

State of Madhya Pradesh and Another

Vs

Kumari Nivedita Jain and Others

Civil Appeals Nos. 554-555 of 1981

(CJI Y.V. Chandrachud, A. Varadarajan, A.N. Sen JJ)

22.09.1981

JUDGMENT

A.N. SEN, J. –

1. The validity of the executive order dated September 9, 1980 passed by the State Government completely relaxing the conditions relating to the minimum qualifying marks for selection of students of Medical Colleges of the State in respect of candidates belonging to Scheduled Castes and Scheduled Tribes categories forms the subject-matter of these appeals by special leave.
2. The facts material for the purposes of these appeals may be stated :
3. Kumari Nivedita Jain, one of the respondents in the present appeals, was a candidate for admission to a Medical College in the State of Madhya Pradesh. In the State of Madhya Pradesh there are six Medical Colleges affiliated to different Universities in the State. The total number of seats in all these Colleges is 720. By an order dated April 2, 1980 the State Government made rules for admission to Medical Colleges, the College of Dentistry, Indore and Government Ayurvedic Colleges of the State and the said Rules are called "Rules for Admission into the Medical, Dentistry and Ayurvedic Colleges in Madhya Pradesh" (hereinafter referred to as the Rules). These Rules were made in exercise of the executive power of the State and these Rules are not statutory. By and under Rule 7 of the Rules, the State Government has reserved 15 per cent seats for each of the categories of the Scheduled Castes and Scheduled Tribes candidates. That means, out of 720 seats, 108 seats are reserved for the Scheduled Castes candidates; and the same number, that is, 108 seats are also reserved for the candidates belonging to the category of Scheduled Tribes. By and under the same Rules, 15 per cent seats are reserved for women candidates and seats not exceeding 3 per cent are reserved for the children of military personnel. Under Rule 8, some further reservations have been made and under this Rule, seats not exceeding 3 per cent are reserved for the nominees of the Government of India and 3 seats are reserved for the candidates nominated by the Government of Jammu & Kashmir. Rule 1(iii) provides that a Pre-Medical Examination shall be held every year for selection of candidates for admission to the Medical Colleges and all admissions shall be made only from the merit list prepared on the basis of the result of this examination except in case of seats placed at the disposal of the Government of India and other States. Rule 15 mentions the subjects of the Pre-Medical Examination and Rule 20 lays down that selection of candidates from amongst those who have qualified in the examination shall be made strictly on merit as disclosed by total number of marks contained by candidates in the Pre-Medical Examination. Rule 20 further provides that minimum qualifying marks for admission to Medical Colleges shall be 50 per cent in the aggregate and 33 per cent in each subject separately; but, for Scheduled Castes and Scheduled Tribes candidates, the minimum qualifying marks shall be 40 per cent in the aggregate and 30 per

cent in each subject. Rule 20 in its Note (ii) empowers the Government to grant in case of candidates belonging to the categories of Scheduled Castes and Scheduled Tribes special relaxation in the minimum qualifying marks to the extent considered necessary in the event of the required number of candidates in these two categories not being available. For the total number of 720 seats in the Medical Colleges of the State, there were 9400 candidates in all. Of the 9400 candidates, there were 623 candidates belonging to the category of Scheduled Castes for whom 108 seats were reserved; and, for the 108 seats reserved for candidates of the Scheduled Tribes category, there were 145 candidates belonging to that category. On the result of the Pre-Medical Examination only 18 seats in the category of the Scheduled Castes and 2 seats in the category of Scheduled Tribes could be filled up, because the other candidates of these categories did not secure qualifying marks prescribed by Rule 20. As 90 seats had remained vacant in the category reserved for Scheduled Castes after selection of the 18 candidates and 106 seats remained unfilled in the category of seats reserved for Scheduled Tribes after selection of the two candidates on the result of the examination, the Board in exercise of the power under Note (ii) to Rule 20 made a relaxation of 5 per cent in terms thereof and thereafter 7 more candidates in the category of Scheduled Castes and one more in the category of Scheduled Tribes got admitted. Thus out of 108 seats reserved for each category of the Scheduled Castes and Scheduled Tribes, only 25 seats could be filled in the category of Scheduled Castes and three in the category of Scheduled Tribes. As only a very few candidate of these two categories could get admitted into Medical Collages and a large number of seats reserved for them could not be filled up by the candidates of these two categories on the basis of the result of the examination even after relaxation had been made in terms of the provisions contained in Note (ii) to Rule 20, the State Government passed an order on September 9, 1980 completely relaxing the conditions relating to the minimum qualifying marks for these two categories. The order dated September 9, 1980, the validity of which had been questioned in the writ petitions filed by Nivedita Jain in the High Court, is to the following effect :

The Government has taken a decision that the candidates belonging to the Scheduled Castes and Scheduled Tribes be admitted to the Medical Colleges in the seats reserved for them in accordance with the merit to be determined on the basis of the marks obtained by them in the Pre-Medical Examination and that for this purpose, the condition relating to the obtaining of minimum qualifying marks be removed.

