IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.8324, 8325, 8326, 8327, 8335, 8361, 8420, 8445, 8452, 8453, 8599, 8630 and 8828 of 2020
and
W.M.P.Nos.10394, 9986, 9987, 9988, 10446, 10178, 9996, 9997, 9989, 9995, 9990, 9994, 10393, 10166, 10167, 10722, 10723, 10042, 10118, 10176, 10119, 10179 and 10177 of 2020

W.P.No.8324 of 2020:

All India Anna Dravida Munnetra Kazhagam,
A recognised Political Party
Having its office at:
226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014
represented by C.Ve.Shanmugam,
District Secretary,
Villupuram North. .. Petitioner

-vs-

1.Union of India,
rep. by its Secretary,
Ministry of Health and Family Welfare,
Nirmal Bhawan,
Near Udyog Bhawan Metro Station,
Maulana Azad Road,
New Delhi.

2.The Secretary,
Ministry of Human Resource Development,
No.1, West Block, Rama Krishna Puram,
New Delhi, Delhi – 110 006.

3.The Medical Council of India,
rep. by its Secretary,
Pocket 14, Section 8, Dwarka Phase 1,
New Delhi – 110 077.

4.The Director General of Health Services,
Room No.446-A,
Nirman Bhawan, New Delhi.

5.The National Board of Examination,
rep. by its Chairman,
Ansari Nagar,
Mahatma Gandhi Marg,
New Delhi.

6.Dental Council of India,
rep. by its Secretary,
Aiwan-E-Galib Marg,
Kotla Road, Temple Lane,
Opp. Mata Sundari College for Women,
New Delhi – 110 002. .. Respondents

and batch cases.

For Petitioners : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.K.Gowtham Kumar
in W.P.No.8324 of 2020

Mr.K.Balu
in W.P.No.8325 of 2020

Mr.P.Wilson
Senior Counsel
for M/s.P.Wilson Associates
in W.P.No.8326 of 2020

Mr.A.Thiagarajan
Senior Counsel
for M/s.D.Veerasekaran
in W.P.No.8327 of 2020

Ms.R.Priya Kumar
in W.P.Nos.8335, 8599 of 2020

Mr.Vijay Narayan,
Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader
and Mr.E.Manoharan
Spl. Government Pleader
in W.P.No.8361 of 2020

Mr.Richardson Wilson
in W.P.No.8420 of 2020

Mr.Stalin Abhimanyu
in W.P.No.8445 of 2020

Mr.T.Saikrishnan
in W.P.No.8452 of 2020

Mr.K.Balu
for M/s.S.Arunachalam
in W.P.No.8453 of 2020

Mr.P.Dinesh Kumar
in W.P.No.8630 of 2020

Mr.R.Ravanan
in W.P.No.8828 of 2020

For Respondents : Mr.R.Shankaranarayanan
Addl. Solicitor General
assisted by
Mr.Venkatasamy Babu
Mr.K.S.Jayaganesan
Mr.K.Srinivasa Murthy
Mr.V.Chandrasekaran
for Union of India

Mr.V.P.Raman
for Medical Council of India

Mr.Vijay Narayan
Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader
for the State of Tamil Nadu

Ms.N.Mala
Addl. Govt. Pleader (Pondy)
for respondent Nos.7 to 9
in W.P.No.8452 of 2020

COMMON ORDER

(Order of the Court was made by ***The Hon'ble Chief Justice***)

This legal battle has been brought forth practically by all the

major political parties of the State and a couple of individual candidates seeking admission regarding reservations for the Other Backward Classes in the All India Quota seats contributed/surrendered by the State relating to Under Graduate and Post Graduate medical courses in the State Government/Union Territory and the Aided Medical Colleges, the admissions whereto are regulated by the Medical Council of India and the Dental Council of India. The concern has been expressed by political forums and this is a unique litigation where the State Government in power in Tamil Nadu has also joined hands on an equal footing with the other petitioners to press forward the implementation of such reservation.

2. All the thirteen writ petitions before us broadly raise one issue, namely, that of non implementation of the policy and percentage of reservation for Other Backward Classes in the State of Tamil Nadu and the Union Territory of Puducherry, to the extent as provided for – 69% (50% for Other Backward Categories and 19% for the Scheduled Caste/Scheduled Tribe Categories in the State of Tamil Nadu), and 50% (34% for Other Backward

Categories and 16% for the Scheduled Caste/Scheduled Tribe Categories in the Union Territory of Puducherry) to such of the seats in the Under Graduate as well as Post Graduate Courses of recognized State run Medical Institutions within the above territories, contributed towards the All India Quota pool by the State, namely 50% of the seats in the Under Graduate courses and 15% seats of the Post Graduate Courses run in these institutions, including Dental Education Courses.

3. The challenge is based on the ground that such reservation has constitutional backing and is protected under Article 15(4) and (5) of the Constitution of India read with the **Tamil Nadu Backward Classes,** Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, **1993** and the amended Medical Council of India Regulations for Graduate Medical Education as well as for Post Graduate Medical Education.

4. It is the contention of all the petitioners that reservation of seats in medical colleges for respective categories has to be provided as per applicable laws prevailing in States/Union Territories, nonetheless, in spite of these provisions being in place, and the proposal by the Union Government itself as disclosed in the short counter-affidavit filed by them, both in these proceedings as well as a similar affidavit filed in W.P.(C) No.596 of 2015 pending before the Supreme Court of India in the matter of ***Dr.Saloni Kumari and another v. Director General, Health Services and others***, which is incidentally sworn by the same Officer, no steps have been taken to extend this benefit of reservation against All India Quota seats contributed/surrendered by the State in spite of having specifically provided for and, therefore, a mandamus has been prayed for seeking implementation of reservation in favour of the Other Backward Categories to the aforesaid class of All India Quota seats available in the State run medical colleges and also apply the same percentage of State specific reservation in the institutions run and managed by the Central Government.

5. It is contended that, by not doing so, the respondents, namely, Union of India and the Medical Council of India, as well as the Counselling Agency, are acting arbitrarily by not enforcing the provisions of law for extending such benefit, thereby depriving the members of the Other Backward Categories from achieving their target of getting admission against All India Quota seats in these courses. It is urged that this action is not only arbitrary and in violation of the aforesaid legal provisions, but is also discriminatory, in as much as the Central Government while applying the **Central Education Institutions (Reservation in Admission) Act, 2006** in respect of the institutions maintained by the Central Government has already admitted of having applied 27% reservation against All India Quota in favour of the Other Backward Categories in those class of institutions. It is, therefore, submitted that for the same courses of study a different parameter is being adopted by non implementation of State reservation policy against All India Quota seats surrendered/contributed by the State, which is mandated by law, as indicated above, and hence a mandamus deserves to be issued directing them to implement the same in order to prevent

any further arbitrariness and discrimination in the matters of admission in Under Graduate and Post Graduate Courses against the seats that have been contributed by the State towards the All India Quota pool.

6. The above contention is also sought to be supplemented by relying on the judgment in the case of ***Abhay Nath v. University of Delhi, (2009) 17 SCC 705***, to urge that if reservation has been included as per the direction of the Supreme Court in that case, including in respect of Scheduled Castes and Scheduled Tribes, which is stated to have been implemented by respondents in their favour, then there is no reason to implement the same policy in relation to Other Backward Categories, who are entitled for the benefits of reservation.

7. It is submitted that the All India Quota admission is implemented through the Director General of Health Services, Government of India, and the said authority is under a bounden duty to implement the State reservation by making allocations,

which is deliberately not being done in spite of the law being in place. It is submitted that the Central Government authorities have no power to control and implement State specific reservation in respect of State contributed seats both in the Under Graduate and Post Graduate courses, in as much as these seats are all funded by the State Government and are of the State run medical colleges. The reservation policy of the State, therefore, has to necessarily apply, as it is a necessary concomitant of the seats which are to be filled up, where the Director General of Health Services, Government of India, is only an agency to implement the admissions, where he is bound by the reservation policy of the State, as prescribed both in law and by the Medical Council of India Regulations. It is submitted that the seats continue to be that of the States even if they have been contributed to the All India Quota pool and their status is not severed so as to denude the authority of of the State to apply the reservation policy of that particular State.

8. The choice of reservation is not left to the Central Authority. Even if the seats have been contributed, or as indicated

surrendered, to the All India Quota pool, the State specific reservation percentage continues to stick to the seat. The only authority available to the Central Government is to implement the counselling fairly and secure admissions on merit out of the candidates who have qualified for the NEET Examinations. Beyond this, it is urged, the respondents have no authority to control, or in any way regulate, the reservation policy in respect of admission against these State contributed/surrendered seats to the All India Quota in the State run Government medical colleges. The status of the 13 petitions filed is as follows:-

(1) **W.P.No.8324 of 2020**
[All India Anna Dravida Munnetra Kazhagam v. Union of India and others]

9.1. This writ petition has been filed by All India Anna Dravida Munnetra Kazhagam, represented by its District Secretary, in public interest, for implementing the reservation policy as indicated above. The petitioner claims itself to be the Ruling Party in the State of Tamil Nadu, on whose behalf, Shri AR.L.Sundaresan, learned Senior Counsel, has advanced his submissions.

9.2. Shri Sundaresan has adopted the submissions advanced by learned Senior Counsel Shri P.Wilson in W.P.No.8326 of 2020 and in addition thereto, he has invited the attention of the Court to Section 4 of the 1993 Act read with Article 15(5) of the Constitution of India to emphasize that the 1993 Act categorically enjoins a mandate of 69% reservation in the annual permitted strength for admission to an educational institution. It is urged by him that the Central Government cannot introduce any rider, as stated in their counter affidavit, to defeat the very policy and percentage of reservation, which has for long not been implemented. The legal rights preserved under the 1993 Act deserve to be enforced by a mandamus as prayed for.

(2) **W.P.No.8325 of 2020**
[***Dr.Anbumani Ramadoss, Member of Parliament v. The Union of India and others***]

10.1. This writ petition has been filed by a Member of Parliament and Former Union Health Minister, Dr.Anbumani Ramadoss, and Shri K.Balu, learned counsel for the petitioner,

submits that the relief prayed for in this writ petition is slightly divergent from what has been prayed for by the other petitioners, in as much as the contention raised is that the Union Government has not been faithfully implementing even the 27% reservation which it professes to do in Central Government institutions, and rather it has avoided to do so in the State Government run medical colleges against the All India Quota seats to which the States have contributed in the ratios of 15% in Under Graduate seats and 50% in the Post Graduate seats.

10.2. Shri K.Balu limits his argument by contending that to this extent only and further contends that paragraph (11) of the short counter affidavit of the respondent No.4 very cleverly introduces a rider even in the proposal made by it, that the said proposal can be implemented only by increasing the number of seats. It is urged that this intention clearly reflects that the Central Government will never implement even this percentage, as there are no increase in the number of seats in the offing. The argument is that the submissions raised in paragraph (11) are an empty offer

that will never see its conversion into reality. It is for this reason that the petitioner has come forward for a mandamus to command the respondents to implement the same and extend the benefit of reservation to the extent of 27%.

(3) W.P.No.8326 of 2020
[Dravida Munnetra Kazhagam v. Union of India and others]

11.1. Shri P.Wilson, learned Senior Counsel and himself a Member of Rajya Sabha, has been heard on behalf of the Dravida Munnetra Kazhagam, a major opposition political party in the State of Tamil Nadu and in the Union Territory of Puducherry.

11.2. Shri Wilson relying on the provisions of the 1993 Tamil Nadu Act, the Central 2006 Act as well as Articles 15(4) and (5) of the Constitution of India urged that the mandate of reservation is a constitutional mandate and has been acknowledged as a core element of the Constitution, which is being virtually violated by not implementing the reservation policy by the Central Government.

11.3. He submits that in view of the judgment in the case of ***Abhay Nath*** (supra), and other decisions that he has relied on, including the judgment in the case of ***Gulshan Prakash and others v. State of Haryana, (2010) 1 SCC 477***, it is evident that the State Governments, once they prescribe for reservation, the same is protected under the enabling provision of Articles 15(4) read with 15(5) of the Constitution of India and, accordingly, once the policy of reservation has been spelt out in the 1993 State Act for educational institutions in the State of Tamil Nadu, then in that event the expression used in the Regulations framed by the Medical Council of India for implementing the State Policy of Reservation is required to be enforced also against the seats contributed by the State to the All India Quota, which has deliberately not been done by the respondents.

11.4. He has contended that there is no valid reason nor any intelligible differentia has been pointed out so as to not apply reservation in favour of the Other Backward Categories in the

courses in question, for which there is a clear mandate in law. The apathy on the part of the respondents in depriving the large number of students entitled for reservation and who have cleared the NEET test cannot be kept waiting endlessly on account of the inaction of the respondents. The denial of a constitutional right of receiving admission by employing the provisions of reservation clearly hits Article 14 of the Constitution of India and, therefore, a mandamus as prayed for deserves to be granted.

11.5. Shri Wilson also invited the attention of the Court to the judgment in the case of ***State of U.P. v. Dinesh Singh Chauhan, (2016) 9 SCC 749*** and has urged that in view of the law laid down therein, there is no escape from the conclusion that the Medical Council of India Regulations and the reservation policy are nowhere in conflict with each other. The Regulations are a complete code. He further submits that the judgment in the case of ***Abhay Nath*** (supra) dilutes the position that was taken earlier by the Apex Court in ***Pradeep Jain v. Union of India, (1984) 3 SCC 654*** and the other cases of ***Rajeshwaran and K.Jayakumar*** (infra) and he

submits that the counter affidavit by the Union of India clearly explains that the policy of State specific reservation has been accepted on principle. He further submits that there is no need for any further exercise of power except to implement the same, because the Regulations framed by the Medical Council of India, namely Regulations 5 and 9, are a self-contained code. He has further tendered written submission that have been extracted hereinafter.

(4) W.P.No.8327 of 2020
[Dravidar Kazhagam v. The Union of India and others]

12. This writ petition has been filed by another political party and Shri A.Thiagarajan, learned Senior Counsel while advancing his submissions has adopted the same arguments as advanced by Shri P.Wilson in W.P.No.8326 of 2020.

(5) W.P.No.8335 of 2020
[Vaiko, General Secretary, Marumalarchi Dravida Munnetra Kazhagam v. Union of India and others]

13. This writ petition has also been filed by Shri Vaiko, a Member of Parliament, raising the very same issues of reservation in respect of Other Backward Categories not being implemented by the respondents and Ms.R.Priya Kumar, learned counsel for the petitioner, has adopted the same arguments as that of Mr.P.Wilson.

(6) W.P.No.8361 of 2020
[State of Tamil Nadu, rep. by its Secretary to Government v. Union of India and others]

14.1. This writ petition has been filed by the Government of the State of Tamil Nadu itself with an affidavit supported by the Principal Secretary, Health and Family Welfare Department, where the learned Advocate General, Shri Vijay Narayan, has advanced his submissions contending that the entire history of this pursuit of reservation of seats in medical colleges began with the challenge raised to the claim of domicile reservation that came to be decided by the Three Judge Bench of the Apex Court in ***Pradeep Jain*** (supra). He submits that, that was a case where 100% domicile reservation that was sought to be introduced by some of the States

was struck down by the Supreme Court, as the same was violative of Article 14 of the Constitution of India and such a reservation was against the interest of meritorious students.

14.2. Shri Vijay Narayan submitted that it is thereafter that the concept of a scheme for providing an All India Quota with a contribution/surrender of 15% seats in the M.B.B.S. Under Graduate Courses and 50% of seats (initially 25%) in Post Graduate Courses was introduced through a judicial intervention of the Apex Court. Travelling down in history, he submitted that the Central Government itself finding the issue of reservation required to be protected by the Constitution, introduced a Constitutional Amendment and by the 103rd Amendment to the Constitution, Article 15(5) was incorporated. Immediately upon this constitutional amendment, the Central Government came up with the 2006 Act. The Medical Council of India Regulations also came to be amended and in order to support such amendment, the Indian Medical Council Act, 1956 also came to be amended bringing in provisions like Sections 33(ma) and 33(mb) read with Section

10D.

14.3. He submitted that the introduction of NEET also did not exclude reservation and the Apex Court in the judgment in the case of ***Yatinkumar Jasubhai Patel and others v. State of Gujarat, (2019) 10 SCC 1***, more particularly in paragraph 9.4, has held that the introduction of NEET does not affect reservations. He, therefore, submits that reservation itself to the Other Backward Categories in the All India Quota seats of Under Graduate and Post Graduate Courses as provided through the State legislations is clearly saved and, hence, the percentage of reservation that has to be applied would be in accordance with the 1993 Act.

14.4. He contends that this entire legal scheme, therefore, clearly envisages extending the benefit of State reservation against the State contributed seats towards All India Quota, which is termed as a surrender. The same does not amount to surrendering the applicability of reservation against these seats. It is urged that it is only the counselling which is conducted by the respondents according to the merit list as announced after the NEET

examinations and the rest of the implementation has to be by the laws applicable according to the Medical Council of India Regulations itself and he submits that this change in law with regard to reservations is clearly decipherable immediately upon the delivery of the judgment in the case of ***Abhay Nath*** (supra). Thus reservation, according to him, is legally protected and which is now being admitted by the Central Government in the short counter affidavit, but in a different manner so as to make it unimplementable.

14.5. He, therefore, contends that the State specific reservation has to be applied for admissions even against those seats that have been contributed and surrendered by the State to the All India Quota in all State run Government medical colleges to the extent of 69% in the State of Tamil Nadu.

14.6. The learned Advocate General also contends that Regulation 9(4) of the Medical Council of India Postgraduate Medical Education Regulations, 2000 is in two parts. The first is that the

application of reservation in the first sentence is quite clear. This cannot be read to exclude the All India Quota seats contributed by the State. Secondly, the Regulation itself ensures that this will have to be in accordance with the State-wise as well as All India merit list to be prepared according to NEET Examinations. Thus, there cannot be any doubt about the applicability of State specific reservations in admissions.

(7) **W.P.No.8420 of 2020**
[T.G.Babu v. Union of India and others]

15.1. This writ petition has been filed by a working Medical Officer, who is a candidate for admission in the Post Graduate Courses. Shri Richardson Wilson, learned counsel, submits that if the reservation as pleaded for is implemented, then the petitioner will be benefited in getting admission through the Other Backward Categories reserved quota.

