate Courses under Service Quota Act, 2008 for providing reservation in postgraduate courses for medical officers in service of the State Government on prescribed terms and conditions. This Statute empowers the State Government to reserve upto 40 per cent of post-graduate seats for in-service candidates. The State had policy of reservation of 40 per cent of the seats available in postgraduate medical admissions for in-service doctors on the basis of seniority.

10. The State of West Bengal framed the West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service (Placement on Trainee Reserve) Rules, 2015 under Section 21 of the West Bengal State Health Services Act, 1990. Note to Rule 3 thereof confers power on the State Government to specify the number of seats in different postgraduate courses which may be available to the in-service doctors. There have been subsequent Executive Orders issued in this regard. Reservation for the in-service doctors by the State Government was successfully challenged before the High Court by twentytwo medical graduates appearing from the open category who had cleared the entrance examination through the

Postgraduate NEET, 2019 conducted by the National Board of Examination at all India level. Reservation for in-service doctors in West Bengal was being continued in terms of a memorandum bearing no.

HF/O/MERT/433//W-43/13 dated 18th April, 2013. The seats involved were for MD-MS courses, which are postgraduate medical degree courses. In terms of the 2000 Regulations, half of the total number of seats had been reserved for All India quota and the other half had been reserved for the State quota. After the second round of counselling, the vacancies remaining from the national quota were reverted back to the State. The complaint of the writ petitioners before the High Court was that the State was seeking to fill up these reverted seats in 60:40 ratio for the open category and in-service candidates. A learned Single Judge of the High Court allowed the writ petition on the ground that such reservation was contrary to the provisions of the 2000 Regulations. The decision of the First Court was affirmed by a Division Bench of the High Court. Admission of the in-service doctors to postgraduate degree courses pursuant to reservation of 40 per cent of the State quota seats was directed to be cancelled and a fresh merit list was also directed to be prepared. In SLP(C) 26665 of 2019 and 26507-26510, 25487-25490 of 2019 and Diary No. 42980 of 2019, the in-service doctors have assailed the judgment of the Division Bench of the Calcutta High Court. The State of West Bengal is the appellant-petitioner in SLP(C) Nos. 26448 of 2019 whereas the Vice Chancellor, West Bengal University of Health Sciences is the appellant-petitioner in SLP(C)No. 26449 of 2019 and SLP(C)No. 26648 of 2019.

11. The main proceeding giving rise to this reference is Writ Petition (Civil) No.196 of 2018. Mr. Arvind Datar, learned Senior Advocate has argued in this writ petition for the petitioners before us. In this writ petition, following reliefs have been prayed for:-

> "(a)Declare by issuance of a writ of mandamus or any other suitable writ/order/direction that Regulation 9 of the Post Graduate Medical Education Regulations, 2000 (more particularly, Regulation 9 (IV) and 9(VII), does not take away the power of the States under Entry 25, List III to provide for a separate source of entry for in-service candidates seeking admission to Degree Courses;
>
> (b)Alternatively, if Regulation 9 of the Post Graduate Medical Education Regulations, 2000 is understood to not allow for States to provide for a separate source of entry for in-service candidates seeking admission to Degree Courses, declare, by issuance of a writ of mandamus or any other suitable writ/order/direction, Regulation 9 (more particularly, Regulation 9 (IV) and 9 (VII) as being arbitrary, discriminatory and violative of Article 14 and Article 19(1)(g)of the Constitution and also ultra vires the provisions of the Indian Medical Council Act 1956; and
>
> (c)Pass any such further orders/directions which this Hon'ble Court may deem fit and proper in the interest of justice."
>
> 12. Before the institution of Writ Petition (Civil) no.196 of 2018, a three-Judge Bench of this Court in the case of State of Uttar Pradesh & Ors. vs. Dinesh Singh Chauhan

> [(2016) 9 SCC 749] had examined the question as to whether having regard to the provisions of Clause 9 of the 2000 Regulations, State's power to provide for reservation of in-service candidates in postgraduate medical degree courses had been retained or not. This issue was decided in the negative. Opinion of the Bench of three Hon'ble Judges of this Court in this case was that the effect of Clause 9 of the 2000 Regulations was in effect forfeiture of the power of the States in making provisions for reservation in postgraduate medical degree courses for in-service doctors. This case dealt with Clause 9 of the 2000 Regulations as it stood prior to 5th April 2018. In Sudhir N.& Ors. vs. State of Kerala & Ors. [(2015) 6 SCC
>
> 685), a Division Bench of this Court has held that Clause 9 of the 2000 Regulations is a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of candidates including the method to be adopted for determining inter-se merit which remains the only basis for such admission. In the case of Dinesh Singh Chauhan (supra), this view was confirmed by the three-

judge Bench of this Court. We must, however, point out here that in the case of Sudhir N. (supra), the question which was addressed was as to whether in-service candidates could be given admission on the basis of inter-se seniority alone.

13. As it would be evident from the aforesaid proviso to sub-clause (4) of Clause 9 (as also sub-clause IV of the same clause as it prevailed after the amendment made on 15th February 2012), the State Governments have been conferred with the power to give weightage in the marks as an incentive of upto 10 per cent of the marks obtained for each year of service in remote and the difficult areas. Rural areas was added to this List on the basis of amendment made on 5th April 2018. A capping of 30 per cent of the marks obtained in the NEET on such weightage has been specified in the said proviso. Sub-clause(8) of the present Regulations, which is broadly similar to sub- clause VII of the same Regulations in its earlier form, thereof permits the State Governments to reserve 50 per cent of the seats in postgraduate diploma courses for in-service doctors who have served for at least three years in remote and/or difficult areas or rural areas. This reservation is subject to a further condition that after acquiring a postgraduate diploma the medical officers should serve two more years in remote and/or in difficult areas or rural areas as defined by the State Government or the competent authorities.

