

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.670 of 2015

IN

Civil Writ Jurisdiction Case No. 15173 of 2014

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1. Medical Council Of India Through its Secretary, Pocket- 14, Sector-8, Dwarka New Delhi-110 077.
 2. The Secretary, Medical Council of India, New Delhi 110077.

.... Appellants.

VERSUS

1. Saifi Ahmad Son of Rafi Ahmad, resident of Mohalla-Bakerganj Post Office- Laheriasarai, P.S.- Laheriasarai, District- Darbhanga
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
3. The Secretary cum Commissioner, Human Resources Department, Government of Bihar, Patna
4. The Secretary, Department of Health and Family Welfare, Government of Bihar, Patna
5. The Bihar Combined Entrance Competitive Examination Board, through its Secretary, IAS Association Building, Near Patna Airport, Patna-14
6. The Examination Controller, Bihar Combined Entrance Competitive Examination Board IAS Association Building, Near Patna Airport, Patna-14
7. The Officer on Special Duty (O.S.D.), Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, Patna-14
8. The Principal, Government Medical College, Battiah District- West Champaran.

.... Respondents.

WITH

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Letters Patent Appeal No. 679 of 2015

IN

Civil Writ Jurisdiction Case No. 14652 of 2014

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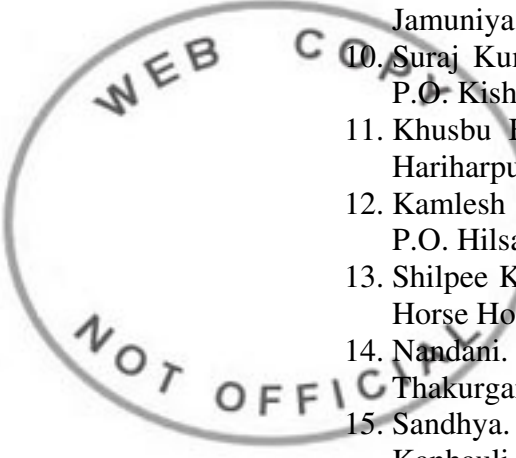
Medical Council of India Through its Secretary, Pocket - 14, Sector - 8, Dwarka New Delhi - 110077.

.... Appellant.

VERSUS

1. Preety Barkha. daughter of Pramod Kumar Paswan. resident of Mohalla - Rajendra Nagar Colony, P.O. Bahadurpur, P.S. Zero Mile, District - Bhagalpur.
2. Anchal Raj. daughter of Kanchan Prasad. resident of Mohalla - Mahatma Gandhi Nagar, P.O. Gandhi Nagar, P.S. Agam Kuan, District Patna - 800026.
3. Manish Kumar. son of Surendra Paswan. resident of village - Pirthu, P.O. Pirthu, P.S. Salaiya, District - Aurangabad.
4. Monica. daughter of Rambilash Manjhi. resident of village - Rampur Khareya (Kurmi Tola), P.O. Karwathi Bazar, P.S. Kuchaikot, District - Gopalganj.
5. Jyoti Lal Ram. son of Godari Ram. resident of village - Khemmatihaniya, P.O. Durgmatihaniya, P.S. Bisha mbharpur, District - Gopalganj.
6. Shiv Shankar Rai. son of Suraj Kumar. resident of Mohalla - New Ambedkar Colony Sandalpur Khadpar, P.O. Mahendru, P.S. Sultanganj, District - Patna.
7. Jitendra Kumar Das. son of Dukhmochan Das. resident of village - Bishanpur, P.O. Madhulata, P.S. Raniganj, District - Araria.

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8. Abhipray Chaudhary. son of Dr. Kumar Amrendra Choudhary. resident of village - Barh, P.O. Barh, P.S. Barh, District - Patna.
 9. Sochindra Kumar. son of Ramnath Rai. resident of village - Rajpur, P.O. Jamuniya, P.S. Subhadra, District - West Champaran.
 10. Suraj Kumar. son of Kapildeo Paswan. resident of village - Mathmaheshpur, P.O. Kishori, P.S. Pakri Barawan, District - Nawada.
 11. Khusbu Bharti. daughter of Late Ram Prasad Mahto. resident of village - Hariharpur, P.O. Karua, P.S. Kalyanpur, District - Samastipur.
 12. Kamlesh Paswan. son of Sri Rajendra Paswan. resident of village - Itabandh, P.O. Hilsa, P.S. Chandradeep, District - Jamui.
 13. Shilpee Kumari. daughter of Sambhu Prasad Rajak. Mohalla - Lok Nagar near Horse Hospital, P.S. Jehanabad, PO. Jehanabad, District - Jehanabad.
 14. Nandani. daughter of Amiya Mandal. resident of village - Gandhi Nagar, P.O. Thakurganj, P.S. Thakurganj, District - Kishanganj.
 15. Sandhya. daughter of Sri Lalan Baitha. resident of Mohalla - Shakti Nagar Kanhauli Bisundatt, P.O. Ramna, P.S. Mithanpura, District - Muzaffarpur.
 16. Ashish Kumar Anuj. son of Hirday Rajak. resident of village - Raypura (Hira Patti), P.O. Balhampur, P.S. Simri Bakhtiyarpur, District - Saharsa.
 17. Manish Kumar. son of Shambhu Das. resident of village - Baradhi Gola, P.O. Akodhi Gola, P.S. Akodhi Gola, District - Rohtas.
 18. The State of Bihar through the Chief Secretary, Government of Bihar.
 19. The Principal Secretary, Health Department, Government of Bihar, Patna.
 20. The Chairman, Bihar Combined Entrance Competitive Exam, IAS Bhawan, Patna.
 21. The Controller Examination, Bihar Combined Entrance Competitive Exam, IAS Bhawan, Patna.

