
have strained every nerve to save their marriage and bring about reconciliation between them and they have felt that their marriage is a dead horse and it is no use flogging a dead horse and they pray that petition for divorce under section 13 of the Hindu Marriage Act be converted into one under section 13-B of the Hindu Marriage and they can be allowed to do so and that petition under section 13 B of the Hindu Marriage Act can be allowed forthwith without waiting any further. So, this revision is dismissed.

R.N.R.

Before N.K. Sodhi & R.C. Kathuria, JJ

DAYANAND MEDICAL COLLEGE AND HOSPITAL,
LUDHIANA—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P. No. 698 of 2001

18th June, 2001

Constitution of India, 1950—Arts. 15(4) & 226—Post Graduate Medical Education Regulations, 2000—Reg. 9—Indian Medical Council Act, 1956—Ss. 20 & 33—Notification dated 5th January, 2001 issued by the State of Punjab—Admission to the Post graduate Medical Courses—Reg. 9 of the 2000 Regulations prescribes a minimum of 50% marks in the entrance test as the eligibility for admission—Govt. by issuing a notification lowering the minimum percentage of marks for eligibility to 40% and also prescribing reservation for various categories in admission—Regulations do not provide for any kind of reservation and reducing of minimum qualifying marks in any case—State Govt. has no power to make reservations for admission and the reservation, if any, could be made by the Council alone—No reservation for admissions in Postgraduate Medical Courses provided by the Council—Action of the State Govt. lowering the qualifying marks and providing reservation for admissions illegal and violative of the Regulations—Writ allowed, impugned notification quashed while directing the University to hold fresh counselling and admit students in accordance with the Regulations.

Held, that a reading of Regulation 9 makes it abundantly clear that admissions have to be made on merit and the best from amongst

the eligible candidates have to be selected and that it does not permit admission of students on the basis of any kind of reservation. In other words, the Council has provided for the mode for admission of students to the Post Graduate Medical Courses which is academic merit alone and thereby it has excluded admission of students on the basis of any kind of reservation which would tend to dilute that merit. In any case, power to make reservations being exclusively with the Council and it not having provided for any reservation, the State could not step into provide for reservation purporting to occupy a vacant field. In other words, the State Government cannot be allowed to take over the functions of the Council in this regard. Thus, the State Government had acted illegally in issuing the notification providing for reservations and lowering the qualifying marks for admissions to the Post Graduate Medical Courses. Consequently, the admissions made in pursuance to this notification cannot take effect.

(Paras 24 & 26)

Rajiv Atma, Ram advocate with Puneet Gupta, Advocate, for the petitioner.

Gurminder Singh, DAG, Punjab for Respondent No. 1

P.S. Patwalia, Advocate, for Respondent No. 2.

Amarjeet Singh, Advocate, for Respondent No. 3.

JUDGMENT

N.K. Sodhi, J.

(1) Whether the notification, dated 5th January, 2001 issued by the State of Punjab providing for admission of students to the Postgraduate Medical Courses with less than 50 per cent marks in the entrance examination is contrary to the Regulations framed by the Medical Council of India and whether the said notification prescribing for reservation for admission to the aforesaid courses is legal are the two meaningful questions which arise for our consideration in this bunch of writ petitions. Since the main arguments were addressed in Civil Writ Petition No. 698 of 2001 the facts are being taken from this case.

(2) Dayanand Medical College and Hospital, Ludhiana (hereinafter referred to as the College) is the petitioner before us. It conducts under Graduate and Postgraduate Courses in Medicine. The Under Graduate Courses conclude in December each year and the Post

Graduate Medical Courses commence in January of the following year. Admissions to these courses are made on the basis of merit obtained by the candidates in the entrance test conducted by the State of Punjab in accordance with the scheme framed by the Hon'ble Supreme Court in *Unni Krishnan, J.P. and others vs. State of Andhra Pradesh and others* (1). The Postgraduate Courses were to commence from January 2001. The State of Punjab did not notify the schedule for holding the entrance examination and, therefore, the petitioner approached this court by filing Civil Writ Petition No. 17088 of 2000 seeking issuance of a mandamus to the State for conducting the Post Graduate Entrance Test (for short PGET). On receipt of notice in that writ petition, the learned Deputy Advocate General gave an assurance that the Punjab Government would be holding the entrance test some time in January, 2001. On this statement being made by him, the writ petition became infructuous and the same was accordingly disposed of as such. The State of Punjab then issued a notification on 5th January, 2001 regulating admissions of students to the Three Year Postgraduate Degree Courses for the session 2001 in Government Medical Colleges, Amritsar, Patiala and Faridkot, Dayanand Medical College, Ludhiana, Government Dental Colleges, Amritsar and Patiala and Government Ayurvedic College, Patiala. It was provided therein that admissions would be made by holding a PGET. Clause (3) of the notification provides for distribution of seats. Out of the total seats, 25 per cent were to be filled up on All India basis through an All India competitive entrance test to be conducted by the government of India. Of the remaining seats to be filled on the basis of PGET, 60 per cent seats were to be filled up from amongst the eligible PCMS/PCMS (Dental/PDES in service doctors and 40 per cent seats were open to all eligible Medical/Dental Graduates who were residents of Punjab. The relevant clause in the notification reads as under :—

“(ii) For 40 per cent seats (open to all eligible Punjab residents)

Medical/Dental Graduates who are residents of Punjab will be eligible irrespective of the College from where he/she graduated. Any candidate holding employment shall have to produce a no objection certificate from his/her employer.

Note : 1.

The seats left vacant from All India quota and surrendered by the D.G.H.S., New Delhi, shall be filled strictly on merit from the combined merit list.

Note : 2.

After exhausting all the eligible candidates under 60 per cent quota the vacant seats due to non-availability of eligible candidates, if any, shall be offered to the eligible candidates under 40 per cent quota and *vice-versa*.

Note : 3.

