Supreme Court of India
Ajay Kumar Singh And Ors. vs State Of Bihar And Ors. on 17 March, 1994
Equivalent citations: JT 1994 (2) SC 662, 1994 (2) SCALE 302, (1994) 4 SCC 401, 1994 3 SCR 57, 1994 (2) UJ 689 SC
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Bench: S Agrawal, B J Reddy, M Mukherjee
JUDGMENT B.P. Jeevan Reddy, J.

1. Permissibility of providing reservations under Clause (4) of Article 15 of the Constitution of India in post-graduate medical courses is the issue raised in these appeals. The State of Bihar issued a prospectus relating to Post-Graduate Medical Admission Test, 1992 providing inter alia reservation in favour of socially and educationally backward classes, Scheduled Castes, Scheduled Tribes and women. The percentages reserved are Scheduled Casted-14%, Scheduled Tribes- 10%, extremely backward classes-14%, backward classes-9% and ladies-3%. The appellants questioned the aforesaid provision for reservation by way of two writ petitions in the Patna High Court. The writ petitions were dismissed whereupon they have approached this Court by way of these appeals. The Indian Medical Council has filed an affidavit in these proceedings putting forward its point of view in the matter. It has supported the appellants' stand.

2. Sri Vikas Singh, learned Counsel for the appellants urged the following contentions:

(1) Article 15(4) does not speak of nor does it permit reservation of seats in educational institutions. While certain preferences and concessions can be given, reservation of seats is outside the purview of Article 15(4).

(2) Even if Article 15(4) permits reservation of seats, such reservation must contribute to the advancement of the society and should not be detrimental to the interests of society. Reserving as much as 50% seats in post-graduate medical courses is certainly detrimental to the interests of the society. The society would be saddled with less competent and less efficient doctors to the extent of half the number available.

(3) Inasmuch as substantial amount is paid by way of stipend to post-graduate students, admission to such course is in effect an appointment to a post. The post-graduate course in medicine is thus a promotional post for doctors who have completed M.B.B.S. course. It has been held by this Court in Indra Sawhney v. Union of India (1992) 6 JT 273, that no reservations are permissible in the matter of promotion.

(4) The Regulations made by the Indian Medical Council prohibit reservation of seats in post-graduate medical courses on any ground whatsoever. The Regulations being statutory prevail over the executive orders made by the Government of Bihar in exercise of its executive power.

3. We shall proceed to deal with the contentions in the order they are urged.

4. It is true that Clause (4) of Article 15 does not expressly authorise providing of reservations in educational institution but it is too late in the day to question this power. Article 15(4) says that nothing in Article 15 or in Clause (2) of Article 29 shall prevent the State from making "any special provision" for the advancement of classes mentioned therein. The words "any special provision" are of wide amplitude and do certainly take in a provision reserving certain number of seats in educational institutions. Indeed, the first major case arising under Article 15 before this Court [M.R. Balaji and Ors. v. State of Mysore [1963] Suppl. S.C.R. 439] was one relating to reservation of seats in educational institutions. At no time was it questioned that such a course was not permissible, evidently in view of the width of the words "any special provision" occurring in Article 15(4). In this connections, we may refer to the holding in Indra Sawhney v. Union of India with respect to a similar argument vis-a-vis Article 16(1). It was argued for the petitioners that Article 16(1) - which guarantees equality of opportunity to all citizens in matters relating to employment - does not warrant providing of reservations. The contention was rejected. It was held that just as Article 14 permits classification so does Article 16(1), which is but a facet of rule of equality in Article 14. For bringing about and ensuring equality, it was held, appropriate measures including reservations can be adopted, what kind of special provision should be made in favour of a particular class, it was observed, is a matter for the State to decide having regard to the facts and circumstances of a given situation. For the above reasons, the first contention of Sri Singh is rejected.

5. The second submission of Sri Singh is premised on the assumption that reservations are basically anti-meritarian. We are afraid, this assumption is without any basis. It is true that in Chitralekaha and Ors. v. State of Mysore and Janki Prasad Parimoo v. State of Jammu & Kashmir , as also in Balaji it seems to have been assumed that reservation necessarily implies selection of a less meritorious persons but this aspect was explained in the majority judgment in Indra Sawhney in the following words:

...the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed. We also firmly believe that given an opportunity, firmly believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with - and may, in some cases, excel - members of open competition candidates. It is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed merit upon members of other classes and that what is required is an opportunity to prove it. It may not, therefore, be said that reservations are anti-meritarian. Merit there is even among the reserved candidates and the small difference, that may be allowed at the stage of initial recruitment is bound to disappear in course of time. These members too will compete with and improve their efficiency alongwith others.