.... Respondents.

WITH

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Letters Patent Appeal No. 777 of 2015
IN
Civil Writ Jurisdiction Case No. 15107 of 2014

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The Secretary, Medical Council of India, New Delhi 110077.

.... Appellant.

VERSUS

1. Ajit Kumar Shukla S/o Paras Nath Shukla resident of village Khajuhati, P.S.- Baikunthpur, District- Gopalganj, at present residing at B.S.P.O. Hospital Room No. 104, Viklang Bhawan, Kankarbagh, Patna
2. Prince Singh S/o Thakur Vijay Kumar Singh resident of Pirbahor Thana Campus, New Building, P.S.- Pirbahore, District- Patna
3. Ishika Bhaedwaj D/o Priya Ranjan Pandey resident of Mohalla- Sipara, Near- Gandhi Murti, P.S.- Gardanibagh, District- Patna
4. Danish Ahmad S/o Nazir Ahmad resident of Mohalla- Shah Fashahat Ki Maidan, Near Committee Hall, P.S.- Chock, Patna City, District- Patna
5. The State of Bihar
6. The Principal Secretary, Health Department, Government of Bihar, Patna
7. The Chairman, Bihar Combined Entrance Competitive Examination Board (BCECE) I.A.S. Bhawan, Near Patna Airport, P.O.-B.V.College, District- Patna
8. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board (BCECE) I.A.S. Bhawan, Near Patna Airport, P.O.- B.V.College, District- Patna.

.... Respondents.

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Appearance :

For the Appellants : Mr. Kumar Brijnandan, Adv.
For the Respondents : Mr. Y.V. Giri, Sr. Adv.
Mr. Pranav Kumar, Adv.
For the State : Mr. Parth Sarthy, G.A.-11.
(In L.P.A. No.670 of 2015)
For the Respondents : Md. Anis Akhatar, Adv.
Mr. Arif baula Siddiqui, Adv.
(In L.P.A. No.777 of 2015)
For the Respondents : Mr. Rama Kant Sharma, Sr. Adv.
Mr. Rajesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 16-12-2015

This batch of Intra-Court appeals under Clause-10 of the Letters Patent of the Patna High Court arises from C.W.J.C. No.14652 of 2014 and analogous cases, which was disposed of by judgment and order dated 23.09.2014. These appeals, as they involved substantial questions of law of general importance, were heard at length, after notice to all the parties and, with their consent, are being disposed of at this stage itself.

2. These appeals are by the Medical Council of India (hereinafter in short as 'M.C.I.') constituted under the Medical Council of India Act, 1956. The substantial question is, whether the State Government has the power and can reduce the minimum eligibility marks for reserved category candidates

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even below what has been prescribed by the M.C.I., as per the M.C.I. regulations of the year 1997 in respect to admission to M.B.B.S./B.D.S. courses. The further question, which would be involved, is whether in exercise of powers under Section-6 of the Bihar Reservation (In Admission in Educational Institutions) Act, 2003 (hereinafter referred to as the 'Bihar Reservation In Admission Act, 2003') any order could at all be passed, much less as directed by the learned Single Judge, lowering the eligibility marks for reserved candidates to enable the State to fill up the seats reserved for them when they failed to qualify.

Factual Matrix

3. The writ petitioners/respondents were students belonging to either to the Scheduled Castes, Scheduled Tribes, Backward Class, Extremely Backward Class or Girl in the Backward Class categories. They intended to seek admission in Medical Colleges of the State or Private Medical Colleges in the State of Bihar for admission to M.B.B.S./B.D.S. professional courses. There were altogether 782 seats available for all categories of students taken together. They were to be filled up through Bihar Combined Entrance Competitive Examination, 2014 (hereinafter in short as 'BCECE').

4. The State Government enacted the Bihar

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Reservation In Admission Act, 2003, which, inter alia, provided that in all educational institutions, which are either fully or partially aided by the State Government, 50% of the seats are are to be filled up and reserved for the reserved category and the proportions of each reserved category is prescribed as under:

“2. Regulation of Reservation of admission.-

(1).....

(2) The vacancies for different categories of reserved candidates from amongst the 50% reserved category, subject to other provisions of this Act shall be as follows:-

(a) Scheduled Castes	16%
(b) Scheduled Tribes	01%
(c)Extremely Backward Class	18%
(d) Backward Classes	12%
(e)Women of Backward Classes	03%
Total	50%

5. For conducting common entrance examination, the State Government constituted BCECE Board and entrusted it with the responsibility of conducting such examinations including that for admission to M.B.B.S./B.D.S. courses in the State.

