

Dr. Narayan Sharma and Another

Vs

Dr. Pankaj Kr. Lehtar and Others

State of Assam and Others

Vs

Dr. Pankaj Lehtar and Others

Dr. Surendra Mazumdar and Others

Vs

State of Assam and Others

Civil Appeal Nos. 5242 – 46 of 1998

(G.B. Pattanaik, M. Srinivasan and S.N. Phukan JJ)

03.11.1999

JUDGMENT

M. SRINIVASAN J.:-

1. These appeals are directed against the judgment of the Gauhati High Court in Civil Rules Nos. 3493 and 3544 of 1997, both being writ petitions under Article 226 of the Constitution. Civil Rule No. 3493 of 1997 was filed by respondents 1 – 25 in Civil Appeal Nos. 5242-43 of 1998. Civil Rules No. 3544 of 1997 was filed by Respondents 26-42 in the said appeals. The appellants in the said appeals were not parties in either of the writ petitions in the High Court. Respondents 43, 43-A, 44 and 45 in the said appeals were Respondents 1 – 4 in Civil Rules No. 3493 of 1997 and Respondents 43,43-A, and 44 were the respondents in Civil Rule No 3544 of 1997. We find it convenient to refer to the parties as arrayed in Civil Appeals Nos. 5242 – 43 of 1998.
2. Respondents 1 – 25 challenged in their writ petition the validity of Rules 4,5 and 8(vii) of the Assam Medical Colleges (Regulation of the Admission to the Post-Graduate Courses) Rules 1997 (hereinafter referred to as "the rules") on several grounds. Respondents 26-42 had in their writ petition prayed for a direction to allow them to appear in the entrance

examination for the session 1996-97 and that they should be admitted only on the basis of the performance and merit in the entrance examination. They prayed for issue of a writ quashing the corrigendum issued by the Director of Medical Education in the educational notice dated 11-7-1997 whereby the candidates referred to in sub-rules (I), (ii), (iii) and (iv) of Rules 4 of the rules were exempted from appearing in the entrance examination.

3. The Government of Assam framed in February 1995 the Assam Medical College (Regulation of Admission to Post Graduate Courses) Rules, 1994 (hereinafter referred as "the 1994 Rules") under Article 166 of the Medical Colleges of Assam. Rule 5 of the said ruled provided for eligibility for competitive examination. Rule 7 provided for scheme of selection and provisions were made for reservation. In 1997, the earlier rules were superseded and the Rules were framed. The Rules came into force w.e.f. 1-7-1997. Rule 4 provides for reservation. Sub-rule (i) relates to all India quota seats being 25% of the total seats. Sub-rules (ii) (iii) and (iv) which are under challenge read as follows:

"4. Reservation in seats.- (i)

(ii) NEC quota seats.- Two seats in degree and two seats in diploma courses shall be reserved for the candidates recommended by the North-Eastern Council.

(iii) Teacher's quota seats.- six seats shall be reserved for those teachers who are appointed on a regular basis on the recommendation of the Commission, in any of the medical colleges of Assam and who had at least 3 years' teaching experience after regular appointment in the subject/discipline for which the seat is available provided that the requirement of teaching experience may be relaxed by a maximum of 1 year in case or pre-and para clinical subjects, by the Government.

(iv) State Health Services' quota seats.- Twenty seats shall be reserved for the doctors appointed in the State Health services on a regular basis on the recommendation of the Commission and who have worked for at least five years on a regular basis in any health center/institution which is situated in a municipal area."

Sub-rules (v) and (vi) are in the following terms:

"4. (v) Following percentages of the seats available after excluding the seats reserved as referred to in (i), (ii), (iii) and (iv) above shall be reserved for Scheduled Castes, Scheduled Tribes and OBC/MOBC candidates:

SC	7%
ST(P)	10%
ST(H)	5%
OBC/MOBC	15%

(vi) ON the date of commencement of these rules, the number of total seats in different disciplines in different colleges and their break –up among the reserved categories as mentioned in sub-rules (I), (iv) and (v) above shall be as in Appendix I. Changes, if any, in this regard shall be notified at the time of advertisement for admission by the Government."