6. The said observations apply equally under Article 15(4)-only read 'admission' for 'recruitment'. It is necessary to reiterate that reservation is provided only at the stage of entry and not at the stage of exit. In the matter of passing of the examination, no concession is shown to members of reserved classes. The pass marks are uniform for all. This means that even if a less meritorious student is admitted under a reserved category, he has to improve his standard and has to acquire the same

proficiency as any other candidate (including the general candidates) while passing the examination. This circumstance is a complete answer to the argument of 'less merit'. No empirical study has been brought to our notice to establish that candidates admitted under reserved quotas generally lag behind in the matter of marks or proficiency in the final examinations. They may enter under different categories but they come out as one single class.

7. It is submitted by Sri Singh that candidates seeking admission to post-graduate medical courses have already enjoyed the benefit of reservation at the time of their admission to M.B.B.S. which course is spread over for five years or more. During this period, (hey are supposed to improve their efficiency and merit and compete with other candidates at the time of admission to post- graduate medical courses. The provision for reservation at the stage of admission to post-graduate course again, says the counsel, is uncalled for and contrary to public interest. Firstly, the assumption on the basis of which this argument is addressed is itself untenable. A candidate who is seeking reservation at the stage of admission to post-graduate course may not have availed of the benefit of reservation at the stage of admission to M.B.B.S.; he could as well have been admitted on his own merit in the general quota (open competition quota); but because the competition at the level of post-graduate medical courses is extremely acute, he may have to seek the benefit of reservation. Therefore, the assumption that a student seeking benefit of reservation at the stage of admission to post-graduate medical course has already enjoyed the benefit of reservation once previously is not. necessarily true. Secondly, there is no rule under Article 15(4) that a student cannot be given the benefit of reservation at more than one stage during the course of his educational career. Where to draw the line is not a matter of law but a matter of policy for the State to be evolved keeping in view the larger interests of the society and various other relevant factOrs. Unless the line drawn by the State is found to be unsustainable under the relevant Article, the court cannot interfere. Sri Singh then brought to our notice certain observations in the majority judgment in India Sawhney to say that reservations in the matter of post graduate and research courses is impermissible. The observations relied upon are in paragraphs 860 and 861. They read thus:

While on Article 335, we are of the opinion that there are certain services and positions where cither on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hercinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/departments/institutions in specialities and super-specialities in medicine, engineering and other such courses in physical science and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons, e.g., Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

As a matter of fact, the impugned Memorandum dated 13th" August, 1990 applies the rule of reservation to "civil posts and services under the Government of India" only, which means that defence forces are excluded from the operation of the rule of reservation though it may yet apply to civil posts in defence services. Be that as it may, we are of he opinion that in certain services and in respect of certain posts, application of the rule of reservation may not be advisable for the reason indicated hereinbefore. Some of them are : (1) Defence Services including all technical posts therein

but excluding civil posts. (2) All technical posts in establishments engaged in production of defence equipment; (3) Teaching posts of Professors - and above, if any; (4) Posts in super-specialities in Medicine, engineering and other scientific and technical subjects; (5) Posts of pilots (and co-pilots) in Indian Airliner and Air India. The list given above is merely illustrative and not exhaustive. It is for the Government of India to consider and specify the service and posts to which the Rule of reservation shall not apply but on that account the implementation of the impugned Office Memorandum dated 13th August, 1990 cannot be stayed or withheld.

8. It may be noticed that the observations were made with respect to Article 16(4) which provision was held qualified by Article 335 which requires that while taking into consideration the claims of the Scheduled Castes and Scheduled Tribes the State shall keep in mind the requirement of maintenance of efficiency of administration. The said consideration was held relevant even while providing for reservation in favour of other backward classes. While making the above observations, the court, concerned with Art. 16(4), was speaking of posts in research and development organisations, in specialities and super-specialities in medicines, engineering and such other courses. The court was not speaking of admission to specialities and super-specialities. Moreover, M.S. or M.D. are not super-specialities. In any event, this Court did not say that they were not permissible; the government was asked to consider the advisability of providing for reservations in those posts having regard to the nature and level of those posts.

