SUPREME COURT OF INDIA

Sudhir N.

Vs.

State of Kerala

C.A.Nos.297-298 of 2015

(T.S.Thakur and R.Banumathi JJ.)

12.01.2015

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of a judgment and order dated 30th March 2011 passed by the High Court of Kerala at Ernakulam in Writ Petitions No.1014 of 2009 and 2610 of 2010 filed by the respondents whereby the High Court has allowed the said petitions with the direction that selection of in- service medical officers for post-graduate medical education under Section 5(4) of the Kerala Medical Officers' Admission to Postgraduate Courses under Service Quota Act, 2008 (Kerala Act 29 of 2008), shall be made strictly on the basis of inter se seniority of the candidates who have taken the common entrance test for post-graduate medical education and have obtained the minimum eligibility bench mark in that test in terms of the Regulations framed by the Medical Council of India.

3. Forty percent of the seats available in the State of Kerala for post- graduate medical admission are reserved for in-service doctors serving in the Health Service Department, Medical College lecturers and doctors serving in the Employees State Insurance Department of the State. As per the practice prevalent before the enactment of the impugned legislation admissions against such reserved seats were made on the basis of seniority of in-service candidates in each category. Post Graduate Medical Education Regulations of Medical Council of India, 2000, however, made it mandatory for all candidates seeking admission to post-graduate medical courses to appear for a common entrance examination. The Regulations,

inter-alia, provide that candidates who appears in the common entrance examination and secure 50% in the case of general category candidates and 40% in the case of SC/ST candidates alone shall be qualified for such admission. Consequently, even in-service candidates had to appear and qualify in the common entrance examination. Representations appear to have been received by the Government from many quarters pointing out that in-service candidates who were working around the clock for the benefit of the public even in remote rural areas could hardly find time to update their knowledge and compete with the general merit candidates so as to score the required 50% marks in the common entrance examination and to qualify for admission to any post-graduate course. Considering these representations, the Government decided to bring a legislation to overcome the difficulties faced by in-service candidates in the matter of getting admission to post- graduate courses. The legislation envisaged a quota for medical officers in the service of the State Government on such terms and conditions as may be prescribed. More importantly, in terms of Section 3 of Act No.29 of 2008 selection of medical officers to the post-graduate courses under the service quota was to be made by a Selection Committee called the Post Graduate Course Medical Selection Committee constituted under Section 4 of the said Act. Section 5 of the Act empowered the Government to set apart seats not exceeding 40% of the total seats available in the State quota for any academic year for selection of medical officers under 'service quota' for admission to post-graduate medical courses in medical colleges of the State. Sub-section (2) of Section 5 provided that the academic qualifications for admission to the post-graduate courses shall be an MBBS degree with a minimum of 50% marks besides other qualifications that may be prescribed. Sub-section (4) of Section 5 required the Post-graduate Selection Committee to finalise the selection list directly based on the seniority of the in-service medical officers and following such other criteria as may be prescribed. Section 6 provided for grant of weightage for 'rural area service' or 'difficult rural area service' as the case may be, in the matter of selection of the candidates for admission. Sections 3, 4, 5 and 6 to the extent they are relevant may be re-produced at this stage:

> "3. Selection of Medical Officers for admission to Postgraduate Course Under the Service.
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> Quota.- Notwithstanding anything contained in the Indian Medical Council Act, 1956 (Central Act 102 of 1956) or any rule or regulation issued thereunder or in any judgment, decree or order of any court or authority, the selection of Medical Officers for admission to Postgraduate Course of study in the State under the service quota shall be made only under the provisions of this Act.

4. Constitution of Post Graduate Course Medical Selection Committee -

(1) The Government may constitute a Postgraduate Course Selection Committee for the purpose of selection of Medical Officers under the service quota with the following ex-officio members, namely:-

(a) The Secretary to Government, Health and Family Welfare Department, Government of Kerala;

(b) The Director of Medical Education;

(c) The Director Health Services;

(d) The Director of Insurance Medical Services;

(e) The Joint Director of Medical Education (M);

(f) The Joint Director of Medical Education (G).

(2) The Secretary to Government, Health and Family Welfare Department shall be the Chairman and the Director of Medical Education shall be the Convenor of the Committee.

(3) The Committee shall discharge its functions in such manner as may be prescribed.

5. Procedure for selection. -

(1) The Government may set apart seats not exceeding forty percent of the total seats available to state quota in an academic year, for selection of Medical Officers under service quota considering their service under the Government for admission to Post Graduate Medical Courses in the Medical Colleges of the State in such manner as may be prescribed.

(2) The academic qualification for admission to the Post Graduate Course shall be M.B.B.S. degree with minimum fifty percent marks and the other qualifications shall be such as may be prescribed.

(3) The details of eligibility for admission, the duration of courses, allotment, fee to be paid, reservations of seats and such other details shall be

published every year in the prospectus before the commencement of admission.