4. Kumari Nivedita Jain, as we have earlier noticed, was a candidate for admission into a Medical College in the general seats, that is, the seats which have not been otherwise reserved. Though she had obtained necessary qualifying marks, she could not secure her admission, as other candidates for the general seats had obtained marks higher than she had obtained in the Pre-Medical Examination, for filling up the vacancies available in the general category. It may be noted that Rule 9 contains a provision to the effect that in case seats of reserved categories of Scheduled Castes and Scheduled Tribes remain vacant, these seats will be filled up by the candidates available on the combined merit list. If the seats in the reserved categories had been thrown open to candidates in the general category on account of the failure on the part of the candidates belonging to the categories of Scheduled Castes and Scheduled Tribes to obtain minimum qualifying marks, Nivedita Jain would have been in a position to secure her admission to the Medical College. As the State Government by its order dated September 9, 1980 decided to relax completely the conditions relating to minimum qualifying marks for these two categories of Scheduled Castes and Scheduled Tribes candidates instead of filling up these seats by candidates available on the combined merit list, she was deprived of the opportunity of getting her admission into the Medical College. She, therefore, filed this writ petition in the High Court of Madhya Pradesh challenging the validity of the said order of the State Government dated September 9, 1980. It will be noticed that this order of

the State Government is also an executive order.

5. The principal grounds on which the validity of the order has been challenged by Nivedita Jain, the respondent herein and the petitioner in the writ petition before the High Court, are - (1) that the order of the Government contravenes Regulation II of the Medical Council of India and would hit Section 19 of the Indian Medical Council Act, 1956, exposing the Medical Colleges to the risk of being derecognised; and (2) that the order of the Government will have the effect of allowing less qualified and less deserving candidates to fill up the seats and would, therefore, destroy equality and violate Articles 14 and 15 of the Constitution.

6. It appears from the judgment of the High Court that another ground, namely, that the order dated September 9, 1980 was violative of Ordinance 94 (sic 54) of the University of Jabalpur, was also urged before the High Court, though this ground does not appear to have been taken in the petition.

7. The High Court accepted the contention of the writ petitioner that the order in question violated Regulations of the Council holding that "the executive power of the State under Article 162 cannot be so exercised as to override the statutory provisions, more so when the said provision is in a field occupied by the Union List. The executive power can be used to supplement a law but not to supplant it." The High Court further held that "the total relaxation of minimum marks for the candidates belonging to these categories cannot be supported under Article 15(4) being violative of the Regulations which have the force of Law". Dealing with the contentions of violation of Ordinance 54 of the University of Jabalpur, the High Court observed :

As the Ordinance has to be read alongwith the regulations and can be given effect to only in so far it is consistent with the regulations, it cannot constitute a new ground for invalidating the impugned order. We would, however, like to emphasise again that when a common entrance test for selection of candidates is held by the Government for all the medical colleges, it is very necessary that the Universities must prescribe identical conditions for admission consistent with the Regulations made by the Medical Council to avoid any confusion in the matter of admission.

8. In the result, the High Court allowed the writ petition and struck down the order of the State Government dated September 9, 1980.

9. In this appeal by special leave, the State of Madhya Pradesh and the Controller of Examinations of Pre-Medical Test have challenged the correctness of the decision of the High Court.

10. Before we proceed to consider the various arguments advanced on behalf of the parties, we may here note that in the writ petition filed by Nivedita Jain, she also challenged the validity of the reservation made by the State Government of 3 per cent of the seats for the children and grandchildren of freedom-fighters by another order passed by the State Government on September 19, 1980. The validity of this order was, however, upheld by the High Court. The matter rests there and in this appeal we are not concerned with this aspect of the matter.

11. Mr. Phadke, learned counsel appearing on behalf of the appellants, has submitted that the High Court struck down the order in question mainly on the ground that the order is violative of the Regulation II of the Council. He has argued that the validity of the reservations for the members of the Scheduled Castes and Scheduled Tribes has not been questioned. It is his argument that the seats are reserved for those communities in the interest of weaker sections of the society and the State

under Article 15(4) of the Constitution is competent to do everything possible for the upliftment of the Scheduled Castes and Scheduled Tribes and other backward communities and the State is entitled to make necessary reservations of seats in the matter of their admission to Medical Colleges. He submits that it must be open to the State to lay down such conditions as will make such reservations effective and will enable the candidates belonging to the categories of Scheduled Castes and Scheduled Tribes to get the benefits of such reservations, in discharge of the duties and obligation of the State, to the members of those communities and other backward communities. It is his submission that in the instant case when the State found that the qualifying conditions laid down for the admission of the candidates belonging to those communities had in reality resulted in denial of the opportunities sought to be given to them, the Government considered it expedient to relax the conditions to enable the candidates of those communities to get the admission to Medical Colleges for prosecuting their studies to become qualified medical practitioners. Mr. Phadke has contended that the provisions contained in Regulation II for violation of which the order in question has been struck down, are directory in nature and they are not mandatory in character, and, as such, they do not have any binding effect; and it is open to the State to make Rules which may not be in accord with the provisions contained in the said Regulation for admission to the Medical Colleges. Mr. Phadke has taken us to the various provisions of the Indian Medical Council Act (hereinafter referred to as the Act) and also to the Regulations framed by the Council. Mr. Phadke submits that the scheme of the Act clearly suggests that the Council is essentially concerned with the standard of medical education in the country and that stage only arrives after the students have been admitted into Medical Colleges. Mr. Phadke has drawn our attention particularly to Sections 19 and 19-A of the Act and he has commented that under Section 33 of the Act, the Council with the previous sanction of the Central Government can frame regulations for carrying out the purposes of the Act. He has submitted that the selection of candidates for admission to Medical Colleges cannot be said to constitute any purpose for which the Act has been enacted, as section of students has no bearing on the standard of medical education and the Council is not competent to frame regulations for admission to Medical Colleges. Mr. Phadke in this connection has referred to the decision of this Court in the case of *Arti Sapru v. State of Jammu & Kashmir* [(1981) 3 SCR 34 : (1981) 2 SCC 484 : 1981 SCC (L&S) 398] and has relied on the following observations of the Court at SCR p. 44 : (SCC p. 492, para 21)