9. We. are unable to appreciate the argument of detriment to the interests of society. As we have said hereinbefore, there is no distinction in the matter of passing the examination. No one will be passed unless he acquires the requisite level of. proficiency. Secondly, the academic performance is no guarantee of efficiency in practice. We have seen both in law and medicine that persons with brilliant academic record do not succeed in practice while students who were supposed to be less intelligent come out successful in profession/practice. It is, therefore, wrong to presume that a doctor with good academic record is bound to prove a better doctor in practice. It may happen or may not.

10. Sri Vikas Singh brought to our notice the decisions of this Court in Dr. Jagdish Saran and Ors. v. Union of India and Pradeep Jain v. Union of India , in support of his submission. Jagdish Saran was not a case arising under Article 15(4). It was a case where 70% of the seats in the post-graduate medical course in the Delhi University were reserved in favour of Delhi University graduates keeping the remaining 30% open to all including the graduates of Delhi University. The validity of the said provision was questioned and in that connection certain observations were made by this Court which read:

But it must be remembered that exceptions cannot overrule the rule itself by running riot or by making reservations as a matter of course, in every university and every course. For instance, you cannot wholly exclude meritorious candidates as that will promote sub-standard candidates and bring about a fall in medical competence, injurious, in the long run, to the very region. It is no blessing to inflict quacks;and medical medgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can he higher than those of the nation. So. within these limitations,

without going into excesses, there is room for play of the Slate's policy choices.

Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be hundpicked by selecting according to capability. At the level of Ph.d., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by watching excellence, has more meaning and cannot be diluted much without grave risk. The Indian Medical Council has rightly emphasised that playing with merit for pampering local feeling will boomerang. Midgetry, where summitry is the desideratum, is a dangerous art. We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration:

Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduates studies should be conducted by the unversities.

11. Having so stated, the court hastened to add the following clarification in paragraph 25:

We hasten to keep aloof from reservations for backward classes and Scheduled Castes and Tribes because the Constitution has assigned a special place for that factor and they mirror problems of inherited injustices demanding social surgery which if applied thoughtlessly in other situations may be a remedy which accentuates the malady.

12. Indeed, this aspect has also been adverted in the first half of paragraph 20. Sri Singh also relied upon certain similar observations in paragraphs 36, 39, 40 and 42, which we do not think necessary to re-produce for the; reason that they were all made in a different context.

13. So for as Pradeep Jain is concerned, the observations relied upon arc in paragraph 22, which read thus:

So much for admission to the MBBS course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to the post-graduate courses, such as, MD, MS and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Jagdish Swan case, and we wholly endorse what he has said:

14. After quoting the observations in Jagdish Saran, the learned Judges referred to the recommendation of the Indian Medical Council that in the matter of admission to post-graduate courses merit alone should be the basis. The other observations relied upon arc in the very same paragraph at pages 692-693. They read:

We are therefore of the view that so for as admissions to postgraduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broaden considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference....

15. It is again necessary to notice the context in which the said observations were made. In Pradeep Jain, the court was concerned with wholesale reservation made by some of the State governments on the basis of domicile or residence requirement within the State and admitting only those students to their medical colleges who satisfied the said requirement. With a view to extend the rule of equalitv, the court directed that certain percentage of seats both in M.B.B.S. and post graduate medical courses should be filled on the basis of All-India entrance test and that students to this received quota should not to be : called upon to satisfy the rule of residence or domicile, as the case may be This was again not a case arising under Article 15(4). The observations made cannot be torn from their context and read as applicable to the situation obtaining under Article 15(4). For the above reasons, the second contention of Sri Vikas Singh as also rejected.

16. We see absolutely no substance in the third submission of Sri Singh. The argument taxes one's credulity. We are totally unable to appreciate how can it be said that admission to post-graduate medical course is a promotional post just because such candidate must necessarily pass MB.B.S. examination before becoming eligible for admission to postgraduate medical course or for the reason that some stipend - it is immaterial whether Rs. 1,000 or Rs. 3,000 p.m. - is paid to post-graduate students. Admission to such course cannot be equated to appointment to a post and certainly not to an appointment by promotion. The argument is accordingly rejected.

