

Dr. Dinesh Kumar and Others

Vs

Motilal Nehru Medical College, Allahabad and Others

Civil Writ Petitions Nos. 348-52 of 1985

(P. N. Bhagwati, A. N. Sen, Ranganath Misra JJ)

01.05.1985

JUDGMENT

P. N. BHAGWATI, J. -

1. This writ petition is an offshoot of the decision rendered by us in *Dr. Pradeep Jain v. Union of India* ((1984) 3 SCC 654). The main judgment in that case was delivered by us on June 22, 1984 and we held in that judgment that (SCC p. 689, para 20) "wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the University or the State, excluding all students not satisfying this requirement, regardless of merit" was unconstitutional and void as offending the equality clause of the Constitution. But after considering such wholesale reservation, we proceeded to observe that the very mandate of the equality clause viewed in the perspective of social justice, would justify some extent of reservation based on residence requirement within the State or on institutional preference for students passing the qualifying examination held by the University or the State and addressing ourselves to the question as to to what extent such reservation might be regarded as constitutionally permissible, we said : (SCC pp. 689-90, para 21)

It is not possible to provide a categorical answer to this question for, as pointed out by the policy statement of the Government of India, the extent of such reservation "would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development of the area and other relevant factors". It may be that in a State where the level of educational development is woefully low, there are comparatively inadequate opportunities for training in the medical speciality and there is large scale social and economic backwardness, there may be justification for reservation of a higher percentage of seats in the medical colleges in the State and such higher percentage may not militate against "the equality mandate viewed in the perspective of social justice". So many variables depending on social and economic facts in the context of educational opportunities would enter into the determination of the question as to what in the cases of any particular State, should be the limit of reservation based on residence requirement within the State or on institutional preference. But, in our opinion, such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 per cent but we are of the view that it would be fair and just to fix the outer limit at 70 per cent. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence.

2. We pointed out that in the result "at least 30 per cent of the open seats shall be available for admission of students on all-India basis irrespective of the State or University from which they come" and directed that "such admissions shall be granted purely on merit on the basis of either all-India entrance examination or entrance examination to be held by the State". This was the decision given by us in regards to admissions to the MBBS and BDS courses. We then proceeded to discuss the question of admissions to post-graduate courses such as MD, MS and the like. We learned heavily on the observations made by Krishna Iyer, J. in *Jagdish Saran v. Union of India* ((1980) 2 SCR 831 : (1980) 2 SCC 768) as also on the recommendation by the Indian Medical Council and the opinion expressed by the Medical Education Review Committee where an opinion was clearly expressed that admissions to post-graduate courses in any institution should be guided strictly by merit and should be open to candidates on all-India basis. We also referred to the policy statement of the Government of India filed by the learned Attorney-General where the view was expressed categorically by the Government of India that so far as admissions to the institutions of post-graduate colleges and such professional colleges are concerned, they should be entirely on the basis of all-India merit, subject only to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes. However, taking into account broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we took the view that though residence requirement within the State should not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference "in the senses that a student who has passed MBBS course from a medical college or university may be given preference for admission to post-graduate course in the same medical college or University but such reservation on the basis of institutional preference should not in any event exceed 50% of the total number of one seats available for admission to the post-graduate course". (SCC p. 693, para 22)

3. This judgment was delivered on June 22, 1984, but by that time, admissions had already been made in the medical colleges attached to some of the Universities in the country and moreover it was felt that some time would be required for the purpose of achieving uniformity in the procedure relating to admissions in various universities. Some of the students seeking admission to the MBBS course in the academic year 1984-85, therefore, made an application to the Court in Civil Appeal No. 6392 of 1983, *Reita Nirankari v. Union of India* ((1984) 3 SCC 706), that the judgment delivered by us may be given effect only from the academic year 1985-86. We accordingly issued notice on the application to the learned advocates who had appeared on behalf of the various parties at the hearing of *Dr. Pradeep Jain case* ((1984) 3 SCC 654) as also to the Attorney-General and after hearing them, we came to the conclusion that (SCC p. 707, para 1) "in view of the fact that all formalities for admission, including the holding of entrance examination, have been completed in some of the States prior to the Judgment dated June 22, 1984 and also since some time would be required for making the necessary preparations for implementing the Judgment", it was not practicable to give effect to the Judgment from the academic year 1984-85. We therefore directed that the Judgment shall be implemented with effect from the academic year 1985-86. This order was made by us on July 26, 1984 and it was directed to form part of the main Judgment dated June 22, 1984.