Objection to the objective test and the viva voce examination is based on the ground that they fall outside the scheme envisaged by the Regulations made by the Indian Medical Council for admission to the M.B.B.S. Course. The respondents, however, question the validity of the Regulations. We are then referred by the petitioners to clauses (j) and (l) of Section 33, Indian Medical Council Act, 1956, in support of the contention that the power of the Council to make regulations extends to making regulations prescribing the examinations and tests for admission. It seems to us *prima facie* that those provisions do not authorise the Council to do so. But we refrain from expressing any final opinion in the matter as the Council is not a party before us.

Mr. Phadke has argued that Item 66 in List I of the Seventh Schedule to the Constitution does not stand in the way of the State Government to frame rules for admission to Medical Colleges in view of Item 25 included in List III of the said Schedule. It is the argument of Mr. Phadke that Item 66 in List I which provides for "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions", is not intended to deal with the question of selection of candidates and Item 25 in List III which provides for "education including technical education, medical education in universities subject to provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour", is broad enough to include all matters

relating to education subject to the provisions of Entries 63, 64, 65 and 66 of List I and empowers the State to frame rules relating to selection of candidates for admission. Mr. Phadke has submitted that the Council must have been aware of the limitations of its power in the matter of selection of candidates for admission; and, the Council has, therefore, made only a recommendation in this regard and has not made any mandatory provision about it. In this connection Mr. Phadke has referred to the language used in Regulation II and has contrasted the same with the language used in Regulation I of the Regulations. Mr. Phadke submits that as Regulation II is only in the nature of recommendation and directory, any rules framed by the State Government regarding selection of candidates in contravention of the said recommendation cannot be held to be invalid and illegal and cannot be struck down on that ground. Mr. Phadke has also argued that there is no question of violation of Article 15(1) and (2) of the Constitution. It is his argument that in view of the provisions in Article 15(4) of the Constitution, the State Government is competent to make special provisions for the advancement of socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes. Mr. Phadke in this connection has referred to the case of Jagadish Saran v. Union of India [(1980) 2 SCR 831 : (1980) 2 SCC 768]. Mr. Phadke has commented that the view expressed by the High Court that the order which violates the statutory regulation of the Council must be held to be violative of Article 15(1) and (2) and not protected by Article 15(4) must necessarily be held to be erroneous, as Regulation II is not mandatory and has no binding effect.

12. Regarding violation of Ordinance 54 of Jabalpur University, Mr. Phadke submits that no such ground has been taken in the petition and further the affidavit filed on behalf of the University shows that the Ordinance has not become effective.

13. Mr. Kacker, learned counsel appearing on behalf of the respondent Nivedita Jain, the petitioner in the writ petition, has argued that Regulation II of the Medical Council is mandatory with statutory force. He has submitted that the Indian Medical Council has been established by the Parliament, inter alia, for the maintenance of Medical Register for India and the matters relating therewith. He further submits that under Section 33 of the Act the Council with the previous sanction of the Central Government has been authorised to make regulations generally to carry out the purposes of the Act, and without prejudice to the generality of this power, the regulation made by the Council may provide for matters specifically mentioned in the said section including any matter for which under the Act provision may be made by regulations, as provided in sub-section (u) of Section 33. It is the argument of Mr. Kacker that Regulation II of the Council which relates to selection of candidates has been made for carrying out the purposes of the Act and selection of the right type of students for maintaining proper standard of medical education comes clearly within the purview and jurisdiction of the Council. Mr. Kacker has placed before us various sections of the Act in support of his submission that regulating selection of students for admission to Medical Collage justly comes within the jurisdiction and function of the Council. In this connection, Mr. Kacker has also referred to the decision of this Court in the case of State of Kerala v. Kumari T.P. Roshana [(1979) 2 SCR 974 : (1979) 1 SCC 572 : AIR 1979 SC 765] and he has relied on the following observations at SCR p. 984 : (SCC p. 580, para 16)

The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus there is an overall invigilation by the Medical Council to prevent

sub-standard entrance qualifications for medical course.