15.2. The contention by the learned counsel is similar to that

what has been advanced by Mr.Wilson and the other learned counsel, which has been adopted by the learned counsel appearing in the case.

(8) **W.P.No.8445 of 2020**
[Communist Party of India (Marxist) v. Union of India and others]

16.1. This is a writ petition filed by the Communist Party of India (Marxist) raising the same plea and contending that unequals cannot be treated equally and, therefore, to deny reservation to the Other Backward Categories is hitting at the root of the promise of reservation, for which laws have already been framed taking the aid of Article 15(5) of the Constitution of India. Its non implementation and defiance by the Central Government amounts to hitting at the basic structure of the Constitution of India, in as much as it has now been settled by the Apex Court that Article 15 of the Constitution of India also forms part of the core values of the Constitution of India.

16.2. Shri Stalin Abhimanyu, learned counsel has urged that

the reservation policy sought to be implemented is in tune with the constitutional aspirations contained in the preamble as well as the fundamental rights guaranteed in Part III thereof and, hence, any such action on behalf of the Central Government or the Medical Council of India/Dental Council of India to deny the benefits arising out of reservation under the State specific percentage, which deserves to be applied and has already been argued by the learned counsel, amounts to an arbitrary exercise of power.

(9) W.P.No.8452 of 2020
[R.K.R.Anatharaman v. The Union of India and others]
and
(10) W.P.No.8630 of 2020
[R.Siva, Purucherry State Organizing Secretary (South), Dravida Munnetra Kazhagam v. Union of India and others]

17.1. One of these writ petitions, being W.P.No.8452 of 2020, has been filed by a Member of the Legislative Assembly of the Puducherry and the other writ petition, being W.P.No.8630 of 2020, has been filed by the Dravida Munnetra Kazhagam Unit of the Puducherry.

17.2. Learned counsel have pointed out that they adopt all the arguments as earlier advanced by the learned counsel with the modification in the prayer for implementation of the percentage of reservation, in as much as Puducherry has 34% reservation for the Other Backward Categories and 16% for the Scheduled Caste/Scheduled Tribe Categories, thus 50% reservation is satisfied according to the specific laws as prevalent in the Union Territory of Puducherry and, therefore, reservation if implemented would be well within the proposal of the Government of India as stated in paragraph (11) of their short counter affidavit. It is urged that autonomy of the Union Territory over the seats is not lost and the policy of reservation even if to be implemented by the Counselling Authority, the same has to be in tune with the law of the Union Territory which does not lose its efficacy in the matters of reservation. It is submitted that the same plea is also being pressed into service in respect of seats, the admissions whereof are governed by the Dental Council of India.

17.3. Learned counsel appearing for the petitioners in the cases relating to Union Territory of Puducherry have also filed a written submission, which is to the following effect:

"The details of the quantum of OBC reservation prevalent in Union Territory of Puducherry is detailed hereunder:

S.No.	*Backward Class Category*	*% of Reservation*
1.	Other Backward Class (OBC)	11%
2.	Backward Class Muslims (BCM)	2%
3.	Most Backward Class (MBC)	18%
4.	Extreme Backward Class (EBC)	2%
5.	Backward Tribes (BT)	1%
Total		34%

1.The total reservation in UT Puducherry (OBC reservation (34%) + Scheduled caste (16%) is 34 + 16 = 50%, which is well with limits prescribed by Hon'ble Apex Court in Indira Sawhney Case in AIR 1993 SC 477.

2.The Hon'ble Apex Court created All India Quota seats in Dr.Pradeep Jain Vs. Union of India (1984) 3 SCC 654, after validating Institutional preference and

residential preference followed by the respective States, on the sole consideration that All India Quota seats will be open to all in India without any domiciliary or residential requirement. The imposition or implementation of State specific reservation on those seats will not vitiate the purpose for which those were created.

3.The Hon'ble Apex Court in Abhay Nath Vs University of Delhi (2009) 17 SCC 705 made it clear that the All India Quota Seats is subject to vertical communal reservation, though application of OBC reservation is not explicitly mentioned.

4.The State/Union Territory, pursuant to Entry 25 List III of Schedule VII r/w Article 239-A of Indian Constitution & Section 18 of the Government of Union Territories Act, 1963, has autonomy (including power to impose reservation) over the Seats in the Educational Institutions within its Control / Territory; and the said autonomy, except relaxation of residential requirement in terms of Dr.Pradeep Jain case, is not lost over those All India Quota Seats despite surrendering those seats to Central Government (DGHS) for the sole purpose of counseling.

5.Medical Council of India and Dental Council of India Regulations, i.e. Regulation 5(5) of Graduate Medical Education Regulations, 1997 and Regulation 9(iv) of Post Graduate Medical Education Regulations, 2000 and Regulation 5(iii) of DCI Revised BDS Course Regulations, 2007 and Regulation 3 under Chapter III of Dental Council of India revised MDS Course Regulations, 2007, in its clear and explicit terms provides for State Specific reservation for Medical / Dental Seats. The condition of non-applicability of the same to All India Quota Seats cannot be read into those regulations in the absence of any explicit provisions to such effect.

In consideration of above submissions, it is therefore prayed that this Hon'ble Court may be pleased to extent reservation prevalent in Union Territory of Puducherry to All India Quota Seats UG/PG Medical / Dental seats sponsored by UT Puducherry."

(11) W.P.No.8453 of 2020
[Communist Party of India v. Union of India and others]

18.1. This writ petition has been filed by the Communist

Party of India contending that there is no surrender of seats and it is only a contribution to the All India Quota, where the lien of reservation is carried with the seat. It is urged that the character of the seat does not alter and it remains a State contributed seat, where the State law of reservation has to apply. The contention raised is that on account of its non implementation, a huge loss has been caused to the candidates belonging to the Other Backward Categories, who have been denied the benefit of reservation, for which there is no plausible explanation with the respondents.

18.2. Shri K.Balu, learned counsel has adopted the very same arguments as advanced by other learned Senior Counsel.

(12) W.P.No.8599 of 2020
[S.M.Janani v. Union of India and others]

19. This writ petition has been filed by a candidate seeking admission in Post Graduate course urging that the respondents themselves while proceeding to conduct the counselling have clearly

indicated that the guidelines and parameters fixed by the Medical Council of India Regulations will be followed. This announcement contained in the brochure is now sought to be violated while implementing the same and it is, therefore, submitted that apart from the other arguments that have already been advanced, it would be additionally seen that the respondents are now proceeding to act in breach of their own promise as declared in their brochure and are thereby violating the State specific reservation that is applicable in respect of admissions against All India Quota seats. It is, therefore, submitted that the personal rights of the petitioner to get admitted are clearly affected and hence, the relief prayed for be granted.

(13) W.P.No.8828 of 2020
[Naam Thamizhar Katchi v. Union of India and others]

20.1. Shri R.Ravanan, learned counsel has advanced two submissions contending that the respondents are acting *per incuriam* and secondly, that there is a legitimate expectancy in

favour of the candidates belonging to the Other Backward Categories which has been denied in spite of the fact that they have a right to get admission through reservation in the light of the submissions that have already been advanced by the other learned counsel.

20.2. It is urged that the announcement of the Post Graduate Admissions and the consequential result dated 11.4.2020 is not in accordance with the law that is prescribed for implementing the State specific reservation.

Submissions made on behalf of the Medical Council of India

21.1. Contradicting the submissions, Mr.V.P.Raman, learned counsel for the Medical Council of India has advanced his submissions by contending that the Regulation 9(4) is in three parts and apart from this, Regulation 9(11) mandates that the Medical Council of India has to act in compliance of all Supreme Court decisions. He, therefore, submits that there is no indication in the

Regulations that the seats contributed/surrendered by the States in the Post Graduate and Under Graduate Courses towards All India Quota have to be filled by specifically applying the State reservation policy. He submits that the words "*All India Quota*" do not occur in either of these Regulations and, therefore, it is not for the Medical Council of India to adopt an interpretation for which no mandate is specified therein.

21.2. He submits that the Central Government has taken steps for implementing the 27% reservation in favour of the Other Backward Categories in Central Government institutions and, therefore, any specific law with regard to extending of such benefit in respect of All India Quota seats to provide reservation to State candidates in the State run medical colleges being wanting, it is not for the Medical Council of India to implement law unless there is a proposal duly finalized or a law declared to that effect.

21.3. He submits that there is no question of any defiance by the Medical Council of India and that it is simply abiding by the

Regulations that have been framed. The Counselling being conducted by the Director General of Health Services is the system approved by the Supreme Court itself that has been translated into the form of Regulations and, hence, there cannot be any inference of *mala fides* or in action on the part of the Medical Council of India.

21.4. He submits that so far as the proposal by the Central Government is concerned, that is for the Central Government to explain.

22. The Medical Council of India has opposed these petitions and has urged that any such claim made by the petitioners would be modifying the law already in place, and since this particular aspect as raised with regard to benefit of reservation against the All India Quota seats is concerned, the same being part of the scheme of the judgments of the Apex Court pronounced from time to time, it is only the Apex Court which can clarify the same and it cannot be enforced through a direction under Article 226 of the Constitution of India by this Court. He has also submitted a brief written

submission, which is extracted herein under:

> *"The Board of Governors in Supersession of the Medical Council of India submits as follows:*
>
> *The petitioners in this batch of writ petitions seek implementation of reservation for OBCs in the All India Quota seats in UG and PG medical admissions. The petitioners rely on Regulation 5(5) of the Graduate Medical Education Regulations, 1997 and 9(4) of Post Graduate Medical Education Regulations, 2000 framed by MCI. For the sake of convenience, Regulation 5(5) is as extracted below:*
>
> > *"**(5) The reservation of seats in Medical Colleges for respective categories shall be as perapplicable laws prevailing in States/Union Territories.** An All India merit list as well as State/Union Territory-wise merit list of the eligible candidates shall be prepared on the basisof marks obtained in 'National Eligibility-cum-Entrance Test and candidates shall beadmitted to MBBS course from the said lists only."*
>
> *Regulation 9(4) of PG Medical Education Regulations, 2000 is as extracted below:*
>
> > *"**The reservation of seats in Medical Colleges/institutions for respective***

categories shall be as per applicable laws prevailing in States/Union Territories. *An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only.*

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."

The Medical Council of India respectfully contends as follows:

I. All INDIA QUOTA SEATS ARE GOVERNED BY THE SCHEME FRAMED BY THE SUPREME COURT

It is submitted that the All India Quota was conceived of by the Hon'ble Supreme Court in Pradeep Jain v Union of India reported in (1984) 3 SCC 654. The Apex Court directed that a certain percentage of seats must be filled purely on merit without applying reservation in any form. This scheme was modified from time to time in Dinesh Kumar v Motilal Nehru Medical College (I) reported in (1985) 3 SCC 22 and Dinesh Kumar v Motilal Nehru Medical College (II) reported in (1986) 3 SCC 727. Further in Abhay Nath reported in (2009) 17 SCC 705 the Court directed reservation for SC/ST alone would be provided in the All India Quota. Therefore, from the beginning, the counselling for All India Quota is done only on the basis of the orders passed by the Supreme Court. This position has continued even after the introduction of National Eligibility and Entrance Test in 2010. It is therefore most humbly submitted that any changes to the current scheme can be made only by the Hon'ble Supreme Court.

II.The MCI Regulations govern State Quota Seats:

Without prejudice to the above, it is submitted that the provisions of Regulation 5 of the Graduate Medical Education and Regulation 9 of the Post Graduate Regulations deal only with the seats to be filled in State

Quota. The regulations do not have any bearing on the All India Quota which is governed completely by the orders of the Supreme Court. The proviso to 9(IV) which provides for weightage marks to be given to candidates in the service of the state government is applicable only to the State Quota seats. This Hon'ble Court in WP.6169 of 2018 vide order dated 18.04.2018 has categorically held that proviso cannot be applied to All India Quota seats. Further a reading of Regulation 9(VII) and 9 (VIII), which provide for bifurcation between government and management quota, and reservation of seats in diploma courses for in-service candidates, reveal that these provisions cannot be applied to All India Quota and are restricted in their operation only to the state quota seats.

Further, this interpretation is also furthered by Regulation 9A in the PG Medical Education Regulations which designates the counselling authority for the All India and State Quota as Director General of Health Sciences, (DGHS). Further it provides that such counselling shall be as per the ***existing scheme****. This makes it clear that counselling for the All India Quota proceeds on the basis of the scheme approved by the Supreme Court and therefore 9(4) does not have any bearing on the same. It is also relevant to point out that the regulations have been understood by all State*

Governments including the State of Tamil Nadu, only in this manner ever since their introduction in the statute book.

III.THE ADMISSIONS IN THE ALL INDIA QUOTA HAVE TO BE IN CONFORMITY WITH JUDGMENTS OF THE SUPREME COURT.

It is submitted that any admission or counselling process has to comply with the orders/judgments of the Hon'ble Supreme Court. Regulation 5(7) of GME and 9(11) of PGME expressly provide for this. The admission process in the All India Quota scheme has to comply with the orders passed by the Supreme Court, and hence the authorities cannot deviate from the same without the approval of the Supreme Court. 5(7) of the GME and 9(11) of PGME are identical and are extracted below

> *"No authority/institution shall admit any candidate to any postgraduate medicine course in contravention of the criteria/procedure as laid down by these Regulations and/or in violation of the judgements passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention / violation of aforesaid shall be discharged by the Council forthwith. The authority / institution which grants admission*

to any student in contravention / violation of the Regulations and / or the judgements passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/ years."

As pointed out above, since the All India Quota seats are filled up in compliance with the directions of the Hon'ble Supreme Court, any reservations for any category including OBC in the All India Quota can be implemented only with the Supreme Court permitting modification of the scheme formulated by the Supreme Court."

Submissions made on behalf of the Central Government and the authorities

23.1. Learned Additional Solicitor General of India for the Central Government and the authorities, with the aid of the decisions that have been cited at the bar, has come up contending that whatever directions have been given by the Supreme Court

have been implemented, but so far as these All India Quota seats are concerned, once they are surrendered to the pool, then it is the exclusive jurisdiction of the Director General of Health Services to apply the Rules that are applicable for such admission, including the provisions of reservation.

23.2. He submits that the contents of paragraph (11) of the counter affidavit indicate only a proposal, which has not yet been finalized, and the practical applicability of any such reservation as proposed has to be decided as a matter of policy by the Central Government, including the consideration of the number of seats or otherwise, and then a decision has to be taken. He contends that at this stage a mandamus for the implementation of the reservation policy cannot be made and he would pray that the writ petitions be dismissed.

24. The focus of the arguments on behalf of the petitioners is based on the premise that all State run medical colleges are funded and maintained by the State Government and the benefit of medical

education in such Government run medical colleges, either in the Under Graduate or Post Graduate level, offers full facilities and as such, such Government run, maintained and aided medical colleges exist on the infrastructure exclusively provided by the State. Thus, the seats available in Under Graduate and Post Graduate Courses continue to be of the States and it is only for the purpose of conducting the admission process, in order to ensure a common merit on All India basis, that the Central Government and the Medical Council of India have been given a limited control. The said control, according to the petitioners, is limited only for the purpose of adjudging the standard of a candidate by virtue of his academic merit in the admission entrance examinations conducted on all India basis, without giving any further control, so as to avoid the constitutional mandate of reservation preserved in the States. The contention is that so far as extending the benefit of constitutional reservation is concerned, it is the policy of the State Government that has to be necessarily taken into account for extending the benefit of reservation, which, in the present case, is in relation to the socially and educationally backward categories in the All India

Quota of Under Graduate and Post Graduate seats in the State run medical colleges.

25. The petitioners contend that the seats meant for All India Quota are contributions of the State itself and continue to be maintained by the State and, therefore, the State does not loose its constitutional authority to implement reservation in favour of Other Backward Classes/Backward Categories, which they are entitled to do and in the State of Tamil Nadu through the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993. The law, therefore, has to be enforced and implemented, as it has the constitutional backing of a valid law relating to education having been legislated under Entry 25 of List III, which now stands further strengthened with the 103rd Constitutional Amendment introducing Article 15(5) of the Constitution of India.

26. It is their contention that reservations in favour of

backward categories was observed to be a measure of social justice even in those cases which were decided by the Supreme Court prior to the Constitutional Amendment and even if there was some embargo, the same now stands lifted with the position having been clarified later on by the Supreme Court and the steps taken by the Government of India as well as the Medical Council of India itself for extending the benefits of constitutional reservations, including to the Other Backward Categories as well.

27. Once this is the development in the matter of admissions in medical colleges, then the hesitancy to implement reservations being extended to the seats available in All India Quota to the Other Backward Categories is a denial of rights to the Other Backward Category candidates, who are otherwise entitled on the basis of merit achieved in the All India Common Entrance Examination, to be given admission in the Under Graduate and Post Graduate courses by applying reservation.

28. The aforesaid arguments have been vehemently opposed

by the Union of India contending that once the seats have been allocated under a scheme framed by the Hon'ble Supreme Court to the extent of 15% in Under Graduate courses and 50% in the case of Post Graduate courses to the All India Quota, then the State loses any control of exercising its option in the manner of admission and, according to the judgments that have been relied on by the learned Additional Solicitor General of India, the scheme framed by the Supreme Court remains intact, subject to any modifications introduced by the Government of India itself. It is, therefore, urged that a mandamus compelling the Central Government to enforce the State specific percentage of reservation to Backward Categories cannot be issued, as reservation is extended through an enabling provision of the Constitution and if the Central Government is exercising its wisdom in respect thereof, there cannot be a compulsion to accept reservation as projected by the State or by the petitioners, as that would be beyond the pale of judicial intervention, contrary to the scheme already approved without any modification by the Apex Court till today. It is urged on behalf of the Union of India that once the percentage of seats as per the

scheme formulated by the Apex Court comes within the pool of All India Quota, then in order to maintain the standard of excellence, the mode of admission, or otherwise, would fall exclusively within the powers of the Central Government and the Medical Council of India, subject to the laws that have been framed under Entry 66 of List I, and unless any such law or rule is modified either by the Central Government or by the Medical Council of India, such a compulsion cannot be judicially enforced, as the All India Quota seats are to be exclusively controlled in its matter of admission, up to the stage of filling up of the seats, by the Central Government without any intrusion by the State Government. It is urged that even after the 103rd Constitutional Amendment, the constitutional provisions are only enabling provisions and in this regard, what has to be kept in mind is not only the policy of the Central Government, but also the Regulations framed by the Medical Council of India, which have to be in tune with the judgments pronounced by the Apex Court that have laid the foundation of the All India Quota. The Apex Court has nowhere given any leverage or any concession to the State Governments to exercise any control whatsoever with

regard to the admissions against the seats of Under Graduate and Post Graduate courses in State run medical colleges contributed towards the All India Quota. In the absence of any such indication in any of the judgments relating to the All India Quota, it is only the decision of the Central Government and the Regulations of the Medical Council of India that would prevail.