4. Since it was made clear as far back as July 26, 1984, that our Judgment dated June 22, 1984, shall be given effect from the academic year 1985-86, we should have thought that the Government of India and the Indian Medical Council would make the necessary arrangements for holding an all-India entrance examination well in time for admissions to the MBBS course for the academic year 1985-86 so far as the minimum 30% open seats not reserved on the basis of residence requirement or institutional preference (hereinafter referred to as the minimum 30% non-reserved seats) were

concerned. But it seems that so far nothing has been done either by the Government of India or the Indian Medical Council and the fate of the students seeking admissions to the MBBS course for the academic year 1985-86 is in a state of total uncertainty. The State Governments have also been equally guilty of indifference and inaction in not taking any steps for the purpose of holding an entrance examination which would test the relative merits of the students seeking admission to the minimum 30% non-reserved seats for the MBBS course in the medical colleges. Some of the State Governments and universities, we are informed, are proposing to fill up the minimum 30% non-reserved seats for the MBBS course on the basis of the marks obtained by the students at the qualifying examinations held by different States and/or universities, totally ignoring the fact that the standard of judging at these different qualifying examinations cannot, by its very nature be uniform. Some universities may be very liberal in their marking while some others may be strict. There would be no comparable standards on the basis of which the relative merits of the students can be judged. It would be wholly unjust to grant admissions to students by assessing their relative merits with reference to the marks obtained by them, not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution. We must, therefore, make it clear that no State Government or university or medical college shall grant admission to students to fill the minimum 30% non-reserved seats for the MBBS course, on the basis of comparison of the marks obtained by them at different qualifying examinations. The admissions must be based on evaluation of relative merits through an entrance examination which would be open to all qualified candidates throughout the country. Such entrance examination should in our opinion be held by the Government of India or the Indian Medical Council on an all India basis and admissions should be granted to the various medical colleges in the country on the basis of the marks obtained at such entrance examination and while granting admission any preference expressed by the students for any particular State or university or medical college or colleges shall be kept in mind, and as far as possible, effort shall be made to conform to such preferences so that the students who secure admissions are least inconvenienced and they are able to carry on their studies near their place of residence. There can be no constitutional impediment in the way of the Government of India or the Indian Medical Council for holding such entrance examination, because the topic of education is in the Concurrent List. We are of the view that such entrance examination must be held by the Government of India or the Indian Medical Council because then there will be only one examination in which the students seeking admission to the MBBS course will have to appear, irrespective of the place where the university or medical college in which, they are seeking admission is located. Today we are witnessing the highly distressing spectacle of students rushing from place to place to appear at entrance examinations which are being held in Delhi, Chandigarh, Bangalore and various other places. So much time, money and energy of the students is wasted and in addition there is a gnawing anxiety at the almost chaotic uncertainty in regard to admission. It is therefore absolutely essential that there should be only one entrance examination common to all the medical colleges in the country and such entrance examination can be held only by the Government of India or the Indian Medical Council. That is why at the last hearing of the present writ petition, we directed the Indian Medical Council to come forward with a positive scheme for holding an all-India entrance examination for regulating admissions to the minimum 30% non-reserved seats for the MBBS course. We hope and trust that at the next hearing of this writ petition, the Indian Medical Council will produce a well thought out scheme for holding an all-India entrance examination so that the necessary directions can be given by the Court in regard to the holding of such entrance examination well in time before the next academic year begins in June/July, 1985. Much time has already been

lost and we are anxious that no further delay should occur, because any delay now will jeopardise the future of the students seeking admissions to the MBBS course for the academic year 1985-86.

5. We would also like to clear up one misunderstanding which seems to prevail with some State Governments and universities in regard to the true import of our Judgment dated June 22, 1984. They have misinterpreted our Judgment to mean that 30% of the total number of seats available for admission to MBBS course in a medical college should be kept free from reservation on the basis of residence requirement or institutional preference. That is a total misreading of our Judgment. What we have said in our Judgment is that after providing for reservation validly made, whatever seats remain available for non-reserved categories, 30% of such seats at the least, should be left free for open competition and admission to such 30% open seats should not be based on residence requirement or institutional preference but students from all over the country should be able to compete for admissions to such 30% open seats. To take an example, suppose there are 100 seats in a medical college or university and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. According to our Judgment, 30% of 70 seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference.