14. In the case of Dinesh Singh Chauhan (supra), before the High Court at Allahabad, legality of two government orders dated 28th February, 2014 and 17th April, 2014 was questioned. These orders imposed condition of working for three years in rural or difficult areas for the in-service doctors aspiring for postgraduate study. The State of Uttar Pradesh at the material time had 30 per cent quota for in-service candidates in the postgraduate degree courses as well. The High Court held that the admission process specified in Clause 9 of 2000 Regulations should be strictly adhered to. The finding of the High Court, as summarised in the judgment of Dinesh Singh Chauhan (supra), was:-

> "6. The High Court whilst adverting to the decisions of this Court including the recent judgment in Sudhir N. v. State of Kerala [(2015) 6 SCC 685 : (2015) 2 SCC (L&S) 323]

held that Regulation 9 is a complete code and the admission process must strictly adhere to the norms stipulated therein. It, thus, proceeded to quash the Government Notification-cum- Government Order dated 28-2-2014 and directed that admissions to postgraduate "degree" courses be proceeded strictly on merits amongst the candidates who have obtained requisite minimum marks in the common entrance examination in question. It also noted that as per Regulation 9, at best, the in-service candidates who have worked in remote and difficult areas in the State, as notified by the State Government/competent authority from time to time, alone would be eligible for weightage of marks as incentive @ 10% of the marks obtained for each year of service in such areas up to the maximum of 30% marks obtained in National Eligibility-cum-Entrance Test."

15. In the aforesaid decision, the three-judge Bench of this Court proceeded on the basis that the procedure for admission to postgraduate courses falls within Entry 66 of List I to the Seventh Schedule of the Constitution of India.

It was, inter-alia, held in this judgment:-

"24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see Preeti Srivastava v. State of M.P.). The procedure for selection of candidates for the postgraduate degree courses is one such area on which the Central legislation and regulations must prevail.

25. Thus, we must first ascertain whether Regulation 9, as applicable to the case on hand, envisages reservation of seats for in service medical officers generally for admission to postgraduate "degree" courses. Regulation 9 is a composite provision prescribing procedure for selection of candidates—both for postgraduate "degree" as well as postgraduate "diploma" courses:

25.1. Clause (I) of Regulation 9 mandates that there shall be a single National Eligibility-cum-Entrance Test (hereinafter referred to as "NEET") to be conducted by the designated authority.

25.2. Clause (II) provides for three per cent seats of the annual sanctioned intake capacity to be earmarked for candidates with locomotory disability of lower limbs.

We are not concerned with this provision.

25.3. Clause (III) provides for eligibility for admission to any postgraduate course in a particular academic year.

25.4. Clause (IV) is the relevant provision. It provides for reservation of seats in medical colleges/institutions for reserved categories as per applicable laws prevailing in States/Union Territories. The reservation referred to in the opening part of this clause is, obviously, with reference to reservation as per the constitutional scheme (for the Scheduled Caste, the Scheduled Tribe or the Other Backward Class candidates); and not for the in-service candidates or medical officers in service. It further stipulates that all-India merit list as well as Statewise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in NEET and the admission to postgraduate courses in the State concerned shall be as per the merit list only. Thus, it is a provision mandating admission of candidates strictly as per the merit list of eligible candidates for the respective medical courses in the State. This provision, however, contains a proviso. It predicates that in determining the merit of candidates who are in service of the Government or a public authority, weightage in the marks may be given by the Government/competent authority as an incentive @ 10% of the marks obtained for each year of service in specified remote or difficult areas of the State up to the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-

service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified remote and difficult areas in the State).

26. From the plain language of this proviso, it is amply clear that it does not envisage reservation for in-

service candidates in respect of postgraduate “degree” courses with which we are presently concerned.

This proviso postulates giving weightage of marks to “specified in-

service candidates” who have worked in notified remote and/or difficult areas in the State—both for postgraduate “degree” courses as also for postgraduate “diploma” courses.

Further, the weightage of marks so allotted is required to be reckoned while preparing the merit list of candidates.

27. Thus understood, the Central enactment and the regulations framed thereunder do not provide for reservation for in-service candidates in postgraduate “degree” courses. As there is no express provision prohibiting reservation to in-service candidates in respect of admission to postgraduate “degree” courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates.

This argument does not commend to us.

In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the regulations in force at the relevant time. The admission process in the present case is governed by the regulations which have come into force from the academic year 2013-2014. This Regulation is a self-contained code.

There is nothing in this Regulation to even remotely indicate that a separate channel for admission to in-

service candidates must be provided, at least in respect of postgraduate "degree" courses. In contradistinction, however, 50% seats are earmarked for the postgraduate "diploma" courses for in-service candidates, as is discernible from clause (VII). If the regulation intended a similar separate channel for in-service candidates even in respect of postgraduate "degree" courses, that position would have been made clear in Regulation 9 itself. In absence thereof, it must be presumed that a separate channel for in-service candidates is not permissible for admission to postgraduate "degree" courses. Thus, the State Government, in law, had no authority to issue a Government Order such as dated 28-2-2014, to provide to the contrary. Hence, the High Court was fully justified in setting aside the said government order being contrary to the mandate of Regulation 9 of the 2000 Regulations, as applicable from the academic year 2013-2014."

16. The reliefs prayed for by the petitioners in Writ Petition(C)No. 252 of 2018, Writ Petition(C)No. 295 of 2018 and Writ Petition(C)No. 293 of 2018 are broadly the same. In the petition instituted by the Association of Tamil Nadu Medical Officers, it has been pleaded that since the year 1989, the State of Tamil Nadu had a policy for providing separate source of entry for in-service candidates to the extent of the 50 per cent of the seats in degree courses. Thereafter the State had also provided weightage to those in- service doctors who have served in rural, remote or difficult areas. The grievances of the petitioners arose in the light of the findings of this Court in the case of Dinesh Singh Chauhan (supra). The petitioners' apprehension was that it would be impermissible for the State to provide a separate source of entry for in-service candidates and that any such exercise of power by State would be in contradiction of Clause 9 which would cause grave prejudice to them. In this context, they made the prayers which we have already referred to. A Bench of three Hon'ble Judges of this Court, at the time of the admission of the Writ Petition (Civil) no. 196 of 2018, on 13th April 2018 opined that the said writ petition required consideration by a larger bench. Before the said Bench of this Court, it was the petitioners' case in Writ Petition (Civil) no. 196 of 2018 that at least three Constitution Bench decisions of this Court, R. Chitralekha and Anr. vs. State of Mysore & Ors.(AIR 1964 SC 1823), Kumari Chitra Ghosh & Anr. vs. Union of India & Ors. [(1969) 2 SCC 228] and Modern Dental College and Research Centre & Ors. vs. State of Madhya Pradesh & Ors. [(2016) 7 SCC 353] had not been considered in the case of Dinesh Singh Chauhan (supra).