All seats in Dayanand Medical College, Ludhiana shall be filled up by the merit of PGET under similar criteria as for 40 per cent seats in Government College except that State reservation shall not be compulsory for them. *However, constitutional reservation, if any, will be mandatory for them. (Emphasis supplied)*

(3) Clause (5) of the notification provides for determination of merit and eligibility for admission to the Post Graduate courses. The relevant part of this clause with which we are concerned is reproduced hereunder for facility of reference :

“5. Determination of merit & eligibility for admission.

1. In case of Medical/Dental Colleges.

(a) The merit of the candidates will be determined by the University by holding the Post Graduate Entrance Test of eligible candidates for admission to three year degree courses for the session 2001.

(b) There will be separate merit list for in service 60 per cent quota candidates for Government Medical/Dental Colleges and a separate merit list for the remaining who are not covered under in service category candidates. The merit list for open and reserve candidates will be combined and reserve candidates will be eligible for open seats also as per their merit.

(c) Interview is compulsory for all candidates applying for the Post Graduate admission. No separate interview letters will be issued.

(d) *Candidates securing at least 40 per cent marks in the competitive examination will be eligible for admission except for admission to the basic subjects viz. Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Social and Preventive Medicine where there will be no condition of minimum marks. Interview for M.D./M.S./M.D.S. courses*

will be held in the office of Vice Chancellor, Baba Farid University of Health Sciences, Faridkot.

(e)
”

(Underlining is ours)

(4) The reservations for admission to the Post Graduate courses have been provided for in clause 8 of the notification which is reproduced hereunder :

“8. Reservation

The reservation for various categories in Post Graduate admission in Government Colleges will be as under

a.	Scheduled Castes/Tribes	25%
b.	Backward Classes	5%
c.	Physically handicapped	3%
d.	Physically handicapped	
i.	Blindness or low vision	1%
ii.	Hearing impairment	1%
iii.	Orthopaedically handicap	1%
d.	Sports persons (credit will be given for the sports achievements made during MBBS/BDS academic courses only and shall be graded by the Director, Sports, Punjab)	
e.	Riot Affected/Displaced persons and wards of persons killed in terrorist action in Punjab.	2%

However, in case of Dayanand Medical College, only a, b, and c shall be applicable.

If candidates in one sub category above of category (c) are not available the seat will go to other sub category under (c).

The candidates under (c) shall be admitted only if they are otherwise found fit medically to pursue the course in the speciality concerned.

NOTE :

A candidate applying for admission against the seats reserved under category (a) shall be considered provided he/she produces a certificate in the prescribed form signed by any of the following authorities.

.....
.....”

(5) It is the aforesaid notification which is now under challenge before us in this bunch of writ petitions. The contention is that the notification insofar as it makes candidates securing 40 per cent marks in the competitive examination eligible for admission offends against the Post Graduate Medical Education Regulations, 2000 (for short the Regulations) which prescribe a minimum of 50 per cent marks in the entrance examination as the eligibility for admission for all candidates and cannot, therefore, be sustained. Another grievance of the petitioner is that not only the minimum percentage of marks for eligibility for admission to the Post Graduate Medical courses has been lowered but in the case of basic subjects like Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Social and Preventive Medicine, there is no condition of minimum marks for admission. This, according to the petitioner, is impermissible and contravenes the Regulations and the law laid down by the Apex Court. The notification is also challenged on the ground that even though the College has not prescribed reservation of any kind for admission of students to the courses run by it, the State Government has prescribed reservation requiring it to reserve 25 per cent seats for Scheduled Castes/Tribes, another 5 per cent for Backward Class candidates and 3 per cent for physically handicapped students. The arguments of the learned counsel for the petitioner is that State Government was not competent to prescribe any such reservations for the College and he went on to contend that the reservation in the Post Graduate courses in Medical Education could not at all be prescribed and, therefore, according to the petitioner, the notification is null and void.

(6) In response to the notice of motion, the Joint Secretary to Government of Punjab, Department of Medical Education and

Research has filed a written statement in which the factual position as stated above has not been disputed. The pleas raised by the petitioner have, however, been controverted and it is pleaded that there is no ban for Constitutional reservations in admissions to the Post Graduate courses. It is further pleaded that the Regulations do not contain a specific bar restricting reservations for Scheduled Castes and Backward Classes. It is admitted that the minimum percentage of marks for eligibility for admission to Post Graduate Medical Courses has been reduced to 40. According to the respondents, this percentage was also reduced in the year 1999 when 80 per cent of the seats reserved for PCMS in-service doctors remained unfilled because most of them could not secure 50 per cent marks in PGET. It is also admitted that in the case of basic subjects there is no condition of minimum marks and this action is sought to be justified on the ground that candidates with higher merit do not opt for the basic subjects with the result the Post Graduate seats in the Departments of Anatomy, Pharmacology and Physiology remain lying vacant thus leading to an acute shortage of teachers in these Departments.

(7) Baba Farid University of Health Sciences, Faridkot (for short the University) which is respondent No. 2 has not filed any separate reply and the learned counsel appearing for it adopted the one filed by the State of Punjab.

(8) The Medical Council of India (hereinafter called the Council) is respondent No. 3. It has filed a short affidavit confined to the issues involved in the writ petition. It is submitted on its behalf that it has framed Regulations in exercise of the powers conferred by Sections 20 and 33 of the Indian Medical Council Act, 1956 (referred to hereinafter as the Act) with the previous sanction of the Central Government and those Regulations were published in the Gazette of India on 7th October, 2000 from which date they have come into force. It is further submitted by the Council that the Act is referable to Entry 66 of List 1 of Schedule VII to the Constitution and is binding on all concerned including the State Government and the Universities. According to the Council, admission of students to the Post Graduate Medical Courses made in accordance with the provisions of the Regulations and that according to Regulation 9 students are selected strictly on the basis of their academic merit. Relying on the provisions to clause (2) of Regulation 9, it is submitted on behalf of the Council that no student could be admitted to a Post Graduate course unless he secures a minimum of 50 per cent marks in the entrance test and the firm stand taken by it is that this requirement cannot be relaxed/ waived or reduced. The notification of the State Government is stated

to be contrary to the provisions of the Regulations and the Council has prayed that the said notification be quashed. Another stand taken by the Council is that the Regulations do not provide for any kind of reservation in Post Graduate Medical Courses where admissions have to be made strictly on the basis of merit and the best from amongst the eligible candidates have to be selected.