6. So far as admissions to 50% open seats not reserved on the basis of institutional preference (hereinafter referred to as 50% non-reserved seats) for post-graduate courses such as MD, MS and the like are concerned, we may point out that these admissions also cannot be made on the basis of marks obtained by the students at different MBBS examinations held by different universities, since there would be no comparable standards by reference to which the relative merits of the students seeking admission to post-graduate courses can be judged. It would not be unfair and unjust but also contrary to the equality clause of the Constitution to grant admissions to 50% non-reserved seats in the post-graduate courses by mechanically comparing the marks obtained by the students at the MBBS examinations held by different universities where the standards of judging would necessarily vary from university to university and would not be uniform. If admissions were to be made on this basis, a less meritorious student appearing in the MBBS examination held by a university where the standard of evaluation is liberal would secure a march over a more meritorious student who appears in the MBBS examination where the standard of marking is strict. We cannot therefore approve of admissions to 50% non-reserved seats for the post-graduate courses being made on the basis of marks obtained by the students at the different MBBS examinations held by different universities. Such admissions would be clearly invalid as constituting denial of equality of opportunity. There can be no doubt that in order to meet the demands of the equality clause, the admissions to 50% non-reserved seats for the post-graduate courses must be made on the basis of comparative evaluation of merits of the students through an entrance examination. Such entrance examination must be held by the Government of India or the Indian Medical Council sufficiently in advance before the term is due to commence for the post-graduate courses. Here again the students seeking admission to post-graduate courses can express their preference for any particular university or medical college or colleges as also for any speciality or specialities which they wish to take up for the post-graduate course and admissions should be granted to the post-graduate courses in various medical colleges in the country on the basis of marks obtained at such entrance examination and while granting admissions, the preferences expressed by the students must be kept in mind and as far as possible, effort should be made to conform to such preferences. We have directed the Government of India and the Indian Medical Council to put forward a positive scheme for holding an all-India entrance examination for regulating admissions to the post-graduate courses at the next hearing of the writ petition so that we can give necessary directions to the Government of India for

holding such all-India entrance examination which would be conducted in at least one centre in each State and which would be open to the students from all over the country. We may point out that having regard to the size of the population, the number of students seeking admission and the extent of the geographical area of a State, it might be desirable to have more than one centre in some State or States both in regard to admissions to the post-graduate courses as also in regard to admissions to MBBS course. If for any reason the Government of India and the Indian Medical Council are unable to organize such all-India entrance examination for admissions to the post-graduate courses on account of paucity of the time now available to them, a situation for which they are almost entirely to blame, we may have to direct as the only possible alternative for the coming academic year, an entrance examination to be held by each State Government or university for regulating admissions to 50% non-reserved seats for the post-graduate courses in the medical colleges situate within that State or attached or affiliated to that university. But unquestionably no admissions can be allowed to be made on the basis of marks obtained at different MBBS examinations held by different universities.