Rules 5(i) and (ii) as corrected are as follows:

"5. Entrance examination and eligibility thereof.- (i) An examination shall be conducted for the purpose of admission to the postgraduate degree and diploma course in the medical colleges of Assam by Gauhati University as per the scheme given at Appendix II. Provided that the candidates referred to in sub-rules (I), (ii) and (iv) of Rule 4 shall not be required to appear in the entrance examination.

(ii) The University authorities shall prepare a merit list based on the sum total of the marks obtained in the entrance examination and the percentage of marks obtained in all the three MBBS examinations by each candidate and publish the same in the leading newspapers in the State."

Rule 8 (vii) reads as follows:

"8. Vacancies.- (i) – (vi)

(vii) Any seat lying vacant under the category referred to in Rule 4(i) shall be filled up by the Director, Medical Education with the approval of the Government in accordance with the procedure of Rules 8(i) and 8(v) ad after informing the Government of India of such vacancy:

Provided, if there is any demand for such vacant seats by North – Eastern Council for allotment of the same to the candidate from North – eastern states other than Assam, the Government may allot the seats to North – Eastern Council as first priority."

4. Respondents 1 – 25 challenged the validity of the Rules mainly on the ground that for postgraduate courses, there could be no reservation and that at any rate, the reservations provided under Sub-rules (ii), (iii) and (iv) of Rule 4 are arbitrary and unanalyzed. It was also their contention that there was no justification whatever for exempting the persons covered by those sub-rules from writing the entrance examination. The grievance of Respondents 26-42 was that the doctors who are in service should not be exempted from writing the entrance examination. According to them, the merit of such candidates should be decided only on the basis of performance in entrance examination. They are doctors in service and they claimed to have completed more than five years' service in rural areas. They challenged the rule to the extent to which it exempted the in-service doctors from appearing in the entrance examination.
5. The State of Assam filed a counter – affidavit in Civil Rule No. 3493 of 1997 only. There is no counter – affidavit in the other writ petition filed by respondents 26-42. As pointed out by the High Court repeatedly in its judgment, even the counter – affidavit filed in Civil Rule No. 3493 of 1997 was unsatisfactory as the State Government did not choose to deal with the contentions raised by the writ petitioners properly and did not choose to place the relevant facts and particulars before the Court. In particular, the counter – affidavit filed by the State Government has not to deal with the contentions of the writ petitioners that the corrigendum of the rules of executive business. The State Government did not also set out the relevant particulars for justifying reservation for candidates recommended by the North – Eastern Council.
6. The High Court heard both the writ petitions and rendered a common judgment whereby it struck down sub-rules (ii), (iii) and (iv) of Rule 4 as well as Rules 5(i) and 8(vii). The High Court has opined that merit should be the sole criterion for admission to postgraduate medical courses subject to the reservation permitted by the Constitution. Consequently, the High Court allowed both the writ petitions.
7. The appellants in Civil Appeals Nos. 5242-43 of 1998 were not parties in either of the writ petitions. They are aggrieved by the judgment of the High Court as they are affected by the quashing of Rule 4(iii) of the rules. They applied for permission to file special leave petition in this Court and the same was granted by order dated 27-10-1998 when leave was granted in all the special leave petitions. The state of Assam has filed Civil Appeals Nos. 5344 – 45 of 1998. Petitioners 1 – 6, 9, 10, 12-14 in Civil Rule No. 3544 of 1997 are the appellants in Civil Appeal No 5246 of 1998 while the other writ petitioners are shown as Respondents 4-9 in the said appeal.