17. The Bench of three Hon'ble Judges in the order passed on 13th April 2018, observed and directed:-

> "12. Having heard the learned senior counsel appearing on both the sides extensively, we are of the view that Dinesh Singh Chauhan (supra), has not considered the legislative Entries in respect of the contentions we have noted above. Apparently, it

appears no such contentions were raised before the Court. Same is the situation with regard to the non-reference with respect to the three Constitution Bench decisions we have referred to above. As far as Modern Dental (supra) is concerned, perhaps the judgment had not been published by the time the judgment in Dinesh Singh Chauhan (supra) was rendered.

13. The petitioners have raised several other contentions and invited our reference to the judgments by Benches of equal strength as in Dinesh Singh Chauhan (supra).

14. In the above circumstances, we are of the view that these writ petitions require consideration by a larger Bench.

15. Learned senior counsel appearing for the petitioners have strenuously pressed for an interim order since the counseling has either commenced or in some States it is only about to commence. Having regard to the entire facts and circumstances of the case, we feel it is appropriate that even the interim relief should be considered by the larger Bench.

16. Accordingly, place the matters before the Hon'ble the Chief Justice of India for consideration by a larger Bench, emergently."

18. It is in this perspective the said writ petition has been referred to us. In the other proceedings which we are hearing now also the same question of constitutional law is involved. There are, however, certain factual variations as regards the manner in which such reservation is contemplated. We shall briefly discuss first the ratio of the judgment in the case of R. Chitralekha (supra). This was a case decided when power was exclusively with the State Legislature to legislate in respect of "Education including universities, subject to the provisions of Items 63, 64, 65 and 66 of List I and 25 of List III". At that point of time, these items were enumerated against Entry 11 of List II of the Seventh Schedule to the Constitution. The dispute in that case before the Constitution Bench of this Court arose from an order passed by the State Government directing reservation of certain percentage of seats in professional and technical colleges and institutions. Such reservation was for Backward Classes and Scheduled Castes and Tribes. The Government order issued on 26th July, 1963 also defined Backward Classes. The criteria for marking, as stipulated, was that 25 per cent of maximum marks for examination in the optional subjects was to be taken into account for making the selection of candidates for admission to engineering colleges was to be fixed as interview marks. Criteria for allotting marks in the interview was also specified. The Selection Committee had evolved certain different marking criteria for interviews. Some of the unsuccessful candidates had approached the High Court for quashing the orders issued by the Government in the matter of admissions to those institutions. The petitioning candidates asked for direction that admission should be in the order of merit. The 'reservation' part of Governmental Order was sustained by the High Court. The High Court, however, held that the Selection Committee had abused the powers conferred upon it. The interviews were set aside and direction was issued by the High Court for holding interviews afresh in accordance with the scheme laid down by the Government. It was urged before the Constitution Bench of this court by the writ petitioners therein that the State Government

had no power to appoint a selection committee for admitting students to colleges on the basis of qualifications higher than or different from those prescribed by the university. One of the grounds for questioning the power of the State Government to appoint a selection committee was that coordination and determination of standards of a university was a Union subject and the State had no power to lay down Rules for maintaining the standards of university education. Referring to an earlier decision of this Court, in the case of Gujarat University & Anr. vs. Shri Krishna & Ors. [(AIR) 1963 SC 703], it was held by the Constitution Bench:-

> "The question was whether medium of instruction was comprehended by either of those entries or whether it fell under both. In that context it was observed at p. 715-16:
>
> 'The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within Entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an all India or other basis impossible or even difficult.' This and similar other passages indicate that if the law made by the State by virtue of Entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State Legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to colleges, it would be directly encroaching on the field covered by Entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law."
>
> 19. In the case of Modern Dental College (supra), a Constitution Bench of this Court examined the impact of Entry 66 of the Union List while analysing the legislative power of the State in regulating certain aspects of admission to institutions of higher education.

It was held in this judgment:-

> "100. The competing entries are: List I entry 66 and List III Entry 25. In the process, List II Entry 32 also needs a glance. Thus, for proper analysis, we reproduce these

entries below:

List I

66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

List II

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations;

cooperative societies.

List III

25. 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."

101.To our mind, Entry 66 in List I is a specific entry having a very specific and limited scope. It deals with coordination and determination of standards in institutions of higher education or research as well as scientific and technical institutions.

The words "coordination and determination of standards" would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc, and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such coordination and determination of standards, insofar as medical education is concerned, is achieved by parliamentary legislation in the form of the Indian Medical Council Act, 1956 and by creating the statutory body like Medical Council of India (for short "MCI") therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as coordination of standards and that of educational institutions. When it comes to regulating "education" as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in List III Entry 25, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject-matter of List II Entry 11. Thus, power to this extent was given to the State Legislatures. However, this entry was omitted by the Constitution (Forty-

second Amendment) Act, 1976 with effect from 3-7-1977 and at the same time List II entry 25 was amended. Education, including university education, was thus transferred to the concurrent List

and in the process technical and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 otiose. When two entries relating to education, one in the Union List and the other in the concurrent List, coexist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to coordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by List III entry 25 is wide enough and as circumscribed to the limited extent of it being subject to List I Entries 63, 64, 65 and 66."

102. Most educational activities, including admissions, have two aspects:

> the first deals with the adoption and setting up the minimum standards of education. The objective in prescribing minimum standards is to provide a benchmark of the calibre and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education determined nationwide is ancillary to the very determination of standards. Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was thought desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the Constitution- makers provided for List I Entry 66 with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

103. The second/other aspect of education is with regard to the implementation of the standards of education determined by Parliament, and the regulation of the complete activity of education. This activity necessarily entails the application of the standards determined by Parliament in all educational institutions in accordance with the local and regional needs. Thus, while List I Entry 66 dealt with determination and coordination of standards, on the other hand, the original List II Entry 11 granted the States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to education was removed and deleted, and the same was replaced by amending List III Entry 25 granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of education, except that which was specifically covered by List I Entries 63 to 66.

104. No doubt, in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] it has been observed that the entire gamut of admission falls under List I Entry

66. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions.

In Gujarat University [Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703 : 1963 Supp (1) SCR 112] , a Bench of five Judges examined the scope of List II Entry 11 (which is now List III Entry 25) with reference to List I Entry 66. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by List I Entry 66 must prevail over power of the State.