(9) From the rival stands of the parties as noticed above, the questions that arise for our determination are as under :—

- (i) Whether the impugned notification providing for admission of students to the Post Graduate Medical Courses with less than 50 per cent marks in the entrance examination is contrary to Regulation 9 of the Regulations framed by the Council ?
- (ii) Whether the State Government is competent to provide for reservations for admission to the Post Graduate Medical Courses ? and
- (iii) Whether it is at all permissible to have reservations for admission to the Post Graduate Medical Courses and, if so, to what extent ?

(10) Before we deal with the contentions advanced by the counsel for the parties, it would be necessary to refer to the relevant provisions of the Regulations. Regulation 9 deals with the selection of the Post Graduate students and reads as under :—

“9. Selection of Post Graduate Students :

- (1) Students for Post Graduate Medical Courses shall be selected strictly on the basis of their *academic merit*.
- (2) 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 competent authority appointed by the State government or by the University/group of Universities in the same State; or
 - (ii) On the basis of merit as determined by a centralised competitive test held at the National level; or

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- (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 wherever entrance test for Post Graduate admissions is held by a State Government or a University or any other authorised examining body, the minimum percentage of marks for eligibility for admission to Post Graduate Medical Courses 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.”
(Emphasis is ours)

(11) It is clear from the plain reading of the aforesaid Regulation that students to the Post Graduate Medical Courses are to be selected strictly on the basis of their academic merit which could be determined by any one of the modes referred to in sub clause (2). The proviso thereto makes it absolutely clear that whenever an entrance test is held for Post Graduate admissions, the minimum percentage of marks for eligibility for admission to Post Graduate Medical Courses shall be 50 per cent for all the candidates. The mandate of the proviso is that no candidate with less than 50 per cent marks in the entrance examination wherever held can be admitted to a Post Graduate Courses. In the cases before us the State Government while issuing the impugned notification of 5th January, 2001 has made students with 40 per cent marks in the competitive examination eligible for admission to the Post Graduate Courses and in the basic subjects like Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Social and Preventive Medicine, there is no condition of minimum marks. This, in our view, is clearly impermissible and contrary to the proviso to clause (2) of Regulation 9 of the Regulations. In other words, students with 40 per cent marks in the competitive examination have been made eligible by the State Government whereas the Regulations do not permit these marks to be reduced in any case from 50 per cent. In this situation, the question that arises is whether Regulation 9 which prescribes 50 per cent as the minimum marks for eligibility for admission to the Post Graduate Medical Courses for all candidates would prevail over the notification issued by the State Government whereby this percentage has been lowered to 40 per cent and in the case of basic subjects no condition of minimum

marks has been prescribed. The matter, in our opinion, is not *res integra* and has been settled by the Apex Court in a number of judgments.

(12) In *Medical Council of India vs State of Karnataka and others* (2) a question arose whether Medical Council of India had the authority to fix intake capacity for admission of students to various Medical Colleges in the State of Karnataka. The State Government had allowed admission of students to the Medical Colleges in excess of the intake capacity fixed by the Medical Council. The State Government contended that it had the power to determine the admission capacity in the Medical Colleges and that this power vested in it by virtue of the two State enactments namely Karnataka State Universities Act, 1976 and Karnataka Educational Institution (Prohibition of Capitation Fee) Act, 1984. The provisions of the two State Acts were held to be repugnant to the provisions of the Act and it was observed that the Regulations framed by the Medical Council under section 33 of that Act were mandatory in nature and have a statutory force. The observations of their Lordships in paragraph 27 may be referred to with advantage and they read as under :—

“The Indian Medical Council Act is relateable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the act even though the State acts may be relateable to Entries 25 or 26 of List - III (Concurrent List). Regulations framed under Section 33 of the Medical Council Act with the Central Government are statutory. These Regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a Regulation falls within the purposes referred under section 33 of the Medical Council Act, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 w.e.f. 27th August, 1992) and clauses (j), (k) and (l) of section 33.”

This case was considered by a Constitution Bench of the Supreme Court in *Dr. Preeti Srivastava and another vs State of Madhya Pradesh and others* (3) in which case the State Act of Uttar Pradesh reducing the minimum qualifying marks for reserved category candidates and the Government order of the State of Madhya Pradesh prescribing the minimum percentage of qualifying marks for such candidates to make

(2) JT 1998 (5) SC 40

(3) J.T. 1999 (5) SC 498

them eligible for admission to Post Graduate Medical Courses were struck down as being violative of the provisions of the Indian Medical Council Act, 1956 and the Regulations framed thereunder. Learned Judges have clearly laid down that the Regulations framed by the Medical Council are binding on the State Governments and that the States cannot in the exercise of their power under Entry 25 of List III of the VIIth Schedule to the Constitution 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. This is clear from the observations made in paragraphs 54 and 59 of this judgment which are reproduced hereunder :

“54. Mr. Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, *inter alia* standards of Post Graduate Medical Education. In the exercise of its power under Section 20 read with Section 33 the Indian Medical Council has framed Regulations which govern Post Graduate Medical Education. These Regulations, therefore, are binding and the State cannot, in the exercise of power under Entry 25 of List-III, make Rules and Regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for Post Graduate Medical Education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List-I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List-III is subject to Entry 66 of List-I.” “59. In the case of *Medical Council of India vs State of Karnataka and others* J.T. 1998 (5) S.C. 40, a Bench of three Judges of this Court has distinguished the observations made in *Kumari Nivedita Jain (supra)*. It has also disagreed with *Ajay Kumar Singh and others vs. State of Bihar and others (supra)* and has come to the conclusion that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with admissions to the M.B.B.S. course and the Regulations framed by the Indian Medical Council relating to admission to the M.B.B.S. course. The Court took note of the observations in *State of Kerala vs Kumari T.P. Roshana and another* (1979) 1 SCC 572 at page 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India

has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is under the act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to Post Graduate Medical courses. We are in respectful agreement with this reasoning.”