8. Mr. P.K. Goswami, learned Senior Counsel appeared for the appellants in CAs. Nos. 5242 – 43 of 1998 and supported the reservation of teachers and exemption for them from appearing in the entrance examination. He submitted that there was no challenge in the writ petition to the validity of sub-rule (iii) of Rule 4 and that no teacher was impleaded as a party to the writ petition. We suggested to the counsel not to rely much on such technical contentions but to argue the matter on merits. Mr. Vijay Hansaria, learned counsel for the State of Assam argued in support of the provisions in the impugned rules.
9. Mr. Rajiv Mehta, learned counsel appearing for the appellants in Civil Appeal No. 5246 of 1998 contended that the High Court has committed an error in issuing a writ quashing the reservation for the in-service doctors and what all they prayed for in their writ petition was only to quash the provision exempting such doctors from writing the entrance examination
10. Mr. G. L. Sanghi, learned Senior Counsel for the respondents supported the judgment of the High Court by contending that there was no necessity for any reservation whatever for the three categories of candidates mentioned in sub-rules (ii) to (iv) of Rule 4. He argued vehemently that the provisions in the Constitution have been violated by the State Government by framing such rules and that too, under executive business. He submitted that reservation could be made only in accordance with Article 15 (4) of the Constitution of India.
11. Counsel on both sides cited decisions of this Court in support of their respective contentions. We heard learned counsel at length and also permitted them to file written submissions. We have gone through the same.
12. We shall now discuss the law enshrined in the Constitution as interpreted by the decisions of this Court on the subject. Article 15(1) prohibits discrimination against any citizen on grounds only of religion, race, caste, sex or place of birth or any of them. Article 29(2) is to the effect that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on ground only of religion, race, caste, language or any of them. Article 15(4) was introduced by the Constitution First Amendment Act, 1951 which reads as follows:

"15. (4) Nothing in this article or in clause (2) of Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled Castes and the scheduled Tribes."

13. Thus article 15(4) provides an exception to Articles 15(1) and 29(2) enabling the state to make a special provision for the advancement of socially and educationally backward classes or for the Scheduled Castes and the scheduled Tribes. A constitution Bench of this Court considered the scope of Article 15(4) in *M.R. Balaji vs. State of Mysore*. After tracing the history of the said provision, the Bench categorically laid down that the backwardness under Article 15(4) must be social and educational and it is not either social or educational but it is both social and educational. While dealing with the extent of the special provision which it could be competent to the State of make under Article 15(4), the Bench observed that the provision is a special provision and not one exclusive in character so that in looking after the advancement of the classes mentioned in the provision, the State would be justified in excluding altogether the advancement of the rest of the society. The bench pointed out that it is because the interest of the society at large would be served by promoting the advancement of the weaker sections in the society, that article 15(4) authorises special provision to be made and that if a provision which is in the nature of an exception completely excludes the rest of the society that is clearly outside the scope of the Article. Referring to the reservation of seats in professional and technical colleges, the Bench said:

" If admission to professional and technical colleges is unduly liberalised it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 16(4) like reservation of posts appointments contemplated by Article 16(4) must be within reasonable limits..... In our opinion, when the State makes a special provision for the advancement of the weaker section of society specified in article 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations."

14. In *Chitra Ghosh v. Union of India* another Constitution Bench held that there could be reasonable classification based on intelligible differential for the purpose of Articles 15(1) and 15(4) as well as Article 29(2). In that case, special provisions were made for sons/daughters of residents of Union Territories specified therein, sons'/daughters of Central Government servants posted in India missions abroad, etc. The Court held that there was no discrimination against the appellants on grounds only of religion, race, caste, language, sex or place of birth and the classification made by the Central Government was reasonable and based on intelligible differentia. While referring to the class of sons/ daughters of residents of Union territories were well known to be comparatively backward and with the exemption of Himachal Pradesh they did not have any medical college of their own. The Bench observed that it was necessary that persons desirous of receiving medical education from those areas should be provided some facility for doing so.

15. In *State of U.P v Pradip Tandan* a Bench of three Judges struck down a special provisions for

persons belonging to rural areas while upholding the provision relating to the hill areas and Uttarakhand. The Bench held that provision for rural areas as such could not be sustained on the ground that the rural represented socially and educationally backward class citizens. The bench said that the rural element did not make it a class.