14. Mr. Kacker submits that in the instant case there is no dispute that the order of the Government dated September 9, 1980 in question clearly contravenes Regulation II of the Council. Mr. Kacker has also drawn our attention to Entry 66 of the Union List which has been set out earlier. Mr. Kacker has contended that the State Government by an executive order cannot override Regulation II of the Council which has statutory force of a Parliamentary Legislation, particularly, when the said provisions are in a field occupied by the Union List. Mr. Kacker has next contended that complete relaxation of the conditions in relation to qualifying marks for admission into Medical Colleges in case of Scheduled Castes and Scheduled Tribes candidates purported to have been made by the State Government by the impugned order dated September 9, 1980 must also be held to be unconstitutional if the said order is clearly violative of Article 15(1) and (2) of the Constitution and cannot be said to be protected by Article 15(4). In support of this submission Mr. Kacker has relied on the decision of the Full Bench of the Patna High Court in the case of Amalendu Kumar v. State of Bihar [AIR 1980 Pat 1 : 1979 Pat LJR 337 (FB)]. In this case the Patna High Court held that where the State Government reduces the percentage of marks, marks prescribed for the Scheduled Castes and Scheduled Tribes for passing competitive examination held for the purpose of admission to Medical Colleges, by executive fiat, first from 45 per cent to 40 per cent and subsequently to 35 per cent on the ground that seats reserved for the Scheduled Castes and Tribes would remain unfilled, both reductions were invalid as violative of guarantee given under Article 15(1).

15. Mr. Kacker has finally submitted that the order in question is also liable to be struck down as the order is violative of Ordinance 54 of the University of Jabalpur.

16. In concluding Mr. Kacker has appealed to this Court that irrespective of the result of this appeal, the respondent Nivedita Jain who has already been admitted into a College on the basis of interim order passed by this Court in this appeal for prosecuting her studies in the Medical College, should be allowed to continue her studies and the fate of this appeal should not interfere with her studies and with her career.

17. As we have earlier noticed, the order in question has been struck down by the High Court essentially on the ground that the order which is an executive order violates Regulation II of the Council which has the force of a statute. It is not in dispute and it cannot be disputed that the order in question is in conflict with the provisions contained in Regulation II of the Council. The main question that falls for determination is whether the order in question which contravenes Regulation II is liable to be struck down on the ground that the State Government by an executive order is purporting to override Regulation II of the Council. For a proper determination of the question it is necessary to understand the true nature of the said Regulation II and to consider whether the said Regulation is of mandatory character with statutory force. The contention of the appellants, as we have earlier noticed, is that Regulation II is only in the nature of a recommendation and is directory and has no statutory force; and the contention of the respondent Nivedita Jain, on the other hand, has been that the said Regulation is mandatory in character with statutory force. For a proper appreciation of these rival contentions, it becomes necessary to analyse and understand the scheme of the Act and the Regulations framed thereunder. The Act was enacted "to provide for re-constitution of the Medical Council of India and the maintenance of Medical Register for India and for matters connected therewith". Section 2 deals with definitions and defines "Regulation" in sub-section (i) to mean "a Regulation under Section 33". Sections 3 to 10 of the Act are not of any material consequence and these sections deal with composition of the Council and its functions. Sections 11, 12, 13 and 14 which deal with the question of recognition of medical qualifications by

the Council are also not very relevant for our present purpose. Section 15 which deals with question of the right of a person possessing qualifications for enrolment on any State Medical Register, is also not very material. Section 16 provides that every university or medical institution in India which grants a recognised medical qualification shall furnish such information as the Council may from time to time require, as to the courses of study and examination to be undergone in order to obtain such qualification, as to the ages at which courses of study and examination are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualifications granted by the university or medical institution. Section 17 confers a right of inspection of medical institution, college, hospital or other institutions where medical education is given and also to attend any examination held by any university or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications guaranteed by that university or medical institution. Section 18 confers a further right of appointing visitors for inspection of any medical institution, college, hospital or other institutions where medical education is given and for attending any examination held by any university or medical institution for the purpose of granting recognised medical qualifications. Section 19 empowers the Committee to make a representation to the Central Government for withdrawal of the recognition, if it appears to the Council on a report by the Committee or the visitor that the courses of study and examination to be undergone in, or the proficiency required from candidates at any examination held by any university or medical institution do not conform to the standards prescribed by the Council or that the staff, equipment, accommodation, training and other facilities for instructions and training provided in such university or medical institution or in any college or other institution affiliated to that university do not conform to the standards prescribed by the Council. The said Section 19 further provides that in the event of any representation being made to the Central Government by the Council, the Central Government will forward the same to the Government of the State in which the university or medical institution is situated and the State Government shall forward it along with such remarks as it may make to the university or medical institution, with an intimation of the period within which, the university or medical institution may submit its explanation to the State Government; and on receipt of the explanation, if any, within the stipulated period the State Government on the expiry of the period shall make its recommendations to the Central Government and the Central Government after making such further enquiries, if any, as it may think fit, proceed to act in the manner laid down in sub-section (4) of Section 19 of the Act. Section 19-A of the Act which is important for our proposes in this appeal reads as follows :

19-A. (1) The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall, before submitting the regulations or any amendment therefore, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(3) The Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.

