* **THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13.10.2011
% Pronounced on: 23.12.2011

WP(C) No. 4299/2011, CM 16403/2011

NOOPUR CHAWLA & ORS. **... PETITIONERS**

Through: Dr. Aman Hingorani, Ms. Swati Sumbly, Advocates for Petitioners
Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Siddharth Bambha, Adv. for applicant in CM 16403/2011
Mr. P.S. Patwalia, Sr. Adv. as Amicus Curiae

VERSUS

UNIVERSITY OF DELHI & ORS. **. . . RESPONDENTS**

Through: Mr. Mohinder J.S. Rupal, Adv. for Respondent No.1/University of Delhi
Mr. A.S. Chandhiok, ASG with Mr.Neeraj Chaudhari, CGSC, Mr.Akshay Chandra, Mr.Khalid Arshad, Ms. Manjusha Wadhwa, Mr.Ritesh Kumar, Mr. Sumit Goyal, Mr.Piyush Sanghi, Advs. for UOI
Mr. Adward Behlo, Mr. C.M. Kennedy, Mr. Amit Kumar Singh, Mr. nishim Vashim, Advs. for State of Nagaland/Intervener
Mr. Nobin Singh, Adv. for State of Manipur/Intervener
Mr. Atul Wadera, Mr. A.K. Saini, Advs. for Intervener

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CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

A.K. SIKRI, ACTING CHIEF JUSTICE

For orders, see WP(C) No.4294/2011.

ACTING CHIEF JUSTICE

SIDDHARTH MRIDUL, J.

DECEMBER 23, 2011
pk

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* THE HIGH COURT OF DELHI AT NEW DELHI

\+ WP(C) NOs. 4294/2011, 4299/2011, 7103/2011 & 4290/2011

Reserved on: 13.10.2011
% Pronounced on: 23.12.2011

WP(C) No. 4294/2011, CM NOs. 16812/2011, 16404/2011

NOOPUR CHAWLA & ORS. ... **PETITIONERS**

Through: Dr. Aman Hingorani, Ms. Swati Sumbly, Advocates for Petitioners
Mr. Vivek Sharma, Adv. for Applicant in CM No.16812/2011
Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Siddharth Bambha, Adv. for applicant in CM 16404/2011
Mr. P.S. Patwalia, Sr. Adv. as Amicus Curiae

VERSUS

UNIVERSITY OF DELHI & ORS. ... **RESPONDENTS**

Through: Mr. Mohinder J.S. Rupal, Adv. for Respondent No.1/University of Delhi
Mr. A.S. Chandhiok, ASG with Mr.Neeraj Chaudhari, CGSC, Mr.Akshay Chandra, Mr.Khalid Arshad, Ms. Manjusha Wadhwa, Mr.Ritesh Kumar, Mr. Sumit Goyal, Mr.Piyush Sanghi, Advs. for UOI
Mr. Anil Shrivastava, Mr. Rituraj Biswas, Advs. for State of Tripura/Intervener
Mr. Adward Behlo, Mr. C.M. Kennedy, Mr. Amit Kumar Singh,

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Mr. nishim Vashim, Advs. for State of Nagaland/Intervener
Mr. Nobin Singh, Adv. for State of Manipur/Intervener
Mr. Atul Wadera, Mr. A.K. Saini, Advs. for Intervener

WP(C) No. 4290/2011

MS. PARIKHA RAMPAL & ORS. **... PETITIONERS**

Through: Mr. Shanker Raju, Adv.
Mr. P.S. Patwalia, Sr. Adv. as Amicus Curiae

VERSUS

GGSIPU & OTHERS **... RESPONDENTS**

Through: Mr. Mukul Talwar, Adv. for R-1
Mr. A.S. Chandhiok, ASG with Mr.Neeraj Chaudhari, CGSC, Mr.Akshay Chandra, Mr.Khalid Arshad, Ms. Manjusha Wadhwa, Mr.Ritesh Kumar, Mr. Sumit Goyal, Mr.Piyush Sanghi, Advs. for UOI

WP(C) No. 4299/2011, CM 16403/2011

NOOPUR CHAWLA & ORS. **... PETITIONERS**

Through: Dr. Aman Hingorani, Ms. Swati Sumbly, Advocates for Petitioners
Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Siddharth Bambha, Adv. for applicant in CM 16403/2011

Mr. P.S. Patwalia, Sr. Adv. as Amicus Curiae

VERSUS

UNIVERSITY OF DELHI & ORS. **... RESPONDENTS**

Through: Mr. Mohinder J.S. Rupal, Adv. for Respondent No.1/University of Delhi
Mr. A.S. Chandhiok, ASG with Mr.Neeraj Chaudhari, CGSC, Mr.Akshay Chandra, Mr.Khalid Arshad, Ms. Manjusha Wadhwa, Mr.Ritesh Kumar, Mr. Sumit Goyal, Mr.Piyush Sanghi, Advs. for UOI
Mr. Adward Behlo, Mr. C.M. Kennedy, Mr. Amit Kumar Singh, Mr. nishim Vashim, Advs. for State of Nagaland/Intervener
Mr. Nobin Singh, Adv. for State of Manipur/Intervener
Mr. Atul Wadera, Mr. A.K. Saini, Advs. for Intervener

WP(C) No. 7103/2011

BHAWNA GARG **... PETITIONER**

Through: Ms. Indu Malhotra, Sr. Advocate with Ms. Sangeeta Goel, Ms. Sweta Kakkad, Mr. Mohit Goel, Mr. Sidhant Goel, Mr. Vanshdeep and Ms. Chinmayee, Advocates.