16. In Jagdish Saran (Dr.) Vs. Union of India a medical graduate from Madras University has to seek admission in a postgraduate degree course in Delhi University as his father was transferred to Delhi. Though he qualified in the entrance examination, he was rejected because of a rule reserving 70% of the seats at the postgraduate level to Delhi University graduates. He challenged the validity of the rule by filing a writ petition. While dismissing the writ petition, the Court gave two directions by one of which he was directed to be admitted to the Degree course that year if the register attendance, etc. did not stand in the way and the Medical Council made an exception by agreeing to addition of one seat as a special case for that year. While referring to postgraduate courses, Justice Krishna Iyer, speaking for himself and Justice O. Chinnappa Reddy said thus (SCC pp. 778 – 79 & 86 paras 23 and 44)

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

Students for postgraduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for postgraduate studies should be conducted by the universities

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44. Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for postgraduate or postdoctoral courses in specified subjects. There is no substitute for sheer flair, for creative talent, for fine – turned performance at the

difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists not humdrum second rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the state is postgraduate or postdoctoral."

17. In *Suman Gupta vs. State of J & K* the question pertained to the right of certain states to nominate candidates to seats reserved in medical colleges of other states on a reciprocal basis. The bench held that the selection of candidates of such nomination shall not be within the untrammelled discretion and uncontrolled choice of the State Government. The Court observed that it was desirable for the Medical Council of India to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in medical colleges outside the State.

18. The question of reservation of seats for residents of the State or students of the same university came up for consideration in *Pradeep Jain (Dr.) v. Union of India*. After referring to the earlier case – law including *Jagdish Saran* and *Pradeep Tandon* the Bench said that considerations for admission to the postgraduate courses such as MD and the like for reservation based on residence requirements within the State of institutional preference were different from those for admission to the MBBS course. The Bench emphatically said that excellence cannot be allowed to be compromised by any other considerations because that would be detrimental to the interest of the nation. In the case of admission to the postgraduate courses the Bench quoted Justice Krishna Iyer in *Jagdish Saran* in *Extenso* and observed as follows:

"We are therefore of the view that so far as admissions to postgraduate course, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value. We would direct that though residence requirement within the State shall not be a ground for reservation in admissions to postgraduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the postgraduate course in the same medical college or university, may be given preference for admission to the postgraduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the India Medical Council in the same manner as directed by us in the case

of admissions to the MBBS course. But even, I regard to admissions to the postgraduate course, we would direct that so far as superspecialities such as Neurosurgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis."

19. In *Dinesh Kumar (Dr) v. Motilal Nehru Medical College* the Court emphasised the need for entrance examination in order to judge the candidates by a uniform standard. The Bench pointed out that the candidates are not to be selected on the basis of the marks obtained by them at the qualifying examination held by different States and/or universities, as the standard of judging at these different qualifying examinations cannot by its very nature be uniform. It was observed that some universities may be very liberal in their making 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. The Bench said that 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 the 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. The bench pointed out that it would be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution. The Bench has earlier directed the India Medical Council to come forward with a positive scheme in regard to the holding of entrance examinations and kept the writ petition pending without finally disposing of the same. The final directions were given by an order dated 21-7-1986. That judgment is reported as *Dinesh Kumar (Dr.) v. Motilal Nehru Medical College*. In that judgment, the Bench also explained some of the observations contained in *Pradeep Jain* and ultimately approved the schemes of examination for admission to MBBA/BDS course and postgraduate courses submitted by the Government of India subject to modifications discussed and formulated in the judgment. While doing so, the Bench rejected the suggestion made by the Government of India that for admission to postgraduate courses a weightage equivalent to 15% of the total marks obtained by a student at the all-India Entrance Examination should be given after he had put in a minimum of three years of rural service. While recognizing the desirability of giving incentives to the doctors to go to the rural areas, the bench held that such incentives should not go to the length of giving weightage of 15% of the total marks obtained by a candidate. After setting out the reasons for rejecting the suggestion made by the Government, the Bench observed: (SCC p 741. Para 12).

12. (4) We are of the view that when selection of candidates is being made for admission on an all-India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. We must remember that what we are regulating are admissions to postgraduate courses and it we want to produce doctors who are admissions to postgraduate courses and it we want to produce doctors who are MD or MS, particularly surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should

be based on merit. Moreover, we are extremely doubtful if a candidate who has rendered three years' rural service for the purpose of getting a weightage of 15 percent would go back to the rural area after he has got MD or MS Degree. We are, therefore of the view that no weightage should be given to a candidate for rural service rendered by him so far as admission to postgraduate courses are concerned. Even if an undertaking is taken from such a candidate that after obtaining MD or MS Degree he will settle probably serve no useful purpose because in the absence of the requisite facilities such as hospital, medical and surgical equipment, nursing etc. it would not be possible for him to give the advantage of his higher medical education to the rural masses and the higher medical education received by him would not be of service to the community."