Section 20 deals with post-graduate medical studies and Section 20-A deals with professional

conduct. Sections 21 to 28 make provision for the maintenance of Indian Medical Register, supply of copies of the State Medical Registers to the Council by the State Medical Council, registration in the Indian Medical Council Register, removal of any name from the Indian Medical Register, provisional registration, registration of additional qualifications, privileges of persons who are enrolled on the Indian Medical Register and the requirement of notification of change of address by every person registered in Indian Medical Register. Section 29 casts an obligation on the Council to furnish reports, copies of minutes, abstracts of its accounts and other information that the Central Government will require, to the Central Government. Section 30 empowers the Central Government to institute a commission of enquiry whenever it is made to appear to the Central Government that the Council is not complying with any provisions of the Act. Section 31 is intended to offer protection in respect of acts done in good faith under the Act. These sections do not have any material bearing on the question involved in the present proceeding. Section 32 authorises the Central Government to make rules to carry out the purposes of this Act, and sub-section (2) of Section 32 makes it obligatory that such rules shall be laid before the Parliament. Section 33 of the Act provides :

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

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- (j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained in universities or medical institutions for grant of recognised medical qualifications;
- (k) the standards of staff, equipment, accommodation, training and other facilities for medical education;
- (l) the conduct of professional examinations, qualifications of examiners, and the conditions of admission to such examinations;
- (m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and
- (n) any matter for which under this Act provisions may be made by regulations.

Section 34 of the Act which happens to be the last section repeals the earlier Indian Medical Council Act of 1933, providing for the usual saving clause.

18. An analysis of the various section of the Act indicate that the main purpose of the Act is to establish Medical Council of India, to provide for its constitution, composition and its functions; and the main function of the Council is to maintain the medical register of India and to maintain a proper standard of medical education and medical ethics and professional conduct for medical practitioners. The scheme of the Act appears to be that the Medical Council of India is to be set up in the manner provided in the Act and the Medical Council will maintain a proper medical register, will prescribe minimum standards of medical education required for granting recognised medical qualifications, will also prescribe standards of post-graduate medical education and will further regulate the standards of professional conduct and etiquette and code of ethics for medical practitioners. The Act further envisages that if it appears to the Council that the courses of study and

examination to be undergone in, or the proficiency required from candidate at any examination held by any university or medical institution do not conform to the standard prescribed by the Council or that the staff, equipment, accommodation, training and other facilities for instructions and training provided in such university or medical institution or in any college of other institution affiliated to that university do not conform to the standards prescribed by the Council, the Council will make a representation to that effect to the Central Government and on consideration of the representation made by the Council, the Central Government may take action in terms of the provisions contained in Section 19 of the Act. The Act also empowers the Council to take various measures to enable the Council to judge whether proper medical standard is being maintained in any particular institution or not.

19. Now coming to the consideration of the question involved in this appeal, it appears from the provisions of the Act that the authority of the Council extends to the sphere of maintaining proper medical standards in Medical Colleges or institutions necessary for obtaining recognised medical qualifications. By virtue of this authority it may be open to the Council to lay down the minimum educational qualifications required of a student who may seek admission into a Medical College. In other words, the eligibility of a candidate who may seek to get admitted into a Medical College for obtaining recognised medical qualifications may be prescribed by the Council. All the candidates who are eligible for admission into Medical Colleges or Institutions for getting themselves qualified as medical practitioners are entitled to seek admission into a Medical College or Institution. As to how the selection has to be made out of the eligible candidates for admission into the Medical College is a matter which has necessarily to depend on circumstances and conditions prevailing in particular States. Though the question of eligibility for admission into the medical curriculum may come within the power and jurisdiction of the Council, the question of selection of candidates out of the candidates eligible to undergo the medical course does not appear to come within the purview of the Council. The observations of the Supreme Court in the case of *State of Kerala v. Kumari T.P. Roshana* [(1979) 2 SCR 974 : (1979) 1 SCC 572 : AIR 1979 SC 765] quoted earlier relate to the question of qualification or eligibility of students for admission into a Medical College and the said observations are not intended to apply to a case of selection of students for admission into a Medical College out of the eligible candidates. As the number of candidates seeking admission to Medical Colleges largely exceed the number of vacancies available to such candidates for admission, some kind of procedure has to be evolved for such selection. The process of selection of candidates for admission to a Medical College out of the candidates eligible for admission for filling up the limited vacancies has no real bearing on the question of eligibility or qualification for admission or on the standard of medical education. The standard of medical education really comes into the picture in the course of studies in the Medical Colleges or Institutions after the selection and admission of candidates into Medical Colleges and Institutions. Students who satisfy the requirements of Regulation I become qualified or eligible to seek admission into the medical course. Regulation I prescribes the requisites which have to be satisfied to enable every student to become eligible or qualified to seek admission and the process of selection comes thereafter.