29. Coming to the short counter affidavit filed on behalf of the Union of India, learned Additional Solicitor General of India has urged that the said facts have been explained in the affidavit and further elaborating his submissions, he submits that a proposal to apply State specific reservation for Other Backward categories on All India Quota seats is with a condition that it will not exceed 50% of the total available seats and it shall further not disturb the existing reservation which can be achieved by proportionately increasing the number of seats with the cooperation of all the participating States and the Medical Council of India. It has been submitted that there was no quota of reservation as against the State contributed/ surrendered seats for All India Quota for Other Backward Categories

in the past. In addition thereto, learned Additional Solicitor General of India has also submitted a 26 paragraph written submission, which is extracted herein under:

> *"The batch of Writ Petitions filed before this Hon'ble Court challenging the NEET-PG 2020 results published on 11.04.2020 by the 5th Respondent National Board of Examination and to direct Respondents to implement reservation for OBC in the state surrendered seats in All India Quota in UG, PG and Diploma Medical & Dental Courses for the year 2020-21.*
>
> *It is submitted that the said Writ Petitions deserves to be dismissed for the reasons set out during arguments before the Hon'ble Court and morefully set out herein below:*
>
> ***Brief Factual History of Evolution of 15% and 50% Seats to be Surrendered to All India Quota***
>
> *1. The question that arises for consideration is whether after creating a common pool of seats for admission to medical course both UG and PG, and having transferred/contributed/surrendered 15% of the seats by every state from and out of total number of seats available can the State Government seek to apply the law of the respective state to implement the quota for*

backward communities. This question is based on the fact that Union of India has already filed a pleading before the Hon'ble Supreme Court conveying its proposal to make available reservation for OBC to the extent of 27% with a cap of 50% on overall reservation.

2. The facts set out in the affidavits by various Petitioners are required only to understand the background. But, the most important background is that the dispute owes its genesis to a direction given by the Hon'ble Supreme Court on this issue. it is therefore imperative to state that the common pool of seats at the hand of the Union of India owes its origin to the direction given by the Hon'ble Supreme Court and it dates back to 1984.

3. Prior to 1984, it was a practice that states, with an inward looking attitude and with the sole objective of localisation and spirit of regionalism, as against national interest, sought to reserve seats completely for local students, by setting out domicile reservation and institutional preference.

4. This practice came to be challenged before the Hon'ble Supreme Court in ***Pradeep Jain v. Union of***

India, *1984 3 SCC 654, wherein, the Hon'ble Supreme Court, for the first time, came up with the concept of States surrendering seats to the All India Quota.*

5. The judgment in Pradeep Jain and its implementation ran into several issues, as detailed in the judgment in ***Dr. Dinesh Kumar &Ors. v. Motilal Nehru Medical College &Ors****(Dinesh Kumar II), 1986 3 SCC 727, as a result of which, the Hon'ble Supreme Court introduced the concept of surrendering 15% of the seats by the State to the All India Quota for UG Courses and 25% to the All India Quota in PG Courses. The 25% surrender for PG Courses has subsequently been increased to 50% of the total number of seats in* ***Saurabh Chaudri v. Union of India*** *(2003) 11 SCC 146). Such surrendering of seats should be done, without taking into account, any reservations which may be provided for, i.e. if 100 seats are there, irrespective of any reservation in the States, 15 seats or 50 seats, as the case may be, should be surrendered to the All India Quota, which surrender, has the effect of a transfer, with all rights and obligations, in relation to the seats, being that of the Central Government.*

6. The march of law relating to medical admissions in

India can be traced from a perusal of the following judgments, which includes the concept of States surrendering seats for All India Quota, the process for filling up these seats, etc.

· ***Pradeep Jain v. Union of India,*** *1984 3 SCC 654, Paragraph21, 22 @ pg no. 36, 37 of Case Law Compilation submitted on behalf of the Union of India.*

· ***Dr. Dinesh Kumar &Ors. v. Motilal Nehru Medical College &Ors*** *Dinesh Kumar (I)1986 3 SCC 22- Paragraph 5,6 pg 49,50*

· ***Dr. Dinesh Kumar &Ors. v. Motilal Nehru Medical College &Ors****(Dinesh Kumar II), 1986 3 SCC 727 – Paragraph 4 – 6 pg 65-67*

· ***Sharwan Kumar &Ors. v. DGHS &Anr(1993) Supp (1) SCC 632 –*** *Paragraph 4, 5 pg 77*

· ***Saurabh Chandra v. Union of India 2003 11 SCC 146 –****Paragraph103 pg 138,139* ***Concept of Reservation is Inapplicable to All India Quota, as held by the Hon'ble Supreme Court of India***

*7. Even in the judgment of Dinesh Kumar II, the Hon'ble Supreme Court was aware of the issue concerning reservation in All India Quota, as is evident from para 6 of the said judgment. The Hon'ble Court, considering the complexities in the said matter, left it open for itself to consider at a later date. (**Refer***

Paragraph 6 of the judgment)

8. Subsequently, the said issue came to be considered by the Hon'ble Supreme Court in the case of ***Union of India v. Rajeshwaran & Anr*** *(2003) 9 SCC 294, wherein, in an appeal against the order of the Hon'ble Madras High Court, directing the grant of reservation for state surrendered seats in the All India Quota, the Hon'ble Supreme Court held that there was no requirement to grant such reservation in the Court created All India Quota from state surrendered seats. Following the judgment in Dinesh Kumar II, the Hon'ble Court categorically held that 15% as earmarked in the scheme framed by the Supreme Court should not be disturbed. It was held that each state will have different categories of SC/ST and the Central Government will have a different category, which makes adjustment of seats difficult. Moreso, the Hon'ble Supreme Court held that the State Government can provide for reservation of SC/ST in 85% seats available to them. Consequently, the Hon'ble Supreme Court set aside the order of the Hon'ble Madras High Court which had issued a mandamus for granting reservation in the 15% All India Quota for SC/ST. It is relevant to note that it is the same prayer that is sought vide the instant batch*

of cases, albeit in the context of OBCs. With the said issue having been put to rest by an authoritative decision of the Hon'ble Supreme Court, it is submitted that it is no longer res integra.

9. Subsequently, when the said issue was again raised in 2008, again in the context of SC/ST reservation in All India Quota of 15% State Surrendered seats, the Hon'ble Supreme Court in ***Union of India &Anr v. K Jayakumar &Anr****2008 17 SCC 478 reiterated its position in Union of India v. Rajeshwaran&Anrand Dinesh Kumar II andheld that provisions of reservations will have no application to the 15% All India Quota.*

10. It is relevant to note that a 3-Judge Bench of the Hon'ble Supreme Court in Gulshan Prakash, has affirmed the decision of the 2-judge bench in Union of India v Rajeshwaran. Also, in the said decision, the Hon'ble Supreme Court has held that State Quota and All India Quota, including state surrendered seats to All India Quota, are independent categories for medical admissions and consequently, central laws of reservation cannot apply to state quota seats. Conversely, in the instant case, where State legislations on reservation are sought to be applied to

state surrendered seats to the All India Quota, the same rationale in Gulshan Prakash should be applied and the writ petitions should be dismissed.

11. The relevant case laws on this subject along with relevant paragraph nos are as follows:

· ***Union of India v. Rajeshwaran&Anr*** *(2003) 9 SCC 294, Paragraph7-9 @ pg no. 82-83 of Case Law Compilation submitted on behalf of the Union of India.*
· ***Union of India &Anr v. K Jayakumar &Anr****2008 17 SCC 478 Paragraph 5,6 @pg no. 85, 86*
· ***Gulshan Prakash&Ors. v. State of Haryana &Ors.*** *2010 1 SCC 477 Paragraph 11, 16, 23, 24, 28*

· ***Magan Mehrotra &Ors. v. Union of India &Ors****. 2003 11 SCC 186 – Para 4 (delivered after Rajeshwaran)*

Reliance on Abhay Nath v University of Delhi, as having displaced the position in Union of India v Rajeshwaran is wholly misplaced

12. In the instant case, the question before this Hon'ble Court is one of competence. The issue before this Hon'ble Court is whether the state legislation

applied to All India Quota seats or whether Central laws will apply. If the state legislation is to apply, the writ petitions deserve to be allowed whereas if central laws and regulations are to apply, then the writ petitions deserve to be dismissed. It is submitted that on matters on competence, the judgment of the Hon'ble Supreme Court in Abhay Nath is solely and completely in favour of the Union of India only. The said judgment permits the Union of India to administer reservations for SC/STs alone, as per its own policy of 15% for SCs and 7.5% for STs. It is relevant to note that in this regard, as submitted by the Ld. Advocate General of Tamil Nadu, the reservation in the state of Tamil Nadu is only 18% for the SCs and 1% for the STs. If for the purpose of reservation for SCs and STs, the State laws do not apply, it logically follows that a different tool cannot be employed to deal with OBC alone. If the arguments of the Petitioners are to be accepted, then it would bring an unacceptable dichotomy whereby the Center will apply 15% and 7.5% for SC and ST, at all India Quota but State government will follow 18% and 1% for State quota seats, but with regard to OBC, both the Center and State will follow the same principle. Such an argument flies in the face of the argument itself. It is therefore submitted that the Hon'ble Supreme Court has

permitted the Central Government to apply its own law and policy, then, there is no reason to depart from such principle for OBC reservation as well. In other words, on matters of competence, the judgment of the Hon'ble Supreme Court in Abhay Nath is authority for the proposition that it is the Union of India and its laws and regulations that are to be applied for state surrendered seats to All India Quota. Consequently, the reliance on Abhay Nath as permitting to apply state legislations for reservation for state surrendered seats to All India Quota is incorrect and deserves to be rejected. Similarly, submission that it is not surrender, but contribution and that state laws of reservation attach like a charge to a property, even when surrendered to All India Quota, are inconsistent with the judgment in Abhay Nath and deserve to be rejected. Consequently, Abhay Nath requires that this batch of writ petitions be dismissed in limine on grounds of seeking to apply laws of an authority which lacks competence over the said subject matter.

13. Further, in rejoinder to the submissions made on behalf of the Union of India, it was argued that the judgment in Abhay Nath has watered down the ratio in Rajeshwaranand Jayakumar. This submission is incorrect. It is submitted that the Court in Abhay Nath,

permitted the Central Government to accord SCs/STs reservation in State surrendered seats to All India Quota. However, even after the said decision in Abhay Nath and after taking note of Abhay Nath in paragraph 28 of its judgment, the Hon'ble Supreme Court in ***Gulshan Prakash &Ors. v. State of Haryana &Ors.*** *2010 1 SCC 477, affirmed its decision in Rajeshwaran. Thus, the very basis of these objections in rejoinder deserves to be rejected.*

14. Also, it is relevant to note that several High Courts and even the Hon'ble Supreme Court has subsequently followed the decision in Rajeshwaran, after Abhay Nath:

· ***Suresh Chandra vs. State of U.P,*** *Civil Misc. Writ Petition No. 26322 of 2014, Allahabad High Court (DB, where his Lordship the Hon'ble Chief Justice was a part of)*

· ***Anupam Thakur and Ors. vs. State of H.P,*** *AIR 2012 HP 14, Himachal Pradesh High Court*

· ***Sejal Garg and Ors. vs. State of Punjab,*** *CWP-16886-2019 (O&M) and CWP-17072-2019 (O&M), Punjab & Haryana High Court (DB)*

· ***Suresh Y. Shingda vs. State of Maharashtra,*** *Writ Petition No. 5339 of 2015, Bombay High Court (DB)*

· ***Narote Amol Sadashivrao and Ors. vs. State of Maharashtra****, Writ Petition No. 5290 of 2013, Bombay High Court, while considering the issue of reservation for medical seats in PG Courses. (DB)*

15. The relevant paragraphs of these judgments as cited in the case law compilation are as follows:

· ***Abhay Nath&Ors. v. University of Delhi &Ors****. 2009 17 SCC 705 Paragraph 4-7*

· ***Buddhi Prakash Sharma v. Union of India*** *2005 13 SCC 61 Paragraph 4*

· ***Gulshan Prakash &Ors. v. State of Haryana &Ors.*** *2010 1 SCC 477 Paragraph 11, 16, 23, 24, 28*

Interpretation given to the Regulation 5(5) of the 1997 Regulations and Regulation 9(iv) of the 2000 Regulations, untenable

16. It is submitted that in light of the decision of the Hon'ble Supreme Court of India in Saurabh Chandra, (2017), per para 9, it is clear that the Regulation 9(iv) is applicable only to state quota seats and not All India Quota. Consequently, it is submitted that the reliance on Regulation 9(iv) and 5(5) to argue in favour of applying the Act of 1993 to provide for reservation to state surrendered seats to All India Quota is incorrect.

17. Arguendo, even if the aforesaid argument that Regulation 9(iv) and Regulation 5(5) apply only to state quota seats is rejected, the same does not and cannot further the case of the Petitioners. It is submitted that Regulation 5(5) as well as Regulation 9(iv) does not state that the laws enacted by the legislatures at the State/Union Territory would apply. Per contra, the Regulation states that the law, as ***applicable*** *in the concerned State or Union Territory would apply. It is but obvious that Central Laws are as such applicable laws in the States and Union Territories as are the laws enacted by the concerned state legislatures. Further, per Article 141 of the Constitution of India, judgments of the Hon'ble Supreme Court are also laws applicable within the concerned states and union territories. Understood in this light, it is submitted that a conjoint and harmonious reading of Regulation 9(11) with Regulation 9(iv) would establish beyond an iota of doubt that the decisions in Rajeshwaran and Jayakumar, as affirmed in Gulshan Prakash, per Article 141 of the Constitution of India, would be laws applicable within the State of Tamil Nadu and consequently, the said decisions deserve to be enforced vide the said Regulations and not the Act of 1993, as contended by the Petitioners, for state*

surrendered seats to the All India Quota. It is further submitted that Regulation 9A and 9(4) are to be read together and not in isolation of each other to enable a purposive interpretation of the regulations in line with the ratios laid down by the Supreme Court. However, it is to be noted that the counselling for PG was over as early as April, 2020. And any order which has the effect of adversely affecting the selected candidates would be passed without hearing them.

18. The following case laws further the case of the Union of India in this regard:

· ***Tamil Nadu Medical Officers Association &Ors. v. Union of India &****Ors 2018 17 SCC 426*

· ***YatinkumarJasubhai&Ors. v. State of Gujarat &Ors*** *2019 10 SCC 1*

In Interpreting the Regulation, the understanding and practice of the authority administering it is a relevant and guiding factor

19. It is submitted that the State of Tamil Nadu, which is also one of the writ petitioners before this Hon'ble Court, has for its part been administering Regulation 9(iv) through a variety of its GOs concerning medical admissions and in all such GOs, it has understood its

domain as being limited to the 85% seats available with it and not the 15% surrendered seats. In all legal proceedings prior to the instant proceedings, the State of Tamil Nadu as well as the MCI have always understood the 15% All India Quota, to be outside of state policies for communal reservation. This is evident from the GOs, submissions and findings made in the following decisions:

· ***State of Tamil Nadu &Anr. v. R. Santosh &Ors*** *WA No. 1492 of 2015 Paragraph 9, 18, 19, 20, 27*

· ***Minor S Prashanth v. The Medical Counselling Committee &Ors.*** *WA 27 & 53 of 2017 – Paragraph 3,4, 11-14*

20. From the aforesaid judgments, it is clear that with regards to the said issue, it has always been the stance and understanding of the State of Tamil Nadu itself that it has no power or role with respect to the 15% All India Quota seats. This interpretation and understanding of the State of Tamil Nadu as well as the MCI, deserves to be taken cognizance of, and judicial deference should be given to such interpretation:

With Respect to All India Quota Seats, States have no role until reversion of seats to State Quota

21. It is trite in law relating to medical admissions that the seats surrendered by the States, if not filled up under the All India Quota, are reverted back to the State and are duly administered as per the norms guiding allotment of State Quota seats. Repeatedly, Division Benches of this Hon'ble Court have held that until such reversion, there is no role for the State to play, in matters concerning admissions to State surrendered All India Quota seats:

*·**State of Tamil Nadu &Ors. v. V S Sai Sachin&Ors.** WA Nos. 838, 843, 856, 870, 872 of 2017 Paragraph 1, 2, 8, 33, 36, 38*

*· **G. Somnath v. State of Tamil Nadu &Ors.** WP MD No. 15667 of 2019 Paragraph 6*

Acceptance of the Petitioner's Contentions results in Anomalous Situations and rendering the 15% All India Quota Otiose

22. It is submitted that the 15% All India Quota was created with the objective of creating a merit based pool of seats, to be made available for students across India. The idea behind the 15% All India Quota in Dinesh Kumar II, was that if there are 100 seats, for

15 seats, persons from all across India should be able to compete. This very object is lost, if the arguments of the petitioners are accepted. It is submitted that under The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993, only persons in Tamil Nadu can be given reservations and various castes in Tamil Nadu are categorized into OBCs. If reservation to the 15% seats is given on the basis of the State Act of 1993, it would result in a situation where out of 15 seats, 7.5 seats, say 8 seats, would carry the reservation per section 4 of the State Act of 1993. In other words, these 8 seats will have to be filled with persons who are entitled to get reservation under section 4 of the State Act of 1993, which are people who reside in Tamil Nadu. As a result of this, the number of seats available to people across India would be reduced to 7, as against the 15 seats mandated by Dinesh Kumar II. And the backward communities are not understood in the same sense across India and implementation would be difficult. It is submitted that it is for this reason that the Hon'ble Supreme Court in Rajeshwaranas well as Jayakumar rejected regional reservation based arguments.

23. It is submitted that even in Abhay Nath, it was the Central Government which approached the Hon'ble Supreme Court, to provide for reservation to SCs and STs, after working out the modalities to prevent such anomalous situations from arising, as prudently pointed out by the Hon'ble Supreme Court in Rajeshwaran and Jayakumar.