20. In *Snehelata Patnaik (Dr.) vs. State of Orissa* a Bench of three Judges explained the observations in *Dr. Dinesh Kumar* and proceeded to suggest that the authorities concerned might well consider weightage up to a maximum of 5 percent of marks in favour of in-service candidates who had done rural service for five years or more and said that the actual percentage would certainly have to be left to the authorities. The bench hastened to clarify that the suggestion did not in any way confer any legal right on in service candidates who had done rural service.
21. In *Unni Krishna, J.P. v. State of A. P.* the Constitution Bench dealt at length with admissions to medical and Engineering courses in private unaided/aided recognized/ affiliated educational institutions and the extent to which they were subject to conditions and regulations of the State. The Bench held that aided institutions have to abide by all the regulations as may be framed by the government and in the matter of admission of students they have to follow the rule of merit and merit alone subject to any reservations made under Article 15 of the Constitution. It was also held that while granting recognition/affiliation to private educational institutions running professional courses, the State was obliged to impose conditions for maintaining standards and ensuring fairness, inter alia, in respect of fees chargeable on the admissions, following the judgment in that case, Bench of Two judges held in *State of Gujarat V. Meghji Pethraj Shah Charitable Trust* that the discontinuation by the Government of the reservation of seats for the donor's nominees was valid and the earlier arrangement between the Government and the donor was contrary to the decision in *Unni Krishnan* and therefore it could be terminated without adhering to the rule of *audi alteram partem*. A three-judge Bench rendered a similar judgment in *Thapar Institute of Eng. And Technology vs. State of Punjab* by striking down reservation of seats for wards of employees of such institution or of company which formed such institution.
22. The importance of holding entrance examination for admission to medical colleges was stressed in *Shirr. Chandar Chinar Bada Akhara Udasin Society V. State of J & K* and directions were issued for holding an entrance examination after a fresh advertisement inviting applications it was also held that the admissions should be in accordance with the judgment of this Court in *Unni Krishnan Case*. A similar judgment was rendered in *Sadha Devi (Dr) v. State of U.P.* wherein the Court quashed a circular of the Government directing that there shall be no minimum qualifying marks for scheduled Caste/Scheduled Tribe/Other Backward Class candidates in the written examination for admission to postgraduate and

Diploma courses. The Bench expressed a serious doubt as to whether any reservation could at all be made for postgraduate courses. The Bench held that if the candidates belonging to those classed failed to secure even the minimum qualifying marks, then the seats reserved for them should be made available to the candidates belonging to the general category. In another judgment rendered on the same lines in Ravindra Kumar Rai vs. State of Maharashtra a Bench of three judges rejected the contention of the State that conducting entrance examination would delay the admission process or that it would be extremely difficult to conduct the examination. The Bench pointed out that even before 1997, when the regulations made by the Medical Council came into force some of the States were conducting entrance examination jointly for engineering and medical students.

23. Recently, a Constitution Bench reiterated the need for entrance examination and maintenance of high standards for admissions to postgraduate courses in Preeti Srivastava (Dr) v. State of M.P. While rejecting the contentions of the State of Madhya Pradesh that there was no need to prescribe any minimum qualifying marks in the common entrance examination as already candidates had passed the MBBS Examination which was an essential prerequisite medical courses, the Bench said thus: (SCC pp. 150-51, para 28).

"28. This argument ignores the reasons underlying the need for a common entrance examination for postgraduate medical courses in a State. There may be several universities in a state which conduct MBBS courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the MBBS Examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the MBBS Examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the MBBS Examination; while it may also be easier for candidates to secure marks at the higher level. A common, Entrance Examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the MBBS Examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the MBBS Examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the MBBS Examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialised education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialised

education and the need to provide for some room for the backward even at the stage of specialised postgraduates education which is one step below the superspecialities."

The Bench, however, left open the question whether reservation could be made for the classes of persons mentioned in Article 15(4) of the Constitution in the matter of admission to postgraduate courses.