VERSUS

UNIVERSITY OF DELHI & ORS. **... RESPONDENTS**

Through: Mr. Mohinder J.S. Rupal, Adv. for Respondent No.1/University of Delhi
Mr. A.S. Chandhiok, ASG with Mr.Neeraj Chaudhari, CGSC, Mr.Akshay Chandra, Mr.Khalid Arshad, Ms. Manjusha Wadhwa, Mr.Ritesh Kumar, Mr. Sumit Goyal, Mr.Piyush Sanghi, Advs. for UOI
Mr. Adward Behlo, Mr. C.M. Kennedy, Mr. Amit Kumar Singh, Mr. nishim Vashim, Advs. for State of Nagaland/Intervener
Mr. Nobin Singh, Adv. for State of Manipur/Intervener
Mr. Atul Wadera, Mr. A.K. Saini, Advs. for Intervener

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

A.K. SIKRI, ACTING CHIEF JUSTICE

1. The petitioners in all these petitions have identical grievance. They are not happy with the quota allotted to the Government of India for admission in certain medical colleges, and particularly the manner in which nominees of Government of India are given admission in these medical colleges without appearing in the admission test conducted by the University, viz. Delhi University Medical – Dental Entrance Test,

2011 (DUMET). WP(C) 4292/2011 was treated as the lead case and, therefore, taking note of facts from this writ would serve our purpose.

2. The bulletin of information for the session 2011 of the faculty of Medical Sciences of the Respondent University states that the Respondent university will conduct MBBS course in three medical colleges i.e. Lady Hardinge Medical College (the Respondent college), Maulana Azad Medical college (MAMC) and the University College of Medical Sciences (UCMS) the admissions to which are to be based on merit as per the Delhi University Medical – Dental Entrance Test 2011(DUMET 2011).

3. As per clause 2.1.3 of the Bulletin nominations are made by the Government of India (the Respondent Government) to fill seats under the category of "Nominees of Government of India (NGOI)" and the candidates who wish to be considered under this category need not appear in the DUMET but are advised to correspond directly with the specified authorities. As per clause 2.1.6 of the Bulletin the NGOI seats for the MBBS course are 30 out of 150 in the Respondent College.

4. The petitioner in this petition is a female general category candidate who has cleared the DUMET – 2011 with the rank of 250. She was aspiring to get admission to MBBS course in Delhi University on the

basis of aforesaid rank. There are a total of 234 general category MBBS seats in the University. However, out of these, 30 are earmarked for quota meant for nominees of Government of India (NGOI) in the Lady Harding Medical College. Her case is that had there been no such quota, she would have got admission in that college on the basis of her ranking. The procedure and manner in which the NGOI quota seats are filled is also questioned.

5. Accordingly, in the present writ petition, the petitioner is seeking, inter alia, a direction quashing the said Bulletin as illegal and unconstitutional, to the extent it provides for filling of 30 seats out of 150 seats in the Respondent College by the Government of India Nominees (NGOI); a writ of mandamus directing that the 30 MBBS seats earmarked for NGOI candidates in the Respondent College for the academic session 2011-2012 be filled from general category candidates; a direction to consider the admission of the petitioner to the MBBS course at the Respondent College against such General category Seats.

6. Ms. Indu Malhotra, Sr. Advocate along with Mr. Mohit Goel, Ms.Sweta Kakkad and Dr. Aman Hingorani argued the case for the petitioners. They articulated their point of view in the form of following submissions:

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The selection of the candidates to the MBBS course must be based only on merit and it cannot be left to the arbitrary and unanalyzed discretion of any administrative body. Such horizontal special reservation or separate channel of entry can be provided only on basis of merit which can be assessed by the performance of the candidates in the entrance exam. The Government of India (GOI) cannot choose any candidates according to its whims and fancies. The GOI has to nominate candidates only in accordance with rank secured in the Entrance exam. To support its contention the Petitioner has relied on ***Narayan Sharma v. Pankaj Kumar Lekhar,*** *AIR 2000 SC 72*:

> "24. The following principles emerge from the above rulings:
>
> (a) A provision for reservation must be within reasonable limits.
>
> (b) There can be a reasonable classification based on intelligible differentia for the purpose of Articles 15(1), 15(4) and 29(2).
>
> (c) There can be reservation for persons belonging to areas which are socially and educationally backward.
>
> (d) A rural area is not a class by itself and cannot be considered to be socially and educationally backward merely because it is a rural area.