24. It is submitted that if these writ petitions are allowed medical admissions across India would get greatly affected and interest of the medical community and the public at large, would be grossly affected.

25. It is submitted that in larger public interest too, this batch of writ petitions deserve to be dismissed, to prevent anomalous situations and confusions from arising in medical admissions in India.

26. A petition under 2-A of the Rules to regulate proceedings under Article 226 of this Hon'ble Court is not maintainable. Rule 2-A would stand attracted if the following ingredients are attracted.

· Numerous persons may be affected in the event of success of the Petitioner in the Writ Petition

· The address of such persons is not known to the

Petitioner or,

· Alternatively, the court considers it necessary having regard to the need for quick decision and avoidance of delay

The Writ Petitioner wants the 4th Respondent which is the agency of the State to be the representative of the persons who may be affected by the result of the Writ Petition. The rule was enacted to ensure that at least one person who would be aggrieved or adversely affected if the Writ Petition were to be allowed should be available as a representative of the class of the persons affected. The ingredients are not satisfied, therefore 2-A is to be dismissed. The Writ Petitioner did not argue on this petition."

30. The aforesaid contentions have already been countered by Mr.P.Wilson, in his written points that have been indicated in a 18 paragraph note, which is as follows:

"1. By virtue of order in SLP No. 8081-8082 of 2020 the objection of UOI to the jurisdiction of HC to decide the issue relating to reservations in All India Quota (AIQ) and the alleged bar in hearing the matter does not survive.

2. The reservations in AIQ "including" SC/ST was permitted by Supreme Court in Abaynath case on 31.1.2007 which means all constitutional reservations are permitted. The line of judgements in Pradeep Jain and thereafter on AIQ stands modified by Abaynath.

3. Utilising the 2006 Central Act, the Central Govt implements 27% to OBC,10% EWS and 5%PwD in AIQ seats contributed by Central Educational Institutions (CEI) without approaching the Hon'ble Supreme Court in view of order in Abbaynath case. Their stance changes only for OBC reservations.

4. In "Gulshan Prakash (2010 (1) SCC 477), on 02.12.2009, SC in para 29 held that Abbaynath case's clarification relating to reservations applied to central seats only. The ratio laid down is that the State has complete control over reservation and Central reservation does not apply to State surrendered seats.

5. The 4 MCI and DCI notifications (filed in drop box -page 1-20 of typed set dated 18.7.2020) enables application of the State specific reservations in medical and dental seats. Hence the State reservation of 69% under TN reservation Act 45/94 shall stand

automatically applied. The regulations never categorised seats as "All India Quota seats or states filled up seats" for the purpose of reservation. See"State of UP vs Dinesh Singh Chauhan" (2016(9)SCC 749)para 25.4 – cl 9 of Regulation is a complete code and constitutional reservation recognised under clause 9(IV)

7. The word 'state specific' appearing in the 4 notifications is referable to reservation in a state. The subordinate legislations takes note of different reservation laws existing in different States (see status of Reservation of OBC)

8. DGHS under Regulations is to hold counselling for AIQ and is an agent /trustee to handle State contributed seats (SCS) to AIQ; DGHS/Central govt cannot choose the reservation of State or Central or reduce or to deny the same after enabling MCI and DCI regulations granting state specific reservations in all seats without any demarcations.

9. Though DGHS is not applying 50% OBC reservations to the State contributed seats to AIQ, DGHS contrary to Gulshan Prakash case has been currently applying wrong reservation in State surrendered seats in Tamil

Nadu in so far as reservation to SC/ST/PwD alone is concerned (see para 9 of counter). Thus in parah 9 central govt has accepted that in a state surrendered seats reservation is possible for SC/ST/PwD but claims impossible for OBC. Thus 15% to SC and 7.5% to ST is applied by DGHS as against existing State reservation of 18% for SC and 1% for ST in State contributed seats even today. Such wrong application of reservation by DGHS is illegal and against MCI,DCI regulations and the State's reservation has to be applied.

10. In para 11 of counter, undertaking to give state specific reservations with a cap on all reservations within 50% on State surrendered seats to AIQ on certain restrictions and conditions is ***proposed*** *which is against MCI, DCI Regulations and violation of The TN Reservation Act and Art 14, 15 of the Constitution. Cap of 50% mentioned in Pradeep Jain's case is on institutional preference reservation, not communal reservation.*

11. The reservations of that State where educational institutions (SEI) are located alone would apply to the State contributed seats to AIQ. The 2006 Central Act which grants 27% OBC reservation applies only to CEI

and not to State institutions covered under TN Act even though seats are filled up by DGHS.

12. The total reservations granted by Central Govt in CEI is SC 15%; ST 7.5% ; OBC is 27% and EWS is 10% totalling to 59.5%. Thus when CG itself grants more than 50% of reservations, it is not proper to dictate terms to State government in paragraph 11 of counter to restrict all reservations with in 50%. Such stand of Central Govt runs against federal structure and is in violation of MCI and DCI regulations.

13. The medical and dental seats are state resources. The State reservation as per TN Act attaches to the State surrendered seats to AIQ. State seat doesn't get de-reserved in the hands of DGHS while it is handling for AIQ as it is filled back in SEI only. In fact after second round of counselling when state contributed seats are not filled up by DGHS, it comes back to state to be filled up by the state itself.

14. 'character of seat as State seat' is not lost merely it is handled by DGHS under a scheme. There is no law which de-reserves the seat in the hands of DGHS. Such an interpretation flies against the Constitutional goal of Art 15 and is impermissible in law.

15. Reservation is a means to achieve equality. Social justice is a fundamental right and equally economic empowerment is a fundamental right to the disadvantage. Right to reservation backed by reservations laws is certainly a fundamental right (see 1997(5)SCC 201 paragraph 23, 26, 27, 47, 48, 51).

16. The CG gave 10% reservations for EWS while for OBC candidates, for the last 4 years they are not abiding even by their own affidavit filed before SC.

17. Since the deadline for PG admissions is extended up to 31.7.2020 under orders of SC's order dated 8.6.2020 (filed in drop box -page 21 of Typed set dated 18.7.2020), there is no impediment to redo the admission for PG before the dead line on the basis of State reservation (TN Act 45/94).

18. It is therefore prayed that this Hon'ble Court may allow the Writ Petition."

31. A common written submission on behalf of the Union Territory of Puducherry, signed by the Under Secretary to Government (Health, has been tendered by learned Additional Government Pleader

(Puducherry), which is as follows:

> *"1.It is respectfully submitted that in the Union Territory of Puducherry there is one Govt. Medical College and 7 self – financing private medical colleges, of which 4 are Deemed to be Universities.*
>
> *2.It is respectfully submitted that in the Union Territory of Puducherry, the three Private Self-Financing Medical Colleges have to share 50% of total intake of PG seats with the Govt. of Puducherry. Under the consensual agreement, the three Private Medical Colleges have shared UG medical seats to Govt. of Puducherry. Both the PG and UG seats earmarked for Govt. quota by the Self-Financing Colleges are filled by the CENTAC on NEET merit basis following the reservation policy adopted by the U.T. of Puducherry.*
>
> *The Reservation Policy followed in the Union Territory of Puducherry under State Quota Seats is given below:-*

General	-	*50%*
1) OBC	-	*11%*
2) MBC	-	*18%*
3) SC	-	*16%*
4) BCM	-	*2%*
5) EBC	-	*2%*
6) ST	-	*1%*

3.It is respectfully submitted that the Lone Govt. Medical College, namely Indira Gandhi Medial College, as per the regulations of the MCI and instructions of Govt. of India is surrendering 15% of UG and 50% of PG to DGHS, New Delhi for allotment of seats on all India basis. If any seats have been unfilled and reverted by the DGHS to Govt. of Puducherry, the reverted seats are treated as Govt. quota seats and filled, by following the reservations policy of the U.T. as stated above.

4.The three Private Self-Financing Medical Colleges have no liability to surrender any seat (PG & UG) to DGHS.

5.It is respectfully submitted that the four Deemed to be University Medical Colleges have to surrender 50% of PG and 15% of PG seats not to the DGHS, New Delhi for allotment of seats on all India basis and it is ascertained that the DGHS is not following any reservation to OBC category in filling up of PG & UG seats in the Lone Govt. College and Deemed to be University medial colleges of the U.T. of Puducherry.

6.In as much as the seats under State Quota, the Govt.

of Puducherry follow the reservation percentages of UT of Puducherry, the seats offered by Govt. of Puducherry under the All India Quota shall follow the reservation percentages of Govt. of India, which inter-alia include the OBC reservation of 27%. The underlying principle shall be the States / Union Territory / Centre concerned shall follow the respective percentage of reservation in vogue of each category.

7.It is therefore most humbly submitted that this Hon'ble Court may please be to record the above submissions and thus render justice."

32. On the submissions so raised with the opposition by the Medical Council of India in particular that this Court cannot proceed, as the scheme being one that was devised by the Hon'ble Supreme Court of India cannot be modified or otherwise interpreted by this Court has to be viewed from the angle of the developments that have taken place with the various pronouncements of the Apex Court, the Constitutional Amendments, the Amendment brought about in the subordinate legislation framed by the Medical Council of India itself in the shape of Regulations, various decisions rendered by this Court as

relied on by learned counsel and then, ultimately, the short counter-affidavit filed on behalf of the Union of India and the communication relied on by the petitioners, particularly, the D.O. Letter of the Union Minister for Health & Family Welfare, dated 18.12.2019.

33. Some of the petitioners herein had directly approached the Apex Court by filing writ petitions under Article 32 of the Constitution of India, but the Apex Court declined to entertain the same on the ground that none of the fundamental rights of the petitioners were violated for them to approach straightaway the Supreme Court. It is, thereafter, the present writ petitions were filed before this Court.

34. A clarification needs to be given in this regard that in these batch of writ petitions, at the interim stage, the Court had issued notices and had also declined to grant any interim relief. Notices were issued on 16.06.2020 and the matter was fixed on 22.06.2020 when the admission Bench of this Court declined to grant the interim relief.

35. A challenge was raised before the Apex Court against the denial of the interim relief and also with regard to the observation

made by this Court of the pendency of the matter before the Apex Court in W.P.(C) No.596 of 2015 ***(Dr.Saloni Kumari and another v. Director General, Health Services and others).*** The Apex Court, on 13.07.2020 (in SLP (C) Nos.8081 – 8082 of 2020), after having examined the issue, passed the following order:

> *"Permission to file Special Leave Petition without certified/plain copy of impugned order in Diary No. 13644/2020 is granted.*
>
> *These special leave petitions are directed against the order dated 22.6.2020 by which the High Court adjourned the matters in view of the pendency of Writ Petition No.596 of 2015 in this Court. This order was passed on the basis of the stand taken by the Union of India that the points arising in the writ petitions filed in the High Court are similar to those that arose in Saloni Kumari and Anr. Versus DGHS & Ors. (Writ Petition No.596 of 2015).*
>
> *We have perused the writ petition filed by Saloni Kumari which is pending consideration in this Court. The issue that arises in the writ petition pertains to the* ***implementation of 27% seats for admission to Post Graduate courses in the All India Quota. The***

complaint of the petitioner is that the seats in the 27% quota of OBCs should not be restricted to Central Government institutions.

Whereas, the writ petitions pending in the High Court involve a dispute pertaining to the percentage of reservation to be followed in State of Tamil Nadu in respect of the surrendered seats in the All India Quota for PG medical admissions.

As the point raised in the writ petitions pending in the High Court is not similar to that in Saloni Kumari's case, the High Court can proceed to adjudicate the writ petitions on merits. *We are informed that the writ petitions are listed before the High Court for final hearing on 17.7.2020. The High Court is requested to decide the writ petitions expeditiously.*

Special Leave Petitions are disposed of accordingly.

W.P. (Civil) No.616/2020
List next week."

36. It appears that after we had reserved the judgment,

another writ petition under Article 32 of the Constitution of India was again filed being W.P.(C) No.616 of 2020, which was dismissed as withdrawn on 21.07.2020, the order is extracted herein under:

> *"After arguing for sometime, Mr. Sanjay Hegde, learned senior counsel appearing for the petitioner seeks and is granted permission to withdraw this writ petition.*
>
> *The writ petition is, accordingly, dismissed as withdrawn."*

37. The matter, therefore, will have to be examined from the point of view of the above factors as to whether the relief prayed for by the petitioners can be proceeded with or not.

38. We are of the view that the writ petitions can be entertained in view of the aforesaid developments and also the clarification of the order of the Apex Court dated 13.07.2020, where the Apex Court has clearly indicated that the issue involved in the present writ petitions can be proceeded with by the High Court and

the pendency of the case of ***Dr.Saloni Kumari and another v. Director General, Health Services and others (supra),*** would not be an impediment to the same for the reason indicated in the order itself that is extracted herein above. Thus, the matter has to be decided in the above background and therefore, it will have to be seen as to whether the judgments of the Apex Court that have been cited at the bar by the respondents prevent this Court from proceeding any further in the matter.

39. To evaluate the contentions, we may briefly indicate that the present dispute relates only to the seats that are contributed by the States towards All India Quota, the genesis whereof lies in the scheme that came to be initiated by the Apex Court in the case of ***Dr.Pradeep Jain v. Union of India, (1984) 3 SCC 654.*** The very concept of All India Quota in order to preserve the entry of meritorious candidates was conceptualized, as at that point of time, there was no scheme for rationalising uniformed method for admissions to the Under Graduate or Post Graduate courses of medical education and therefore, in order to streamline admissions,

the Apex Court formulated a scheme with further direction that the Central Government as well as the Medical Council of India in particular would come up with a scheme setting up an adequate structure for admission to the medical colleges and at the same time, balance the equality and opportunity of such admission to the students across the country, keeping in view any disadvantages, social and economic or otherwise, but at the same time, forging a system so as to improve standards for medical education and coordination without compromising with merit.

40. The issue raised in the case of ***Dr.Pradeep Jain*** (supra) was with regard to a challenge raised to the reservation of a wholesale reservation made by some of the State Governments entirely on the basis of domicile or residence requirement within the State or on the basis of Institutional preference, regardless of merit. This was declared to be unconstitutional and in violation of Article 14 of the Constitution of India, but at the same time, the Hon'ble Supreme Court permitted reservation based on residence requirement and formed a scheme fixing an outer limit not

exceeding 70% of the seats available in the medical colleges, as a result whereof, 30% of the open seats would be available on All India basis, where such admissions would be purely on merit on the basis of either an All India Entrance Examination or the Entrance Examination to be held by the State. The judgment, therefore, also announced that in order to provide for securing merit, an Entrance Examination was required to be conducted in order to avoid any such promotion of monopoly of admission either on domicile basis or Institutional preference basis. The Apex Court, while proceeding to decide the case and laying down the scheme, had also taken into account the recommendations of the Indian Medical Council and also the Medical Education Review Committee of the Central Government.

41. What is worth noting in the context of the present dispute is about reservations in medical colleges. Measuring disparity and inequality, they came to the conclusion that certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on

a broader basis and to bring about real and not formal, actual and not merely legal equality. They also expressed that a National Entrance Examination should be ideal, which must increasingly be strived to be reached. The Court also was of the view that in super specialties, there should be no reservation at all and admissions should be granted purely on merit on All India basis.

42. An issue had been discussed with regard to the claim of backwardness in a particular region and in paragraph 18, after discussing the same, the Court observed that it was not concerned with a case of reservation or preference for persons from backward region within a State and therefore, the Court need not therefore dwell any longer upon it. However, while doing so, in paragraph 22, they took notice of the policy statement filed by the learned Attorney General, Government of India, expressing the view that sofar as admission to the Institutions of Post Graduate colleges and special professional colleges is concerned, that should be entirely on the basis of All India merit, subject to the Constitutional reservations in favour of Scheduled Castes and Scheduled Tribes. In paragraph 24, an

ultimate direction was issued making the decision binding, which deserves to be noted, as this appears to be one of the basic arguments of learned counsel for the Medical Council of India and the same is extracted herein under:

> *"**24.The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all the State Governments and Union Territories.** We may point out that it is not necessary for us to give any further directions in these writ petitions in regard to the admissions of the petitioners in the writ petitions, because the academic term for which the admissions were sought has already expired and so far as concerns the petitioners who have already been provisionally admitted, we have directed that the provisional admissions given to them shall not be disturbed but they shall be treated as final admissions. The writ petitions and the civil appeal will accordingly stand disposed of in the above terms There will be no order as to costs in the writ petitions and the civil appeal."*

43. This was followed by the pronouncement of the Apex Court in the case of ***Dr.Dinesh Kumar v Motilal Nehru Medical College (I) reported in (1985) 3 SCC 22,*** where, in paragraph 2, the same Bench reiterated its observations made earlier on admission being made on the basis of All India merit, subject only to Constitutional reservations in favour of Scheduled Castes and Scheduled Tribes. The Bench further expressed its concern about the arrangements of All India Entrance Examination not having been made by the Government of India and the Indian Medical Council, and it was also observed that the State Governments were equally guilty of indifference and inaction. It was again reiterated that it is absolutely essential that there should be only one Entrance Examination common to all the medical colleges and such Entrance Examination could be held only by the Government of India or the Indian Medical Council, for which they called upon the Medical Council to produce a well thought out scheme for holding such an examination. A confusion in that case with regard to the percentage of seats available was clarified and the mode and manner

of admissions that were then required were taken care of. The matter was adjourned to enable the Medical Council of India and the Government of India to produce a scheme so that necessary directions could be issued for holding of All India Entrance Test.