Validity of a State legislation depends upon whether it prejudicially affects "coordination or determination of standards", even in absence of a Union legislation. In R. Chitralekha v. State of Mysore [R. Chitralekha v. State of Mysore, AIR 1964 SC 1823 : (1964) 6 SCR 368] , the same issue was again considered. It was observed that if the impact of the State law is heavy or devastating as to wipe out or abridge the Central field, it may be struck down. In State of T.N. v. Adhiyaman Educational & Research Institute [State of T.N. v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104 : 1 SCEC 682] , it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya [State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1 :

> 5 SCEC 637] . Though the view taken in State of M.P. v. Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] and Ajay Kumar Singh v. State of Bihar [Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401] to the effect that admission standards covered by List I Entry 66 could apply only post admissions was overruled in Preeti Srivastava [Preeti Srivastava v. State of M.P.,(1999) 7 SCC 120 : 1 SCEC 742], it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535.

105. We do not find any ground for holding that Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] excludes the role of States altogether from admissions. Thus, observations in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] that entire gamut of admissions was covered by List I Entry 66 cannot be upheld and overruled to that extent. No doubt, List III Entry 25 is subject to List I Entry 66, it is not possible to exclude the entire gamut of admissions from List III Entry 25. However, exercise of any power under List III Entry 25 has to be subject to a Central law referable to Entry 25.

In Her concurring opinion, Banumathi J.(as her Ladyship then was) observed :-

"132. The intent of our Constitution Framers while introducing entry 66 of the Union List was thus limited only to empowering the Union to lay down a uniform standard of higher education throughout the country and not to bereft the State Legislature of its entire power to legislate in relation to "education" and organising its own common entrance examination."

20. The Constitution Bench in the case of Modern Dental College (supra) did not opine that there was plenary legislative power of the Union covering the entire field of admission in higher educational institutions. In the case of Dinesh Singh Chauhan (supra), another Constitution Bench decision of this Court Dr. Preeti Srivastava & Anr. vs. State of M.P. & Ors.(1999)7 SCC 120 was referred to and followed. In the case of Dr. Preeti Srivastava (supra), this Court examined the following question:

"The question is whether apart from providing reservation for admission to the postgraduate courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different minimum qualifying marks, for special category candidates seeking admission under the reserved category."

21. The case of Preeti Srivastava (supra) involved the question of prescribing minimum percentage of qualifying marks for the reserved category candidates (with reference to Article 15(4) of the Constitution of India). As regards the respective powers of the State and the Union to legislate in the field of education, it was held:

"35. The legislative competence of 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 State 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:

"25. 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:

"66. Coordination 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 coordination 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."

22. On the aspect of laying down norms for admission, it was held in the case of Dr. Preeti Srivastava (supra):

36. 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 postgraduate 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 does 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."

23. From a composite reading of these authorities, the position of law as emerges, is that all aspects of admission cannot be said to be covered by Entry 66 of the Union List, even if the entire admission process is incorporated in a single code. Certain aspects of admission stipulated by the State may trespass into legislative zone of "coordination and determination of standards." One illustration of such potential trespass would be lowering the eligibility criteria for admission fixed by a Union legislation, the 2000 Regulations in this case. In such a situation, the State would be encroaching upon exclusive field of the Union. The case of Preeti Srivastava (supra) was decided broadly on this rationale. But there can be Rules on facets of admission process in institutions of higher education framed by the State legislature which would not have impact on the subjects enumerated against Entry 66 of the Union List, and thus would not result in conflict with the latter. While analysing the State's power to legislate under Entry 11 of List II of the Seventh schedule of the Constitution, as it originally existed, it has been observed in the case of Modern Dental College (supra) that "...except the determination of minimum standards and coordination which was in the national interest..", the State had power to legislate with respect to all other aspects of education. Now that the subjects of erstwhile Entry 11 of List II find their way in the Concurrent List, the State's power is further subject to any statutory instrument owing its origin to any Union legislation, even if such statutory instrument is not enacted on the basis of exclusive power of the Union contained in Entry 66 of List I. In that context, we would have to examine as to whether these facets of admission to the postgraduate medical degree course from a separate entry channel comprising of in-service doctors stand already covered or occupied by the statutory instrument in the form of 2000 Regulations owing its origin to a Union legislation comes within the ambit of Entry 66 of List-I. If not, the subject-entry would be in the concurrent list and it would be permissible for the States to lay down their own norms, which are not covered by any Union legislations. In the case of Modern Dental College (supra), this was the judicial approach of the Constitution Bench. We find support for taking this view from the case of R. Chitralekha (supra) also. In the latter authority, of course, the competing entries were in List I and List II of the Seventh Schedule of the Constitution and the dispute was on methodology of marking in the selection process as also reservation for Backward Classes and Scheduled Castes. In R. Chitralekha (supra), this Court, in substance took the view that the subject heads of Entry 66 of List I did not encompass every aspect of admission process in higher educational institutions and opined that State legislative competence stood retained to deal with certain features connected with the admission process also, unless the State's action in that regard directly encroached upon the subjects comprised within the Union List. There can thus be certain features of the admission procedure over which the State can also have power to make stipulations. In a more recent case, Yatinkumar Jasubhai Patel and Others vs. State of Gujarat and Ors. [(2019) 10 SCC 1], a Bench comprising of three Judges examined a similar question involving interpretation of Gujarat University Act, 1949. In consideration of this Court was Rules framed by

the Gujarat University for the purpose of governing admission to postgraduate course. So far as seats of the State List are concerned, these were made available for the candidates of Gujarat University. Such "institutional preference" was held to be permissible by this Court. This Court observed, inter-alia, in this judgment:-

> "9.5. Even while giving admissions in the State quota/institutional reservation quota, still the admissions are required to be given on the basis of the merits determined on the basis of NEET examination results. Under the circumstances, introduction of the NEET scheme, as such, has nothing to do with the "institutional preference....."

24. The third authority referred to by the three Hon'ble Judges of this Court while referring the Writ Petition of Tamil Nadu Medical Officers Association & Ors., in pursuance of which these matters have been

placed before us on reference, is the decision of another Constitution Bench of this Court, the case of Kumari Chitra Ghosh & Anr.(supra). The dispute in this case was over reservations made in respect of certain categories of students for admission to the MBBS course in a medical college under the Delhi University. 25 per cent of the seats (excluding the seats reserved for Government of India nominees) were reserved for girl students. There was, however, eight stipulated categories of students who were eligible for admission. These categories included being residents of Delhi, wards of central government servants posted in Delhi, cultural scholars etc.

25. The minimum percentage of marks which a candidate seeking admission was to obtain in the aggregate of compulsory subject was 55. The appellants obtained 62.5% marks and were domiciled in Delhi. But they could not obtain admission because of admission given to certain students nominated by the Central Government who got marks lower to what they had obtained.

They approached the Delhi High Court questioning the power of the Central Government to make nomination, but their petitions were dismissed.