7. That takes to a consideration of the main question arising in the present writ petition. The question relates to the admissions to 50% non-reserved seats for post-graduate courses in the Motilal Nehru Medical College, Allahabad. Now in all the medical colleges in the State of Uttar Pradesh a student who wishes to join a post-graduate course namely MD, MS or like has necessarily to do house job for a period of one year after completion of internship and the house job has to be in a speciality which the student wishes to take up for the post-graduate course. There are a few exceptions to this general rule as for example, a student who has done house job in medicine is qualified for admission to the post-graduate course in radiology. That is how petitioner 5 who had done house job in medicine could secure admission in the post-graduate course for radiology. Then there are also cases where a student who has done house job in a particular speciality for six months and in another allied speciality for the remaining six months, may be qualified for admission to the post-graduate course in the former speciality. But, by the large, barring these few exceptional situations, a student cannot qualify for admission to the post-graduate course in a particular speciality unless he has done house job in that speciality. A student therefore, according to the rules prevailing in all the medical colleges in the State of Uttar Pradesh, has to do house job for one year and then seek admission to the post-graduate course which is of two years' duration and he can take admission to the post-graduate course only in the speciality in which he has done his house job. We are informed that this situation prevails also in the medical colleges of one or two other States. This system under which a student is first required to do house job in a speciality of his choice and then seek admission to the post-graduate course which can be only in that speciality and in no other, is likely to cause considerable hardship to the students, because it is quite possible that a student who has done house job in a particular speciality may not come within the quota of 50% seats reserved on the basis of institutional preference and even so far as 50% non-reserved seats are concerned, he may be left out, if he gets less marks at the entrance examination than another student who has chosen the same speciality for his house job. He obviously cannot get admission to the post-graduate course in another speciality even if he does better in the entrance examination than a student who has done house job in that speciality. His admission to the post-graduate course would become dicey and one year spent by him in doing house job may turn out to be futile. That is why we find that in most of the States, the post-graduate course is of three years duration and during the first year, the student is expected to do house job in the speciality in which he has been admitted to the post-graduate course. This system is more advantageous to the students since it gives an opportunity to the students to secure admission to the post-graduate course in any speciality that is available, on the basis of the marks obtained at the MBBS examination in case of 50% seats reserved on the basis of

institutional preference and on the basis of marks obtained at the entrance examination in case of 50% non-reserved seats. We would therefore recommend to the Indian Medical Council as also to the State of Uttar Pradesh and other States which follow the system of one-year house job followed by two-year post-graduate course to uniformly adopt the system of three-year post-graduate course with house job in the first year. It is desirable that so far as post-graduate education in the Medical Faculty is concerned, there should, as far as possible, be uniformity throughout the country.

8. The petitioners belong to a batch of students who did the MBBS course in Motilal Nehru Medical College, Allahabad, and who passed the MBBS examination held by the University of Allahabad in July 1982. The internship of one year which is obligatory in the case of every student passing the MBBS examination was completed by them in July 1983. The petitioners thereafter took up house job in the Motilal Nehru Medical College, Allahabad. The case of the petitioners is that at the time when they took up their house job in July 1983, the admission to the post-graduate courses were governed by the old rules which provided for reservation of 75% seats for students passing the MBBS examination from the same institution in which admission is sought that is, on the basis of institutional preference with the remaining 25% seats open for students who has passed the MBBS examination from any medical college in the State of Uttar Pradesh and who satisfied the residence requirement in the State of Uttar Pradesh. The petitioners said that so far as admissions to the post-graduate courses for the academic year 1984 - 85 were concerned-which academic year commenced in January 1984 - the petitioners knew that having regard to the number of students who had completed their house job in 1983 and who would therefore be eligible for admission to the post-graduate courses in the academic year 1984-85, some seats in the post-graduate courses for the academic year 1984-85 would remain vacant and would be available to petitioners on completion of their house job in July 1984. These seats in the post-graduate courses for the academic year 1984-85 would be available to the petitioners in addition to the seats in the post-graduate courses for the academic year 1985-86 commencing from January 1985. The petitioners contended that on the basis of 75% of the seats for the academic years 1984-85 and 1985-86 being available to students passing the MBBS examination from Motilal Nehru Medical College, Allahabad - an assumption which according to the petitioners they were entitled to make before the Judgment of this Court dated June 22, 1984 - the petitioners reasonably anticipated that if they took a particular speciality, they would be able to secure admission to the post-graduate course in that speciality on the basis of institutional preference and basing themselves upon this anticipation, they selected their speciality for the house job. The petitioners claimed that if the old rule of 75% and 25% had continued to prevail for the academic year 1985-86 and had not been set at naught by the Judgment of this Court dated June 22, 1984, they would have been able to secure admission to the post-graduate course in the speciality chosen by them for the house job. But by reason of reduction of the percentage reserved for institutional candidates from 75 to 50 commencing from the academic year 1985-86, the petitioners could not secure admission to the post-graduate course for the academic year 1985-86. The petitioners therefore urged that in those cases where the system of post-graduate education adopted is to have house job for one year followed by a two-year post-graduate course, it would be fair and just to give effect to our Judgment dated June 22, 1984 so as to be applicable at the point of time when house job is taken up by the students with a view to securing admission to the post-graduate course on the completion of the house job. It was not the contention of the petitioner that the applicability of our Judgment dated June 22, 1984 should be postponed beyond the academic year 1985-86 and they conceded that the Judgment may be given effect to from the academic year 1985-86 but they submitted that for the applicability of the Judgment the post-graduate course should be deemed to commence from the time when the students take up house job in any particular speciality so that no injustice is done to them.