44. The matter again came up before a Two Judges Bench of Hon'ble the then ***Chief Justice P.N.Bhagwati*** *and* ***Ranganath Misra, J.,*** which is known as the case of ***Dr.Dinesh Kumar and others (II) v. Motilal Nehru Medical College, Allahabad and others, reported in (1986) 3 SCC 727,*** when for the first time, the scheme of All India Entrance Examination came to be formulated by the Medical Council of India, that was discussed after putting all the States to notice and also taking into consideration the various developments that took place with regard to the formulation of such scheme. Paragraph 5 of ***Dr.Dinesh Kumar (II),*** *which* is relevant for the present controversy, is extracted herein below and the same would shed light on the stand taken by the Tamil Nadu in particular and the response of the Apex Court:

> *"**5.**Another objection raised on behalf of some of the State Governments and particularly the **State of Tamil***

Nadu *related to the following suggestion made in the Scheme submitted by the Government of India:*

> *"It was felt that the judgment of the Supreme Court by which 30 per cent of the open seats for admission to MBBS/BDS courses were to be arrived at after taking into account the reservations validly made (which term has not been defined) provides enough scope to the State Governments to increase the number of reserved categories, thereby contributing lesser number of seats for being filled on all-India basis."*

The objection *raised by these State Governments was* ***twofold. Firstly,*** *it was contended that the suggestion that 15 per cent of the total seats available for admission to MBBS/BDS course* ***without taking into account any reservations*** *which may be made by the State Government, would tend to produce inequality of opportunity for admission to students in different States since the percentage of reservations varied from State to State and* ***secondly,*** *it was urged that the proposal of the Government of India that valid reservations should not exceed 50 per cent of the total number of seats available for admission, will reduce the opportunities which were at present available to Scheduled Castes, Scheduled Tribes and backward*

classes as a result of reservations exceeding 50 per cent of the total seats made in some of the States and particularly in the State of Tamil Nadu where the reservations exceeded 68 per cent. ***We agree with the second objection raised*** *on behalf of some of the State Governments* ***but so far as the first objection is concerned, we do not think it is well founded.*** *There can be no doubt that if in each State, 30 per cent of the seats were to be made available for admission on the basis of All-India Entrance Examination after taking into account reservations validly made, the number of seats which would be available for admission on the basis of All-India Entrance Examination would vary inversely with the percentage of reservations validly made in that State. If the percentage of reservations is high as in the State of Tamil Nadu or the State of Karnataka, the number of seats available for admission on the basis of All-India Entrance Examination would be relatively less than what would be in a State where the percentage of reservations is low. There would thus be total inequality in the matter of making available seats for admission on the basis of All-India Entrance Examination. It would be open to a State Government to reduce the number of seats available for admission on the basis of All-India Entrance Examination by*

increasing the number of reserved categories or by increasing the percentage of reservations. We therefore agree with the Government of India that the formula adopted by us in our main judgment dated June 22, 1984 [Dr Pradeep Jain v. Union of India, (1984) 3 SCC 654] for determining the number of seats which should be made available for admission on the basis of All-India Entrance Examination should be changed. We would direct, in accordance with the suggestion made in the Scheme by the Government of India, that not less than 15 per cent of the total number of seats in each medical college or institution, without taking into account any reservations validly made, shall be filled on the basis of All-India Entrance Examination. This new formula is in our opinion fair and just and brings about real equality of opportunity in admissions to the MBBS/BDS course without placing the students in one State in an advantageous or disadvantageous position as compared to the students in another State. The same formula must apply also in regard to admissions to the postgraduate courses and instead of making available for admission on all-India basis 50 per cent of the open seats after taking into account reservations validly made, we would direct that not less than 25 per cent of the total number of seats without taking into account any reservations,

shall be made available for being filled on the basis of All-India Entrance Examination. This suggestion of the Government of India deserves to be accepted and the objection to it must be overruled."

45. The question, therefore, of any inadequate representation to admissions on the basis of reservation was considered and 15% of the total seats in Under Graduate course without taking into account any reservation which may be made by the State Government that was objected to came to be turned down by the Apex Court, as is evident from the perusal of the said paragraph.

46. When it came to deciding the issue of reservations beyond 50% by the State Government, the objections raised by the States were accepted, as is evident from the ratio expressed in paragraph 6 thereof, which is extracted herein under:

*"**6.**But so far as the second objection is concerned, we think there is merit in it. We do not think that it would be right for us to limit the reservations which can be validly made by a State Government in the matter of admission to the MBBS/BDS course and the*

postgraduate courses to 50 per cent of the total number of seats. There are some States like Tamil Nadu and Karnataka which have reservations far exceeding 50 per cent in admissions to MBBS/BDS course and we do not propose to restrict such reservations to 50 per cent. When we say that we do not propose to limit the percentage of reservations to 50 as suggested by the Government of India we should not be understood as laying down that the State Government may make reservations to any extent it likes or that the percentage of reservations can validly exceed 50 without violating any constitutional guarantees. We are not going into this question because it does not directly arise for determination in this case. We may however point out that there is a considerable body of opinion in favour of the view that too large a percentage of reservations has the effect of only stifling the opportunities of really brilliant students who do not belong to the reserved categories and creating a certain amount of frustration leading to class antagonism but also prejudicially affecting the quality and efficiency of the medical services available to the people, particularly in the field of higher medical education such as the postgraduate courses. There is on the other hand an equally powerful lobby which holds that reservations must be made in proportion to

the population of Scheduled Castes, Scheduled Tribes and backward classes, because these classes of people have been subjected to oppression and exploitation and have been deprived of all opportunities of education and advancement since a long lime and unless reservations are made in their favour and they are given proper opportunities by a process of reverse discrimination, they will never be able to take their place in society on an equal footing with others and it is only by wiping out injustice which has been done to them for long long years, by making reservations in their favour that we shall be able to build a truly egalitarian society. It is the firm belief of those who propound this view that the theory that reservations carried beyond a certain limit affect the quality and efficiency of the medical services is nothing but an elitist myth which is put forward in order to perpetuate the vested interests. These rival arguments raise an interesting question of social policy which may have to be decided by this Court at some future point of time but we do not think that in the context of the present case it would be right for us to enter upon a consideration of this question."

47. With regard to holding of examination and the scheme in

relation thereto, the judgment in paragraphs 11 to 13 laid down the future course to be adopted.

48. There is yet another decision with regard to admissions against 15% All India Quota seats in Under Graduate course by a Three Judges Bench in the case of ***Harsh Pratap Sisodia v. Union of India and others, reported in (1999) 2 SCC 575***. The petitioner therein had been refused admission against 15% quota in spite of having qualified in the entrance test. The refusal was on account of the student having allegedly passed his Biology examination in the succeeding year, whereas, as per the rules, the incumbent should have passed the examination in one and the same attempt. It was held in that case that the said rule was not applicable, but while disposing of the said issue, the following observation was made in paragraph 6:

> *"**6.** It is not disputed that the criteria of eligibility for allotment of a seat to MBBS against the 15% all-India quota has been fixed by the CBSE in consultation with the Medical Council of India under a modified scheme approved by this Court. **Under that scheme, the States and colleges cannot insist upon satisfaction of the "State requirements" as a condition to grant admission to the allottees against the 15% all-India quota.** It is, therefore,*

not open to any State to fix any additional eligibility criteria in cases of candidates who fall under the 15% all-India quota. The eligibility criteria having been approved by this Court, it could not be ignored by the Dean, Medical College, Solapur. The denial of admission to the petitioner was thus wholly illegal and unjustified. Consequently, this writ petition succeeds and is allowed. The Dean, V.M. Medical College, Solapur is hereby directed to grant admission to the petitioner in the first year of MBBS course under the 15% all-India quota forthwith."

49. We are mentioning this in order to appreciate the arguments of either side about the existence of scheme approved by the Apex Court, the ratio whereof is that any additional eligibility criteria cannot be fixed for the candidates who fall under 15% All India Quota, as it has already been approved by the Apex Court.

50. One of the judgments that has been heavily relied on by learned counsel for the Union of India is reported in ***(2003) 9 SCC 294 (Union of India v. R.Rajeshwaran and another),*** decided on 27.7.2001, was an issue arising from the judgment of the Madras High

Court for applying the rule of reservation to the Scheduled Castes and Scheduled Tribes in All India Quota of Under Graduate courses. A learned Single Judge of this Court had issued a direction holding that 15% of the seats available to All India Quota were normally subject to the rule of reservation in the State. As against the order of the Single Judge, a writ appeal was filed, where interim orders were granted, against which SLP was filed by the Union of India before the Apex Court. By exercising power under Article 139-A of the Constitution of India, the writ appeal was transferred to the Apex Court and then the Apex Court proceeded to consider the impact of the direction issued in ***Dr.Dinesh Kumar (II)*** (supra) and observed in paragraphs 7 to 9 as follows:

> *"**7.** In respect of undergraduate course, the scheme works out like this. If a State has a total of 100 seats and in that State 15% of the seats are reserved for Scheduled Castes and 10% for Scheduled Tribes, the State will fill up 15% seats for Scheduled Caste candidates and 10% for Scheduled Tribe candidates, of the remaining 75 seats 60 seats will be filled by the State Government as unreserved and **15 seats will be earmarked for the all-India quota.***

8. *Inasmuch as 15% all-India quota has been earmarked under the scheme framed by this Court and that scheme itself provides the manner in which the same should be worked out, we do not think, it would be appropriate to travel outside the said provisions to find out whether a person in the position of the petitioner would be entitled to plead in the manner sought for because each of the States could also provide for reservation for the Scheduled Caste and Scheduled Tribe category in respect of 85% of the seats available with them.* ***If we meddle with this quota fixed, we are likely to land in innumerable and insurmountable difficulties. Each State will have different categories of Scheduled Castes and Scheduled Tribes and the Central Government may have a different category and hence adjustment of seats would become difficult. The direction*** *fixing 15% quota for all-India basis takes note of reservations and hence the High Court need not have made any further directions.*

9. *In Ajit Singh (II) v. State of Punjab [(1999) 7 SCC 209 : 1999 SCC (L&S) 1239] this Court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation. Language of Article 15(4) is identical and*

the view in Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan [(1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1] and Superintending Engineer, Public Health v. Kuldeep Singh [(1997) 9 SCC 199 : 1997 SCC (L&S) 1044] that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be held to be laying down the correct law. In these circumstances, neither the respondent in the present case could have sought for a direction nor the High Court could have granted the same."

It should however be remembered that the said judgment was delivered prior to the introduction of Article 15(5) of the Constitution of India.

51. This was followed by another judgment dated 11.09.2002 of the Apex Court in the case of ***Union of India and another v. K.Jayakumar and another, reported in (2008) 17 SCC 478,*** which has been relied on by learned counsel for the Union of India and again arising out of a judgment of the Division Bench of this Court. The said judgment was delivered on 11.09.2002, but it came to be reported in

(2008) 17 SCC 478. The judgment being short and of only seven pages, is extracted herein under:

> *"**1.** The Union of India is in appeal against the judgment of the Division Bench of the Madras High Court.*
>
> ***2.** In a public interest litigation the question that arose for consideration is whether the 15% reservation of seats in the medical colleges on the basis of the all-India entrance examination should also contain the provisions of reservation for Scheduled Caste and Scheduled Tribe students. The High Court by a cryptic order without discussing the matter came to the conclusion that the reservation being a constitutional mandate, it would be for the Government to follow the same in future and the writ petition was disposed of accordingly.*
>
> ***3.** Learned ASG appearing for the Union of India contended before us that the 15% seats on the basis of all-India entrance examination in respect of the medical colleges in the country, excepting the States of Andhra Pradesh and J&K, as has been indicated in Dinesh Kumar (Dr.) (II) case [Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College, (1986) 3 SCC*

727] in pursuance of a specific direction of this Court. He further contended that this question as to whether the 15% of seats on the basis of all-India entrance examination should also follow the reservation has already been considered by this Court in Union of India v. R. Rajeshwaran [(2003) 9 SCC 294 : (2001) 6 Scale 662] and following the earlier judgment of this Court in Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College [Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College, (1986) 3 SCC 727] it has been categorically held that the provisions of reservation will have no application to the 15% quota meant for admission on the basis of all-India entrance examination.

4. *The learned counsel for the respondents, on the other hand, contended before us that in Preeti Mittal v. Gaganjot Kaur Saira [(1999) 3 SCC 700] in respect of admission to the Government Medical College of Chandigarh, this Court has considered the question of reservation and has applied the reservation even against 15% all-India pool, and therefore there is no error committed by the High Court in issuing the impugned direction.*

5. *In view of the contentions raised by the learned*

counsel for the respondents relying upon the judgment of this Court in Preeti Mittal case [(1999) 3 SCC 700] and since that decision has not been noticed in Union of India v. R. Rajeshwaran [(2003) 9 SCC 294 : (2001) 6 Scale 662] we think it appropriate to notice the judgment of this Court in Preeti Mittal [(1999) 3 SCC 700]. ***A plain reading of the aforesaid judgment, though certain observations made therein in paras 25 and 26 may lead to an assumption that even there can be a reservation against seats meant for all-India pool, but on scrutiny we find that the question was neither directly in issue nor has been considered or answered.*** *In R. Rajeshwaran case [(2003) 9 SCC 294 : (2001) 6 Scale 662] , however, the question directly came up for consideration and has been answered by this Court. That apart, in Preeti Mittal case [(1999) 3 SCC 700] a particular clause of the proceedings, namely, Clause 3, was in fact under consideration. The observation, if any, while interpreting that clause,* ***cannot be held to be a ratio in the matter to hold that even in respect of the seats meant to be filled up on the basis of all-India entrance examination, the provision of reservation should apply.***

6. *In our considered opinion, the question has been*

directly considered in the decision of this Court in R. Rajeshwaran [(2003) 9 SCC 294 : (2001) 6 Scale 662], referred to supra, and ***it has been indicated as to how incongruous it would be, if the provisions of reservation be made applicable to the seats meant for being filled up on the basis of all-India entrance examination.*** *Following the judgment of this Court in R. Rajeshwaran [(2003) 9 SCC 294 : (2001) 6 Scale 662] as well as in Dr. Dinesh Kumar [Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College, (1986) 3 SCC 727]* ***we hold that the High Court was wholly in error in observing that the requirement of reservation should also apply to the seats to be filled up on the basis of all-India entrance examination.***

7. *We, therefore, set aside the said observation/direction of the High Court. This appeal is allowed accordingly."*

52. Then coming to the judgment of a Five Judges Bench in the case of ***Saurabh Chaudri and others v. Union of India and others, reported in (2003) 11 SCC 146,*** this judgment again re-affirmed the reservation on domicile basis to the extent answered in

Dr.Pradeep Jain case and also by way of institutional preference, but confined it to 50% of the seats. The Court reiterated the law in the case of ***Dr.Pradeep Jain*** in preference ***Dr.Dinesh Kumar (II)***. The suspected classification warranting a strict scrutiny test as enunciated by the US Supreme Court was also discussed therein. While discussing the reservation and also the need to maintain All India standard of merit in medical education, the majority of the judgment authored by the ***Hon'ble V.N.Khare, Chief Justice,*** approved the scheme framed by the Supreme Court and held that the scheme was a law within the meaning of Article 141 of the Constitution of India and binding on all the States under Article 144. Paragraphs 49 and 50 are extracted herein under:

> *"**49. A scheme, thus, came to be framed by this Court which is a law within the meaning of Article 141 of the Constitution of India and is binding on all the States in terms of Article 144 of the Constitution of India.** The principal considerations which weighed with the Court for arriving at the aforementioned conclusion were: (SCC pp. 686-87, para 19)*

"There can be no doubt that the policy of ensuring admissions to the MBBS course on all-India basis is a highly desirable policy, based as it is on the postulate that India is one nation and every citizen of India is entitled to have equal opportunity for education and advancement, but it is an ideal to be aimed at and it may not be realistically possible, in the present circumstances, to adopt it, for it cannot produce real equality of opportunity unless there is complete absence of disparities and inequalities — a situation which simply does not exist in the country today. There are massive social and economic disparities and inequalities not only between State and State but also between region and region within a State and even between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them. They do not have the social and material resources to take advantage of these opportunities which remain merely on paper recognized by law but non-existent in fact. Students from backward States or regions will hardly be able to compete with those from advanced States or regions because, though possessing an intelligent mind, they would have had no

adequate opportunities for development so as to be in a position to compete with others. So also students belonging to the weaker sections who have not, by reason of their socially or economically disadvantaged position, been able to secure education in good schools would be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had the best of school education and in open all-India competition, they would be likely to be worsted."

50. *A distinction was made therefore between the undergraduate course i.e. MBBS course and postgraduate medical course as also superspeciality courses. The Court, therefore, sought to strike a balance of rights and interests of all concerned."*

53. The Court further in **paragraph 73 re-emphasised the need** of holding All India Examination by the Centralised Agency and till then continued the examinations that were being conducted then by the All India Institute of Medical Science. Paragraph 73 is extracted herein under:

*"**73.** For the purpose of selecting the candidates, it is necessary to hold an all-India entrance examination by*

an impartial and reputed body. We must, therefore, lay down the criteria therefor. AIIMS in terms of an order passed by this Court has been conducting the said examination. ***It may continue to do so unless a competent body is created by the Central Government in terms of a parliamentary Act or otherwise.*** *All expenses for conducting such examination shall be borne by the Central Government which would also provide the requisite infrastructure therefor.* ***One test shall be held for all the students taking admission throughout the country. This order is passed keeping in view the fact that now one common entrance test is held for admission against 25% of all-India quota and other tests are being held by the respective universities.*** *Disparities in such tests should be done away with and merit of the students should be judged on the basis of one test held therefor."*

54. The directions, however, made in the said judgment were treated as interim in nature, subject to any law made by the Parliament, for which the observation in paragraphs 75 and 77 are extracted herein under:

"75. Our directions aforementioned, however, are

interim in nature. *Parliament having regard to Entry 66 List I of the Seventh Schedule of the Constitution of India has the legislative competence which would take care of the country as a whole.* ***While making such a legislation, Parliament, undoubtedly, would take into*** *consideration the special needs of some small States, having regard to their backwardness — economic, social and educational, as also geographical conditions.*

.....

77. The courts are normally reluctant to issue any direction to the Central Government for making law. Following our practice, we refrain ourselves from issuing any direction in this regard. *We hope and trust that the Central Government expeditiously considers making of a legislation or taking such steps as are necessary in this behalf keeping in view the requirement of coordination in higher education in terms of Entry 66 List I of the Seventh Schedule of the Constitution of India."*

55. Thus, the responsibility of maintaining higher standards of education and for holding of all India examination was stressed upon

and for a law being made in this regard by the Central Government as it fell within its domain.