(4) The Postgraduate Course Selection Committee shall finalise the selection list strictly based on the seniority in service of the Medical Officers and following such other criteria as may be prescribed.

(5) The selection list finalised under sub-section (4) shall be published by the Post Graduate Selection Committee for the information of the applicants.

6. Weightage for rural service. - Every Medical Officer who has 'rural area service' or 'difficult rural area service' as the case may be, in the State shall be given weightage in selection in such manner as may be prescribed."

4. Aggrieved by the above legislation, Writ Petitions No.1014 of 2009 and 2610 of 2010 were filed by the respondents challenging the constitutional validity of Section 5(4) of the Act in so far as it provides that 'admission to post-graduate in-service quota shall be only on the basis of seniority'. The petitioners also questioned the validity of some of the provisions of the prospectus for the relevant year to the post- graduate admission in the service quota but gave up that prayer when the petitions eventually came up for hearing confining the relief prayed for in the writ petition to a declaration as to the validity of the statutory provisions under challenge.

5. The primary ground on which the challenge to the validity of the legislation was mounted by the writ petitioners was that the State legislature could not enact a law that would make selection for admission to the post-graduate courses dependent solely on the seniority of the in- service candidates without prescribing the minimum conditions of eligibility for the candidates concerned. Competence of the State Legislature to enact Section 5(4) of the impugned Legislation was also called in question on the ground that the said piece of legislation violated the regulations framed by the Medical Council of India the authority competent to do so under the Medical Council of India Act, 1956. It was argued that the Post-Graduate Medical Education Regulations, 2000 provided the minimum requirements that all the candidates have to fulfil. Inasmuch as the State enactment contrary to the said regulation and requirement postulates that selection of candidates shall be made only on the basis of seniority it was beyond the legislative competence of the Kerala State Legislature. The Indian Medical Council Act and the MCI Regulations framed under the same were, argued the writ petitioners- respondents herein, referable only to Entry 66 of List I of Seventh Schedule. Any legislation

enacted by the State Legislature in exercise of its power under Entry 25 in List III was subject to any law to the contrary passed by the Parliament in exercise of its power under Entry 66 of List I. That the State Act was reserved for consideration of the President and that it has received the assent of His Excellency in terms of Article 254(2) of the Constitution did not save the legislation from the vice of legislative incompetence.

6. The State of Kerala contested the petitions and, inter alia, argued that the State enactment was in pith and substance different from the Indian Medical Council Act and the MCI Regulations. The State attempted to justify the legislation under Entry 25 of List III and argued that it does not in any manner conflict with Entry 66 of List I. It was argued that the dominant purpose of the legislation under challenge ought to be seen, and that purpose did not, according to the State, in any way, impinge upon the Central legislation so as to call for any interference by the Court.

7. On behalf of the in-service doctors an attempt was made to justify the enactment on the ground that, but, for a provision permitting a quota for service aspirants for admission to post-graduate courses it would be difficult to compete with fresh graduates who may be academically better off than candidates who have since long given up their studies and devoted themselves entirely to the service of the people at large some of them inhabiting in remote and difficult areas of the State.

8. The Medical Council of India who was arrayed as a respondent in the writ petitions, however, supported the case of the writ-petitioners (respondents herein) to point out that the MCI Regulations categorically postulate that students for post-graduate course can be selected only on the basis of their inter se academic merit. Any other method of selection is, therefore, by necessary implication forbidden. Inasmuch as the State Legislation has attempted to introduce another method of selection which has the effect of subverting the MCI Regulations the impugned enactment was bad.

9. The High Court of Kerala has, by the judgment and order impugned in these appeals, agreed in principle that admission to post-graduate courses can be made only on the basis of inter se seniority provided the candidates appear in the common entrance examination and qualify. It has relying upon the decisions of this Court in Dr. Preeti Srivastava & anr. v. State of M.P. & ors. (1999) 7 SCC 120 and State of M.P. & Ors. v. Gopal D. Tirthani & Ors. (2003) 7 SCC 83 held that the prescription of an entrance examination with minimum eligibility marks to be secured in the entrance test for post-graduate course is within the field covered by Entry 66 of List I and that the State Legislature cannot, by reference to Entry 25 of

List III, make any law that may have the effect of encroaching upon the field occupied by Entry 66 of List I. The High Court observed:

> "The principles of law emanating from the above include that the prescription as to the requirement of an entrance examination with a minimum eligibility bench mark to be acquired in that entrance test for postgraduated medical education is within the field covered by Entry 66 in List I and the competence of the State Legislature to make a law with reference to Entry 25 in List III would not enable it to make any such law encroaching on the field occupied by Entry 66 in List I. The MCI Regulations framed under Section 33 of the IMC Act is insulated from any contradiction by any State legislation. Therefore, the State cannot make a law doing away with the requirement, for in-service candidates, to participate in the common entrance test for admission to postgraduate medical courses and obtaining the minimum eligibility requirement prescribed by the MCI in the Regulations."