9. There is considerable force in the contention urged on behalf of the petitioners. We have directed by our order dated July 26, 1984 that the Judgment delivered by us on June 22, 1984 shall become effective from the academic year 1985-86 and we do not propose to postpone the operation of the Judgment beyond that academic year. But the question is as to how the principle laid down by us in the Judgment for regulating admission to the post-graduate courses is to be applied. So far as three-year post-graduate courses are concerned - and in most of the universities in the country we have three-year post-graduate courses - there is no difficulty in giving effect to the Judgment from the academic year 1985-86. Whatever admissions are made to the three-year post-graduate courses for the academic year 1985-86 will be governed by the principle laid down in the Judgment. But differently of application arises in cases where, as in the State of Uttar Pradesh and one or two other States, the students do house job for one year and then seek admission to one or the other of the post-graduate courses which are of two years' duration. The admissions to the post-graduate courses in such cases take place after the completion of the house job. Now if the principle laid down by us in the Judgment were to govern such admissions from the academic year 1985-86, it would cause considerable hardship to the students who have selected house job in a particular speciality prior to the delivery of the Judgment on June 22, 1984, on the basis of reasonable anticipation that, according to the old rules governing admission which prevailed prior to the date of the Judgment they would be able to secure admission to the post-graduate course in the speciality chosen by them but who may now, as pointed out in the paragraphs, be unable to secure such admission under the principle governing admissions laid down in the Judgment. Some of these students may legitimately complain that if they knew that admission to the post-graduate courses for the academic year 1985-86 were going to be made on the basis of the new principles laid down in the Judgment and that only 50% of the seats were going to be available for institutional students, they would have selected for their house job a speciality which would have brought them within the 50% quota of seats reserved on the basis of institutional preference. Now having chosen a particular speciality for the house job, they cannot obtain admission to the post-graduate course in any other speciality and consequently they can hope to get admission to the post-graduate course only if an entrance examination is held and they secure better marks at the entrance examination than other students who have done house job in the same speciality. It is quite possible that in the circumstances some less meritorious students might get admission to the post-graduate courses because they have done house job in some other speciality, while more meritorious students may be left out on account of choice of the speciality. It would not therefore be fair and just to hold that in case of students who have taken up house job in a particular speciality prior to the delivery of the Judgment dated June 22, 1984, their admissions to the two-year post-graduate courses during the academic year 1985-86 should be governed by the new principle laid down in the Judgment. We would accordingly direct, in order to meet the demand of equality and justice, that in case of universities and medical colleges, where the system in vogue is to have one-year house job in a particular speciality followed by admissions to a two-year post-graduate course in the same speciality, the admission to the two-year post-graduate courses for the academic year 1985-86 should be governed, not by the new principle laid down in the Judgment but by the old rules which prevailed prior to the delivery of the Judgment provided the students seeking admissions had commenced their house job prior to the delivery of the Judgment on the June 22, 1984. If, however, the house job was commenced subsequent to the delivery of the Judgment on June 22, 1984, the admissions to the two-year post-graduate courses for the academic year 1985-86 would be governed by the new principle laid down in the Judgment.

10. Now let us once again turn to the facts of the present case. The academic year 1984-85 commenced in January 1984 and on the basis of 75% seats being reserved for institutional candidates according to the rules of admission then prevailing in the State of Uttar Pradesh, the