56. The Hon'ble Supreme Court came across a writ petition filed in relation to the letter issued on 7.12.2004 by the Director General of Health Services about the availability of Post Graduate seats under 50% of All India Quota and the complication arising from the said letter came to be decided by the Apex Court in the case of ***Buddhi Prakash Sharma and others v. Union of India and others, reported in (2005) 13 SCC 61, decided on 28.02.2005.*** This was a matter relating to reservations for Scheduled Castes and Scheduled Tribes in All India Quota seats that had been varied in ***Saurabh Chaudri*** case (supra). The Court came to the conclusion that there was non application of mind in issuance of the letter dated 7.12.2004 and the anomalous situation resulted giving rise to the litigation. Paragraphs 3 and 4 of the order is extracted herein under:

> *"**3.** Pursuant to directions dated 21-2-2005 the compliance affidavit has been filed along with detail about the available seats in the year 2004, total number of postgraduate seats about which information was given by the respective States/Union Territories to*

DGHS pursuant to its letter dated 7-12-2004 and such of information which has been supplied by some of the States pursuant to our order dated 21-2-2005. The facts and figures given in the summary provided by DGHS make an interesting reading and it also shows how on account of total non-application of mind in issue of the letter dated 7-12-2004, this situation has arisen resulting in this otherwise totally avoidable litigation. It is not in dispute that till 2004-2005 when all-India quota of seats was 25%, the number of postgraduate seats was worked out on the basis of total seats without any exclusion. It is because of the letter dated 7-12-2004 requiring the information about 50% of all-India quota ***after excluding the reserved seats that this mess has been created.*** *None permitted DGHS to change the basis this year. The result of communication is that in many States the total number of postgraduate seats has gone down than what it was when the all-India percentage was 25% instead of it being almost double since the direction of this Court was that from this academic year it would be 50%. In this state of affairs learned Additional Solicitor General frankly submitted that he is not in a position to support the letter dated 7-12-2004 or the stand taken by the respondent Government in the affidavit.*

4. From the material placed before us, it is evident that some of the States have not furnished the requisite information to DGHS. ***We direct that the total number of postgraduate seats on all-India basis would be 50% of the total number of seats without any exclusion and the calculation of seats would be done on the same*** *basis which was adopted when all-India quota was 25%. The Chief Secretaries of States/Union Territories, who have not supplied the requisite information to DGHS on this basis, are directed to supply the same latest by 5.00 p.m. on 1-3-2005 and file a compliance affidavit in this Court. Failure to supply the information would be seriously viewed as a violation of this Court's direction by the Chief Secretaries concerned. The counselling will commence on the dates already announced as we have no doubt that entire information about availability of the seats would be furnished by all concerned to DGHS."*

57. The said order passed by the Apex Court dated 28.02.2005 became subject matter of review by a Three Judges Bench in the case of ***Abhay Nath and others v. University of Delhi and others on***

31.01.2007, which judgment is reported in (2009) 17 SCC 705.

Paragraphs 5, 6, 7 and 8 of the order passed in that case are extracted herein under:

> *"**5.** Another writ petition was filed in this Court in Buddhi Prakash Sharma v. Union of India [(2005) 13 SCC 61] . In this writ petition an order was passed by this Court on 28-2-2005 [(2005) 13 SCC 61] wherein it was stated that the total number of postgraduate seats on all-India basis would be worked out on the basis of 50% of the total number of seats without any exclusion. The order indicated that out of 50% that are allocated are to be admitted by All-India Entrance Examination and **it was made clear that there shall not be any seats excluded on reservation.***
>
> ***6.** The Additional Solicitor General pointed out that in the all-India quota of 50% seats, if 22.5% are reserved for SC/ST students, it would be difficult for the State to give the entire percentage to reservation out of the 50% seats left for them to be filled up. It is equally difficult for DGHS to have the entire 22.5% reservation out of the 50% of the seats allotted to be admitted in the All-India Entrance Examination. Therefore, it is suggested that the Union of India has decided to provide 22.5% reservation for SC/ST candidates in all-*

India quota from the academic year 2007-2008 onwards.

***7. The Union of India seeks clarification of the order passed in Buddhi Prakash Sharma v. Union of** India [(2005) 13 SCC 61] passed on 28-2-2005, to the effect that 50% seats for all-India quota shall exclude the reservation. **We review that order and make it clear that the 50% of the seats to be filled up by All-India Entrance Examination shall include the reservation to be provided for SC/ST students.** To that extent the order passed on 28-2-2005 [(2005) 13 SCC 61] is clarified.*

***8.** IA No. 7 of 2007 in WP (C) No. 18 of 2005 is disposed of accordingly."*

58. It is the contention of the petitioners that through this order, the Apex Court clarified that reservations were even applicable to All India Quota seats in respect of Scheduled Caste and Scheduled Tribe students. The argument is that after such reservation came to be extended to the Schedule Castes and Scheduled Tribes against All India Quota seats, then all the previous decisions of the Apex Court,

including the orders passed in the case of ***Rajeshwaran*** *and* ***K.Jayakumar*** (supra) stand diluted and therefore, the contention of the respondents, particularly, the Medical Council of India that no change can be brought about except by the Supreme Court stands answered, as the Supreme Court itself had transformed and modified its earlier orders relating to the applicability of reservation in All India Quota seats.

59. We may at this stage also point out that constitutional reservation meant for social and economic backward classes had been acknowledged with the 103rd Constitutional Amendment brought about in Article 15(5) in the Constitution and the Central Government itself came to enact the law of reservation to be applied in educational institutions set up by the Central Government viz., Central Educational Institutions (Reservations in Admission) Act, 2006.

60. The second point to be noted is that with the opening of reservation in All India Quota in favour of Scheduled Castes and Scheduled Tribes, and the same being extended in Central Government Institutions to the extent of 27% for OBC's against All

India Quota seats was followed by a challenge raised to the NEET Examinations and the procedure in respect thereof. We are mentioning this as the entire litigative history emphasised the need for an All India Entrance Examination in order to ensure admissions and the eligibility being judged on merit.

61. The Regulations framed by the Medical Council of India came to be challenged in the case of ***Christian Medical College, Vellore and others v. Union of India and others,*** that was struck down, but on a review, the judgment was stayed and has been ultimately reviewed upholding the introduction of NEET Examinations. The judgments in this regard are ***Christian Medical College, Vellore and others v. Union of India and others, reported in (2014) 2 SCC 305; Medical Council of India v. Christian Medical College, Vellore and others, reported in (2016) 4 SCC 342 and Christian Medical College Vellore Association v. Union of India and others, reported in 2020 SCC OnLine SC 423.***

62. Thus, the argument being raised of any merit being compromised by introducing reservation in All India Quota seats, in our

opinion, also gets diluted, as NEET Examinations are now clearly designed to allow only such candidates to be admitted, who secure a minimum merit. Even though this evaluation of holding of All India Examination for providing merit has taken almost three decades beginning from the observations in ***Dr.Pradeep Jain*** (supra), yet, after this goal has been achieved, we find that both by the Constitutional Amendments as well as by the judgments of the Apex Court, Constitutional reservations have been provided for as against even All India Quota seats, in spite of two earlier contrary judgments in the case of ***Rajeshwaran*** *and* ***K.Jayakumar*** (supra), as is evident from the order passed in the case of ***Abhay Nath*** (supra).

63. We find a justification in arriving at this conclusion not only from the aforesaid developments, but now also having been accepted by respondent No.4 in the short counter-affidavit in paragraph 11, which is extracted herein under:

> *"11. It is submitted that, the candidates belonging to OBC have already approached the Hon'ble Supreme Court of India vide "Writ Petition No.596 of 2015 filed by Saloni Kumari & Anr. V/s DGHS & Ors." seeking 27% reservation in favour of the candidates belonging*

to OBC category in All India UG/PG Quota Scheme which is pending for final decision and the said issue is sub-judice before the Hon'ble Supreme Court. The next date of hearing (tentatively) in the matter is 08.07.2020. (A copy of current status of the case enclosed ANNEXURE-X). ***The Ministry of Health and Family Welfare (briefly referred to as MoHFW) in its affidavit has proposed to apply State specific reservation for OBC on all available AIQ UG & PG seats, with a condition that over all reservation will not exceed 50% of total available seats and the existing reservation of the UR, ST & SC will not be disturbed by proportionately increasing the number of seats, with the co-operation of all participating States and MCI.*** *On implementation of State Specific Reservation Policy for SC, ST & OBC, the State Government will have to contribute AIQ seats category wise including seats reserved for Physically Handicapped candidates by maintaining reservation roster at college/state level."*

64. It may be briefly mentioned that in the same counter-affidavit, the Union of India had taken a ground of pendency of ***Saloni Kumari*** case, which has now been clarified by the Apex Court vide

order dated 13.07.2020. In paragraph 12, the pendency of another PIL No.87 of 2018 at the Nagpur Bench of Bombay High Court has also been pleaded, in which an interim order was passed on 16.7.2018.

65. This interim order by the Bombay High Court is extracted hereunder:

> *"1. The learned A.S.G.I. submits that by the order passed by Madras High Court the entire admission process is held in abeyance. He is seeking time of two days to file appropriate affidavit. He also makes a statement that during the said period no steps to the prejudice of the petitioner will be taken.*
>
> *2. In view of this statement, list the matter on 19th July, 2018.*
>
> *3. Till then no steps to the prejudice of the present petitioners be taken."*

The interim order was allowed to continue on 19-07-2018 and again on 26-07-2018.

66. Against the said interim order, a Special Leave to Appeal

No.20287 of 2018 was filed by the Union of India that was taken up on a mention on 30-07-2018 and was again directed to be listed on 01-08-2018. The Apex Court on 01-08-2018 passed the following order:

> *"We have heard Mr. Maninder Singh, learned Additional Solicitor General appearing for the petitioners-Union of India and perused the record.*
>
> *The High Court of Judicature at Bombay Nagpur Bench vide order Signature Not Verified dated 31.07.2018 passed in Writ petition No.3885/2018, has directed that a copy of merit list of candidates who are successful in second round be placed before itself on the next date of hearing.*
>
> *In view of this Court's order dated 30.04.1993 passed in Writ Petition (C) No.443 of 1993 titled Sharwan Kumar vs. Director General of Health Services & Anr. and connected writ petitions, it was directed that in case of any difficulty felt by the Director General of Health Services or any other person including the State Authorities or universities in the implementation of the All India Quota Scheme, they can approach this Court.* ***We therefore see no reason why this issue has fallen for consideration before the High Court.***

It appears that the existence of OBC quota is clearly a matter of the scheme vide this Court's order dated 31.1.2007 passed in Writ Petition (C) No.138 of 2006 titled Abhay Nath & Ors. vs. University of Delhi & Ors.

We accordingly issue notice to the respondents. Until further orders, there shall be stay of paragraph 3 of the order dated 31.7.2018 passed by the Bombay High Court in Writ Petition No.3885/2018, and paragraph (3) of the impugned order dated 16.07.2018 passed by the High Court. There shall also be ex parte interim stay of further proceedings before the High Court."

67. A perusal of this order is necessary keeping in view the contentions raised about the matter being directly dealt with by the Apex Court. From the above quoted order, it is evident that the Apex Court took notice of the order passed on 30-04-1993 in the case of ***Sharwan Kumar v. Director General of Health Services and Another and connected writ petitions, reported in (1993) 3 SCC 332.*** The said order dated 30-04-1993 in the case of ***Sharwan Kumar*** (supra) indicated the procedure and approved a Scheme attached as Annexure I to the said order to be followed in matters of

15% of All India Quota seats of U.G. Courses. Paragraphs 8 and 9 of the order dated 30-04-1993 are extracted hereinunder:

> *"8. In our Order dated August 14, 1992, we have taken note of the criticism that the existing process of allotment of candidates to the various colleges for admission to MBBS/BDS courses against the 15% All-India quota is inordinately protracted and selection process does not conclude till February of the year following the one for which admissions are intended and made, and have observed that time is ripe to evolve an appropriate procedure so that at least from 1992 onwards the whole procedure could be completed within a reasonable time frame, say, before 30th October each year. Since the process for selection for the year 1992 had already commenced under the existing process the same 'was allowed to be completed under that process. For the year 1993 onwards Shri Subba Rao has placed before us suggestions in the form of a draft scheme prescribing the procedure whereby it would be possible to complete the process of allotment of the 15% All-India quota for admission to the MBBS/BDS courses in various colleges in the country by September 30. We have perused the said draft scheme. Keeping in view the said scheme we hereby approve the scheme*

prescribing the procedure to be followed for allotment of 15% All-India quota for admission to MBBS/BDS courses in the various colleges in the country. The said approved scheme is attached herewith as Annexure I to this Order. It will be operative for selection to be made for the year 1993-94 and the examination to be held for such selection in May, 1993. ***The said scheme will operate for future selections also.***

9. If in the implementation of the scheme any difficulties are felt by the Director General of Health Services or by any other person including the authorities in the States or by the Universities, they can approach this Court for necessary direction.

ANNEXURE-I SCHEME

1. The Entrance Examination will be conducted in the month of May and the dates will be so fixed that the result is declared by July 15.

2. Candidates shall appear for Entrance Examination, without giving their preference for courses (MBBS/BDS) and college choices.

3. A merit list equal to total number of seats plus a

waiting list of 50% of the total number of seats shall be prepared.

4. The successful candidates whose names are included in the merit list shall appear in person for allotment to scats on notified dates.

5. About 200 candidates will be called for personal appearance on a notified date in accordance with the rank in the merit list, i.e., rank Nos. 1 to 200 on the first day, rank Nos. 201 to 400 on the second day and so on.

6. The seats available will be displayed on computer screen and the Notice Boards and thus the candidate will stand informed about the available seats at the time of allotment.

7. On the day of personal appearance the allotment will be made in Order of merit, out of the seats available for allotment at his/her rank, through computer.

8. Candidates will have an option to either (a) Select any one of the seat/ seats available OR (b) Reject the available seat/seats and for fait the claim for a seat under All India Quota.

9. A candidate who is unable to appear in person on the notified date can send his/her authorised representative with authority letter duly signed by him/her for allotment on the notified date.

10. Candidates allotted seats on a particular day will be issued allotment letters on the next day. The last date of joining will be 15 days from the date of personal appearance.

11. The candidates who fail to appear on notified date in person or through his/her authorised representative shall forfeit the claim for a seat under All-India Quota.

12. The candidates who do not join the allotted college by the last date of joining, shall also forfeit the claim of a seat under All-India quota.

13. The first round of allotment by personal appearance would be from August 1 to August 14 covering all the successful candidates including waiting list candidates.

14. The Dean/Principal of the College shall notify to the Director-General of Health Services, New Delhi, by September 5, the vacancy position due to non-joining

of a candidate/ candidates allotted seat/seats in the first round. In case the vacancy position is not communicated by September 5 the seats allotted to the college will be treated as vacant and allotment of candidates will be made against these deemed to be vacant seats and it shall be the responsibility of the Dean/ Principal of the concerned college to give admission to those candidates.

15. The second round of allotment by personal appearance will be for (a) candidates who were allotted a seat in the first round and who wish to change their allotted college/ course and wish to join the same against vacancies arising due to nonjoining of the candidates allotted in the first round of personal appearance; and (b) for candidates on the merit list who could not be considered for allotment in the first round.

16. The candidates who were allotted a seat in the first round and who desire to change their allotted college/ course for the vacancies arising due to non-joining of allotted candidates will have to apply to DGHS in writing by registered post. Their applications, duly forwarded by Principal/ Dean of the allotted colleges should reach the DGHS by registered post on

or before September 5. They will have to give an under taking that their earlier allotment will stand cancelled and the seat will be vacated by them in case the change is made to them.

17. The second round of allotment by personal appearance will be from Septembers to September 12.

18. Each day candidates up to 600 rank numbers will be covered i.e. the candidates from rank Nos. 1 to 600 will appear on September 8, from rank Nos. 601 to 1200 on September 9 and so on. The fact that a candidate has appeared in the second round of allotment shall not entitle him for a change as the same will be subject to availability of a seat and the acceptance of the available seats at the rank of the candidate by him/ her.

19. The candidates who have been allotted a seat in the second round will have to join the college within 15 days from the date of their personal appearance.

20. ***The whole allotment and admission process to the 15% seats for All-India quota will be over by September 30 and any seat remaining vacant thereafter will be deemed to have***

surrendered back to the colleges/ States.

21. In the year 1993, the venue for this allotment process will be Delhi. In subsequent years it may be extended to four metropolitan cities by linking the venue in these four cities to the mother computer, located in Delhi through Satellite. As and when the linkage of four metropolitan cities becomes successful, the network will be spread to the other State Capitals also."

68. The Apex Court in ***Akhil Bharitiya O.B.C. Mahasangh case,*** (supra), went on to further notice a fact viz. the existence of OBC Quota was clearly a matter of the Scheme vide the order of the Apex Court dated 31-06-2007 passed in Writ Petitions (C) Nos.138 of 2006, titled ***Abhay Nath and others v. University of Delhi and others*** (supra). We have already extracted the said order whereby a 3 Judges Bench had reviewed the order in the case of ***Buddhi Prakash Sharma*** (supra) making it clear that 50% of the seats in P.G. Courses to be filled up by All India Quota **shall include the reservation to be provided for S.T./S.C. candidates.** There is no scheme indicated in the said order about the existence of O.B.C.

Quota. However, in paragraph 3 of the said order, the judgment in the case of ***Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College*, (1986) 3 SCC 727,** where the total number of seats of the All India Quota had to be made available **without taking into account any reservation.** It is this part of the order, as indicated in ***Buddhi Prakash Sharma case*** (supra), came to be reviewed in ***Abhay Nath case*** (supra) **in favour of S.T./S.C. candidates only.** This can be a matter of understanding of no indication of reservation to O.B.C. candidates but no specific direction with regard to O.B.C. category candidates.

69. It may be further recorded that after the passing of the interim order dated 01-08-2018 by the Apex Court referred to above, the Bombay High Court awaited the decision of the Apex Court. The Apex Court allowed the Union of India to withdraw the petition with liberty to file an application for impleadment in the pending matters. The order passed on 17-09-2018 by the Apex Court in Special to Leave Appeal (C) No.20287 of 2018 is quoted herein below:

> *"Learned counsel appearing for the petitioners prays for withdrawal of this petition with liberty to file*

application for withdrawal of this petition with liberty to file application for impeadment in the pending matter/s.

Prayer is allowed.

Accordingly, the special leave petition is dismissed as withdrawn with the liberty aforesaid."