(13) The learned Judges of the Constitution Bench disagreed with the contrary view expressed earlier in *Ajay Kumar Singh and others vs State of Bihar and others* (4) and *State of Madhya Pradesh and another vs Kumari Nivedita Jain and others* (5).

(14) This question also came up before us in *Dr. Mrs. Kumud Dharwal vs State of Punjab and others* (6) wherein we held as under

“Moreover, the Regulations framed by the Medical Council of India are binding upon the University and the same cannot be bye-passed by it. The position in this regard has been clarified not only in *Dr. Ajay Pradhan’s case* (supra) but also in the latest decision of the Apex Court in *Dr. Preeti Srivastava and another vs State of Madhya Pradesh and others* 1999 (4) S.L.R. 687.”

(15) In view of the settled position of law as stated above, it must be held that the Regulations framed by the Council are mandatory and the State Government cannot be allowed to act in contravention thereof. As a corollary, it follows that the notification issued by the State Government which is in contravention of Regulation 9 must yield to the mandatory provisions of the Regulations and the State Government was not justified in reducing eligibility for admission to the Post Graduate courses from 50 per cent marks in the competitive test to 40 per cent. Not only this, curiously enough no condition of minimum marks has at all been fixed in the basic subjects. This would mean that there is no cut off percentage of marks for any candidate in regard to the basic subjects. In other words, a candidate who gets zero in the competitive examination or secures no marks therein is also eligible

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- (4) J.T. 1994 (2) SC 662
(5) 1981 (4) S.C.C. 296
(6) 2000 (4) RSJ 562

for admission if a seat is vacant. Obviously, the State Government has thrown to the winds merit altogether and made a mockery of the merit criteria which cannot be permitted. This action of the State is in contravention of the law laid down by the Apex Court in *Dr. Sadhna Devi and others vs State of Uttar Pradesh and others* (7). In this case the State of Uttar Pradesh fixed a cut off percentage of 45 per cent marks in Post Graduate Medical Education for admission of the general category candidates to the Post Graduate courses in Medicine. The cut off percentage for the reserved category candidates was fixed at 35 per cent. Thereafter by a Government order dated 31st August, 1995, the State Government completely did away with the cut off percentage of marks in respect of the reserved category candidates so that there were no minimum qualifying marks in the Post Graduate Medical Entrance Examination prescribed for such candidates. This Government order was challenged before the Supreme Court and it was struck down it being held by the Apex Court that the State Government while laying down the minimum qualifying marks for admission to the Post Graduate courses could not say that there will be no minimum qualifying marks for reserved category candidates. The Supreme Court observed that if the State Government were to be allowed to do this, it would mean that merit would be sacrificed. After the decision in *Dr. Sadhna Devi's* case (supra), the State Government again fixed 20 per cent marks as the cut off percentage for the reserved category candidates. This too was struck down as being unreasonable in *Dr. Preeti Srivastava's* case supra). The case before us is even worse. In the case of basic subjects the State Government has fixed no minimum qualifying marks at all for the general candidates as well. As already observed, this cannot be allowed. The State Government should realise that the Post Graduate courses in Medical Education are competency based and the goal of Post Graduate Medical Education is to produce competent specialists and Medical teachers. What kind of competent specialists and Medical teachers will the State produce if it allows the students to be admitted with no marks in the entrance examination. May be the seats remain unfilled because most of the candidates do not secure 50 per cent marks in PGET but that is no ground to lower the standards and allow entry to the sub-standard material. The Supreme Court in *Dr. Preeti Srivastava's* case (supra) did not even allow a large difference in the qualifying marks between general category students and reserved category students at the Post Graduate level. In this context, their Lordships observed as under :

“33. A large differentiation in the qualifying marks between the two groups of students would make it very difficult to

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

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

(16) It may be noticed that before the Regulations were framed in pursuance to the observations made by the Apex Court in *Dr. Preeti Srivastava's case* (supra), the Council had not framed any regulations prescribing the minimum qualifying marks for admission to the Postgraduate Medical Courses with the result that different State Governments were prescribing different percentage of qualifying marks

for such admissions. This led to a spate of litigation and, as already observed, the Apex Court struck down in *Dr. Sadhna Devi's case* (supra) the action of the State Government in not laying down any minimum qualifying marks for admission to the postgraduate courses. Even 20% marks as the cut off percentage for the reserved category candidates was struck down in *Dr. Preeti Srivastava's case* (supra) it being observed that there could not be much difference in the qualifying marks between the general category students and the reserved category students. The Apex Court observed in this case that it was for the Council to lay down the minimum academic standards and it is in pursuance to those observations that the Council has now framed the present Regulations prescribing 50% of the marks in the entrance test as the qualifying marks for admission to the postgraduate medical courses for all categories of students. Now with Regulation 9 having come into force, it is not open to any State Government to prescribe the minimum qualifying marks lower than what are provided in the proviso to Regulation 9(2) of the Regulations.

(17) To conclude on the first issue, we hold that the notification dated 5th January, 2001 issued by the State Government lowering the eligibility for admission to the Post Graduate Medical Courses in the State of Punjab for the session 2001 being contrary to Regulation 9(2) of the Regulations cannot be sustained.

(18) We now advert to the second question namely, whether the State Government is competent to provide for reservation for admission to the Post-Graduate Medical courses.

(19) The learned Deputy Advocate General appearing on behalf of the State strenuously contended that Article 15(4) of the Constitution gives power to the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes and that it was in the exercise of this power that the State provided for reservation for admissions to the post-graduate courses for the scheduled caste and sheduled tribes. In support of this plea he further contended that the State has the power to legislate in regard to the subject of education including medical education under Entry 25 of List-III of the VIIth Schedule to the Constitution. The argument is that the State alone is competent to provide for the reservations. We are unable to accept this contention. No doubt, the State has the power to make special provisions for the advancement, inter alia, of scheduled castes and scheduled tribes notwithstanding Articles 15(1) and 29 (2) of the Constitution but this power, in our opinion, has to be used in a reasonable manner which is

consistent with the ultimate public interest. In *M.R. Balaji & Ors. v. State of Mysore* (8) the Supreme Court while dealing with the power of the State under Article 15(4) of the Constitution, observed as under :—

“When Article 15(4) refers to the special provisions for the advancement of certain classes of Scheduled Castes or Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character so that in looking after the advancement of those classes the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Parliament intended to provide that where the advancement of the Backward Classes or the scheduled castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored.”