The appeal before this Court was by

certificate.

26. It was held in this judgment, on the aspect of classification of that category of students:-

> "8. As laid down in Shri Ram Krishna Dalmia v. Shri justice S.R. Tendolkar & Others, Article 14 forbids class legislation; it does not forbid reasonable classification. In order to pass the test of permissible classification two conditions must be fulfilled- (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and
>
> (ii) differentia must have a rational relation to the object sought to be achieved. The first group of persons for whom seats have been reserved are the sons and daughters of residents of Union Territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language, it is not easy or always possible to get admission into institutions imparting medical education in foreign countries. The Cultural, Colombo Plan and Thailand scholars are given admission in medical institutions in this country by reason of reciprocal arrangements of educational and cultural nature. Regarding Jammu and Kashmir Scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the State itself for its residents. The classification in all these cases is based on intelligible differentia which distinguished them from the group to which the appellants belong.

9. It is the Central Government which bears the financial burden of running the medical college.

It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education.

If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification." This judgment was founded on the principle of reasonable classification and has been subsequently followed in other cases as well where certain categories of candidates have been given benefits in the admission process based on certain specified criteria.

27. The issue to be addressed now is as to whether Clause 9 of the 2000 Regulations is relatable to Entry 66 of List I of Seventh Schedule of the Constitution or as to whether the source of power to make such Regulation, particularly in relation to providing a separate entry channel for in-service candidates come under Entry 25 of the Concurrent List. In the event we find that the entry relates to the Concurrent List, in such a situation also we shall have to examine if the field for formulating admission quota for in- service doctors stands entirely occupied by the aforesaid MCI Regulations or not. For this exercise, however, we shall have to analyse the different provisions of Clause 9 of the 2000 Regulations.

28. Before we embark on such analysis, we shall deal with two other aspects of dispute having Constitutional import involved in this reference. First, we would test the nature or character of the State quota, which we have so far referred to as reservation. Clause 9 (4) or Clause 9 (IV) as it stood prior to 5th April 2018 of the 2000 Regulations permit reservation as per the applicable laws of the State or the Union Territory. In the case of Dinesh Singh Chauhan (supra), the three Judge Bench of this Court opined that the reservation referred to in the opening part of the said clause is akin to reservation as per constitutional scheme and does not embrace reservation for in-service candidates. We have quoted paragraph 25.4 of the report in which such view has been expressed. We are in agreement with the opinion expressed in the case of Dinesh Singh Chauhan on this construction of Clause 9 (4) of the 2000 Regulations. In a series of judgments including the cases of D.N. Chanchala vs. The State of Mysore and Others [(1971) 2 SCC 293], K. Duraiswami & Anr. vs. State of Tamil Nadu & Ors. [(2001) 2 SCC 538], AIIMS Students Union vs. AIIMS and Others [(2002) 1 SCC 428] as also State of M.P.& Ors vs. Gopal D. Tirthani & Ors.

[(2003) 7 SCC 83], it has been held that allocation of seats for in-service candidates is only a separate or exclusive channel of entry or source of admission and such entry- path cannot be equated with reservation provisions incorporated as compensatory discrimination. But classifying a category of candidates for such distinct or separate channel has been upheld consistently, provided such categorisation is based on intelligible differentia. In fact, on the question of such entry channel being based on reasonable classification, it has been held in the case of Gopal D. Tirthani (supra):-

> "21. To withstand the test of reasonable classification within the meaning of Article 14 of the Constitution, it is well settled that the classification must satisfy the twin tests: (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differentia must have a rational relation with the object sought to be achieved. It is permissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. We have, in the earlier part of the judgment, noted the relevant statistics as made available to us by the learned Advocate-General under instructions from Dr Ashok Sharma, Director (Medical Services), Madhya Pradesh, present in the Court. The rural health services (if it is an appropriate expression) need to be strengthened. 229 community health centres (CHCs) and 169 first-

> referral units (FRUs) need to be manned by specialists and block medical officers who must be postgraduates. There is nothing wrong in the State Government setting apart a definite percentage of educational seats at postgraduation level consisting of degree and diploma courses exclusively for the in-service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In-service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia.
>
> There is a laudable purpose sought to be achieved. In-service candidates, on attaining higher academic achievements, would be available to be posted in rural areas by the State Government. It is not that an in-service candidate would leave the service merely on account of having secured a postgraduate degree or diploma though secured by virtue of being in the service of the State Government. If there is any misapprehension, the same is allayed by the State Government obtaining a bond from such candidates as a condition precedent to their taking admission that after completing PG degree/diploma course they would serve the State Government for another five years. Additionally, a bank guarantee of rupees three lakhs is required to be submitted along with the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved."
>
> 29. The same view stands consistently reflected in a large body authorities, including the cases of Dr.Snehalata Patnaik & Ors vs. State of Orissa & Ors [(1992) 2 SCC 26], Pre PG Medical Sangharsh Committee & Anr. vs. Dr. Bajrang Soni & Ors. [(2001) 8 SCC 694], and the case of AIIMS Students Union (supra). In the case of Satyabrata Sahoo & Ors. vs State of Orissa & Ors. [(2012) 8 SCC 203] also, there were two entry channels, one for in-service candidates and the other for open-category candidates. Provisions for these two entry paths were not under challenge in that case.

The constitutionality of institutional preference in postgraduate courses in favour of in-house candidates was found to be valid, on the basis of reasonable classification in the case of AIIMS (supra). The case of Yatin Kumar Jasubhai Patel & Ors. (supra) also is based on similar reasoning. In order to justify the retention of such source of entry into postgraduate medical degree courses, it was argued on behalf of the State of Tamil Nadu and State of West Bengal by Mr. Vaidyanathan and Mr. Giri, for the former and Mr. Rakesh Dwivedi, learned Senior Advocate for the latter that such reservation was necessary for proper functioning of the public health system as the respective States have shortage of specialised better qualified doctors to serve the remote areas. This stand has been supported by Mr. P.V. Surendranath, learned Senior Advocate appearing for the West Bengal University of Health Sciences. The same stand has been taken by Mr. Jaideep Gupta, learned Senior Advocate for the State of Kerala and Mr. Rahul Chitnis, learned Advocate for the State of Maharashtra. The theme of argument on behalf of the in- service doctors has been that they have to discharge arduous duties serving a large number of patients across the respective States and it is always not possible for them to academically update to meet the theoretical standards set by the MCI for the entrance examination. Mr. Sanjay Hegde and Mr. Vijay Hansaria, learned Senior Advocates have appeared before us for the petitioners in W.P. (C)No. 252 of 2018, W.P.(C) No. 293