70. The Bombay High Court then took up the matter and on 23-01-2019 the original writ petitioner in the PIL No.87 of 2018 viz. Akhil Bhartiya OBC Mahasangh took leave to implead the said petitioner in the case of ***Dr. Saloni Kumari v. State of Uttar Pradesh,*** **W.P. (C) No.596 of 2015,** pending before the Apex Court. The matter ultimately came up before the Division Bench of the Bombay High Court where final orders were passed on 12-06-2019 after noticing the aforesaid facts and the orders passed by the Apex Court, and the **PIL was dismissed** with the observation that the original Writ Petitioner viz. Akhil Bhartiya OBC Mahasangh is entitled to approach the Apex Court for intervention or may adopt such other remedies as may be available in law. The Bench, however, observed that the PIL could not

be kept pending in view of the orders passed by the Apex Court. The aforesaid gamut of facts again indicates that the PIL was ultimately dismissed with liberty to the petitioner to approach the Apex Court.

71. The above facts are necessary to be read in tandem with paragraph 9 of the order dated 30-04-2003 passed in the case of ***Sharwan Kumar*** (supra) that has been extracted herein above whereby the Apex Court had indicated that if the in the implementation of the scheme any difficulties are felt by the Director General of Health Services or by any other person including the authorities in the States or by the Universities, they can approach this Court for necessary direction. It may be mentioned that the last line of paragraph 8 of the said order also states that the said Scheme will operate for future selections also.

72. Additionally, one of the arguments that has been advanced with vehemence on behalf of the petitioners is with regard to the D.O. Letter of the Union Health Minister, which is extracted herein under:

"D.O.No.V.11026/93/2019-MEP

18, December 2019

Dear Shri P.Wilson Ji,

Please refer to your letter dated November 01, 2019 addressed to Hon'ble Minister, Human Resource Development regarding ***reservation for OBC candidates in medical seats under All India Quota.***

2. I have had the matter examined. I would like to inform that as per the Central Educational Institutions (Reservations in Admission) Act, 2006. 27% ***reservation for OBC candidates in Central Institutes of the country in All India Quota is being provided.*** *Further as per the Orders of the Hon'ble Supreme Court in WP (C) No.138 of 2006, there is 15% reservation for SC and 7.5% for ST candidates in All India Quota from the academic year 2007-08 onwards.*

3. It is also informed that OBC reservation varies from State to State and the State do not contribute its seats category-wise for the all India Quota and each State has its own reservation policy for admissions to UG/PG medical courses ***and the States are also at liberty***

to frame special provisions by law to provide reservation for the OBCs/SCs and STs for the purpose.

4. I would also like to inform that the matter for providing ***reservation to OBC candidates in medical seats under All India Quota (other than Central Institutes) is pending before the Hon'ble Supreme Court*** *in Writ Petition No.****596/2015*** *in the matter of* ***Saloni Kumari & Anr. Vs. Directorate General of Health Services****.*

With regards,

Yours sincerely,
(Dr.Harsh Vardhan)

Sh. P.Wilson,
Member of Parliament (RS)
No.10, Railway Colony 4th Street,
Off Nelson Manickam Road,
Chennai-600 029.

73. A perusal of the above letter also takes the shelter of the case of ***Dr.Saloni Kumari,*** which obviously now stands clarified by the order of the Apex Court dated 13.07.2020. Nonetheless, it has been accepted in the letter of the Hon'ble Minister that the Central Educational Institutions (Reservations in Admission) Act, 2006, does

provide for 27% reservation for other backward category candidates in Central Institutions of the country in All India Quota. Thus, in Central Institutes, reservation for other backward category against All India Quota stands secured by the Central Government. However, the letter says that Other Backward Category reservation varies from State to State and since the States do not contribute their seats category-wise, and they have their own policy of reservation for the Under Graduate/Post Graduate medical courses, they are at liberty to frame a special provision by law to provide reservation to the Other Backward Categories, Scheduled Castes and Scheduled Tribes for the said purpose.

74. In this regard, it will now be apt to introduce the plea raised by the petitioners that insofar as the State of Tamil Nadu is concerned, there is already a law in place viz., Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993. In this background, the law insofar as the State of Tamil Nadu is already in place. The State

Government of Tamil Nadu has also filed one of the writ petitions and the learned Advocate General contends that the law being in place, it has only to be implemented against the State contributed/surrendered seats to the All India Quota, which has to be done by the respondents and the respondents having failed to do so, a direction deserves to be issued for implementation thereof.

75. We have to assess the arguments of Medical Council of India as also the State Government in their written submissions and the written submission tendered by the learned Additional Solicitor General of India which was also narrated orally. It is evident that their stand is that the States have no role to enforce any reservation on the State surrendered seats of All India Quota unless they are reverted back to them. This stand taken by the Union of India appears to be in contrast to the stand taken by the Union Health Minister in his above quoted letter and paragraph 11 of the short counter affidavit of respondent No.4.

76. Not only this, in paragraph 11 of their short counter-

affidavit, the stand taken is that the Central Government has proposed to apply State specific reservation for OBC on all available All India Quota Under Graduate/Post Graduate seats, subject to a condition that the overall reservation will not exceed 50% of total available seats and the existing reservation of the Un-reserved, Schedule Caste and Scheduled Tribe seats shall not be disturbed. To achieve this, the suggestion is of proportionately increasing the number of seats with the co-operation of all participating States and the Medical Council of India.

77. The aforesaid stand by the Union of India is a new third dimension to the case that advances towards a further step to provide reservation to Other Backward Categories against State surrendered All India Quota seats.

78. As against this, the Medical Council of India appears to be not exactly in tandem with the Union of India to contend firstly that the system of admission against All India Quota cannot be modified or interfered with, as it is a scheme framed by the Supreme Court

and the law made by it. Secondly, they contend that the Medical Council of India Regulations that have been framed viz., Regulation 5(5) and 9(iv) are only meant to indicate reservation in State Quota seats and not All India Quota seats. It therefore means that the Medical Council of India maintains that neither this Court, nor even the Central Government, nor the State Government can make any provision except by any order of the Apex Court.

79. The aforesaid argument on behalf of the Medical Council of India does not appear to be exactly appropriate for the following reasons. Firstly, that the Scheme itself came to be initiated as a concept for All India centralised admission process by the Apex Court and from a reading of all the judgments right from ***Dr.Pradeep Jain*** (supra) upto the judgment in the case of ***Christian Medical College*** (supra), it is clear that the scheme as originally framed came to be modulated time and again with observations being made in the cases of ***Rajeshwaran*** and ***K.Jayakumar*** (supra). But, the Supreme Court in a five Judges decision, in the case of ***Saurabh Chaudri,*** as noted above, even though continued the existing scheme as to be binding

under law, yet all directions contained therein were indicated to be an interim arrangement subject to any law or provisions being made later on.

80. We may, however, point out that the Apex Court in ***Saurabh Chaudri case*** (supra) was concerned only with regard to the institutional preference matter having been raised again and the Court went on to uphold the view taken in ***Dr. Pradeep Jain's case*** (supra). The said 5-Judges Bench judgment did not notice or touch upon the directions dated 30.04.1993 in the case of ***Sharwan Kumar case, (1993) 3 SCC 332*** which was in relation to the scheme for implementing the All India Quota to the extent of 15% of the U.G. seats in the Medical Colleges. The Court, however, clearly observed about the interim nature of directions and further expressed a hope and trust that the Central Government expeditiously considers making of a legislation or taking such necessary steps as it is empowered to frame laws under Entry 66 of List I of the VII Schedule of the Constitution of India read with Entry 25 of List III of the said Schedule. Paragraphs 75 to 77 of ***Saurabh Chaudri's case*** *(supra)* are extracted herein under:

"75. Our directions aforementioned, however, are interim in nature. Parliament having regard to Entry 66 List I of the Seventh Schedule of the Constitution of India ***has the legislative competence which would take care of the country as a whole.*** *While making such a legislation, Parliament, undoubtedly,* ***would take into consideration the special needs of some small States, having regard to their backwardness*** *— economic, social and educational, as also geographical conditions.*

76. Parliament has also the legislative competence in terms of Entry 25 List III of the Seventh Schedule of the Constitution. It, for education and particularly higher education where excellence is required, while enacting law must also foresee that in the era of liberalisation and globalisation, Indian citizens must compete with their counterparts of the developed countries. ***Merit, thus, must be allowed to explore to the fullest extent. Genius hidden in the citizens must be allowed to blossom.*** *Despite 55 years of India's existence as an independent nation, a national policy on higher education has not come into being. Its significance and importance was highlighted in Dr Pradeep Jain case [(1984) 3 SCC 654 : AIR 1984 SC 1420]; but Parliament did not pay any heed thereto.*

> *77. The courts are normally reluctant to issue any direction to the Central Government for making law. Following our practice, we refrain ourselves from issuing any direction in this regard.* ***We hope and trust that the Central Government expeditiously considers making of a legislation or taking such steps as are necessary in this behalf keeping in view the requirement of coordination in higher education in terms of Entry 66 List I of the Seventh Schedule of the Constitution of India."***

81. Thus, to accept that all the decisions from ***Pradeep Jain*** onwards had sealed the fate of any future arrangements relating to Other Backward Class reservations being made will not be applicable in the present circumstances when post Constitutional 103rd Amendment laws framed by the Central Government have opened up reservation for other backward categories to the extent of 27% in Central Government Institutions against All India Quota seats, and has also proposed to do it in the present context with a cap of 50% without disturbing the other reservations. The Apex Court had nowhere prevented the applicability of any future laws of reservations and in

the case of **Rajeshwaran** (decided on 27.07.2001) and **K.Jayakumar** (decided on 11.09.2002) (supra), had expressed that any attempt of reservation at that stage would have resulted in confusion if the said benefit was extended to other backward categories under All India quota. The subsequent observations in the decision of ***Saurabh Chaudri*** (supra) as indicated above and the opening up of reservations for Scheduled Castes and Scheduled Tribes in the case of ***Abhay Nath*** (supra), therefore, lead to the inference that the Apex Court had proceeded to accommodate reservations in favour of Scheduled Castes and Scheduled Tribes as against the All India quota after reviewing the judgment in the case of ***Buddhi Prakash Sharma*** (supra) and hence, to say that reservations would not be considered for all times to come in favour of other backward categories as directed by the Supreme Court may not appear to be correct.

82. The contention of surrender of seats or contribution of seats to the Central pool came about as a result of the judgment in the case of ***Dr.Pradeep Jain*** (supra) and further, as explained in ***Dr.Dinesh Kumar (II)*** supra and further noticed in the case of ***Saurabh Chaudri*** (supra). This concept was introduced to ensure that 15% of

the seats in Under Graduate medical courses and 50% in Post Graduate medical courses may be made available for All India open examination to ensure the securing of admission to the best of the meritorious candidates. In our opinion, this pursuit of achieving merit has, as already indicated above, after a long drawn battle of three decades, been achieved to a substantially great extent as expected by the Apex Court in the case of ***Dr.Pradeep Jain*** (supra) by the holding of NEET examinations. We may just extract the relevant provisions which indicate that for a candidate to qualify in the National Eligibility cum Entrance Test (NEET), he/she will have to obtain a minimum of 50% marks and in the case of SC/ST and other backward classes, this minimum percentage would be 40. For the other Disabilities category, a separate category of percentage has been provided at 45% as minimum requirement for clearing the test. The aforesaid minimum percentage of marks is further qualified by another clause that no candidate who has failed to obtain the minimum eligibility marks as prescribed shall be admitted to any of the courses in the said academic year. The relevant provisions are as follows:

> *"Sub-clause (ii) of Clause 5(5) of Medical Council of India Regulations on Graduate Medical Education, 1997*

which has been substituted in terms of notification published on 21.12.2010 in Gazette of India,

(ii)In order to be eligible for admission to MBBS course for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (Fifty percent) marks in each paper of National Eligibility-cum-Entrance Test held for the said academic year. However, in respect of candidates belonging to Scheduled Casts, Scheduled Tribes and Other Backward Classes, the minimum percentage of marks shall be 40% (Forty Percent) in each paper and in respect of candidates with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (Forty Five Percent) in each paper of National Eligibility-cum-Entrance Test:

Provided when sufficient number of candidates belonging to respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test in any academic year for admission to MBBS course, the Central Government in consultation with Medical Council of India may, at its discretion, lower the minimum marks required for admission to MBBS course for candidates

belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said year only.

83. Not only this, the amendments brought about also indicate the possession of a similar percentage of marks at the qualifying examination in order to seek admission through the NEET. It is, therefore, clear that the minimum of merit has now been taken care of in order to ensure the availability of meritorious candidates through this All India process for admission to Under Graduate and Post Graduate courses. This, therefore, meets the argument of merit and therefore, in the said background, once the minimum of merit has been taken care of, the reservation will be applied only amongst such meritorious candidates, who clear the NEET examination. Reservation, therefore, without reference to merit does not appear to be now a problem for the purpose of any admission in the Under Graduate and Post Graduate medical courses. Thus, the application of any reservation rule, be at the instance of the State specific law or as per any reservation policy framed by the Central Government for All India

quota seats will not affect merit. The introduction of reservation in the All India quota, the apprehension whereof had been expressed earlier cited in the case of ***K.Jayakumar*** or the judgment in the case of ***Rajeshwaran*** has been taken care of to a great extent with the fading away of any compromise on merit at least in relation to admission in the Under Graduate and Post Graduate medical courses.

84. We now come to the regulations framed by the Medical Council of India namely, Regulation 5(5) for Graduate Courses substituted as per notification dated 21.12.2010 and 9 (4) for Post Graduate courses that are extracted herein under:-

> *"The Clause 5(5) of Medical Council of India Regulations on Graduate Medical Education, 1997 has been substituted in terms of notification published on 21.12.2010 in Gazette of India,*
>
> *(i) There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance Test for admission to MBBS course' in each academic year. The overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical*

Council of India with the previous approval of the Central Government shall select organization/s to conduct 'National Eligibility-cum-Entrance Test for admission to MBBS course.

*(ii) In order to be **eligible for admission to MBBS course** for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (Fifty percent) marks in each paper of National Eligibility-cum-Entrance Test held for the said academic year. However, in respect of candidates belonging to Scheduled Casts, Scheduled Tribes and Other Backward Classes, the minimum percentage of marks shall be 40% (Forty Percent) in each paper and in respect of candidates with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (Forty Five Percent) in each paper of National Eligibilty-cum-Entrance Test:*

Provided when sufficient number of candidates belonging to respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test in any academic year for admission to MBBS course, the Central Government in consultation with Medical Council of India may, at its discretion, lower the

minimum marks required for admission to MBBS course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said year only.

*(iii)**The reservation of seats in medical colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories.** An all India merit list as well as State-wise merit list of the eligible candidates shall beprepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS course from the said lists only.*

(iv)No Candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub-Clause (ii) above shall be admitted to MBBS Course in the said academic year.

(v)All admissions to MBBS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test."

In the clause 5, sub-clause II, as amended vide notification No.MCI-31(1)2010-Med/499068 dated 21st December 2010, the following shall be substituted as under, in terms of notification dated 15.02.2012.

> *"II.In order to be eligible for admission to MBBS course for a particular academic year, it shall be necessary for a candidate to obtain minimum marks at 50th percentile in 'National Eligibility-cum-Entrance Test to MBBS course' held for the said academic year. However, in respect of candidates belonging to Scheduled Casts, Scheduled Tribes and Other Backward Classes, the minimum percentage of marks shall be at 40th percentile. In respect of candidates with locomotory disability of lower limbs terms of Clause 4(3) above, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in 'National Eligibilty-cum-Entrance Test for admission to MBBS course'.*
>
> *Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any*

academic year for admission to MBBS course, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said year only.

In the clause 5, sub-clause II, as amended vide notification No.MCI-31(1)/2010-Med/49068 dated 21st December 2010, the following shall be added as under, in terms of notification dated 15.02.2012.

"VI.To be eligible for admission to MBBS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology/Bio-technology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Bio-technology at the qualifying examination as mentioned in clause (2) of Regulation 4 and in addition must have come in the merit list of "National Eligibility-cum-Entrance Test" for admission to MBBS course. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other

Backward Classes the minimum marks obtained in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 40% instead of 50%. In respect of candidates with locomotory disability of lower limbs in terms of Clause 4(3) above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 45% instead of 50%.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally permitted to take up the National Eligibility-cum-Entrance Test and in case of selection for admission to the MBBS course, he/she shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.

VII.The Central Board of Secondary Education shall be the organization to conduct National Eligibility-cum-Entrance Test for admission to MBBS course."

9. Procedure for selection of candidate for ***Postgraduate courses*** *shall be as follows:-*

1) ..

2) ..

3) ..

4) ***The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories.*** *An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only.*

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent Authority from time to

time."

85. The said regulations categorically indicate that the reservation of seats for respective categories shall be as per applicable laws prevailing in the States/Union Territories. The said provision, it is true, does not mention All India quota seats specifically, but it does not specifically exclude it either. No express distinction is indicated between the two categories of seats, namely, the State seats and the State surrendered / contributed seats to the All India quota. It categorically speaks about an All India merit list as well as State-wise merit list of the eligible candidates on the basis of the marks obtained in the National Eligibility cum Entrance Test (NEET) and further specifies that admissions shall be made only from the said lists. The question is, whether the aforesaid regulations intend to apply reservation only in respect of State sponsored seats and not State surrendered seats to All India quota or central pool. It is correct that the judgment in the cases of ***Rajeshwaran*** and ***K.Jayakumar*** (supra) had expressed its reservation about any such benefits being made available, but with the introduction of reservation to SC/ST's against All India Quota seats, can it be said that the MCI regulations were

incorporated for applying reservation in respect of the State sponsored seats only? In our opinion, had it been so, it would have been categorically stated as such. However, the Medical Council of India relies on the other parts of the regulations to contend that the directions of the Supreme Court have to be complied with and therefore, the Council urges that the cases of ***Rajeshwaran*** and ***K.Jayakumar*** (supra) prevent the application of State's specific reservation against All India quota. It is also argued by splitting the regulations in 3 parts to advance a stand of it being applicable to State seats only. The argument that the regulations provide a bifurcation between the Government and Management Quota reservation of seats in Diploma Courses for in-service candidates reveal that the same cannot be applied to All India Quota and therefore, the whole regulation should be read only with regard to States seats is unacceptable for the reason that the bifurcations are specific and nowhere touch upon indicating denial of reservation to OBC candidates against All India Quota seats. The main contention is that the orders of the Hon'ble Supreme Court completely govern the said field.