The Court struck down a reservation of 68% made for backward classes for admission to the medical and engineering courses.

(20) In *Dr. Jagdish Saran & Ors. v. Union of India* (9) reservation of 70% seats for the local candidates in admissions to the postgraduate medical courses was struck down by the Apex Court and while dealing with Article 15(4) of the Constitution, their Lordships observed as under :—

“The first caution is that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation..... A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potentials of the weak with the partial recognition of the presence of competitive merit —such is the dynamic of social justice which animates the three egalitarian articles of the Constitution.”

(8) (1963) Suppl 1 SCR 439

(9) (1980) 2 SCC 768

(21) This issue also came up for consideration before the Supreme Court in *Dr. Preeti Srivastava's* case (*supra*). In that case, as already observed, the State Act reducing the minimum qualifying marks for reserved category candidates to 20% for making them eligible to the postgraduate course was struck down and while dealing with Article 15(4) of the Constitution, the learned Judges observed in para 26 of the judgment as under :—

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

The decision may perhaps, depend upon the expert body's assessment of the potential of the reserved category candidates at a certain level of minimum qualifying marks and whether those who secure admission on the basis of such marks to post-graduate courses can be expected to be trained in two or three years to come up to the standards expected of those with postgraduate qualifications.” (Emphasis supplied).

Again, after dealing with Entry 25 of List-III which gives, power to the State to legislate in regard to the subject of education including medical education and Entry 66 of List-I which deals with "Co-ordination and determination of standards in institutions for higher education", their Lordships observed in para 60 of the judgment as under :—

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

(Underlining is ours)

(22) Reservations of whatever kind dilute merit and are bound to lower to some extent the standards of Postgraduate Medical Education. Since this power to make reservations affects the standards of medical education, it is but reasonable to hold that the power to

make reservations must also vest in the authority which has to lay down and maintain standards of Postgraduate Medical Education. In other words, the power to make reservations is relateable to the power to lay down standards of medical education which power as held by the Supreme Court in *Dr. Preeti Srivastava's* case (*supra*) is exclusively within the domain of the Council. In this view of the matter, it is the Council alone which could make reservations, if any, for admission of students to the Postgraduate Medical Courses. The aforequoted observations of the Constitution Bench in *Dr. Preeti Srivastava's* case (*supra*) also support the view that reservations, if any, for admissions to the Post Graduate Medical courses could be made only by the Medical Council of India and not by the State Government. In the result, the answer to the second question as posed earlier has to be in the negative and it has to be held that the State Government has no power to make reservations for admissions to the Post Graduate Medical courses.

(23) In the cases before us, in clause 8 of the notification dated 5th January, 2001 issued by the State Government, reservation has been provided for various categories of students in Postgraduate admissions in Government Medical Colleges. For the College the reservations have been provided only for scheduled castes/tribes, backward classes and physically handicapped persons to the extent mentioned in sub-clauses (a), (b) and (c) of Clause 8 of the notification. This is clearly impermissible and without any authority of law. The impugned notification to the extent it provides for reservation for admissions to the Post Graduate Medical courses in the Medical Colleges in Punjab is illegal and cannot be sustained.

(24) Shri P.S. Patwalia, Advocate appearing for the University strenuously contended that the Council by framing the Regulations has not provided for any reservation for admissions to the Post Graduate Medical courses and, therefore, the field in regard to reservations has been left open. The argument, indeed, is that the State Government in the exercise of its power relateable to Entry 25 of List-III of the VIIth Schedule to the Constitution was competent to occupy the vacant field by providing for reservation for different categories of students as stated in the impugned notification. The learned counsel referred to the recommendations of the Council on Post Graduate Medical Education and drew our attention to the note under clause IV-A of the recommendation dealing with the selection of Post Graduate students. In the note it had been recommended that "there shall be no reservation for admission to Post Graduate Medical Degree/Diploma course under any category." His contention is that in spite of this recommendation

the Regulations as framed in the year 2000 do not contain such a bar and, therefore, it has to be presumed that the field of reservations has been left vacant by the Council in regard to which the State could issue executive instructions. We are unable to accept this contention. There is nothing on the record to show that the recommendations made by the Council were ever approved by the Central Government or that they ever took the shape of Regulations under section 33 of the Act. The recommendations of the Council without their approval by the Central Government have no force of law and cannot be taken notice of. Be that as it may, we are concerned with Regulation 9 of the Regulations which deals with "SELECTION OF POST GRADUATE STUDENTS". A bare reading of clause (1) of this Regulation leaves no room for doubt that the Council has provided that students for Post Graduate Medical courses shall be selected strictly on the basis of their academic merit which means that they will be selected on no other consideration. Clause (2) gives us various modes for determining the *academic merit* of the candidates for the purpose of admission and the proviso makes it clear that where admission is to be made on the basis of an entrance test the minimum percentage of marks for eligibility for admission to Post Graduate Medical courses shall be 50 per cent for "all the candidates." A reading of this Regulation makes it abundantly clear that admissions have to be made on merit and the best from amongst the eligible candidates have to be selected and that it does not permit admission of students on the basis of any kind of reservation. In other words, the Council has provided for the mode for admission of students to the Post Graduate Medical courses which is academic merit alone and thereby it has excluded admission of students on the basis of any kind of reservation which would tend to dilute that merit. If the Council had intended to provide for reservation for admission to the Post Graduate Medical courses, a specific provision would have been made in Regulation 9 and in the absence of any such provision it cannot but be held that it intended to exclude reservations completely in Post Graduate Medical courses. This view finds support when we compare the Regulations with those framed by the Council for the MBBS course. It will be noticed that for admission to MBBS courses, the Council has specifically provided for the lowering of qualifying marks upto 40 per cent instead of 50 per cent in the case of reserved candidates but no such provision has been made in the case of admissions to the Post Graduate Medical courses. It is, thus clear that where ever the Council intended to provide for reservations it has expressly done so as in the case of admissions to the MBBS courses. Having not made any provision for reservation for admissions to the Post Graduate Medical courses, it has to be held that the Council consciously refrained from making any provision because it did not want to dilute merit at

post-graduation level. In any case, as already observed by us, power to make reservations being exclusively with the Council and it not having provided for any reservation, the State could not step in to provide for reservation purporting to occupy a vacant field. In other words, the State Government cannot be allowed to take over the functions of the Council in this regard.