of 2018 and W.P.(C)No.295 of 2018. Learned Senior Advocates for these petitioners as also the appellant in-service doctors in the appeals arising out of the judgment of the High Court of Calcutta have sought to justify their defence on the same grounds. On the aspect of legislative competence, the rival arguments have already been dealt with in our discussions earlier in this judgment. We are satisfied that the doctors in employment of the States and allied sectors form a separate and distinct class and for the purpose of admission in postgraduate degree courses they can be given certain elements of preference. Holding them to be a distinct group fits in with overall objective of having medical professionals with superior qualification for tending to the needs of the general public. Moreover, the 2000 Regulations by permitting award of incentive marks to them and also providing for 50 per cent reservation in diploma courses indirectly recognise this category of doctors as a separate class. But do the provisions of 2000 Regulations permit the States to provide quota for such in-service candidates?

30. In the case of Modern Dental College (supra), it has been explained the manner in which Entry 66 of List I ought to be interpreted while dealing with admission to postgraduate medical admission course. It has been held in this judgment that the said entry in List I is having a very specific and limited scope. It has also been held in the said decision that while setting standards in educational institutions for higher studies would be in the exclusive domain of the Union, that might not include conducting of examination etc. Regulating medical education would come within Entry 25 of the List III giving concurrent powers to both Union as well as States. In the case of Modern Dental College (supra), the rules for admission into medical postgraduate courses framed by the State government were assailed.

31. Referring to the judgment of this Court in the case of Preeti Srivastava (supra), the Constitution Bench did not find any ground for holding that the said judgment excluded the role of States altogether from admissions.

32. Now, turning to the context in which we are adjudicating the present set of proceedings, we have to ascertain as to whether setting apart specified percentage of seats for in-service doctors in postgraduate medical degree courses is referable to matters of admissions or standards of education. It has been acknowledged in the decision of Modern Dental College (supra) that there may be certain overlapping of subjects vis-à-vis Entry 66, List I and Entry 25, List III to the Seventh Schedule of the Constitution of India. In our opinion, the question of providing a separate entry-path to in-service doctors may have some effect on overall standard of medical education at the postgraduate degree level institutions, as the students who would gain admission to such courses may not come purely on the basis of a uniform order of merit. But that is not the manner in which we ought to interpret the expression “standards” in institutions of higher education. The Constitution Bench judgment in the case of Modern Dental College (supra) has construed the words “coordination and determination of standards” to mean laying down the standards of education. Analysis of Clause 9 of the 2000 Regulations reveals that the said clause provides a minimum entry standard in the form of clearance of the NEET on obtaining minimum of marks of 50 per cent by general category candidates. Once these standards are laid down, we are of the view that if the State authorities provide an independent channel of entry for in-service doctors in postgraduate medical degree courses, who fulfil the aforesaid minimum standards, as the latter expression has been

construed in the case of Modern Dental College (supra), provisions to that effect would not be in breach of the constitutional scheme. The impact on the "standards", as the expression is to be construed in Entry 66 of the first list, would be far too distant from admission norms framed by the State authorities for such in-service doctors. The separate entry-channel for in- service doctors would be integral to the admission norms, relatable to the Entry 25 of the Concurrent List. Such admission norms if compatible with minimum standards laid down by the MCI, would fall under the items specified against the aforesaid entry of List III.

33. The question that arises next is whether Clause 9 of the 2000 Regulations lay down the procedure for admission in such a manner that providing a separate entry channel for in- service doctors even through the State merit list by an independent statutory instrument would be contrary to the provisions of the 2000 Regulations or not. If that is the case, then the respective State legislations and Regulations would fall foul of Article 246 and Article 254 of the Constitution of India. We reproduce below the text of Articles 246 and 254 of the Constitution of India:-

> "Article 246- Subject-matter of laws made by Parliament and by the Legislatures of States.-
>
> (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List") (2) Notwithstanding anything in clause (3), Parliament and, subject to Clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.
>
> Article 254- Inconsistency between laws made by Parliament and laws made by the Legislatures of States- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, be void.

> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:
>
> Provided that nothing in this clause shall prevent Parliament form enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."
>
> 34. It has been argued on behalf of the Union of India by Mr. Aman Lekhi, learned Additional Solicitor General of India and by Mr. Vikas Singh, learned Senior Advocate appearing for the MCI that the said Clause 9 is a self-contained code and there is an implied bar upon permitting a separate source of entry for in-service doctors. Clause 9(4) of the 2000 Regulations makes provisions for reservation of seats in postgraduate courses, not making any distinction between degree and diploma courses.

In Clause 9(8) thereof, or in Clause 9(VII) in its earlier form, reservation of 50 per cent seats in diploma courses has been prescribed. Main stand of the MCI is that the degree course is a full-fledged three years course and clinical subjects in such course is one of the most sought after by the students. It is MCI's case that postgraduate degrees enable the students to pursue super speciality courses later on as well as become teachers in medical institutes. The PG diploma course, on the other hand, according to the MCI, is of greater practical value for treating patients in remote and difficult or rural areas of the country. The MCI, according to Mr. Singh has sought to strike a balance between competing interest of in-service candidates and direct candidates as also interest of the States in ensuring quality medical treatment to remote areas, while not compromising on merit. This stand has been supported by Mr. Nidhesh Gupta, learned Senior Advocate representing private respondents from open- category appearing in the appeals arising out of the judgment of the Calcutta High Court. The disadvantages spelt out by the in-service doctors is of being out of touch with academic developments because of their pressing duties often in remote locations. These disadvantages were considered by this Court in the case of AIIMS (supra), and it was recorded in that judgment, in reference to the case of K. Duraiswamy (supra) in paragraph 31 of the report:-

> "Some of them had done graduation sometime in the past and were either picked up in the government service or had sought for joining government service because, may be, they could not get a seat in postgraduation and thereby continue their studies because of shortage of seats in higher level of studies. On account of their having remained occupied with their service obligations, they became detached or distanced from theoretical studies and therefore could not have done so well as to effectively compete with fresh medical graduates at the PG entrance examination. Permitting in-service candidates to do postgraduation by opening a separate channel for admittance would enable their continuance in government service after

postgraduation which would enrich health services of the nation.