86. We find that after the aforesaid two cases in ***Rajeshwaran***

and ***K.Jayakumar*** and the commencement of the 103rd constitutional amendment, the Centre also came up with its law and applied reservation for other backward categories to the extent of 27% in respect of All India quota in Central Government Institutions. This fact is now clearly acknowledged in paragraph 11 of the short counter-affidavit as also the D.O. letter of the Central Union Health Minister dated 18.12.2019. If that was so, then did the Medical Council of India ever object to the applicability of such reservations in favour of other backward category candidates to the extent of 27% in such institutions? If the Medical Council of India did not object to any such reservations in relation to the Central Institutions, then on the same principle we cannot infer any specific denial of reservation in the MCI regulations to the other backward categories in the State surrendered seats of All India quota. This implied bar being read by the Medical Council of India has not been specifically indicated nor does it appear to have been indicated in any of the regulations framed by the Council.

87. The Regulations, particularly Regulation 9.11, indicates that the Medical Council of India would be bound by the orders and

directions of the Supreme Court. There is no gainsaying that the Medical Council of India would be bound by the same but this does not estop the Central Government from exercising its legislative powers either through primary or subordinate legislation to adopt a reservation policy, which they have already done in respect of S.T./S.C. candidates against the All India Quota seats in Central Government institutions and 27% to the OBC candidates in such institutions. The only field which is left at present is the extension and implementation of reservation to OBCs in the States' surrendered All India Quota seats. The affidavit of the respondent No.4 in paragraph 11 specifically refers to "the Ministry of Health and Family Welfare in its affidavit" has proposed to apply States specific reservation for OBC candidates against all available All India Quota seats with a certain rider. This falls within the competence of the Central Government as already expressed by the 5 Judges Bench in ***Saurabh Chaudri' case*** (supra). The argument that the Medical Council of India would be bound by the Apex Court's orders and directions, therefore, does not mean that the Central Government is debarred from taking any further steps in this regard by exercising it's legislative competence in this field. We say this even assuming that the respondents do not intend

to apply the State specific laws against the All India Quota seats.

88. The above position having not been successfully dislodged, we find no rational nexus or reason for not allowing the benefit of reservation to the other backward categories as against the State surrendered All India quota seats.

89. Thus, even assuming for the sake of arguments that the State specific reservation cannot be *ipso facto* clamped on such seats as they have been surrendered to the Central pool, then the Central Government itself has come forward to apply reservation as per paragraph 11 of the short counter-affidavit and that commitment stands renewed in the D.O. letter of the Union Health Minister. The learned counsel for the Medical Council of India has not been able to give any satisfactory answer to this stand taken by the Central Government, which, in our opinion, extends in favour of the petitioners.

90. In this background, we find that on principle there is no legal or constitutional impediment for extending the benefit of reservation to

the other backward categories in the State surrendered All India quota seats of the UG/PG medical courses in the State run medical colleges within Tamil Nadu subject to any further directions or orders of the Apex Court.

91. The question is can a *Writ of Mandamus* be issued for imposing a mandate on the Central Government and the Medical Council of India to extend the benefit of reservation to other Backward Class categories against All India Quota seats?

92. Reservation *per se* is neither a Fundamental nor a Legal Right unless authorized by a statue made by the Parliament. The provisions of Article 15 and Article 16 of the Constitution of India have been held to be enabling provisions with discretion to the State to frame any law relating to reservation. In the instant case, the State Government itself has filed a Writ Petition contending that the Tamil Nadu Act, 1993 framed by the State Government is in force and therefore should be applied for reservation against the All India Quota seats as claimed. The same is being resisted by the Central Government and the Medical Council of India, the Central Government

coming with a plea that it has framed a limited proposal for extending such benefits as explained in paragraph 11 of their counter-affidavit. But this is being totally opposed by the Medical Council of India on the ground that the State specific reservation is not available in the case of All India Quota seats and even otherwise, the All India Quota seats is a scheme conceptualized by the Supreme Court and therefore, no change can be brought about without any orders of the Apex Court in this regard.

93. We may clear certain fundamental doubts. A *Mandamus* can issue to an authority where there is an obligation cast in law to do some act. In the present case, it is an issue of implementing reservation against All India Quota seats in favour of other Backward Category candidates. The question of implementing any obligation or duty by the Central Government or by the Medical Council of India would arise only if any such right has been crystallized in favour of the other Backward Class category candidates. In the instant case, there are two aspects of the matter which have been already observed by us, viz. that against the All India Quota seats in the Central Government institutions 27% reservation has been extended to the

other Backward Class category candidates. The State of Tamil Nadu has already come up in a Writ Petition contending that the State has already taken this decision as there is a law to support that State specific reservation in Tamil Nadu to the extent claimed, reservation should be implemented. The Tamil Nadu State law therefore is in position but the question is of applying it against the All India Quota seats. Even assuming that the All India Quota seats belong to the Central Government pool and are to be governed by the Central legislation, a specific the rule of reservation has not yet been introduced by the Central Government with regard to All India Quota seats surrendered and contributed by the State-run Medical Colleges in the All India Quota pool. The contest of a sense of belonging in respect of the All India Quota seats needs to be dispelled. It is true that as per the Scheme drawn by the Supreme Court, the All India Quota was conceptualized to be an earmarked separate quota for ensuring admission to candidates based on their merit. The seats of the All India Quota, therefore, do not carry a sticker of ownership so as to understand the same, and the seats would belong to and are rather meant to be for candidates who would stand in merit to occupy the said seats. The All India Quota, therefore, belongs to the meritorious

candidates on an All India basis, which also includes any candidate from any State. The same, therefore, cannot be said to be, in effect, either belonging to the Centre or to the State. The preparation of merit has now been taken care of by the NEET examination and therefore, no candidate other than who qualifies the said examination can be granted admission and therefore also, the seats belong to those who compete and qualify proving their eligibility and merit in the examination. The Central Government has, however, in its affidavit both in the case of *Dr. Saloni Kumar* (supra) and in the present case as well, categorically taken a consistent stand that such reservation can be extended for which, there is a proposal to the extent indicated in the paragraphs of the said affidavits referred to above.

94. The question is can this be said to be a crystallized right in favour of the other Backward Class candidates or is it a mere anticipation. It is by now well settled that a mere anticipation is something different from a legitimate expectation which can be transformed into a right. However, the decision-making process of the respondents does indicate a promise to fulfill this expectancy through a proposal which is yet to be finalized. It has not taken the shape of a

formal rule and the Medical Council of India Regulations are silent on the same as to whether the All India Quota seats would also attract the law of reservation as applicable in the respective States. It is this nebulous state which has been created on account of the absence of a firm decision coupled with uncertain and inferential stands taken by the respondents that has led to the filing of these Writ Petitions. The Medical Council of India has inferred that it is bound to follow the judgments of the Supreme Court of India which has been indicated in the Regulations itself and simultaneously there is no specific indication of the word "**All India Quota**" either occurring in Regulation 5.5 or Regulation 9.4 in respect of the U.G./P.G. Courses. It has, therefore, taken a stand which does not appear to reflect a rejection by the Central Government. Learned counsel for the Medical Council of India explained this that all the State Governments have been throughout taken to understand that there would be no reservation in respect of other Backward Class categories against All India Quota seats, and it is in this way that the States have understood it up till now.

95. We cannot accept this argument for the simple reason that the State of Tamil Nadu with the entire galaxy of all representative

political parties by filing their own Writ Petitions have clearly indicated that they have never understood or conceded to this understanding of the Medical Council of India about the status of State specific reservation to other Backward Class categories against the All India Quota seats. The State Government in the saddle having itself filed the Writ Petition is sufficient proof to negate this contention of the Medical Council of India.

96. Side by side, what can also be clearly perceived is that the Central Government in its affidavit, as indicated above, has continuously indicated a proposal for introducing reservation in favour of other Backward Class candidates. This is not an elusive proposal and rather is a positive indication of a competent legal resolve for implementing the reservation in favour of other Backward Class categories vis-à-vis the U.G. / P.G. seats of All India Quota. This, stand does not therefore qualify as a mere anticipation and tends to move a step forward for crystallizing a legitimate expectation of reservation in favour of other Backward Class categories for the seats in question.

97. The question therefore is can a *Mandamus* be issued to enforce such a committed proposal which is yet to take the form of law and remains in the realm of what can be termed as an active consideration prolonged since the filing of the affidavit in the year 2016 in the case of ***Dr. Saloni Kumari*** (supra). The power of judicial review in policy matters is by now well-settled that a Court cannot issue a *Mandamus* to the Executive or the Legislature to frame a law or to frame a policy unless it is established that there is manifest arbitrariness or violation of Article 14 or any of the Fundamental Rights guaranteed under the Constitution of India. As noted above, Articles 15 and 16 of the Constitution of India do not confer a Fundamental Right of reservation and are only an enabling provision for the State to exercise such a discretion. This being the position of law, a straight *Mandamus* for extending the benefit of reservation from this Court may not be possible unless a crystallized right takes a shape. The interference with a policy matter, if already taken, may be permissible through a judicial review to a limited extent as held by the Apex Court but, on the other hand, it is debatable as to whether a policy framed in the shape of a proposal and not implemented can be enforced in the absence of a crystallized legal right. The petitioners contend that

according to the Tamil Nadu Act, 1993, the State has already introduced reservation and therefore the other Backward Class categories already have a legal right to seek the implementation of reservation against All India Quota seats. This question has to be seen in the background that All India Quota seats and its admissions are to be governed by the process of admission already in place in view of the judgments of the Apex Court as well as the regulations framed by the Medical Council of India. There cannot be any dispute that the minimum standards of eligibility for seeking admissions in professional courses in medical education have to be fixed by the Medical Council of India and the Dental Council of India, but reservation in admissions has to be sanctioned by legislation or in the present context by any orders of the Apex Court.

98. There appears to be a dispute with regard to the percentage, keeping in view the provisions of the Tamil Nadu Act of 1993 and the offer extended by the Central Government in its short counter-affidavit.

99. We may refer to the Constitution Bench judgment in the case

of ***Dr.Preethi Srivastava vs. State of Madhya Pradesh, (1999) 7 SCC 120,*** where while discussing this issue in respect of fixing of minimum eligibility marks in Post Graduate education in medical specialities, the majority of four Judges opined as under in paragraph 24:-

> *"**24.** At the next below stage of post-graduate education in medical specialities, similar considerations also prevail though perhaps to a slightly lesser extent than in the super specialities. But the element of public interest in having the most meritorious students at this level of education is present even at the stage of post-graduate teaching. Those who have specialised medical knowledge in their chosen branch are able to treat better and more effectively, patients who are sent to them for expert diagnosis and treatment in their specialised field. For a student who enrols for such speciality courses, an ability to assimilate and acquire special knowledge is required. Not everyone has this ability. Of course intelligence and abilities do not know any frontiers of caste or class or race or sex. They can be found anywhere, but not in everyone. Therefore, selection of the right calibre of students is essential in public interest at the level of specialised post-graduate education. **In view of this supervening public interest which has***

to be balanced against the social equity of providing some opportunities to the backward who are not able to qualify on the basis of marks obtained by them for post-graduate learning, it is for an expert body such as the Medical Council of India, to lay down the extent of reservations, if any, and the lowering of qualifying marks, if any, consistent with the broader public interest in having the most competent people for specialised training, and the competing public interest in securing social justice and equality. The decision may perhaps, depend upon the expert body's assessment of the potential of the reserved category candidates at a certain level of minimum qualifying marks and whether those who secure admission on the basis of such marks to post-graduate courses, can be expected to be trained in two or three years to come up to the standards expected of those with post-graduate qualifications."

100. The aforesaid view was reiterated in paragraph 23 of the judgment of the Apex Court in the case of ***State of Madhya Pradesh vs. Gopal D.Tirthani, (2003) 7 SCC 83***, which is extracted

hereinunder:-

> ***23.*** *In the case of Dr Preeti Srivastava v. State of M.P. [Preeti Srivastava (Dr) v. State of M.P., (1999) 7 SCC 120] the Constitution Bench has expressly discarded the submission that there need not be any qualifying marks prescribed for the common entrance examination.* ***The Medical Council of India, as an expert body, is the repository of the nation's faith for laying down the extent of reservations, if any,*** *and the lowering of qualifying marks consistent with the broader public interest in having the most competent people for specialized training and the competing public interest in securing social justice and equality. Even when it is permissible to prescribe lesser qualifying marks for a reserved category (not a mere separate channel of entry of candidates) and the general category of candidates at the postgraduate level, there cannot be a big disparity between the two. The level of disparity in the qualifying marks subject to its being permitted by the expert body, must be minimal so that the candidates seeking admission into postgraduation*

can put up to a certain level of excellence. Referring to Ajay Kumar Singh v. State of Bihar [(1994) 4 SCC 401], Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] and Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan [(1997) 6 SCC 283 : 1997 SCC (L&S) 1449] the Constitution Bench observed that it is true that in spite of having been admitted through any channel or maybe, by reservation, merely because everybody has to take the same postgraduation examination to qualify for a postgraduate degree, it is not a guarantee of quality. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum marks and a person who qualifies with high marks. If excellence is to be promoted at the postgraduate level, the candidates qualifying should be able to secure good marks while qualifying. Attaining minimum qualifying marks has a direct relation with the standards of education. Prescription of qualifying marks is for assessment of the calibre of students chosen for admission. If the students are of a

high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. The assemblage of students in a particular class should be within a reasonable range of variable calibre and intelligence, else the students will not be able to move along with each other as a common class. Hence, the need for a common entrance test and minimum qualifying marks as determined by experts in the field of medical education.

101. Relying on the minority view expressed in the judgment of ***Dr.Preethi Srivastava*** (supra), a Full Bench of the Rajasthan High Court took a contrary view that came to be reversed by the Apex Court in the case of ***Harish Verma and Others vs. Ajay Srivastava***

and Another, (2003) 8 SCC 69 while referring to the ratio in the above quoted judgments.

102. Needless to emphasise that the said decisions were with regard to the fixing of minimum qualifying marks for admission to Post Graduate courses and not on the issue of providing reservation after qualifying the examinations. But, the observations made therein even touched upon the issue of extending benefits to the reserved category candidates to secure social justice, equality and competing public interest. This is to be taken into account for the reason that while framing a policy or framing a law even by the Medical Council of India, the said observations cannot be lost sight of by the Medical Council of India and the Central Government.

103. The aforesaid observations, therefore, indicate that a policy relating to extending the benefit of reservations *vis-a-vis* qualifying marks and admissions has to be reviewed jointly by the Central Government as well as by the Medical Council of India. At the same time, once the constitutional mandate enabling the State to frame a law has been crystallised by the framing of a particular law by the

State Government, then its applicability *vis-a-vis* All India quota to the extent the percentage is permissible cannot be ignored. We may, however, caution that the balance which has to be struck is in order to avoid any undesirable disbalance of representation of candidates qualifying on merit in the NEET examinations. The minimum merit and the preparation of the list of candidates entitled to admission having been taken care of by the NEET examinations, it cannot be said that merit would be compromised if reservation is introduced in favour of Other Backward Categories in the All India quota, who have qualified in the NEET examinations, but, that is an issue for which a decision has to be taken upon a joint deliberation and consideration of all such factors that may be necessary so as to implement the policy by any appropriate fusion and the protection of interests and at the same time maintaining a balance of the representations of each category of candidates in their respective proportions.

104. We are issuing certain directions as we find that the entire constitutional obligation to take a decision by the Central Government is evidently a necessity when it involves the future career of candidates aspiring in a welfare State to receive their share of

opportunity of education. We are not asking the respondents to take a decision on some manifesto, but rather on a clear projection of a firm commitment to a proposal by way of a solemn affidavit before this Court preceded by a similar affidavit before the Apex Court in the case of ***Dr.Saloni Kumari*** (supra) involving the rights of the Other Backward category candidates, who, upon being qualified and declared eligible through an entrance examination, are found to be possessed of the merit of getting admission. It is the implementation part of OBC reservation against All India Quota seats which is warranting in the present case on account of an indecisiveness prevailing in proceeding to take a positive step or otherwise in relation to the claim as set out in the writ petitions. This claim is not bereft of substance, but does require an expert decision consciously to fulfill the commitment of the proposal as represented by the Central Government in its own affidavit through the fourth respondent, both in the case of ***Dr.Saloni Kumari*** and in the present case as well. We are issuing the directions which are not a policy declaration nor a mandamus to declare a policy. The proposal as committed is already in place as professed by the fourth respondent in his affidavit and legally supportable by a State law. Since the seats are of All India quota, therefore, it requires a decision

with the participation of the authorities keeping in view the fact that the control of setting of coordinated standards of higher education is with the Central Government and the Medical Council of India in such matters as held by the Constitution Bench in ***Saurabh Chaudri's*** *case.*

105. To apply this on principle, the matter has to be resolved between the State Government and the Central Government with the participation of the Medical Council of India as well as the Dental Council of India and in this view of the matter, we find that it would be appropriate that the issue is referred to a Committee for providing the terms of implementation of such reservation as claimed by the petitioners, which can only be done with regard to the courses that are to be run in future and not in the present academic year as that would disturb the entire selections that have already been set into motion and are likely to be concluded under the existing scheme. This exercise, therefore, has to be taken with the participation of all these three Organs and for which, we direct the Union of India through the Director General of Health Services, Ministry of Health and Family Welfare, to convene a meeting along with the Health Secretary,

Government of Tamil Nadu and the Secretaries of the Medical Council of India and the Dental Council of India in order to finalise the manner in which the facilities of OBC reservation are to be provided for against All India Quota seats in the UG/PG courses with effect from the next academic year as already proposed by the Central Government and discussed hereinabove.

106. In case, any of the parties intend to contend that they need some clarification from the Apex Court, it is open to them to approach the Apex Court for any such clarification, but the directions given herein shall be complied with and the decision with regard to the implementation of the percentage of reservation that may be offered as indicated above may be announced by the Central Government preferably within three months.

All the writ petitions, therefore, stand disposed of in the light of the observations made hereinabove. No costs. Consequently, all miscellaneous petitions are closed.

(A.P.S., CJ.) (S.K.R., J.)
27.07.2020

Index : Yes
sasi/bbr/sra

To:

1.The Secretary,
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2.The Secretary,
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3.The Medical Council of India,
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4.The Director General of Health Services,
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5.The Chairman,
National Board of Examination,
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Mahatma Gandhi Marg,
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6.The Secretary,
Dental Council of India,
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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(sasi)/bbr/sra

W.P.Nos.8324, 8325,
8326, 8327, 8335, 8361, 8420,
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and 8828 of 2020