(25) All that we have said is fortified by a scrutiny of the correspondence exchanged amongst the respondents in this regard. Regulations framed by the Council were circulated amongst others to the University as per letter of the Council dated 9th December, 2000 "with the advise to implement the same for admissions to be made in the coming academic session strictly as per the prescribed Regulations." Not only this, even after the Regulations had been framed and before they were published, the Council by its letter dated 7th September, 2000 informed the Director, Research and Medical Education, Punjab, Principal, Government Medical College, Patiala and the Registrar of the University that "there is no provision for any kind of reservation in the Council Regulations in Post Graduate Medical Education." Similar information was sent to the College as well by letter dated 3rd November, 2000. Thereafter, by letter dated 10th January, 2001 the College brought to the pointed notice of the University the issue of reservations to Post Graduate Medical courses and stated as under :

"I would like to draw your attention to another letter of the M.C.I. no MCI-(7) (10)/2001-Legal/6811 dated 7th September, 2000(copy no. 2 enclosed) wherein it has again been re-emphasized that there is no provision of any kind of reservations in the Council's Regulations in Postgraduate Medical Education and where it is clearly mentioned that "I am further to state that there is no provision for any kind of reservation in the Council Regulations on Post Graduate Medical Education. I am directed to request you to please defend the above cases on your own behalf and watch the interest of the Council."

(26) It is surprising to note that despite being fore warned by the Council that no reservation could be provided for admissions to the Post Graduate Medical courses the State Government issued the impugned notification on 5th January, 2001 providing for such reservations. Soon after the issuance of this notification and much before the admissions were made, the Council again by its letter dated 23rd January, 2001 brought to the notice of the University pointing

out that the notification had been issued in contravention of the Regulations framed by the Council. It was specifically pointed out that marks at the qualifying examination had been lowered from 50 per cent to 40 per cent for certain category of students which was not in conformity with the Regulations. It was further brought to the notice of the University that "You may also kindly note that in these regulations no reservation of any category has been prescribed by the Council." In spite of the fact that the State Government had been repeatedly told well in time that no reservation could be made in the Post Graduate Medical courses and that marks of the PGET could not be reduced from 50 per cent, it still issued the notification providing for reservation and also lowering the qualifying marks in flagrant violation of the Regulations. Not only this, it also proceeded to make admissions to the Post Graduate Medical courses and admitted students against reserved seats in different Medical Colleges in the State. In this view of the matter, we have no hesitation to hold that the Council has not provided for any reservation for admissions to the Post Graduate Medical courses in the State and that the State Government had acted illegally in issuing the notification providing for reservations and lowering the qualifying marks for admissions to the Post Graduate Medical course. Consequently, the admissions made in pursuance to this notification cannot take effect.

(27) This takes us to the third question posed in the earlier part of the judgment namely whether at all it is legally permissible to have any reservation for admissions to the Post Graduate Medical courses. Learned counsel appearing for the petitioner had strenuously urged before us that no reservation of any kind could be provided for admissions to the Post Graduate Medical courses. He contended that the Apex Court in *Mohan Bir Singh Chawla v. Panjab University, Chandigarh & another* (10) has taken the view that higher we go, less should be the extent of reservation or weightage and went on to contend that it would be dangerous to provide for reservations at the level of post graduate medical education where the object is to produce competent specialists and medical teachers no matter whether the reservation is made by the State Government or by the Council. He referred to some of the observations made by the Apex Court in *Dr. Preeti Srivastava's case (supra)* and also to those made in *K. Duraisamy and another v. State of Tamil Nadu and others* (11). It is not necessary for us to answer this question as it is purely academic. We have already held that the power to make reservations, if any, lies with the council and since it has not provided for any reservation for admissions to the

(10) JT 1996 (1) SC 226

(11) JT 2001 (2) SC 48

Post Graduate Medical courses, therefore, the question whether such reservations could at all be made and if so to what extent would be examined if and when the Council decides to provide for reservations to such courses.

Civil Writ Petitions No. 3631 and 3738 of 2001 :

(28) We may now deal with the additional point raised in these writ petitions. Petitioners in these writ petitions are students who have passed their M.B.B.S. examination from the College and are seeking admission to the Post Graduate Medical courses in the same College. Their grievance is that for admission to the Post Graduate Medical courses the respondents have denied them 10 per cent weightage of the marks secured by them in PGET as was being done before the issuance of the impugned notification dated 5th January, 2001. This weightage is claimed by the petitioners on the ground that they have passed the qualifying examination namely MBBS from the same College. In other words, the petitioners are claiming College based institutional preference for admission to the Post Graduate Medical courses. This claim of theirs has been resisted by the respondents particularly by the learned counsel for the University on the ground that such a preference if allowed would be constitutionally invalid and would offend against the principles of equality enshrined in Article 14 of the Constitution. This question is also not *res integra* and arose directly before the Apex Court in *State of Rajasthan and another v. Dr. Ashok Kumar Gupta and others* (12). In that case what was under challenge before the court was the Ordinance of the University of Rajasthan which provided for uniform addition of 5 per cent marks to the students applying for admission to the Post Graduate course in any one of the five Medical Colleges provided the student had passed his final M.B.B.S. examination from the College to which admission in Post Graduate course was sought and after examining the issue threadbare and on the basis of the competitive data based study noted that such institutional preference would lead to disastrous results violating Article 14 of the Constitution. The question was answered by the learned Judge in the following words :—

“Now it has to be realised that the aggregate of marks for all subjects put together is 2750. 5 per cent of these marks would work out to 137.5 marks. In the results, a candidate from the same College will have an advantage of 137.5 marks over candidates from other Colleges. In Medical courses where there is intense competition and candidates run neck to neck so often with a difference of a mark or two, a difference of 137.5 marks by way of Collegewise institutional

preference would virtually make a mockery of the merit criteria. A candidate, say from Jaipur College, who secures 137.5 marks less than a candidate from Jodhpur, Bikaner, Udaipur or Ajmer will get admission in P.G. course at Jaipur in preference to the other more meritorious candidates merely because he passed the M.B.B.S. examination at Jaipur even though all of them secured their marks at the identical competitive examination to all the Colleges, It, needs no argument that Article 14 is seriously shattered."