(e) Admission to post-graduate courses should be strictly based on merit.

(f) The merits of the candidates seeking admission to higher educational courses shall be judged by uniform standard and for that purpose holding an entrance examination is the best method.

(g) There shall be no dilution of standards in higher educational courses and in particular, post-graduate courses.

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

7. The counsel for the petitioners have also taken sustenance from the judgment of the Supreme Court in ***State of Madhya Pradesh v. Gopal T. Tirthani,*** *AIR 2003 SC 2952* for proving their contention that even if there are two channels of entry, there has to be a common entrance test and the candidates must secure minimum qualifying marks so as to become eligible for reservation. In the said case, it was held as under:

> "24. The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute post-graduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India."

8. It is further submitted by the petitioners' counsel that the GOI has itself taken the stand in its counter affidavit that the selection of students

against the central pool seats is made by the beneficiary agencies either on the basis of entrance exams or academic merit.

9. The second pillar on which the learned counsel for the petitioners want their case to be built is that the exemption granted to the NGOI category of candidates is unconstitutional and illegal and is liable to be struck down. As the DUMET-2011 has already been conducted on 22.05.2011, 30 seats earmarked for NGOI category of candidates in the Respondent College must be filled with General category candidates, including the petitioners.

10. Third pillar of their edifice is that it is legally impermissible to have 20% horizontal special reservation (30 out of 150 seats)/ separate channel of entry for NGOI candidates in the Respondent College. Such high percentage is violative of Article 14 and 15 of the Constitution. Reliance has been placed on the Apex Court's judgment in ***Anil Kumar Gupta, v. State of UP,*** *(1995) 5 SCC 173* wherein it was held:

> "In this connection, we must reiterate what this Court has said in Indra Sawhney. While holding that what may be called "horizontal reservation" can be provided under Clause (1) of Article 16, the majority judgment administered the following caution in para 744; "(B)ut at the same time, one thing is clear. It is in very exceptional situation - and not for all and sundry reasons - that any further reservations of whatever kind, should be provided under Clause (1). In such

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cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress the specific situation. The very presence of Clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under Clause (4) as well as under (1), the vacancies available for free competition as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do". Though the said observations were made with reference to Clauses (1) and (4) of Article 16, the same apply with equal force to Clauses (1) and (4) of Article 15 as well. In this case, the reservation of fifteen percent of seats for special categories was on very high side. As pointed out above, two categories out of them representing six percent out of fifteen percent are really reservations under Article 15(4), wrongly treated as reservations under Article 15(1). Even otherwise, the special reservation would be nine percent. The respondents would be well advised to keep in mind the admonition administered by this Court and ensure that the special reservations (horizontal reservations) are kept at the minimum."

Reliance has also been placed on the decision of the Hon'ble Gujarat High Court in the case of ***Shajul George v. State of Gujarat,*** *(1997) 2 GLR 1250* wherein it was held that it is not open to reserve any seat for the Central Government save for reservation provided under Article 15 of the Constitution. As regards the special needs of the states

/union territories where no medical education is available, the Hon'ble high Court referred to the scheme of the respondent Government approved by the Supreme Court in ***Dr. Dinesh Kumar & Ors. v. Motilal Nehru Medical College Allahabad & Ors.***, *1986 (3) SCC 727*, in terms of which not less than 15% of the total number of seats in each medical college or institution without taking into account any reservation policy are to be filled in on the basis of All India Entrance Examination. The Supreme Court had considered new formula as fair and just which brought about real equality of opportunity in admission in MBBS/BDS course without placing students of one state in an advantageous position over others. After consideration, the Gujarat High Court struck down the reservation of MBBS seats for students to be nominated by the Central Government as illegal. In the said case, it was held as under:

> "Then came a leading case of Dr. Dineshkumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors., [1986] 3 SCR 345 (Dineshkumar II). In Dineshkumar (II), pursuant to the direction given by the Court earlier, a scheme submitted by the Medical Council of India and circulated amongst various State Governments and Deans of Medical Faculty and others was considered at length. The scheme was modified and redrafted and was submitted by the Government of India to the Court for acceptance, which was considered by the Supreme Court. After taking into account objections of various State

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Governments and particularly States of Tamil Nadu and Karnataka regarding the quota for All India Entrance Examination in the light of reservation policy, the Apex Court directed that in accordance with the suggestions made in the scheme by the Government of India, not less than 15% of the total number of seats in each Medical College or Institution without taking into account any reservation policy shall be filled in on the basis of All India Entrance Examination. Their Lordships observed that the new formula was fair and just and would bring about the real equality of opportunity in admissions in the M.B.B.S./B.D.S. course without placing the students in one State in an advantageous or disadvantageous position as compared to the students in another State. The Court also noted that it might affect reservation policy adopted by a particular State Government. If percentage of the reservation is high, as in the State of Tamil Nadu or State of Karnataka, 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, but the Court stated that, "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." The Court, therefore, directed that all Medical Colleges or Institutions run by Union of India or State Government or a Municipal or other local authority to make reservation of 15% of the total number of seats for the M.B.B.S./B.D.S. courses

available for admission on the basis of All India Entrance Examination.