24. The following principles emerge from the above rulings:

- a. A provision for reservation must be within reasonable limits.
- b. There can be reasonable classification based on intelligible differentia for the purpose of Articles 15(1), 15(4) and 29(2).
- c. There can be reservation for persons belonging to areas which are socially and educationally backward.
- d. A rural area is not a class by itself and cannot be considered to be socially and educationally backward merely because it is a rural area.
- e. Admission to postgraduate courses should be strictly based on merit.
- f. The merits of the candidates seeking admission to higher educational courses shall be judged by a uniform standard and for that purpose holding an entrance examination is the best method.
- g. There shall be no dilution of standards in higher educational courses and in particular, postgraduate courses.

1. In the light of the aforesaid principles, we shall now proceed to consider the validity of the provisions contained in Rules 4(ii), 4(iii) and 4(iv) of the rules. Rule 5(i) provides that the candidates referred to in the aforesaid sub-rules shall not be required to appear in the entrance examination. The challenge in the writ petition filed before the High Court was both with regard to the reservation and with reference to the exemption of those candidates from appearing in the entrance examination. The High Court has quashed both the provisions. In our opinion, the two aspects of the matter have to be considered separately as different considerations arise. They are not interdependent. In fact, in the latest judgment of the Constitution Bench referred to above, namely *Cr. Preeti Srivastava* the question of reservation was left open while the Bench dealt with only the question of prescription of qualifying marks in the common entrance examination. In the circumstances, we propose to consider the two questions, one relating to exemption from appearance in entrance examination and the other relating to reservation separately with regard to each of the categories mentioned in the three sub-rules.

26. Reservation is provided in Rule 4. Sub-rule (i) pertains to all-India quota seats. That is not in dispute in the present case. Sub-rule (ii) provides for NEC quota seats. Under that sub-rule, 2 seats in degree and 2 seats in diploma courses shall be reserved for the candidates recommended by NEC. The provision as it reads, does not contain any guidelines on the basis of which recommendation could be made by NEC. Obviously, the matter is left entirely to the discretion of NEC. On the face

of it, the provision appears to be arbitrary and unconstitutional. The contention of the State Government is that NEC is a statutory body created under the North Eastern Council Act, 1971 to oversee the coordinated development of 7 States in the north-eastern region of the country. The Council consists of the governors and Chief Ministers of 7 States in the north-eastern region, namely, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The Council is an advisory body which discusses and makes recommendations with regard to matters of common interest in the field of economic and social planning of the said States. The council has taken up various developmental schemes for improving 3 medical colleges in the state of Assam at Dibrugarh, Gauhati and Silchar. Apart from the 3 colleges, there is only one medical college in Manipur and other States in the north-eastern region do not have any medical college. The quota is meant for 5 States namely, the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura which do not have any medical college. As such, students of these States are handicapped in getting medical education. The contention of State Government is that the students of the said States form a class by themselves and it is a valid classification.

27. In the writ petition before the High Court, the petitioners had challenged reservation under the sub-rule expressly alleging that it is a device just to keep seats in the hands of the executive to be allotted arbitrarily and whimsically. In the counter-affidavit filed by the state Government in the writ petition, no attempt was made to place relevant particulars before the Court in justification of the said reservation. Excepting a vague statement in para 18 of the counter-affidavit that the State of Assam has the responsibility to provide assistance to the neighboring States in the development of their medical manpower, there is nothing in the counter-affidavit which could enable the Court to uphold the reservation. Having been utterly negligent before the High court, the State Government has made an attempt in this Court by setting out certain particulars in the grounds of appeal. In ground (C) in the special leave petition, it is stated that 5 of the 7 States in the north-eastern region do not have medical colleges and only Assam has got 3 medical colleges apart from. It is unfortunate that the State Government has not chosen to help the court by placing the relevant particulars in support of the reservation. It is, however, clear from the available materials that the present case is similar to the one dealt with in *Chitra Ghosh v. Union of India*, wherein the Constitution Bench pointed out that provision for sons/daughters of the Union Territories of Himachal Pradesh, Tripura, Manipur, Naga Hills, NEFA and Andaman was a valid classification in view of the fact that the Union Territories referred to above were backward areas with the exception of Himachal Pradesh as they do not have medical colleges of their own. A perusal of the North Eastern Council Act, 1971 shows that the functions of the council include making of recommendations with regard to any matter of common interest in the field on economic and social planning. There is absolutely no doubt that the candidates belonging to the 5 states of north-eastern region where there is no medical college form a separate class and a reusable provision for them reserving a few seats in the medical courses is not violative of any of the provisions of the constitution. Hence we uphold the reservation of 4 seats under the NEC quota.