17. Now, we come to the more important submission which was supported and elaborated by Sri Harish Salve, learned Counsel appearing for the Indian Medical Council. The argument runs thus : the - Indian Medical Council Act, 1956 is an Act made by the Parliament with reference to Entry 26 of List-Ill (Legal, Medical and other profession) as well as Entry 66 of List-I which empowers the Parliament to make laws with respect to "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions". It is the function of the Indian Medical Council to determine the standards of higher education in various institutions in the country and to coordinate the same. In discharge of the duty cast upon it to determine and coordinate the standards of education, the council has decided that there should be no reservation of any kind in the matter of admission to post-graduate medical courses and that admissions should be made solely and exclusively on the basis of merit and merit alone, The Regulations made by the Indian Medical Council with the previous sanction of the Central Government say so. The Regulations being a species of delegated legislation bind all the institutions imparting medical education. In the face of these Regulation, it is not open to the State of Bihar to provide for such reservation under an executive order. Sri Salve brought to our notice the Regulations made by the Indian Medical Council under Section 33 of the Act which arc found printed in the publication of the Medical Council of India under the title "Recommendations on

post-graduate medical education (adopted by the Medical Council of India in February, 1971-revised upto January, 1988)". The publication is of the year 1989. Under the heading "criteria for the selection of candidates", Clause (a) stales thus : "(a) students for postgraduate training should be selected strictly on merit judged on the basis of academic record in the under-graduate course. All selection for postgraduate studies should be conducted by the Universities." Under the heading "evaluation of merit", it is stated:

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

Alternatively the authorities concerned may conduct competitive entrance examination to determine the merit of a candidate for admission to post-graduate medical courses.

18. Sri Salve also brought to our notice Recommendations made by the Medical Council of India to the Central Government for according its approval to enable the Medical Council of India to publish them as Regulations under Section 33 of the Act. These recommendations are contained in another publication of the Medical Council of India under the heading "recommendations of post-graduate medical education (adopted by the Medical Council of India in January, 1992 - revised upto April, 1993)." Under the heading "(iv) selection of students and period of training" Clause (A) relates to "selection of post-graduate students". Under Clause (A), it is stated : "students for post-graduate training 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.... A note is appended to the said clause which says inter alia, "there shall be no reservation for admission to post-graduate medical degree/diploma course under any category". The said publication also contains a reference to the letter dated 2(l/24th August, 1987 from the Central Government, Ministry of Health and F.W. forwarding therewith a copy of the extract of the minutes of the meeting of the committee of Vice chancellors of the central universities held on January 19, 1985 received from the Ministry of Human Resources Development (Department of Education) regarding reservation of seats for students belonging to Scheduled Castes/Scheduled Tribes in M.D/M.S. courses for comments of the council. It is stated that "the post-graduate committee reiterated its earlier decision not to have reservation to students belonging to Scheduled Castes/Scheduled Tribes in post-graduate medical courses". No such "earlier decision", however, has been brought to our notice. Sri Salve slated, alter obtaining instructions from the Indian Medical Council, that the recommendations made in January, 1992 (revised upto April, 1993) have not yet been approved by the Central Government and are not published as Regulations under Section 33 of the Act.

19. The Indian Medical Council Act, 1956 was enacted by Parliament to provide for the re Constitution of the Medical Council of India, main tenance of a medical register for India and for matters connected therewith. Section 11(1) says that "the medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be