15. It was submitted on behalf of the petitioners that after the decision of the Hon'ble Supreme Court in Unni Krishnan (supra), in the matter of admission to students in professional colleges, merit and merit alone must be considered to be the sole criterion. It is also submitted that in the light of the Supreme Court decisions, the legal position regarding reservation is well-settled. At the initial stage, 15% seats of the total seats at all medical colleges should be reserved and earmarked for All India Entrance Examination. From the remaining seats, reservation can be made by State Governments in accordance with the provisions of Article 15 of the Constitution. It was submitted that in the light of a Larger Bench decision in Indra Sawhney v. Union of India and Ors., AIR1993SC477 , such reservation is permissible upto 50%. It is, however, not open to the respondents to give effect to the reservation policy on the basis of total number of seats. It is clearly violative of the mandate given by the Hon'ble Supreme Court in Dinesh Kumar (supra) as well as in Unni Krishnan (supra). To that extent, the action of the respondents requires to be interfered with by this Court.

16. It was, no doubt, contended by the respondents that Unni Krishnan (supra) declared law in respect of giving admission to professional course run by individuals and/or private colleges and not by Government colleges. It cannot be gainsaid that Unni Krishnan (supra) applies to private professional colleges. In our opinion, however, the contention of the learned Counsel for the petitioners is well founded

> that if a private college has to follow the directions issued by the Supreme Court for giving admissions to a professional course, it is inconceivable that a college run by the Union of India or by State Governments or by other authority which can be said to be "State" within the meaning of Article 12 of the Constitution of India, would not be bound by such directions. The point, as submitted by the petitioners, is no longer res integra."

11. Another pillar on which the petitioners construct their case is that today there exist medical Colleges in virtually every State / Union Territory in India, except perhaps the inaccessible tribal areas. Reservation for such category of candidates, if any, are to be treated to be under Article 15(4) of the Constitution and not under Article 15(1). Support for this submission is sought from the judgment in the case of ***Anil Kumar Gupta*** (supra) and particularly the following discussion therein:

> "19. In this connection, we must reiterate what this Court has said in Indra Sawhney. While holding that what may be called "horizontal reservation" can be provided under Clause (1) of Article 16, the majority judgment administered the following caution in para 744; "(B)ut at the same time, one thing is clear. It is in very exceptional situation - and not for all and sundry reasons - that any further reservations of whatever kind, should be provided under Clause (1). In such cases, the State has to satisfy, if called upon, that

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> making such a provision was necessary (in public interest) to redress the specific situation. The very presence of Clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under Clause (4) as well as under (1), the vacancies available for free competition as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do". Though the said observations were made with reference to Clauses (1) and (4) of Article 16, the same apply with equal force to Clauses (1) and (4) of Article 15 as well. In this case, the reservation of fifteen percent of seats for special categories was on very high side. As pointed out above, two categories out of them representing six percent out of fifteen percent are really reservations under Article 15(4), wrongly treated as reservations under Article 15(1). Even otherwise, the special reservation would be nine percent. The respondents would be well advised to keep in mind the admonition administered by this Court and ensure that the special reservations (horizontal reservations) are kept at the minimum."

12. One of the arguments of the petitioners is that the classification of the other categories of candidates for NGOI seats in the Respondent College such as Tibetan Refugees and National Bravery award winners have no valid justification and has no rational relation with the area of Medical Education itself. Therefore, the Bulletin should be struck down for wrong inclusion of categories of candidates.

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13. So as to answer the question regarding determination of merit, the petitioners have relied on the pronouncement of the Supreme Court in ***P. A. Inamdar & Ors v. State of Maharashtra & Ors***.. *AIR 2005 SC 3226* wherein a specific question was framed to this effect in para 27. It was held as follows:

> "138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty."

14. The petitioner has also relied on the judgment of the Apex Court in the case of ***T.M.A. Pai Foundation v. State of Karnataka,*** *(2002) 8 SCC 481.*

> "58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require

that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies."

15. It is submitted by the petitioner that if common entrance test is prescribed by a private institution than it is inconceivable that in the case of a college established and run by the Government, any admission can be made otherwise than on merit or any quota can be reserved for any person, family or trust, which may have assisted monetarily in establishing the college. Reliance has been placed on ***State of Gujarat and Ors. v. Meghji Peth Raj Shah Charitable Trust and Ors.,*** *(1994) 3 SCC 552.*