28. Sub-rule (iii) of Rule 4 provided for 6 seats to be reserved for those teachers who are appointed on a regular basis on the recommendation of the Commission in any of the medical colleges of Assam who had at least 3 years' teaching experience after regular appointment in the subject/discipline for which the seat is available provided that the requirement of teaching experience is relaxed by a maximum of one year in case of pre-and para-clinical subjects by the government. In the writ petition, this sub-rule was challenged in para 32-A on the ground that there are no guidelines in regard to the reservation. It is also alleged that in the 1994 Rules, 6 seats reserved for teachers' quota were shown separately but in the rules the seats reserved for teachers' quota are included in general seats whereby some genuine and eligible candidates of the general

stream will be deprived of getting seats. In the counter-affidavit filed by the State government, it was stated that the demand in respect of upgrading the skills of the teachers of the medical college varied in the matter of the medical discipline concerned from year to year and that it was difficult to reserve seats in a particular discipline and, therefore, the teachers' quota was included in the general category and at the time of selection, the State Government could finalise the subjects in which it was necessary to provide seats for the teachers of the medical colleges. Here again, the contents of the counter-affidavit were not sufficient to justify the reservation. In the grounds of appeal in this court, it is stated in ground (E) that as per the norms prescribed by the Medical Council of India, postgraduate qualification is mandatory for appointment of a candidate to the rank of assistant Professor and above and in some departments like Cardiology, Nephrology, Neurosurgery etc., training in superspeciality is required along with MD or MS Degree for the post of Assistant Professor or above. It is stated that the recruitment of the teaching faculty is done in the rank of Demonstrator and Registrar etc., for which only MBBS Degree is necessary; acquiring of PG degree is a must for the teaching faculty in the interest of the institute and the students. It is further stated that there is a dearth of qualified doctors for promotion to the rank of Assistant Professors and above in the para-clinical and non-clinical subjects like Anatomy, Pharmacology, SPM & F&SM, Microbiology etc., for which several posts could not be filled up in the medical colleges of Assam. As a result, the academic interest of the institutions was badly hampered. Thus the reservation is justified on the ground of institutional requirements. There cannot be any doubt that the teachers form a class by themselves and the classification is based on intelligible difference having a rational nexus with the object of the rule. Hence we uphold the reservation of 6 seats under the teacher's quota.

29. Under sub-rule (iv), reservation of 20 seats is made for doctors appointed in the State Health services on a regular basis on the recommendation of the commission and who have worked at least 5 years on a regular basis in any health centre / institution which is not situated in the municipal area. The High court has rightly pointed out that the rule is worded in negative terms and not in positive terms. In the 1994 Rules, the relevant provision was in the following terms:

"Ten seats may be reserved in the disciplines specified below against each for those doctors who have completed 5 (five) years or more in rural/hills/char areas as follows."

10 disciplines were mentioned in the sub-rule. Thus, the earlier rule was in positive terms that the doctor concerned should have served in rural/hills/char areas. That was different from the present rule which provided for reservation for doctors who have worked in any health centre / institution which is not situated in a municipal area. No justification has been made by the State Government for changing the wording of the rule or increasing the quota from 10 to 20. As rightly pointed out by the High court, Any place just outside a municipal town is one which is not situated in a municipal area and which will fall within the scope of the sub-rule. The doctor working in an institution situated in a place immediately adjacent to but outside a municipal town will get the benefit of the rule while in practice, he will also get all the benefits available in the urban areas situated within the municipal limits. The rule does not require the doctor to serve in a remote rule had provided for service in a rural area, it has been held that the classification is not a valid one. We have already referred to the judgment of this Court in *State of U.P. v Pradip Tandon*³ where it was held that the rural element did not make it a class and provision for rural areas could not be sustained on the ground that the rural areas represented socially and educationally backward class of citizens. The reasons given by this Court in *Dinesh Kumar*⁸ in the passage quoted by us in para 19 (*supra*) are also applicable here. In the circumstances, we are in quashing of sub-rule (iv) of rule 4.