It was further held :—

"The fortunes of the candidates would thus undergo a sea change. Those who are more meritorious having secured more aggregate marks than others would not get admission to P.G. courses anywhere in Rajasthan, whereas those with lesser merits would get admission by reason of the 5 per cent Collegewise preference. To take the case of the appellants, they having secured aggregate marks of 1650, 1638, 1624, 1617 and 1613 have not been able to secure admission in any discipline. As against this candidates having secured much less marks already secured admission in one or the other of the five Medical Colleges."

And again

"This analysis exposes the extremely unfair and unjust impact of the impugned Rule. This factor coupled with the four factors highlighted earlier leave no room for doubt that while on the face of it the impugned Rule appears to extend or accord equal treatment of 5 per cent weightage to the students of each of the five Medical Colleges, in actual operation it brings about oppressive and obnoxious inequality. Once the veil of 'apparent' equality is pierced, the ugly inequality stares one in the eyes which are opened to the offensive 'reality'. Such being the position the Constitutional validity of the impugned Rule cannot be sustained. It has to be buried unceremoniously as unconstitutional being violative of Article 14 of the Constitution of India."

Similar view was taken by the Supreme Court in *Municipal Corporation of Greater Bombay and others v. Thukral Anjali Deokumar and others* (13) and *P.K. Goel and others v. U.P. Medical Council and others* (14), where institutional preference was invalidated and deprecated. In this view of the matter, the contention of the petitioners

(13) AIR 1989 SC 1194

(14) AIR 1992 SC 1475

is rejected and it is held that they are not entitled to any Collegewise institutional preference as claimed by them.

Civil Writ Petition 6847 of 2001:

(29) In Civil Writ petition No. 698 of 2001 challenge was made to the admission of the students who sought admission against 40 per cent seats open to all eligible Medical Graduates who were residents of Punjab and it was argued by the learned counsel for the University that our decision should be confined only to this class of students and should not affect the admissions made under 60 per cent quota meant for in-service candidates including the candidates admitted against the reserved categories as those candidates were not parties to the writ petition. After the arguments had been heard and orders reserved in this writ petition, civil writ petition 6847 of 2001 came to be filed in which challenge has been made to the admission of all the reserved candidates to the Post Graduate courses in the State of Punjab including those admitted under the 60 per cent quota meant for in-service candidates. All reserved candidates admitted to the post-graduate medical courses have been impleaded as parties.

(30) We have heard counsel for the parties in this case as well. Shri Rajiv Atma Ram learned counsel for the petitioners reiterated the submissions made by him in CWP 698 of 2001. Shri G.K. Chatrath, Sr. Advocate and Shri Deepak Sibal, learned counsel appearing for the private respondents who have been given admission against the reserved seats contended that since the Council has not provided for any reservation for admission to the Post Graduate courses, it was open to the State Government in the exercise of its powers under Entry 25 of List-III of the VIIth Schedule to the Constitution to occupy the vacant field by issuing executive instructions and provide for reservation. We have already noticed this contention earlier which was advanced by Shri P.S. Patwalia, Advocate and for the reasons already recorded, we find no merit in the same.

(31) Shri G.K. Chatrath, Sr. Advocate forcefully contended that the power to make reservations is only with the State Government and not with the Council as alleged by the petitioners. He took us through the various provisions of the Constitution including the preamble and referred to some of the observations made by the Apex Court in *Indira Sawhney etc. v. Union of India and others* (15), *Comptroller & Auditor General of India and others v. Mohan Lal Mehrotra & others* (16), *Dr. Narayan Sharma and another v. Dr. Pankaj Kr. Lekhar and others* (17), and *Haridas Parsedia v. Urmila Shakya and others* (18).

(15) AIR 1993 SC 477

(16) AIR 1991 SC 2288

(17) (2000) 1 SCC 44

(18) (2000) 1 SCC 81

We have carefully gone through these judgments and are of the view that the question of standards being lowered at the stage of postgraduate medical admissions or for making reservations at that level was not before the court in any of these cases and, therefore, these judgments do not advance the case of the respondents. As already observed, the Apex Court in *Dr. Preeti Srivastava's* case (supra) has already held that it is for the Council to lay down the extent of reservation, if any, and the lowering of qualifying marks, if any, consistent with broader public interest and the observations made in this have been quoted in the earlier part of the judgment. In this view of the matter, we have no hesitation in rejecting the contention of Shri Chatrath.

(32) When faced with the observations of the Apex Court in *Dr. Preeti Srivastava's* case (supra) in paragraphs 26 and 60 of the judgment, Shri Chatrath was at pains to contend that those observations were in the nature of obiter dicta as they were made even though the question whether the Council had power to make reservations was not in issue before the court. The argument is that a decision not expressed and not proceeding on a conscious consideration of an issue cannot be deemed to be a binding law under Article 141 of the Constitution because the question of the power of the Council to provide for reservations was not discussed in *Dr. Preeti Srivastava's* case (supra) and any observations made on that issue should not be made the basis of decision of this case. He referred to the judgments of the Apex Court in *Arnit Das vs. State of Bihar* (19), *State of U.P. and another vs. Synthetics and Chemicals Ltd. and another* (20), *State of Punjab vs. Baldev Singh* (21) and *S.P. Gupta and others vs. President of India and others* (22). We are unable to accept the contention of Shri Chatrath. In our view, the Constitution Bench of the Supreme Court in *Dr. Preeti Srivastava's* case (supra) has, while dealing with the power to lay down academic standards for postgraduate medical education, examined the issue at length and came to the conclusion that it was for the Council to provide for reservation at the postgraduate level and further held that the Council would decide whether any reservation is to be provided or not and, if so, to what extent. The only question that was left open in that case was whether reservations at all were permissible at the postgraduate level in medicine. The question as to who could provide for the reservations was discussed and decided holding that it was for the Council to make a provision for reservation, if any, as they affect standards of postgraduate medical education.