"In the scheme evolved in the said judgment, it is expressly directed that all students admitted to a private professional college shall be selected exclusively on the basis of merit, both in the category of merit (free) seats as well as payment seats. In the case of such private professional colleges, an exception was made to the extent of 5% of the seats

for accommodating the N.R.Is/foreign students in view of the orders and policy of the Government of India to encourage such students. It has also been directed expressly that "there shall be no quota reserved for the management or for any family, caste or community, which may have established such college". If this is the position in the case of professional colleges established and administered by private bodies, it is inconceivable that in the case of a college established and run by the government, any admissions can be made otherwise than on merit or any quota can be reserved for any person, family or Trust, which may have assisted monetarily in establishing the college. The government is not precluded from accepting donations from charitable-minded individuals or organisations but it cannot certainly enter into an arrangement or a venture of the kind concerned herein. In this case, the payment was more in the nature of a deal whereunder Sri M.P. Shah obtained in return an enduring benefit till the college lasts. It was not even a case, where the government unilaterally offered something out of gratitude for such "donation" - not that we are saying that such a thing would be legal. Now, where an individual or an organisation which establishes and runs a medical college (recognised by State or affiliated to a university) is not entitled, according to Unnikrishnan, to admit students on its own, or in its discretion, it is inconceivable that a person or a body which has assisted in setting up of a government medical college would be permitted to have a quota of its own to which it can nominate students of its own choice. There is no room for such an arrangement in law. We are, therefore, tit the opinion that the reason given by the Government of Gujarat in its communication dated

> June 22, 1993 for terminating the said arrangement is a perfectly relevant, legitimate and valid reason. It was bound to do so in law and it has done so. No exception can be taken to the said action."

16. It is submitted by the Petitioners that even when quota is fixed for a particular category then also it is necessary to undertake the entrance examination as on the basis of the merit in that examination the candidates for the quota category is to be selected. Reliance has been placed upon ***Narayan Sharma v. Pankaj Kr. Lekhar,*** AIR 2000 SC 72 wherein it was held as under:

> 30. We shall now advert to rule 5(i) which exempts the candidates referred to in Sub-rules (i), (ii), (iii) and (iv) of Rule 4 from appearing in the entrance examination. We are not concerned with Sub-rule (i) of Rule 4 as stated already. With reference to the candidates referred to in Sub-rule (ii) of Rule 4, there is no justification for exempting them from appearing in the entrance examination. As has been repeatedly held by this Court, the selection of candidates for Post-graduate courses should be based only on merit and it cannot be left to the arbitrary discretion of any administrative body. Though we have upheld reservation of 4 seats under NEC quota, we are of the opinion that such reservation can be provided only on the basis of merit which can be assessed by the performance of the candidates in the entrance examination. The NEC cannot choose any candidate according to its whims and fancies. The NEC has to

> recommend candidates only in accordance with the rank secured in the entrance examination.
>
> Hence, the provision in Rule 5(i) exempting the candidates referred to in Sub-rule (ii) of Rule 4 from appearing in the entrance examination has been rightly struck down by the High Court and we uphold the same.

17. The Respondent Governments stand is that it is open to the central Government to reserve any seat whatsoever even for defence /parliamentary forces, who have sacrificed their lives or have been permanently disabled in war / terrorism or for the bilateral commitments of the Government. For this very purpose, reliance has been placed on the Apex Court judgment of ***Kumari Chitra Ghose v. Union of India,*** *(1969) 2 SCC 228.*

The petitioners have countered the reliance placed by the respondents by contending that in the abovementioned case also, the special category candidates were not exempted from taking the entrance exam.

18. The petitioner herein has also brought o the notice of this court a decision rendered by a Learned Single Judge of this court in ***Manisha Yadav V. University of Delhi***, W.P. (C) No. 5630/2008 wherein it was observed that the decision rendered by The Apex court regarding right of

the Government to reserve seats by nomination in institution set up by it in ***Kumari Chitra Ghose*** (supra) was nearly 40 years ago and since then, with overall development of the country, a sea change has taken place with the opening of State funded and private medical and other institutions throughout the country. It was directed that a review of this policy should be undertaken.

19. One of the respondents defence is that at the time of taking the exam for entrance, the petitioners were aware of the NGOI quota mentioned in the Bulletin.

20. It is contented by the respondents that all over India, there are 41569 seats for medical candidates and only 260 seats have been allotted under the central pool scheme which was formulated in 1949. It is further submitted that this particular quota has never increased. Relying on the Apex Court judgment of ***Unni Krishnan, J.P. & Ors. etc. v. State of Andhra Pradesh,*** *(1993) 1 SCC 645.*

> "111. On the first question, the Bench held, on a consideration of Articles 21, 38, 39(a) and (f), 41 and 45 of the constitution:
>
> (a) the framers of the Constitution made it obligatory for the State to provide education for citizens";

(b) the objectives set forth in the preamble to the Constitution cannot be achieved unless education is provided to the citizens of this country;

(c) the preamble also assures dignity of the individual. Without education, dignity of the individual cannot be assured;

(d) Parts III and IV of the Constitution are supplementary to each other. Unless the 'right to education' mentioned in Article 41 is made a reality, the fundamental rights in part III will remain beyond the reach of the illiterate majority;

(e) Article 21 has been interpreted by this Court to include the right to live with human dignity and all that goes along with it. "The "right to education' flows directly from right to life." In other words, 'right to education' is concomitant to the fundamental rights enshrined in part II the Constitution. The State is under a constitutional mandate to provide educational Institutions at all levels for the benefit of citizens." The benefit of education cannot be confined to richer classes.