recognised medical qualifications for the purposes of this Act." Section 12(1) says that the medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall also be medical qualifications for the purposes of the Act. Section 13 says that the medical qualifications granted by certain other medical institutions in India not included in the First Schedule but included in Third Schedule shall as well be recognised medical qualifications for the purposes of the Act. Section 15 provides that the medical qualifications included in the Schedules to the Act shall be sufficient qualification for enrolment on any State medical register. It further declares that save as provided in Section 25, no person other than a medical practitioner enrolled on a State medical register shall hold office as physician or surgeon under the Government or under any other institution maintained by a local or other authority. He shall also not be entitled to practice medicine in any State nor shall he be entitled to issue any certificate or give evidence in any matter relating to medicine. Any person acting in contravention of the said provision is made liable for punishment of imprisonment for a term which may extend to one year or with fine or both. Section 16 empowers the Indian Medical Council to call upon every university and medical institution of India which grants a recognised medical qualification to furnish such information with respect to the "courses of study and examinations to be undertaken in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification". Section 17 empowers the executive committee of the Indian Medical Council to appoint such number of medical inspectors as it may deem necessary to inspect any medical institution, college, hospital or other institution where medical education is imparted and to attend any examination held by it. Section 18 confers upon the council the power to appoint visitors to inspect such institutions. Section 19 empowers the council to writhdraw recognition in case "the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by any university or medical institution" do not conform to the prescribed standards. Recognition can also be withdrawn where "the staff, equipment, accommodation, training and other facilities or instruction and training" provided in such institution do not conform to the prescribed standards. Section 19-A empowers the council to prescribe the minimum standards of education required for granting recognised medical qualifications (other than post-graduate medical qualification) by universities or medical institutions in India". Section 20 empowers the council to prescribe the standards of post-graduate medical education "for the guidance of universities" and to "advise universities in the matter of securing uniform standards for Post-Graduate Medical Eduction throughout India". For this purpose, the council can constitute a post-graduate medical education committee. Section 20-A empowers the council to prescribe the standards of professional conduct and etiquette and code of ethics for medical practitioners and to ensure their observance. Section 21 requires the council to maintain the Indian medical register. Sections 22 to 28 deal with matters relating to the said register. Section 29 obliges the council to furnish such reports, accounts and other information as the Central Government may require. Section 32 empowers the Central Government to make rules to carry out the purposes of the Act whereas Section 33 empowers the council to make Regulations, with the previous approval of the Central Government, generally to carry out the purposes of the Act. Section 33 also specifies the several matters which can be provided by Regulations The matters so specified include "(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." By Indian Medical Council (Amendment) Act, 1993, brought into force with effect from August 27, 1992 Sections 10-A, 10-B and 10-C were added. These sections deal with establishment of new medical colleges or opening of new or higher courses of study or training in existing medical institutions.

20. A review of the provisions of the Act clearly shows that among other things, the Act is concerned with the determination and coordination of standards of education and training in medical institutions. Sections 16, 17, 18 and 19 all speak of "the courses of study and examinations to be undergone" to obtain the recognised medical qualification. They do not speak of admission to such courses. Section 19-A expressly empowers the council to "prescribe the minimum standards of medical education" required for granting under-graduate medical qualification. So does Section 20 empower the council to prescribe standards of post-graduate medical education" but "for the guidance of universities" only. It further says that ihe council "may also advise universities in the matter of securing uniform standards for post-graduate medical education throughout India". (The distinction between the language of Section 19-A and Section 20 is also a relevant factor, as would be explained later.) Clause (j) of Section 33 particularises the subjects with respect to which Regulations can be made by the council. It speaks of the courses and period of study and the practical training to be undergone by the students, the subjects of examination which they must pass and the standards of proficiency they must attain to obtain the recognised medical qualifications but it does not speak of admission to such courses of study. Indeed, none of the sections afore mentioned empower the council to regulate or prescibe qualifications or conditions for admission to such courses of study. No other provision in the Act does. It is thus clear that the Act does not purport to deal with, regulate or provide for admission to graduate or post- graduate medical courses. Indeed, in so far as post-graduate courses are concerned, the power of the Indian Medical Council to "prescribe the minimum standards of medical education" is only advisory in nature and not of a binding character. In such a situation, it would be rather curious to say that the Regulations made under the Act are binding upon them. The Regulations made under the Act cannot also provide for or regulate admission to post-graduate courses in any event.

21. The Regulations made by the Medical Council in 1971 (revised upto January, 1978) speak generally of students for post-graduate training being selected "strictly on merit judged on the basis of academic record in the under-graduate course". This is more in the nature of advice and not a binding direction. The Regulation does not say that no reservations can be provided under Article 15(4). The power conferred upon the State by Clause (4) of Article 15 is a constitutional power. The said power obviously could not have been overridden or superseded by a regulation made by the Indian Medical Council under the Act. The Regulation must be read consistent with Article 15(4) and if so read, it means that the students shall be admitted to post-graduate training strictly on the basis of merit in each of the relevant classes or categories, as the case may be. Any other construction seeking to give an absolute meaning to the said Regulation would render it invalid both on the ground of travelling beyond the Act. It may also fall foul of Article 15(4).