students who completed their house job before January 1984 were admitted to the post-graduate courses for the academic year 1984-85, but since the number of students eligible for admission in this academic year were few, some seats for the post-graduate courses for the academic year 1984-85 remained unfilled. Some of the students belonging to the batch of the petitioners who completed their house job in July 1984 thereupon filed Writ Petition No. 8362 of 1984 in the High Court of Allahabad contending that a large number of seats reserved for institutional students in the post-graduate courses for the academic year 1984-85 were lying vacant and that they should be directed to be filled. The High Court by an order dated September 28, 1984 gave interim direction that applications should be invited for the vacant seats for the academic year 1984-85. Pursuant to this interim direction, applications were invited in September 1984. Thereafter, another direction was given by the High Court on November 13, 1984 that the State Government shall "complete the admissions to the post-graduate courses for the academic year 1985-86 on or before January 2, 1985 in accordance with the rules" applicable to such admissions. It seems that following upon the earlier direction given by the High Court on September 28, 1984, the State Government passed an order on December 15, 1984 directing that the admissions to the vacant seats in the post-graduate courses for the academic year 1984-85 be made by December 31, 1984. This direction was carried out by the Principle of the Motilal Nehru Medical College and on the basis of 75% of the seats being reserved for institutional candidates and 25% being open to students from all medical colleges in the State of Uttar Pradesh subject to residence requirement, the Principal granted admission to the vacant seats in the post-graduate courses for the academic year 1984-85. Unfortunately, the petitioners could not secure admission in these vacant seats since they were more meritorious students who had done better in the MBBS examination than the petitioners. The admissions to these vacant seats were completed by December 31, 1984 as directed by the State Government by its order dated December 15, 1984. The petitioners do not complain against these admissions. But their grievance is in regard to the admission made to the post-graduate course for the academic year 1985-86. These admissions were purported of to be made on the basis of the new principle laid down in the Judgment dated June 22, 1984 as understood by the Principal. What the Principal did was to grant admissions to 50% of the seats reserved on the basis of institutional preference by selecting institutional students on the basis of merit and having regard to the speciality in which they had done their house job and so far as the remaining 50% open non-reserved seats were concerned, the Principal admitted students coming from different parts of the country on the basis of the marks obtained by them at the different MBBS examinations in which they had appeared and passed. The result was that the petitioners could not secure admission to the seats in the post-graduate courses even for the academic year 1985-86. It was under these circumstances that the petitioners filed the present writ petition challenging the admissions made for the academic year 1985-86.

11. Now there can be no doubt that the grievance made by the petitioners is justified. The petitioners are right when they contend that having regard to the fact that the house job was started by them prior to the delivery of the Judgment on June 22, 1984, their admissions, to the post-graduate courses for the academic year 1985-86, that being the academic year for which they became due to be consider, should have been governed by the old rules which prevailed prior to the date of the Judgment and not by the new principle laid down in the Judgment. We have already stated our reasons for taking this view and we need not reiterate those reasons. Of course the Principal of the Motilal Nehru Medical College cannot be blamed for granting admissions for the academic year 1985-86 in accordance with the new principle laid down by us in the Judgment, since we had said in our order dated July, 26, 1985-86 that the Judgment shall be effective from the academic year 1985-86 and on a literal interpretation of that order even admissions to the two-year post-graduate courses for the academic year 1985-86 would have to be in accordance with the new principle laid down in

the Judgment. But, as pointed out above, it would work considerable hardship and injustice if, in case of students who have started house job prior to the delivery of Judgment on June 22, 1984, admissions to the two-year post-graduate courses for the academic year 1985-86 were to be made on the basis of the rule enunciated in the Judgment. We must therefore hold that in the State of Uttar Pradesh and other States where the system of post-graduate medical education adopted, is to have one-year house job followed by two-year post-graduate course, students who started their house job prior to the delivery of the Judgment on June 22, 1984 should be governed by the old rules prevailing prior to the date of the Judgment when seeking admission to the post-graduate courses for the academic year 1985-86 but in case of students who started their house job after the date of the Judgment, their admissions to the post-graduate courses for the academic year 1985-86 should be governed by the new principle laid down in the Judgment. On this view, 75% of the seats in the post-graduate courses for the academic year 1985-86 should have been made available to the institutional students and the case of the petitioners was that, if that had been done, the petitioners would have been able to course admission as falling within the 75% quota. It was not seriously disputed on behalf of the respondents that if the old rules governing admission had been applied, the petitioner would, save perhaps in a solitary case, have been able to get admission to the post-graduate courses. The petitioners were thus unjustly and improperly left out of the quota for institutional students on what has turned out to be erroneous view of the legal position. The petitioners also complained that even in regard to the 50% non-reserved seats, the petitioners were denied an opportunity of competing for them, because no entrance examination was held either by the Government of India or by the State Government or even by the concerned university for testing the relative merits of the students seeking admission to the post-graduate courses. This complaint was made in the alternative on the premise that the admissions were governed by the new principle laid down in the Judgment. We have already pointed out that this premise was unjustified and the admissions were governed not by the new principle laid down in the Judgment but by the old rules which prevailed prior to the delivery of the Judgment. But even if the admissions were governed by the now principle laid down in the Judgment, the Principal could not grant admissions to 50% non-reserved seats in the post-graduate courses without judging the relative merits of the candidates through a common entrance examination. The Principal was clearly wrong in granting admissions to 50% non-reserved seats on the basis of the marks obtained by the candidates at the different MBBS examination held by different universities. No admissions could be granted to 50% non-reserved seats except through a common entrance examination where the relative merits of the candidates could be tested and a comparative evaluation could be made on the basis of a common standard. It is quite possible that if a common entrance examination had been held, the petitioners or at least some of them might have been able to establish their superior merit as against those who happen to have been admitted on the basis of the marks obtained at the different MBBS examinations. We are therefore of the view that the admissions purported to have been made to 50% non-reserved seats in the post-graduate courses were invalid and the admissions should have been made in accordance with the old rules prevailing prior to the delivery of the Judgment on June 22, 1984.