(f) Capitation fee is nothing but a consideration for admission. The concept of "teaching shops" is alien to our Constitutional scheme. Education in India has never been a commodity for sale.

(g) "We hold that every citizen has a "right to education' under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned for

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> state-recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions - whether state-owned or state-recognised - in recognition of their "right to education' under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of citizen's right to education under the Constitution."

21. It is contended by the respondents that the deadline for the admission i.e 30th September, 2011 has already expired. So the prayer regarding admission of the petitioners in this academic year cannot be sustained. Reliance has been placed on ***Mridul Dhar v. Union of India,*** *(2005) 2 SCC 65*, wherein it is observed as under:

> "12. Reference may also be made to notification dated 25th February, 2004 issued by the Medical Council of India in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (for short, 'the Act') with the approval of the Central Government, making the "Graduate Medical Education (Amendment) Regulations, 2004, laying down the time schedule for completion for admission process for-first MBBS course. It is on same lines as the aforequoted time schedule. Time schedule (Appendix-E) to the regulation reads as under:

"APPENDIX-E

TIME SCHEDULE FOR COMPLETION OF THE ADMISSION PROCESS FOR FIRST MBBS COURSE

Schedule for Admission	Seats filled up by Central Govt. through All India Entrance Examination	Seats filled up by The State Govt./ Institutions
Conduct of Entrance Examination	Month of May	Month of May
Declaration of Result of Qualifying Exam./ Entrance Exam.	By 5th June	By 15th June
1st round of counseling/ admission :	To be over by 30th June	To be over by 25th July
Last date for joining the allotted College And Course:	Within 15th days from the date of allotment of seats	31st July
2nd round of counseling for allotment of seats from Waiting List : Last date for joining for candidates allotted Seats in 2nd round of counseling from the Waiting List	To be over by 8th August Within 15 days from the date of allotment of seat (Seats vacant after 22nd August will be surrendered Back to the States/College	Up to 28th August 31st August)
Commencement of academic session :		1st of August

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Last date up to which students can be admitted Against vacancies arising due to any reason :	30th September"

22. To counter this particular argument of the respondent Government, the petitioners have relied on the pronouncement of the Supreme Court in ***Sadanand Misra v. Forest Research Institute and Ors.***, *(2002) 9 SCC 419.*

> "5. Inasmuch as we are clearly of the opinion that admission to the appellant could not have been denied, the petition should have been allowed by the High Court and therefore this appeal deserves to be allowed. As the writ petition was filed by the appellant promptly and there has been no delay on his part, he cannot be made to suffer on account of the time lost in litigation."

23. It is the case of the petitioners that they cannot be penalized as the petition was filed on 4.7.2011 and they approached the Court on time. The petitioners have also relied on this court's judgment of ***Dhruv Singhal V. Guru Gobind Singh Indraprastha University And. Ors.***, *W.P.(C) No. 6641/2010* wherein learned Single Judge of this court has taken the view that if delay is on the part of the University, then the interest of the candidates is to be protected.

24. It is contended by the respondents that the Prospectus mentioning the DUMET-2011 is only limited for candidates from Delhi. Therefore, there is no force in the submission of the petitioners that in order to become eligible for seats in the college of Delhi, the nominees have to clear the DUMET-2011.

25. It is pertinent to mention that the Ministry of Health and Welfare has approved the implementation of National Eligibility-cum-Entrance Test (NEET) for all UG and PG medical courses in the country, pursuant to the directions of the Supreme Court in ***Simran Jain v. Union of India,*** [W.P.(C) No. 380 of 2009] and is preparing to introduce SET from the next academic year.

26. It is contended by the learned counsel for the respondent - Medical Council of India that pre existing inequalities can be remedied by reasonable classification. Reliance has been placed on various decision of the Hon'ble Supreme Court. In ***Miss Rita Kumar v. Union of India,*** *(1973) 1 SCC 454*, it has been held thus:

> "5. It is true that the petitioners are repatriates like some of the respondents but there is a difference between the two categories as the petitioners had come to India earlier while the respondents had immigrated much later. The former were more re-settled than the latter and since the object of the rule

creating reservations of seats was rehabilitation and re-settlement it cannot be said that the classification so made administratively had no reasonable nexus to the object in view. The respondent candidates were also repatriates though, it is true, they received a lesser percentage of aggregate marks than the petitioners. If both the categories had been placed in similar circumstances it would have been possible to urge that there has been discrimination. But since the petitioners and their families have been better settled and rehabilitated than the respondents and their families it was open to the Selection Committee to decide administratively how best the purpose of rehabilitation of repatriates could be served. In our view, therefore, the discrimination is not invalid and the petitions must fail."