22. So for as 1992 Recommendations are concerned, they have not yet been approved by the Central Government nor have they been published as Regulations under Section 33. No more need be said with respect to them for they cannot obviously govern the admission to medical courses.

23. In State of Madhya Pradesh v. Nivedita Jam , a Bench of this Court comprising Y.V. Chandrachud, C.J., A. Vardharajan and A.N. Sen, JJ. held, dealing with a Regulation (simlar to the one contained in the 1989 publication of the Regulation by the Indian Medical Council) made by the Indian Medical Council that it is "merely directory and does not have any mandatory force". A.N. sen, J. speaking for the Bench dealt with the scope of Entry 66 List-I in the Seventh Schedule to the Constitution in the following words:

Entry 66 in List I (Union List) of the 7th Schedule to the Constitution relates to "co-ordination and determination of standard in institutions for higher education or research and scientific and technical institutions". This entry by itself does not have any bearing on the question of selection of candidates to the Medical Colleges from amongst candidates who are eligible for such admission. On the other hand, entry 25 in List III (Concurrent List) of the same Schedule speaks of-"education, including technical education, medical education in Universites, subject to entries 63, 64, 65 and 66 of List I ...vocational and technical training of labour". This entry is wide enough to include within its ambit the question of selection of candidates to medical colleges and there is nothing in the entries 63, 64 and 65 of List I to suggest to the contrary. We are, therefore, of the opinion that Regulation II of the Council which is merely directory and in the nature of a recommendation has no such statutory force as to render the order in question which contravenes the said regulation illegal, invalid and unconstitutional.

24. We arc inclined to agree with the above statement. The power to regulate admission to the courses of study in medicine is traceable to Entry 25 in List III. (Entry 11 in List-Il, it may be remembered, was deleted by the 42nd Amendment to the Constitution and Entry 25 of List-III substituted.) The States, which establish and maintain these institutions have the power to regulate all aspects and affairs of the institutions except to the extent provided for by Entries 63 to 66 of List-I. Sri Salve contended that, the determination and coordination of standards of higher education in Entry 66 of List-I takes in all incidental or ancilliary matters, that Regulation of admission to courses of higher education is a matter incidental to the determination of standards and if so, the said subject-matter falls outside the field reserved to the States. He submits that by virtue of Entry 66 List-1, which overrides Entry 25 of List-III, the States are denuded of all and every power to determine and coordinate the standards of higher education, which must necessarily take in regulating the admission to these courses. Even if the Act made by the Parliament does not regulate the admission to these courses, the States have no power to provide for the same for the reason that the said subject-matter falls outside their purview. Accordingly, it must be held, says Sri Salve, that the provision made by the State government reserving certain percentage of seats under Article 15(4) is wholly incompetent and outside the purview of the field reserved to the States under the Constitution. We cannot agree. While Regulation of admission to these medical courses may be incidental to the power under Entry 66 List-I, it is integral to the power contained in Entry 25 List-III. The State which has established and is maintaining these institutions out of public funds must be held to possess the power to regulate the admission policy consistent with Article 14, Such power is an integral component of the power to maintain and administer these institutions. Be that as it may, since we have held, agreeing with the holding in Nivedita Jain that Entry 66 in List-I does not take in the selection of candidates or regulation of admission to institutions of higher education, the argument of Sri Salve becomes out of place. The States must be held perfectly competent to

provide for such reservations.