Candidates in open category having qualified in postgraduation may not necessarily feel attracted to public services. Providing two sources of entry at the postgraduation level in a certain proportion between in-service candidates and other candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. The object sought to be achieved is to benefit two segments of the same society by enriching both at the end and not so much as to provide protection and encouragement to one at the entry level."

35. According to Mr. Singh, these drawbacks being faced by in-service doctors can be overcome by awarding incentive marks contemplated in proviso to sub-clause (4) of Clause 9. Even if we proceed on the basis that Clause 9 is a self-contained code, as held in the case of Sudhir N. (supra), such interpretation having been approved in the case of Dinesh Singh Chauhan (supra), in our view a self-contained code can cover only those subjects which are contained in such code. This is not an exhaustive code covering every feature of admission to postgraduate degree courses in medical education. If the code does not refer to certain matters, which do not have impact on or dilute the main subject for which the code is made, appropriate authorities are not enjoined from making provisions for such uncovered areas. This we hold because the field of legislation involved in the subject-dispute is a shared field between the Union and the States. The legislative disability of the States would occur only when the Union legislation covers the same subject on which State undertakes legislative exercise and the State legislative instrument is found to be repugnant to the latter. There also can be vacant legislative zones within a code, and such vacant zones can be filled up by the appropriate legislature. We have already referred to the provisions contained in the code pertaining to the admission process.

Clause 9(4)(or Clause 9(IV) in its earlier form) of the 2000 Regulations further stipulates that candidates shall be admitted to post-graduate courses from the two merit lists only, as referred to in the said clause. On behalf of the writ petitioners who had instituted proceedings in the High Court at Calcutta, it was submitted that if a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all as held in Nazir Ahmed vs. King Emperor AIR 1936 PC 253. Certain other authorities reiterating the same dictum have been cited. This principle, however, has become so well- established in our jurisprudence that we do not consider it necessary to specifically refer to those authorities in this judgment. But having regard to Clause 9(4) of the 2000 Regulations, we do not think provision for reservation of in-service doctors by the State from the State- wise merit list published in pursuance of that provision would result in deviation from a mandatory statutory scheme. The aforesaid sub- clause is required to be construed in the light of the State's power to make provisions over the admission norms, provided the candidates fulfil the basic admission criteria contained in the 2000 Regulations. Having regard to the legal and factual context of this case and considering the fact that the issue of legislative competence arises in respect of an entry belonging to shared, and not exclusive field of legislations, in our opinion the said sub-clause cannot be interpreted to mean that the State is denuded of the power to make a separate channel of

admission to the said courses for in-service doctors from the State merit list. This is an issue of legislative competence and the Nazir Ahmed dictum does not come into conflict with the interpretation we are giving to this clause. Application of that principle solely on the basis of a Union legislation, without examining the scope of the State's legislative power in the given context, would be contrary to the constitutional scheme in having concurrent field of legislation. The said sub-clause does not prescribe specific bar on the State authorities in providing for such reservation or such separate entry-channel. The principle of implied exclusion also would not apply here in our opinion. The principle of implied exclusion is derived from the latin dictum "expressio unius est exclusio alterius". There are authorities, which caution the Courts against indiscriminate application of this doctrine, describing it to be a "dangerous master" (Mary Angel and Ors. vs. State of Tamil Nadu (1999) 5 SCC 209, State of Karnataka vs. Union of India & Anr. (1977) 4 SCC 608, and Assistant Collector of Central Excise vs. National Tobacco of India Ltd. (1972) 2 SCC 560).

36. When a subject falls in a shared field of legislation, there may be cases where the dominant legislative body may not have had made provisions in a legislative instrument for which it had power to do so. But in such a situation the dominant legislative body cannot prevent the secondary legislative body from making provisions in that regard. We would make it clear here that we are using the terms "dominant legislative body" to describe the Union legislature and "secondary legislative body" to refer to the State legislature in the context of the concurrent list only. We are doing so because in case of repugnancy between two legislative instruments originating from the Union and the State legislatures in relation to any entry therein, the former is to prevail as per the constitutional scheme. Turning back to the aspect of occupied field, if certain areas of legislative entry is left void by the Union Legislature, these void areas would come within the legislative power of the secondary legislative body as the constitutional entry gives both the legislative bodies co-existing, power to legislate on such subjects. Clause 9 of the 2000 Regulations is no doubt a self-contained code. But as we have already observed, it is not an exhaustive code covering all aspects of admission in postgraduate medical degree courses. The scope of this code and extent of its operation has been explained by this Court in the case of Yatinkumar Jasubhai Patel & Ors. (supra). Negation of power of the State cannot be a matter of inference, or such negation cannot be in anticipation that the Union Legislature may make provisions in future in the vacant legislative space. The authorities in support of this proposition are West U.P. Sugar Mills Association & Ors vs. State of Uttar Pradesh & Ors. (2020 SCC Online SC 380), U.P. Cooperative Cane Unions Federations vs. West U.P. Sugar Mills Association & Ors. [(2004) 5 SCC 430], S.R. Bommai & Ors. vs. Union of India & Ors. [(1994) 3 SCC 1] and Tika Ramji & Ors.etc vs. State of U.P.& Ors (AIR 1956 SC 676). Only in cases where the State legislature makes a law repugnant to any provision of law made by the Parliament, the Parliamentary law would prevail. We do not find the 2000 Regulations so overwhelming in its scope and extent that we can proceed on the presumption that the entire field of admission to postgraduate medical course stands covered by it. In the facts of the given case, we do not think we can proceed on the basis of there being implied repugnancy. Such repugnancy has to be direct and positive.

37. Is there any vacant space for State to prescribe a separate entry-channel for in-service doctors, having regard to the

admission process laid down in the 2000 Regulations? In the case of Modern Dental College (supra), it has been observed,

referring to the earlier Entry 11 of List II, that the States had exclusive power to legislate with respect to all aspects of education barring determination of standards and coordination by the Parliament. In the case of Preeti Srivastava (supra), legislative competence of the State making admission rules not inconsistent with the standards set down by the Union Legislature has been acknowledged. It has been observed in the judgment of Modern Dental College (supra) that except the determination of minimum standards and coordination, State's power in regulating medical education was preserved. When the said entry (i.e. Entry 11 of List II) was brought to the Concurrent List by 42nd Amendment to the Constitution of India, the form of State's power remained the same, provided of course there was no repugnancy of a State statutory instrument with any Union legislative provisions covering the same subject.