In ***Miss Nishi Maghu and Ors v. State of J&K***, *(1980) 4 SCC 95*, the Apex Court has held thus:

10. The classifications based on areas adjoining actual line of control and bad pockets are also challenged as violative of Article 14 of the Constitution. These are really backward areas and the residents of these areas are indisputably socially and educationally backward. Reservations made for candidates from such backward classes cannot be said to offend Article 14. In fact in Parimoo's case the reservation made for residents of bad pockets which were identified in the report of the Wazir Committee, was accepted as valid. We therefore hold that the challenge to these two categories is not justified.

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In ***Union of India and Anr. v. Alok Kumar,*** *(2010) 5 SCC 349*, it has been stated thus:

> "65. This Court in the case of Confederation of Ex-Service Man Associations and Ors. v. Union of India and Ors. (2006) 8 SCC 699 was concerned with providing of Medicare /Medical aid to ex-servicemen and the scheme framed by the Government to provide ex-defence personnel medical services provided they paid "one-time contribution", was held not to be arbitrary and based on the practice followed earlier. In such circumstances, this Court held as under:
>
> > In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised."

27. The Respondent MCI has also raised the defense that in any case that the 30 Sept deadline has passed and from next year an All India examination is going to be conducted.

28. First aspect which has to be addressed is as to whether it is permissible to earmark some of the seats to be filled up by NGOI. There are 500 seats in MBBS course in three Delhi colleges. Out of these 500

seats, 36 seats fall under NGOI quota. Break-up of these seats is as under:

Name of Medical College	Seats to be filled in on the basis of DUMET				Seats to be filled in by D.G.H.S.	Seats to be filled in by Govt. of India Nominees	Total Seats
MBBS Course							
	General	SC	ST	OBC	15% Quota	NGOI	
Lady Harding Medical College (Controlled and funded by Central Govt.)	55	19	10	14	22	30	150
Maulana Azad Medical College (Run by GNCTD)	113	25	12	14	30	6	200
University College of Medical Sciences (Under DU)	66	19	9	34	22	Nil	150
	234	63	31	62	74	36	500

29. As noted above, the case set up by the petitioners is that it is legally impermissible to have horizontal special reservation / separate channel for entry of NGOI candidate, particularly in Lady Harding Medical College where 30 out of 150 seats, i.e. 20% seats are given under NGOI quota. Relying upon the judgment of the Supreme Court in ***Anil Kumar Gupta*** (supra), it is argued that such horizontal reservation is

impermissible. Reliance is also placed on the judgment of Gujarat High Court in ***Shajul George*** (supra) wherein it was held that it was not open to reserve any seat for the Central Government save for reservation provided under Article 15 of the Constitution of India. The respondents, on the other hand, have contended that all over India, there are 41569 seats for medical candidates and only 260 seats have been allotted under the Central Pool Scheme. It was argued that the scheme was formulated in the year 1949; particular quota has never increased and the scheme has been approved by the Supreme Court in ***Kumari Chitra Ghosh*** (supra).

30. It cannot be disputed that this very question has been decided by the Apex Court in ***Kumari Chitra Ghosh*** (supra) and the Court had approved the same. A perusal of that Constitutional Bench judgment would show that two issues were raised, namely, (i) whether the provision for reservation of seats was unconstitutional; and (ii) whether the nominations to the reserved seats had been made contrary to the rules. Precise argument of the petitioners in the said case was also predicated on Articles 14, 15 and 29(2) of the Constitution of India. The argument was repelled by the Supreme Court in the following words:

> "8. As laid down in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors., (1959) 1 SCR 279 Article 14 forbids class legislation it does not forbid reasonable classification. In order to pass the test of

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permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved. The first group of persons for whom seats have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language, it is not easy or always possible to get admission into institutions imparting medical education in foreign countries. The cultural, Colombo Plan and Thailand scholars are given admission in medical institutions in this country by reason of reciprocal arrangements of educational and cultural nature. Regarding Jammu & Kashmir scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the State itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong.

9. It is the Central Government which bears the financial burden of running the medical college. It is

for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right, to decide from what sources the admission will be made. That essentially is a question of policy and depends inter-alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.

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12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded. The Central Government is under no obligation to release those seats to the general pool. It may in the larger interest of giving maximum benefit to candidates belonging to the non-reserved seats release them but it cannot be compelled to do so

> at the instance of students who have applied for admission from out of the categories for whom seats have not been reserved. In our opinion the High Court was in error in going into the question and holding that out of the nine seats filled by nomination two had been filled contrary to the admission rules and these would be converted into the general pool. Since no appeal has been filed against that part of the order we refrain from making any further observations in the matter."