20. Undoubtedly, under Section 33 of the Act, the Council is empowered to make regulations with the previous sanction of the Central Government generally to carry out the purposes of the Act and such regulations may also provide for any of the matters mentioned in Section 33 of the Act. We have earlier indicated what are the purposes of this Act. Sub-sections (j), (k), (l) and (m) of the Act which we have earlier set out clearly indicate that they have no application to the process of selection of a student out of the eligible candidates for admission into the medical course. Sub-sections (j), (k) and (l) relate to post-admission stages and the period of study after admission in Medical Colleges. Sub-section (m) of Section 33 relates to a post-degree stage. Sub-section (n) of

Section 33 which had also been quoted earlier is also of no assistance as the Act is not concerned with the question of selection of students out of the eligible candidates for admission into Medical Colleges. It appears to us that the observations of this Court in the case of *Arti Sapru v. State of Jammu & Kashmir* [(1981) 3 SCR 34 : (1981) 2 SCC 484 : 1981 SCC (L&S) 398] which we have earlier quoted and which were relied on by Mr. Phadke, were made on such consideration, though the question was not very properly finally decided in the absence of the Council.

21. We shall not consider the two relevant Regulations of the Council and they are Regulation I and II. The said Regulations read :

#### I. ADMISSION TO THE MEDICAL COURSE

No candidate shall be allowed to be admitted to the Medical Curriculum proper until :

(i) he has completed the age of 17 years at the time of admission or will complete the age on or before 31st December of the year of his admission to the Ist M.B.B.S. Courses. Provided that the candidates who are admitted directly to the 5 1/2 years integrated M.B.B.S. Course should have completed the age of 16 years at the time of admission or will complete this age on 31st December of the year of admission to the pre-medical course.

(ii) he has passed -

(a) the Intermediate examination in Science of an Indian University/Board or other recognised examining body with Physics, Chemistry and Biology, which shall include a practical test in these subjects :

OR

(b) the pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/pre-medical examination shall include a practical test in these subjects :

OR

(c) the first year of the three years degree course of a recognised University, with Physics, Chemistry and Biology, including a practical test in these subjects provided the examination is a "University Examination" :

OR

(d) B.Sc examination of an Indian University :

Provided that he has passed the B.Sc. examination with not less than two of the following subjects - Physics, Chemistry, Biology (Botany, Zoology); and further that he has passed the earlier qualifying examination with the following subjects, Physics, Chemistry, Biology and English.

Note. - A student who has passed the B.Sc. examination with one or more of the

subjects mentioned earlier would be admitted to the Medical Course if he had passed the remaining subjects of the Medical group (Physics, Chemistry and Biology) in the pre-professional/intermediate examination :

OR

(e) the Higher Secondary Examination or the Indian School Certificate Examination which is equivalent to 10 + 2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subject with English at a level not less than the Core Course for English as prescribed by the National Council for Education, Research and Training, after the introduction of 10 + 2 + 3 years educational structure as recommended by the National Committee on Education.

Note. - Where the course content is not as prescribed for 10 + 2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical College :

OR

(f) any other examination which, in scope and standard, is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology, including a practical test in each of these subjects and English.

Note. - (a) The pre-medical course may be conducted either at Medical College or a Science College.

(b) After the 10 + 2 course is introduced, the integrated course should be abolished.

## II. SELECTION OF STUDENTS

The selection of students to a medical college should be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country :

(a) In States, having only one Medical College and One University/Board/Examining Body conducting the qualifying examination, the marks obtained at such qualifying examination be taken into consideration.

(b) In States, having more than one University/Board/Examining Body conducting the qualifying examination (or where there are more than one Medical College under the administrative control of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation due to the variation of the standard of qualifying examinations conducted by different agencies.

(c) Where there are more than one college in a State and only one university/Board conducting the qualifying examination then a joint selection board be constituted for all the colleges.

(d) A competitive entrance examination is absolutely necessary in the case of

institutions of all India character.

(e) To be eligible for competitive entrance examination, candidate must have passed any of the qualifying examinations as enumerated under the head-note "Admission to Medical Course" :

Provided that a candidate who has appeared in a qualifying examination the result of which has not been declared, may be provisionally allowed to take up the competitive examination and in case of his selection for admission to a medical college, he shall not be admitted thereto unless in the meanwhile he has passed the qualifying examination :

Provided also that a candidate for admission to the medical course must have obtained not less than 50 per cent of the total marks in English and Science subjects taken together (i) at the qualifying examination (or at a higher examination) in the case of Medical College where the admissions are made on the basis of marks obtained at these examinations or (ii) 50 per cent of the total marks in English and Science subjects taken together at the competitive entrance examination where such examinations are held for selection :

Provided further that in respect of candidates belonging to Scheduled Castes/Scheduled Tribes the minimum marks required for admission shall be 40 per cent in lieu of 50 per cent for general candidates.

Where the seats reserved for Scheduled Casts and Schedules Tribes students in any State cannot be filled for want or requisite number of candidates fulfilling the minimum requirements prescribed from that State then such vacant seats may be filled up on all India basis with Scheduled Castes and Scheduled Tribes getting not less than the minimum prescribed pass percentage or reverted to general category.