30. We shall now advert to rule 5(i) which exempts the candidates referred to in sub-rules (i), (ii), (iii) and (iv) of rule 4 from appearing in the entrance examination. We are not concerned with sub-rule (ii) of Rule 4, there is no justification for exempting them from appearing in the entrance examination. As has been repeatedly held by this court, the selection of candidates for postgraduate courses should be based only on merit and it cannot be left to the arbitrary discretion of any administrative body. Though we have upheld reservation of 4 seats under the NEC quota, we are of the opinion that such reservation can be provided only on the basis of merit which can be assessed by the performance of the candidates in the entrance examination. NEC cannot choose any candidate according to its whims and fancies. NEC cannot choose any candidate according to its whims and fancies. NEC has to recommend candidates only in accordance with the rank secured in the entrance examination. Hence, the provision in Rule 5(i) exemption the candidates referred to in sub-rule (ii) of Rule 4 from appearing in the entrance examination has been rightly struck down by the High Court and we uphold the same.

31. As regards the teachers, there is no need for them to participate in the entrance examination as they have been constantly in touch with the subject/discipline for which reservation is made. The concept of entrance examination was evolved for the purpose of prescribing a uniform standard for judging all the candidates. It has also been repeatedly emphasised by this court that merit should be the criterion for admission to postgraduate courses. Both the tests will be satisfied in the case of teachers who have been working in the medical colleges of Assam for the required number of years. Hence, there is no necessity for them to appear in the entrance examination. The rule insofar as it exempts the teachers from appearing in the entrance examination is valid. We differ from the view taken by the High Court and propose to allow the appeal in that regard.

32. Insofar as the candidates referred to in sub-rule (iv) of Rule 4 are concerned, we have expressed our opinion that reservation for them is not valid. Consequently, the question of examination does not arise. However, we wish to make it clear that even if for any reason, the reservation of seats under sub-rule (iv) of the State Health Service' quota is upheld, the exemption of the candidates referred to in that sub-rule from appearing in the entrance examination is not valid. There is no earthly reason for exempting them from appearing in the entrance examination. In order to maintain the high standards required for admission to postgraduate courses, those candidates should also be made to appear in the entrance examination and admission must be made only on the basis on merit.

33. What remains to be considered is Rule 8(vii) of the rules. The High court has struck down the entire rule overlooking that the challenge is only to the proviso to the rule and not the main part of the rule. The reasons which we have given already for upholding the reservation of seats for candidates referred to in sub-rule (ii) of Rule 4, will hold good for upholding the proviso to sub-rule (vii) of rule 8. The proviso is only discretionary and not mandatory. Further it only provides for first priority being given to NEC. In the circumstances, we differ from the High Court and uphold the sub-rule.

34. In the view we have expressed above, it is unnecessary for us to consider the contention raised by the contesting respondents that the reservation under sub-rules (ii) to (iv) taken along with the reservation under sub-rule (v) of Rule 4 exceeds 50% of the total number of seats after excluding the 25% under all-India quota. Here again, the State Government has not come forward with a clear answer to the contention raised by the contesting respondents but we are not dealing with that question as it is unnecessary for the purpose of this case.

35. In fine, the following are the conclusions arrived at by us:

1. Sub- rules (ii) and (iii) of rule 4 of the rules are valid and constitutional.
2. Sub-rule (iv) is unconstitutional and void.

(3) Rule 5(i) is unconstitutional and not valid insofar as it exempts the candidates referred to in sub-rules (ii) and (iv) of rule 4 from appearing in the entrance examination.

1. Rule 8(vii) and the proviso are valid.

36. The appeals are allowed to the extent indicated and the judgment of the High Court is accordingly set aside to that extent. The writ petitions filed in the High Court are allowed to the extent indicated. The parties will bear their respective costs.