31. In fact, counsels for the petitioners conceded that the issue was covered by the aforesaid judgment. However, they tried to get over this judgment by arguing that it was rendered way back in the year 1969 and due to changed circumstances over a period of time, the reasoning/rationale contained therein had lost its sanctity/validity. On this ground, it was submitted that this judgment should not be followed. No doubt, this judgment was rendered more than 40 years ago wherein the Apex Court had upheld the right of the Government to reserve seats to be filled in by it by nomination in the institutions set up by it. Accepting the justification offered by the Government that many States and Union Territories do not have medical institutions of their own, particularly in North-Eastern States. It is also a fact that there has been overall economic development in the country, a sea change has taken place with the opening of the State funded and private medical and other institutions

throughout the country. Many colleges have been set up in North-Eastern region as well. This may all justify giving a re-look by the Government at the extent of nomination seats that need to be reserved for being filled up by its nominees. When this very scheme is approved by the Constitution Bench of the Supreme Court, it is not within the province of this Court to declare that such judgment has become irrelevant. No doubt, in ***State of Punjab & Anr. v. Devans Modern Breweries Ltd. & Anr.,*** *(2004) 11 SCC 26*, Supreme Court has held that a judgment rendered long ago under particular circumstances may lose its effect due to changed circumstances, but this declaration has to come from the Supreme Court only which had rendered the earlier judgment. As far as this Court is concerned, in view of the mandate provided by Article 141 of the Constitution of India, it is bound by the ratio of ***Kumari Chitra Ghosh*** (supra). We thus can only say that the Central Government should re-examine the matter. This becomes more important because of the reason that the NGOI seats are not even evenly distributed among the three colleges. Out of 36 such seats, 30 are allocated to Lady Harding Medical College constituting 20% as against that Maulana Azad Medical College. In Maulana Azad Medical College, there are only 6 such seats earmarked out of 200. In University College of Medical Sciences, not a

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single seat is reserved under the NGOI quota. No doubt, Lady Harding Medical College is fully controlled and funded by the Central Government which is not the position in respect of other two colleges, however, the Government should keep in mind that it has to provide reservation for SC/ST/OBC category of candidates. There are additionally 15% seats are given to be filled in by Director General of Health Services. To top it, when 30 seats are given to NGOI, the net result is that out of 150 seats, 95 seats come under reservation in one form or the other and only 55 seats are left in general category which may constitute about 35%. This results in imbalance qua general category candidates. Examples are galore that even when general category candidates perform so well, they miss out and are not able to get admission because of the reservations.

32. Another aspect which needs to be highlighted at this stage is that Central Government has itself stated that out of 41569 seats for medical candidates, only 260 seats have been allotted under the Central Pool Scheme. What is significant is that out of 260 seats, 36 seats are only in Delhi and that too in two colleges and out of these 36 seats, 30 seats are earmarked in one college, i.e., Lady Harding Medical College. This calls for some rationalization in the policy. It is expected that these aspects

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would be looked into by the respondents and a decision taken thereon within three months.

33. Next question which arises for consideration is as to whether the procedure adopted by the Central Government in nominating these candidates is appropriate. As noted above, learned counsel for the petitioners had strenuously argued that even if the NGOI scheme is valid, such nominees can get admission only on the basis of Common Entrance Test and their merit in the aforesaid test. In view of the law laid down by the Supreme Court in various judgments which the petitioners have cited, this argument of the petitioners has substantial force. Since nominations have already been made in this year and such students have already taken admission and are undergoing the course, it may not be appropriate to disturb their admission in this year. We may also place on record that the respondent - Medical Council of India has itself realized this legal position and a statement was made at the Bar on behalf of Medical Council of India that from next year, an All India Common Entrance Examination is going to be conducted and even the nominations by the Government of India will be made on the basis of such examination. The Medical Council of India had no choice but to make this statement which

is in consonance with the directions of the Supreme Court in ***Simran Jain*** (supra).

34. No doubt, the petitioners had approached this Court by filing the writ petitions in June, 2011, however, fact remains that these writ petitions could not be decided by 30th September, 2011. In ***Mridul Dhar*** (supra), the Supreme Court had formally fixed 30th September, 2011 as the last date up to which students can be admitted against vacancies arising due to any reason. No doubt, in some of the cases decided by the Supreme Court thereafter, this date has been relaxed in particular cases but those are the directions given by the Supreme Court in exercise of its power under Article 142 of the Constitution. Otherwise, it has been reiterated by the Supreme Court time and again that deadline of 30th September, 2011 should be strictly adhered to.

35. To sum up, since it may not be feasible at this distance of time to undo the admission granted to the nominees of the Government of India and it may also not be possible to accommodate the petitioners now as the deadline of 30th September, 2011 has gone by and having regard to the fact that the problem is taken care of from next year when Medical Council of India is going to conduct All India Common Entrance Examination, we may not be in a position to give relief to the petitioners

in these writ petitions for this year. We may place on record that in so far as petitioner in WP(C) No.4292/2010 is concerned, she was successful in getting admission in the second counselling. For this reason, this writ petition was disposed of on 13th September, 2011. However, at the same time, counsel for the parties were permitted to refer to the pleadings of this writ petition while arguing other writ petitions. We accordingly dispose of these writ petitions in the aforesaid terms.

ACTING CHIEF JUSTICE

SIDDHARTH MRIDUL, J.

DECEMBER 23, 2011
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