The authorities (State Government and Universities) should arrange special coaching classes for Scheduled Castes/Scheduled Tribes candidates before the qualifying/competitive examination to enable them to come up to the appropriate standard for admission to the Medical Courses.

Regulation I prescribes the eligibility of a candidate for admission to medical courses. For maintaining proper standards in Medical Colleges and Institutions it comes within the competence of the Council to prescribe the necessary qualification of the candidates who may seek admission into the Medical Colleges. As this Regulation is within the competence of the Council, the Council has framed this Regulation in a manner which leaves no doubt that this Regulation is mandatory. The language of this Regulation, which starts with the words "no candidate shall be allowed to be admitted to the medical curriculum until...", makes this position absolutely clear. On the other hand the language in Regulation II which relates to selection of candidates clearly goes to indicate that the Council itself appears to have been aware of the limitation on its powers to frame any such regulation regarding the procedure or process of selection of candidates for admission to the medical course out of the candidates qualified or eligible to seek such admission. As, however, the question of selection of candidates for admission into Medical Colleges out of the eligible candidates is a problem more or less common to all the States, the Council might have considered it desirable to recommend certain guidelines which may be followed in the matter of selection of students out of the eligible candidates for admission into Medical Colleges. It is well-known that all over India candidates who aspire to get admission into Medical Colleges and who are otherwise eligible or

qualified for admission to medical courses on the basis of the provisions contained in Regulation I of the Council, cannot all be admitted into the Medical College or Institution for dearth of seats. By way of solution of this problem, the Council appears to have thought it fit to suggest the procedure which will have the effect of selecting such candidates on the basis of merit only. The procedure suggested is intended to do away with nepotism and favouritism and any unfair practice in the matter of such admission, as the procedure recommends merit to be the criterion. The Council itself appears to have apprehended that what is contained in Regulation II is merely in the nature of a recommendation and this is evident from the language used in Regulation II particularly when the same is contrasted with the language used by the Council in Regulation I. Regulation II begins with the words "selection of students in a medical college should be based solely on merit". We are of the opinion that the use of the words "should be" in Regulation II is deliberate and is intended to indicate the intention of the Council that it is only in the nature of a recommendation. Regulation I which lays down the conditions or qualifications for admission into medical course comes within the competence of the Council under Section 33 of the Act and is mandatory and the Council has used language to manifest the mandatory character clearly, whereas Regulation II which deals with the process or procedure for selection from amongst eligible candidates for admission is merely in the nature of a recommendation and directory in nature, as laying down the process or procedure for selection for admission of candidates out of the candidates eligible or qualified for such admission under Regulation I. Regulation II recommending the process of selection is outside the authority of the Council under Section 33 of the Act and the Council has advisedly and deliberately used such language in Regulation II as makes the position clear and places the matter beyond any doubt. There is another aspect of the matter which also goes to suggest that Regulation II is merely directory and does not have any mandatory force. Apart from reservations of seats for Scheduled Castes and Scheduled Tribes categories and other reservations, reservation of seats is commonly made for being filled up by nomination. In the instant case before us, it appears that the seats not exceeding 3 per cent are reserved for the nominees of the Government of India apart from the other reservations. These nominees of the Central Government do not have to sit for any Pre-Medical Examination to qualify themselves for selection to the Medical Colleges. They must of course be eligible for admission in the sense that they must have the necessary qualification for admission in accordance with Regulation I. The candidates eligible under Regulation I are selected by virtue of nomination and there is no question of any pre-medical test for such candidates nominated by the Central Government. If Regulation II could be considered to be mandatory, there could be no such nomination of candidates by the Central Government.

22. Entry 66 in List I (Union List) of the Seventh Schedule to the Constitution relates to "coordination 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 II (Concurrent List) of the same Schedule speaks of - "education, including technical education, medical education in Universities, 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.

23. In the case of *State of Andhra Pradesh v. Lavu Narendranath* [(1971) 3 SCR 699 : (1971) 1 SCC 607 : AIR 1971 SC 2560] this Court held at SCR p. 709, (SCC p. 614, para 15) "The executive have

a power to make any regulation which should have the effect of a law so long as it does not contravene any legislation already covering the field..."

24. Under Article 162 of the Constitution the executive power of a State, therefore, extends to the matter with regard to which the legislature of a State has power to make laws. As there is no legislation covering the field of selection of candidates for admission to Medical Colleges, the State Government would, undoubtedly, be competent to pass executive orders in this regard.

25. We shall now proceed to consider whether the order in question is violative of Article 15(1) and (2) of the Constitution. The High Court has held that as the order is violative of the Regulation of the Council, the order cannot be supported under Article 15(4) of the Constitution. We have earlier held that the contravention of Regulation II which is merely directory and in the nature of a recommendation does not invalidate the order. As the order in question is not liable to be struck down on the ground of contravention of Regulation II of the Council, the order can clearly be supported under Article 15(4) of the Constitution.