38. We are of the opinion that the admission process stipulating a distinct source of entry for in-service candidates by itself would not constitute breach of the provisions of Clause 9 of the 2000 Regulations, provided that the minimum standards mandated by the said Regulations for being eligible to pursue postgraduate medical degree course are adhered to. A separate source of entry for in-service doctors through the State merit list in our view would come within the legislative power and competence of the State. We also take note of the fact that reservation for in- service doctors has been a long standing practise and the rationale behind such reservation appears to be reasonable to us. But we refrain from dilating on the necessity of maintaining such practise as in this judgment, we are primarily concerned with the question of competence of State authorities in making Rules providing for such reservation.

39. Clause 9(4) of the 2000 Regulations stipulates entry into the postgraduate courses from the two merit lists, one all India and the other that of the State. The same was the scheme of Clause 9(IV) in its erstwhile form. The dispute in these proceedings, however, is mainly on admission norms to postgraduate degree courses. If the State authorities provide reservation for in-service doctors from within the State's own merit list, our view is that such an exercise would be relatable to the admission process and the same would not be in breach of any prohibition flowing from the 2000 Regulations. This would entail some form of variation of the merit list of the State, but we do not find any prohibition under the 2000 Regulations against a State undertaking that exercise. Such step undertaken by the State would be relatable to the State's legislative power derived from Entry 25 of the Concurrent List and not covered by the 2000 Regulations. We do not find any repugnancy with the 2000 Regulations if the State authorities create such a distinct channel of entry.

40. In the case of Gopal D. Tirthani (supra), there was reservation for in-service candidates. This was found to be a separate and exclusive channel of entry or source of admission. As we have already observed, having a separate entry-channel for in-service candidates to postgraduate medical courses has been a long standing practise. The Bench of three Hon'ble Judges of this Court in the

case of Dinesh Singh Chauhan (supra) sought to distinguish this factor on the ground that the provisions of Clause 9, which was applicable at that time the case of Gopal D. Tirthani (supra) was decided, was different from its form as it subsisted when the former case was decided. But the relevant clause, as reproduced in the judgment of Gopal D. Tirthani (supra) did not contain any provision for separate entry route for in-service candidates. Paragraph 6 of the said judgment [reported in 2003 (7) SCC 83] reproduces Clause 9(1) as it prevailed then. We are quoting below the said paragraph:-

"6. Regulation 9 of the Regulations framed by the Medical Council of India reads as follows:-

"9. Selection of postgraduate students-(1) Students for postgraduate medical courses shall be selected strictly on the basis of their academic merit.

For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses:

(i) on the basis of merit as determined by a competitive test conducted by the State Government or by the competitive authority appointed by the State Government or by the university/group of universities in the same State;

(ii) on the basis of merit as determined by centralized test held at the national level; or

(iii) on the basis of the individual cumulative performance at the first, second and third MBBS examinations, if such examinations have been passed from the same university; or

(iv) combination of (i) and

(iii) Provided that whatever entrance test for postgraduate admissions is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be fifty per cent for all the candidates:

Provided further that in non-

governmental institutions fifty per cent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institution on the basis of merit."

41. The selection criteria as contained in Clause 9 of the 2000 Regulations, which was considered by this Court in the case of Gopal D. Tirthani (supra) and the content of Clause 9, which is the subject of dispute in the present set of proceedings are no doubt not identical. But the said clause which was examined in the case of Gopal D. Tirthani (supra) had a merit based approach.

Reservation of in-service candidates was made through Executive Orders of the State Government. We are not to undertake a word to word comparison of Clause 9 as it prevailed at different points of

time. What matters here is that in its original or earlier version, no provision for reservation or separate entry- channel for in-service doctors has been shown to us by any of the learned counsel appearing for the parties. The State Government Orders laid down such distinct source of entry. Interpretation of the same clause in its present form should also be based on the same underlying reasoning.

42. Because of these reasons, we hold that there is no bar in Clause 9 of the Postgraduate Medical Education Regulations, 2000 as it prevailed on 15th February 2012 and subsequently amended on 5th April, 2018 on individual States in providing for reservation of in-service doctors for admission into postgraduate medical degree courses. But to take benefit of such separate entry channel, the aspiring in-service doctors must clear the NEET Examination with the minimum prescribed marks as stipulated in the 2000 Regulations.

We respectfully differ from the views expressed by the Bench of three Hon'ble Judges of this Court in the case of the State of Uttar Pradesh & Ors. vs. Dinesh Singh Chauhan [(2016) 9 SCC 749] to the extent it has been held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of 2000 Regulations. In our opinion, that is not the correct view under the Constitution. The reference is answered accordingly.

43. We also expect that the statutory instruments of the respective State Governments providing for such separate channel of entry should make a minimum service in rural or remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree. On completion of the course, to ensure the successful candidates serve in such areas, the State shall formulate a policy of making the in-service doctors who obtain entry in postgraduate medical degree courses through independent in-service channel execute bonds for such sum the respective States may consider fit and proper.

44. So far as the appeals against the judgment of the Calcutta High Court are concerned, we are of the opinion that the judgment and order of the High Court at Calcutta in MAT No.1222 of 2019 (Dr. Md. Babul Akhtar and Ors. vs. Dr. Md. Nazir Hossain & Ors.) along with the allied appeals were not founded on proper interpretation of law for the reasons we have already discussed. We accordingly set aside the judgment under appeal, delivered on 1st October, 2019. All the appeals are accordingly allowed. The memorandum dated 18th April, 2013 is restored and the writ petition filed in the High Court at Calcutta (W.P. No.8990(W) of 2019) shall stand dismissed. The writ petitions filed before this Court being W.P. (Civil) No. 196 of 2018, W.P. (C) No.252 of 2018, W.P.(C) No. 295 of 2018 and W.P.(C) No. 293 of 2018 shall stand allowed in the above terms.

45. We, however, direct that the doctors who are already undergoing the postgraduate degree courses on the basis of being successful in the original writ petition filed in the High Court at Calcutta shall not be disturbed from pursuing the said course. The same direction shall also cover successful medical students who have already undertaken admission in postgraduate medical degree courses following the applicable admission process and are pursuing their postgraduate studies in the States of Gujarat, Haryana, Kerala, Maharashtra and Tamil Nadu.

46. All connected applications shall stand disposed of. Interim orders, if any shall stand dissolved.

47. There shall be no order as to costs.

.....J. [ARUN MISHRA .....J. [INDIRA BANERJEE] .....J. [VINEET SARAN] .....J. [M.R. SHAH] .....J. [ANIRUDDHA BOSE] NEW DELHI;

AUGUST 31, 2020.