(19) (2000) 5 SCC 488

(20) (1991) 4 SCC 139

(21) (1999) 6 SCC 172

(22) AIR 1982 SC 149

(33) The learned counsel also brought to our notice the provisions of Article 335 of the Constitution including the proviso thereto which was inserted by the Constitution (82 Amendment) Act, 2000. A plain reading of this Article would show that it is the Constitutional duty of the State to take into consideration the claims of the members of scheduled castes and scheduled tribes in the matter of appointments to services and posts in connection with the affairs of the Union or of a State while doing so the maintenance of efficiency of administration shall be kept in sight. The argument of the learned counsel for the respondents is that the proviso added in the year 2000 dilutes the rigours of the main provision. It is not necessary for us to deal with this provision because Article 335 of the Constitution including the proviso deals with appointments to services and posts in connection with the affairs of the Union or of a State. It does not deal with admissions to educational institutions. It appears that the proviso was added with a view to undo the effect of the judgment of the Apex Court in *S. Vinod Kumar and Anr. vs. Union of India and others* (23) where it was laid down after considering Articles 16(4) and 335 of the Constitution that for the purpose of promotion lower qualifying marks for the reserved category candidates was not permissible.

(34) Now coming to the last submission made by the learned Counsel for the respondents. They beseechingly submitted that in case the impugned notification dated 5th January, 2001 issued by the State Government were to be quashed, the operation of our judgment should be made prospective and the admissions already made on the basis of the notification should not be disturbed. To reinforce their submission they pointed out that the notification was issued in January, 2001 whereas CWP 6847 of 2001 was filed in the month of May after a delay of 4 months when the admissions to all the institutions had been made on the basis of the entrance test held on 4th March, 2001. It was also stated that after the admissions were made, classes have commenced with effect from 16th April, 2001. In the light of this factual position, it was urged that this court should not disturb the admissions already made. They referred to the judgments of the Apex Court in *Dr. Preeti Srivastava's case* (supra) and *Medical Council of India vs. State of Karnataka and others* (supra) where even though the admissions were held to be invalid but were not disturbed and the operation of the judgment was made prospective. We are unable to accept the prayer made by the respondents in this regard. As already noticed, the State Government had been pre-warned that there were no reservations provided for admissions to the postgraduate courses in

medicine but in spite of that it issued the notification ignoring Regulation 9 of the Regulations and went on to make admissions. Even after the issuance of the notification, the State Government was told not to make admissions on the basis of reservation. This advice of the Council, too, was ignored. Moreover, the admissions were made sometimes in April this year and the classes commenced with effect from 16th April, 2001. All the admissions were made provisional presumably because the notification was under challenge in these writ petitions. It is also worth mentioning that apart from the college, admissions to the postgraduate classes in all other institutions in the State are made in the month of July every year but this year on account of the College having approached this court in CWP 17088 of 2000 the admissions were made in April. The College, however, has been making admissions to the postgraduate classes in January each year. It has also admitted students provisionally and the classes have not yet commenced, as was brought to our notice by the counsel representing the College. Since we have held that the notification is in flagrant violation of the Regulations and also of the law laid down by the Apex Court in *Dr. Sadhana Devi's case* (supra), we find no justification to allow the admitted students to continue with their course more so when they have studied only for a month or so. It is true that in the cases of *Medical Council of India* (supra) and *Dr. Preeti Srivastava's case* (supra), their Lordships of the Apex Court while quashing the government orders did not upset the admissions already granted because by the time the decisions were rendered the students had almost completed their course of studies. That is not the situation here. The postgraduate course has a duration of three years and it makes no difference if some of the students have studied for a month or so. In CWP 6847 of 2001 challenge is to the admissions of reserved category candidates and since these admissions were finalised in April, 2001, the writ petition could be filed only thereafter. There is, thus, no delay in filing of the writ petitions. In the circumstances, we do not find any justification to make our judgment prospective in operation and allow the illegal admissions to continue. It was then urged that admissions granted to the reserved category candidates alone be set aside and those of the general category students be allowed to continue and the resultant vacancies could be filled up from the remaining candidates on the basis of their merit. This too is not possible. When reserved category students are out of the reckoning, some students belonging to the general category are likely to go up in merit and they will have a right to choose the discipline and the institution of their choice according to their merit. These students cannot be deprived of

this right. Therefore, a fresh counselling will have to be held. Since a fresh PGET is not to be held, students who have been admitted on the basis of their merit are not likely to be adversely affected as they will continue to retain present merit and may be some of them even come up higher on the merit list. It is, therefore, not necessary to have them before us as parties.

(35) No other point was raised.

(36) In the result, the writ petitions are allowed and the impugned notification dated 5th January, 2001 insofar as it lowers the qualifying marks from less than 50 per cent in the entrance examination and provides for reservations for admissions to the Post Graduate Medical courses in the State of Punjab is quashed. Consequently, all the admissions made on the basis of this notification are set aside and the University is directed to hold fresh counselling at the earliest of all the candidates on the basis of their merit obtained in PGET held on 4th March, 2001 and admit students as per their merit in accordance with the Regulations after excluding the students who had applied for admission on the basis of reservation. It is, however, made clear that if any candidate belonging to a reserved category finds place in the merit list, then he would be considered for admission as per his merit and will not be excluded. Petitioners will be entitled to have their costs from respondent no. 1.

R.N.R.