26. It cannot be disputed that the State must do everything possible for the upliftment of the Scheduled Castes and Scheduled Tribes and other backward communities and the State is entitled to make reservations for them in the matter of admission to medical and other technical institutions. In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservation have been made. In any particular situation, taking into consideration the realities and circumstances prevailing in the State it will be open to the State to vary and modify the conditions regarding selection for admission, if such modification or variation becomes necessary for achieving the purpose for which reservation has been made and if there be no law to the contrary. Note (ii) of Rule 20 of the Rules for admission framed by the State Government specifically empowers the Government to grant such relaxation in the minimum qualifying marks to the extent considered necessary. In the State of Kerala v. N.M. Thomas [(1976) 1 SCR 906 : (1976) 2 SCC 310 : 1976 SCC (L&S) 227 : AIR 1976 SC 490], this Court by a majority had held that relaxation of the Rules which required a lower division clerk to pass a departmental test within a period of two years in the interest of the employees belonging to Scheduled Castes and Scheduled Tribes was not unconstitutional or illegal. The relaxation made by the State Government in the rule regarding selection of candidates belonging to Scheduled Castes and Scheduled Tribes for admission into Medical Colleges cannot be said to be unreasonable and the said relaxation constitutes no violation of Article 15(1) and (2) of the Constitution. The said relaxation also does not offend Article 14 of the Constitution. It has to be noticed that there is no relaxation of the condition regarding eligibility for admission into Medical Colleges. The relaxation is only in the rule regarding selection of candidates belonging to Scheduled Castes and Scheduled Tribes categories who were otherwise qualified and eligible to seek admission into Medical Colleges only in relation to seats reserved for them. The respondent Nivedita Jain and other deserving candidates may feel that because of the reservations they are being deprived of the opportunity of getting their admission into Medical Colleges. It is, however, to be noted that the validity of the reservations of seats for candidates belonging to Scheduled Castes and Scheduled Tribes categories have not been challenged in the writ petition and very properly as in view of Article 15(4) of the Constitution. In the case of Jagdish Saran v. Union of India [(1980) 2 SCR 831 : (1980) 2 SCC 768], relied on by Mr. Phadke, this Court has held that the Indian Constitution is wedded to equal protection and non-discrimination and Articles 14, 15 and 16 are inviolable and Article 29(2) strikes a similar note though it does not refer to regional restrictions or reservations; Article 15 further saves State's power to make special provisions for women and children or for advancement of socially and

educationally backward classes and reservations under Article 15(4) exist and are applied. This Court further held at SCR p. 855 as under : (SCC p. 785, para 40)

Coming to brasstacks, deviation from equal marks will meet with approval only if the essential conditions set out above are fulfilled. The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage.

27. The view expressed by the Patna High Court in the case of Amalendu Kumar v. State of Bihar [AIR 1980 Pat 1 : 1979 Pat LJR 337 (FB)] that Article 15(1) of the Constitution cannot be meaningful and will become illusory until minimum standards of proficiency are laid down and followed in the matter of admission to Medical Colleges and if undeserving candidates are admitted into Medical Colleges, the standard of medical education will go down, undeserving candidates admitted to Medical Colleges would not be able to pass out and qualify as doctors and there may be many drop-outs and doctors not properly qualified will prove a danger to society, appears to be untenable. It fails to notice that there is no relaxation in the standard of medical education or curriculum of studies in Medical Colleges for those candidates after their admission to the College and the standard of examination and the curriculum remains the same for all. There may be drop-outs and many of these candidates may not qualify. There may also be such failures and drop-outs in the case of other candidates than those belonging to these categories. It is eminently desirable that some kind of minimum standard for selection for admission to Medical Colleges apart from eligibility should be there. It has been represented to us by the counsel for the State that the State has, in fact, prescribed such a minimum standard for selection of even the candidates belonging to Scheduled Castes and Scheduled Tribes into Medical Colleges.

28. The only other ground that was urged in support of the case of the writ petitioners that the order in question is illegal and invalid, is that the order violates Ordinance 54 of the University of Jabalpur. No such ground has been taken in the writ petition. Though the High Court has considered this argument, the High Court does not appear to have come to any definite finding on this question. This question, in the instant case, cannot be said to be a question of pure law. In the affidavit which has been filed on behalf of the University, it has been stated that Ordinance 54 has not been adhered to. In the absence of any plea being taken in the writ petition, we are of the opinion that the respondent is not entitled to urge this point and rely on any alleged contravention of Ordinance 54 of Jabalpur University.

29. In the result the order in question is not, therefore, liable to be struck down as being violative of Regulation II or of Article 15 of the Constitution. The appeal, therefore, succeeds. The Judgment and Order passed by the High Court are hereby set aside and the writ petition is dismissed. There will, however, be no order as to costs.

30. Though this appeal succeeds, yet in our opinion, justice requires that the respondent Nivedita Jain who has already been admitted to the Medical College on the basis of interim order passed by the Court and has been prosecuting her studies should be allowed to continue her studies and to continue to be a student of the Medical College where she is already studying. She is otherwise a qualified candidate and eligible for admission into the medical course which she is not undergoing and the cause of justice does not require that her studies should be interrupted and her career should not be put in jeopardy. We, therefore, direct the authorities concerned to treat the student Nivedita Jain as a regular student of the College where she has been admitted and to allow her to continue her

studies.

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