25. Sri Salve then contended that the principle of Nivedita Jain, if applied uniformly, would undoubtedly tell upon and affect the power of the Parliament under Entry 66 of List-I. He submitted that if the State government provides that a student belonging to a reserved category obtaining one mark in entrance test would yet be eligible for admission in post-graduate courses in a situation where the eligibility percentage is, say, 50% for open competition candidates, it is bound to affect the standards of education. Counsel pointed out that according to the ratio of Nivedita Jain, this is permissible. In our opinion, Sri Salve is over-drawing the picture. A perusal of the judgment in Nivedita Jain shows that the minimum eligibility marks prescribed for general candidates for admission to M.B.B.S. was 50 whereas for Scheduled Castes/Scheduled Tribes candidates it was 40 marks. During a particular year, it so happened that even after relaxing the minimum eligibility marks by 5%, Scheduled Castes/Scheduled Tribes candidates were not available in adequate number to fill the seats reserved for them. It was in such a situation that the government resorted to the exceptional step of removing the minimum required marks altogether for that year in exercise of power of relaxation. It was not done on permanent basis. Be that as it may, we are of the opinion that Entry 66 List-I ought not to be construed in isolation. It must be read alongwith Entry 25 in List-Ill. Entry 25, as substituted by the 42nd (Amendment) Act, reads : "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 subject-matter of education including medical education is thus in the concurrent list. Only a portion of it in so far as it falls under Entries 63 to 66 of List-I has been scooped out of it and placed in List-I. But this only means that we should properly delineate the field occupied by Entries 63 to 66 of List-I to find out how much is taken away from out of Entry 25. Whenever a question arises whether a particular Legislation made by the State with reference to Entry 25 impinges upon the aforesaid entries in List-I, one has to apply the doctrine of pith and substance to determine whether the Act impinges upon the field reserved to the Parliament. This principle is well-settled from a series of decisions of this Court. In Ishwari Khaitan Sugar Mills (P) Ltd. and Anr. v. State of Uttar Pradesh and Ors. etc. [1980] S.C.R. (3) 331, the question was whether the Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 was void for the reason that it trenched upon the field occupied by Entry 52 of List-I - ("Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest"). The Parliament, as is well-known, made such a declaration in the Industrial Development and Regulation Act, 1951 and sugar industry is one of the industries included in the Schedule to the Act. The plea of the State was that the law made by it is in pith and substance relatable to Entry 42 in List-Ill ("Acquisition and Regulation of Property") and is, therefore, not ultra vires the powers of the State Legislature. A Constitution Bench of this Court upheld the Slate's plea on an examination of the provisions of the State Act. In that connection, it observed:

When validity of a legislation is challenged on the ground of want of legislative competence and it becomes necessary to ascertain to which entry in the three lists the legislation is referable to, the Court has evolved the theory of pith and substance. If in pith and substance a legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, the Act as a whole would be valid notwithstanding such incidental trenching. This is well established by a catena of decisions (see Union of India v.

H.S. Dhillon and Kerala State Electricity Board v. Indian Aluminium Co. Ltd. , Untwalia, J. speaking for the Constitution Bench has in terms stated that the pith and substance of the Act has to be looked into and an incidental trespass would not invalidate the law. The challenge in that case was to the nationalisation of contract carriage by the Karnataka State, inter alia, on the ground that the statute was invalid as it was a legislation on the subject of inter-State trade and commerce. Repelling this contention, the Court unanimously held that in pith and substance the impugned legislation was for acquisition of contract carriage and not an Act which deals with inter-State trade and commerce.

26. The court held further that there was indeed no conflict between the I.D.R. Act and the State Act and that both can operate simultaneously without coming into conflict with each other. The court observed:

...the IDR Act is essentially concerned with the control over the management of the industrial undertakings in declared industries. By the acquisition under the impugned Act and vesting of the scheduled undertakings in the Corporation the scheduled undertaking will nevertheless be under the control of the Central Government as exercised by the provisions of the IDR Act because the Corporation would be the owner and would be amenable to the authority and jurisdiction of the Central Government as the provisions of the IDR Act would continue to apply to the scheduled undertakings, sugar being a declared industry, and scheduled undertakings are industrial undertakings within the meaning of the IDR Act. No provision from IDR Act was pointed out to us to show that in implementing or enforcing such a provision the impugned legislation would be an impediment. Therefore, there is no conflict between the impugned legislation and the control exercised by the Central Government under the provisions of the IDR Act and there is not even a remote encroachment on the field occupied by IDR Act.

27. In our opinion, the situation in the case before us is no different. The State will regulate the admission policy and at the same time adhere to the standards determined by the Indian Medical Council.

28. Reference in this connection may also be made to another well-settled principle-affirmed in Calcutta Gas Co. v. State of West Bengal , to wit : "every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same Lists and to reject that construction which will rob one of the entries of its entire content and make it nugatory". This principle applies equally to a case where an entry in List-II or List-Ill is made subject to an Entry in List-I. The concerned entry in List-I should not be so construed as to rob the relevant entry in List-II or List-III of all its content and substance. It is only when it proves not possible to reconcile the entries that the non-obstante clause "notwithstanding anything in Clauses (2) and (3)" occurring in Article 246(1) has to be resorted to. Applying the aforesaid rules, we must hold that regulation of admission of students subject to post-graduate medical courses falls outside the purview of Entry 66 List-I, which means that it continues to inhere the Entry 25 of List-III.