10. The High Court then held that inasmuch as Section 5(4) of the impugned enactment provides for the preparation of a select list of in- service medical officers based on seniority, such selection shall be made from among in-service medical officers only who have appeared in the common entrance test of post-graduate medical education and obtained the minimum eligibility bench mark in that test in terms of the MCI Regulations. The High Court held:

> "The conclusion is that the provision in Section 5(4) of the State Act that the select list of in-service medical officers for postgraduate medical education shall be strictly on the basis of seniority is subject to the requirement that such selection can be made only from among those in- service medical officers who have undergone the common entrance test for postgraduate medical education and have obtained the minimum eligibility bench mark in that test in terms of the MCI Regulations. It is so declared. These writ petitions are allowed to that extent."

11. The present appeals assail the correctness of the above order and judgment.

12. Regulation 9 of the Regulations framed under the MCI Act, inter alia, provides that admission to post-graduate medical courses shall be made strictly on the basis of inter se academic merit of the candidates. The Regulation further stipulates the methodology for determining the academic merit of the candidate. It reads:

"Selection of Postgraduate Students (1) (a) Students for Postgraduate medical courses shall be selected strictly on the basis of their inter-se Academic Merit.

(b) 50% of seats in Post Graduate Diploma Course shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas.

(2) For determining the "Academic Merit", the University/Institution may adopt the following methodologies:

(a) On the basis of merit as determined by a 'Competitive Test' conducted by the state government or by the competent authority appointed by the state government or by the university/group of universities in the same state; or

(b) On the basis of merit as determined by a centralised competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise; or

(d) Combination of (a) and (c).

Provided that wherever 'Entrance Test' for postgraduates admission is held by a state government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Provided further that in Non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority notified by the State Government and the remaining fifty percent by the management(s) of the institution on the basis of inter-se Academic Merit.

Further provided that in determining the merit and the entrance test for postgraduate admission weightage in the marks be given as an incentive at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto the maximum of 30% of the marks obtained.'

13. The above leaves no manner of doubt that admissions to post-graduate medical courses have to be made only on the basis of academic merit of the candidates. It is clear from sub-Regulation (2) (supra) that for determining the "academic merit" the university/institution can adopt any of the methodologies stipulated therein. In terms of proviso (1) to Regulation 9, general category candidates must secure 50% marks while those belonging to SC/ST and other backwards classes are required to secure at least 40% marks in the entrance test in order to be eligible for admission. In terms of the third proviso to Rule 9 (supra) weightage for service rendered in remote and difficult areas is made permissible at the rate of 10% of the marks obtained for each year in service in remote or difficult areas upto a maximum 30% of the marks.

14. Regulation 9 is, in our opinion, a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions. To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9. Suffice it to say that but for the impugned legislation making an attempt to change the basis on which admissions can be made, such admissions must, in all categories, be made only on the basis of merit as determined in terms of the provision extracted above. That method, however, is given a go-bye by the impugned legislation when it provides that in-service candidates seeking admission in the quota reserved for in-service doctors shall be granted such admission not on the basis of one of the methodologies sanctioned by Rule 9(2) of the Rules but on the basis of inter se seniority of such candidates. The question is whether the State was competent to enact such a law. Our answer to that question is in the negative. The reasons are not far to seek. As noted earlier, the subject is fully covered by several pronouncements of this Court to which we shall presently refer but before we do so we may extract Article 246 of the Constitution which reads as under:

> "246. Subject matter of laws made by Parliament and by the Legislatures of States (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List) (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List) (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to

make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List') (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List"

15. We may also refer, at this stage, to Entry 66 of List I which runs as under:

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

16. In State of T.N. and Anr. v. Adhiyaman Educational & Research Institute & Ors. (1995) 4 SCC 104, this Court was examining the scope of Entry 66 of the Union List vis-a-vis Entry 25 of the Concurrent List in relation to the provisions of Tamil Nadu Private Colleges (Regulation) Act and Madras University Act vis-a-vis Council for Technical Education Act, 1987. This Court held that the Central Act was intended to achieve the object of coordinated and integrated development of the technical education system at all levels throughout the country with a view to promoting qualitative improvement of such education. This Court further held that the Central Act namely, All India Council for Technical Education Act, 1987 was within the scope of Entry 66 of List I and Entry 25 of List III and that on the subject covered by the statute the State could neither make a law under Entry 11 of List II nor under Entry 25 of List III after the 42nd Amendment. If there was any law existing immediately before the commencement of the Constitution within the meaning of Article 372, such as the Madras University Act, 1923, the Central Legislation would, to the extent of repugnancy, impliedly repeal such pre-existing law. This Court summed up the legal position and the test applicable in the following paragraph:

"41. What emerges from the above discussion is as follows:

(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is

absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[pic](ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

17. In Dr. Preeti Srivastava (supra) one of the questions that fell for consideration was whether the standard of education and admission criteria could be laid under

Entry 25 of List III by a Central Legislation. A Constitution Bench of this Court by majority held that standard of education and admission criteria could be laid down under Entry 66 of List I and under Entry 25 of List III. It was held that both the Union as well as the State have the power to legislate on education including medical education and the State has the right to control education so far as the field is not occupied by any union legislation. When the maximum marks to be obtained in the entrance test for admission to the institutions for higher education including higher medical education is fixed, the State cannot adversely affect the standards laid down by the union government. It was held that it is for the MCI to determine reservation to be made for SC/ST and OBC candidates and lowering the qualifying marks in their favour on the pretext or pretence of public interest. Speaking for the majority, Sujata V. Manohar, J. summed up the legal position as under:

> "35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".
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> Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:
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> "25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." [pic] Entry 25 is subject, inter alia, to Entry 66 of List I.
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> Entry 66 of List I is as follows:
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> "66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."
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> Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union

legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) the calibre of the teaching staff;

(2) a proper syllabus designed to achieve a high level of education in the given span of time;

(3) the student-teacher ratio;

(4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution; (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and [pic](8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

(emphasis supplied)

18. This Court further held that MCI had framed regulations in exercise of the power conferred under Section 20 read with Section 33 of the Medical Council of India Act which covered post-graduate medical education. These regulations are binding and the States cannot, in exercise of their power under Entry 25 of List III, make any rule which are in conflict with or adversely impinge upon the regulations made by the MCI. Since the standards laid down are in exercise of power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the union government. The State's power to frame rules pertaining to education was in any case subject to any provision made in that connection by the union government. The Court observed:

"52. Mr. Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed regulations which govern postgraduate medical education. These regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.

53. Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254."

(emphasis supplied)

19. We may also at this stage refer to the decision of this Court in Gopal D. Tirthani case (supra). That was a case where the State defined the percentage at post-graduation level for degree and diploma course exclusively for in-service candidates. The reservation came under challenge but was upheld by this Court holding that the setting apart of 20% seats in post-graduate course for in-service candidates was not a reservation but a separate and exclusive channel of entry or source of admission, the validity whereof cannot be determined on the constitutional principles applicable to communal reservation. In-service candidates and those who are not in-service are two classes based on an intelligible differentia. The purpose sought to be achieved by such classification was a laudable purpose as such candidates would, after they acquire higher academic achievements, be available to be posted in rural areas by the State Government. Having said that, this Court held that there can be no relaxation for in-service candidates in so far as the common entrance test is concerned and MCI regulation could not be relaxed for that purpose. The argument that in- service candidates are detached from theoretical study and cannot, therefore, compete with other candidates was rejected by this Court. The following passages, in this regard, are apposite:

> "25. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.
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> 26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI

Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification consistently with the aforequoted observation of this Court in Dayanand Medical College and Hospital case."

(emphasis supplied)

20. It is in the light of the above pronouncements futile to argue that the impugned legislation can hold the field even when it is in clear breach of the Medical Council of India's Regulations. The High Court was, in our opinion, right in holding that inasmuch as the provisions of Section 5(4) of the impugned enactment provides a basis for selection of candidates different from the one stipulated by the MCI Regulations it was beyond the legislative competence of the State Legislature. Having said that the High Court adopted a reconciliatory approach when it directed that seniority of the in-service candidates will continue to play a role provided the candidates concerned have appeared in the common entrance test and secured the minimum percentage of marks stipulated by the Regulations. The High Court was, in our opinion, not correct in making that declaration. That is because, even when in Gopal D. Tirthani's case (supra) this Court has allowed in-service candidates to be treated as a separate channel for admission to post-graduate course within that category also admission can be granted only on the basis of merit. A meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. It is now fairly well settled that merit and merit alone can be the basis of admission among candidates belonging to any given category. In service candidates belong to one category. Their inter-se merit cannot be overlooked only to promote seniority which has no place in the scheme of MCI Regulations. That does not mean that merit based admissions to in-service candidates cannot take into account the service rendered by such candidates in rural areas. Weightage for such service is permissible while determining the merit of the candidates in terms of the third proviso to Regulation 9 (supra). Suffice it to say that Regulation 9 remains as the only effective and permissible basis for granting admission to in-service candidates provisions of Section 5(4) of the impugned enactment notwithstanding. That being so, admissions can and ought to be made only on the basis of inter se merit of the candidates determined in terms of the said principle which gives no weightage to seniority simplicitor.

21. In the result, these appeals fail and are hereby dismissed but in the circumstances without any order as to costs.