12. But we are not inclined to strike down the admissions which have already been made. There are two reasons why we do not wish to disturb these admissions. In the first place, the students who have already been admitted are not parties to the present writ petition and it would not be right to make any order striking down their admissions without giving them an opportunity of being heard. Secondly, the admissions have been made as far back as January 1985 pursuant to an order of the High Court and the students who have been admitted have been prosecuting their studies since the last about three months and it would cause them immense hardship if their admissions were none (sic now) to be disturbed. We do not therefore propose to strike down the admissions already made

to the post-graduate courses for the academic year 1985-86. But at the same time we must not allow any injustice to be perpetrated on the petitioners. It would in our opinion be fair and just that the petitioners should be able to get admission to the post-graduate courses in the Motilal Nehru Medical College being the institution in which they did their MBBS course, the reason being that if the old rules had been applied they would have been able to secure such admission. The State of Utter Pradesh, however contended that the number of students admitted to the post-graduate courses in the various specialities was already in excess of that permitted by the Indian Medical Council and apart from any objection which may be raised by the Indian Medical Council, the interest of higher education would suffer if the petitioner were directed to be admitted to the post-graduate courses in the specialities respectively chosen by them for their house job. Now it is necessary to point out that the number of students admitted to the post-graduate courses has turned out to be excess of their authorised by the Indian Medical Council simply because the students admitted to the vacant seats in the post-graduate courses for the academic year 1984-85 pursuant to the order of the High Court dated September 28, 1984 and the order of the State Government dated December 15, 1984 could commence their post-graduate study only from January 1985 and the students admitted to the post-graduate courses for the academic year 1985-86 also commenced their post-graduate study at the same time with the result that both sets of students, one admitted for the academic year 1984-85 and the other admitted for the academic year 1985-86 started and continued their post-graduate study simultaneously and together and this resulted in the total number of students being in excess of that authorised by the Indian Medical Council. But if we take into account only the number of students admitted for the academic year 1985-86, we do not think that by admitting the petitioners, the teacher-students ratio prescribed by the Indian Medical Council would be substantially breached. We may point out that even if the teacher-student ratio is violated by granting admissions to the petitioners, we would direct that this may be allowed to be done as an exceptional case, because otherwise injustice would result to the petitioners and neither the Court nor the Indian Medical Council can be so incentive as to shut its eyes to injustice. We would therefore direct that the petitioners shall be admitted to the post-graduate courses in the specialities respectively chosen by them for their house job, for the academic year 1985-86 either in the Motilal Nehru Medical College or in any of the other five medical colleges in the State of Utter Pradesh, at the option of the State Government.

13. We are not finally disposing of the writ petition with this Judgment since directions have yet to be given by us in regard to the holding of entrance examination both for admissions to the MBBS course as also for admissions to the post-graduate courses. We have already directed the Indian Medical Council to come forward with a positive scheme in regard to the holding of both these entrance examinations and we shall finally dispose of the writ petition after considering the scheme put forward by the Indian Medical Council and issuing the necessary directions to the Government of India and the State Government and/or universities for holding the necessary entrance examinations.

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