29. Even if one relates the Indian Medical Act to Entry 25 of List- III in addition to Entry 66 of List-I, even then the position is no different - for the Indian Medical Act does not purport to regulate

the admissions on admission policy to post-graduate medical courses. The fit-Id is thus left free to be regulated by the State. The State can make a law or an executive rule; in this case it has chosen to make an executive rule.

30. It may also be mentioned that the impugned provision provides a uniform eligibility criteria of 50% for general candidates and candidates of 'other backward classes' and 40% for members of Scheduled Castes and Scheduled Tribes. Only when the students in requisite number were not available was the said criteria reduced to 40% and 30% respectively. This small distinction in the eligibility criteria can, by no stretch of imagination, be said to impinge upon the determination or coordination of standards in institutions of higher learning.

31. Sri Salve then contended that there is a conflict between the decision in Nivedita Jain and the Constitution Bench decision in Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar [1963] Suppl. 1 S.C.R. 112. The Gujarat University prescribed, purporting to the Act under Section 4 of the Gujarat University Act, that all instruction in the university colleges shall be imparted through the Gujarati language alone. The question arose whether the university had the power under the Act to prescribe Gujarati (or Hindi or both) as exclusive medium of instruction and examination and whether legislation authorising the university to so prescribe was inconsistent with Entry 66 of List-I? It was held by the majority that the Act did not confer upon the university the power to impose Gujarati or Hindi or both as exclusive medium of instruction or examination. Clause (27) of Section 4 of the Act, it was held, did not indicate that the Legislature was dealing with the subject of prescribing an exclusive medium of instruction. It was also observed that no other provision of the Act empowered the university to do so. Accordingly, it was held, the universtiy could not prescribe Gujarati as the sole medium of instruction. The above holding concluded the matter and it was not necessary for the court to go into the question whether the State Legislature possessed the power to prescribe Gujarati or Hindi as the exclusive medium of instruction in the university, but the court did go into the question for the reason that High Court had held the Act to be beyond the legislative competence of the State Legislature, and also because counsel for both parties requested the court to express itself on the question for their future guidance. (See Page 135)

32. After referring to Entries 63 to 66 in List-I and Entry 25 of List-II (as also to Entry 11 in List-II) the court observed : "Items 63 to 66 of List-I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. Use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures....The two entries undoubtedly overlap : but to the extent of overlapping, the power conferred by item 66 List I must prevail over the power of the State under item 11 of List II ....Under items 63 to 65 the power to legislate in respect of medium of instruction having regard to the width of those items, must be deemed to vest in the Union. Power to legislate in respect to medium of instruction, in so far it has a direct bearing and impact upon the legislative head of co-ordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by item 66 List I to be vested in the Union." The court rejected the argument that prescribing the medium of instruction is not a matter falling within determination and coordination of standards of higher education in Entry 66 of List-I. It held expressly that it is within the purview

of the said Entry. This decision, thus, holds that the medium of instruction of higher education is a matter falling within the purview of "coordination and determination of standards in institutions for higher education" in Entry 66 of List-I. Accordingly, it was held that the State Legislature was not competent to legislate in that behalf. We see no conflict between the said decision and the decision in Nivedita Jain.

33. Lastly, we may refer to the submission of Sri Vikas Singh that the Bihar Government acted illegally inasmuch as the impugned provision made by it is in clear contravention of the judgment of a learned Single Judge of the Patna High Court in Vijay Kumar and Ors. v. State of Bihar 1990 P.L.J.R. 277. In the said decision, it is pointed out, it has been held that in view of the Indian Medical Council Act and the Regulations made by the council, the order of the State Government providing for reservations in the post-graduate medical course is impermissible It is submitted that the said decision had become final and was, therefore, binding upon the State of Bihar. It does not, however, appear that this decision was brought to the notice of the Division Bench that rendered the decision under appeal. Since, we have expressed ourselves on merits of the controversy, which is inconsistent with the ratio of the judgment in Vijay Kumar, it is not necessary to pursue this argument of learned Counsel.

34. For all the above reasons, the appeals fail and are dismissed. No costs.