6. For BCECE-2014, the said Board issued a

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prospectus for the year 2014 which clearly specified the total number of vacancies. In the prospectus, the nature of examination and method of examination were given. Clause 5 thereof, specifies reservation which was as per the Bihar Reservation In Admission Act, 2003, in addition to the reservation, as noted above. Clause 5.7 provided vertical reservation of 3% for physically challenged persons. Clause 9.7 provided two stage examinations. Clause 14.4, *inter alia*, provided for admission through counselling after examination. The regulations of the MCI would be applicable wherein the qualifying marks are stipulated. So far as general category candidates are concerned, the minimum qualifying marks would be 50%, for the reserved category it would be minimum 40% and for physically challenged persons it would be 45%.

7. As stated above, for the total number of seats available, large number of persons applied, including all the writ petitioners of the different writ petitions. After the examinations, a final merit list was prepared, which showed apart from others most of the petitioners had also qualified. It is not in controversy that this was immediately revised by the BCECE Board, on realizing the mistakes in tabulation of merit list, without having due regard to the minimum eligibility marks prescribed,

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category wise. Accordingly, a revised or second merit list was published in which all the writ petitioners/respondents of reserved category got excluded as they had secured less than 40% marks and were, thus, ineligible for consideration.

8. About 67 seats which were meant for reserved category remained unfulfilled because sufficient numbers of candidates were not found who had got the minimum eligibility marks for the reserved category. This is what brought these students to this Court.

9. It appears that the students or some through their guardians had moved before the Bihar State Scheduled Castes, Scheduled Tribes and Backward Commission, in the meantime. The matter having been brought to the notice of the Bihar State Scheduled Castes, Scheduled Tribes and Backward Commission (hereinafter referred to as 'State Commission') the said Commission vide its letter dated 25.08.2014 wrote to the State Government that the State Government should not allow the unreserved seat to go vacant and not be filled up by reserved category students and directed the State Government to exercise powers of relaxation, as contained in Section 6 of the Bihar Reservation In Admission Act, 2003. This request was also made to the BCECE Board. The BCECE Board, in turn,

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informed the State Government in the Department of Health, that in view of the M.C.I. regulations, 1997 and the prospectus of BCECE, 2014, the BCECE could not take any decision. The State Commission took up the matter and passed a detailed order directing the State Government to order relaxation so that the 50% of the reserved category seats be filled up by reserved category candidates, and the State Commission would not tolerate non-compliance. The matter was then taken by the State Government and the State Government took a decision that in exercise of power to remove difficulty under Section 6 of the Bihar Reservation In Admission Act, 2003, they could not take any step which could be inconsistent with the provisions of the Act and the M.C.I. Regulations. They also referred to Article 15(4) and Article 335 of the Constitution, as also Clause 4.4 of the prospectus issued by the BCECE Board and, therefore, wrote to the M.C.I. to further relax the percentage of marks of reserved category candidates. The State took a stand that the M.C.I. regulations, 1997 were binding and, it was for the M.C.I. to relax the minimum eligibility marks. They could not do so. The M.C.I. refused permission to relax the marks and pointed out that no admission could be permitted to students who had not fulfilled the minimum eligibility criteria in terms of the

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M.C.I. Regulations on Graduate Medical Education, 1997. It is in these factual matrixes that the writ petitions were heard by the learned Single Judge. The learned Single Judge, looking into the “aspiration of the people” of the State and the obligation to provide proper education to the reserved category candidates, virtually held that in terms of Section 6 of the Bihar Reservation In Admission Act, 2003, which confers powers on the State Government to pass orders to remove difficulty and, in view of the judgments of the Apex Court, which recognizes the power of the State to reduce the minimum eligibility criteria, even below the M.C.I. regulations, the State was directed to issue appropriate orders so that the seats reserved for the reserved categories candidates be filled by them. It is not in dispute that pursuant to the direction issued by the learned Single Judge, State, having been virtually bound by the said direction, lowered the eligibility percentage for reserved categories candidates much below the M.C.I. regulations. Consequent whereeto, the writ petitioners/ respondents were admitted in regular courses.

Statutory Provisions

Medical Council of India
Regulations on Graduate Medical
Education, 1997:

5. Selection of Students:- The

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selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:

(1)

(2) In States, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

.....

(5) Procedure for selection to MBBS course shall be as follows:-

(i) In case of admission on the basis of qualifying examination under Clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and

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must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in Clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

(ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry & Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing

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not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Bihar Reservation (In Admission in Education Institutions) Act, 2003:

2. Regulation of Reservation of admission. (1) In any educational Institution fully or partially aided by the State Government (admissions) shall be regulated in the following manner, namely:-

- (a) From open merit category .. 50%
- (b) From Reserved Category ..50%

(2) The vacancies for different categories of reserved candidates from amongst the 50% reserved category, subject to other provisions of this Act shall be as follows:-

- (a) Scheduled Castes 16%
- (b) Scheduled Tribes 01%
- (c) Extremely Backward Class 18%

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(d) Backward Classes	12%
(e) Women of Backward Classes	03%

Total 50%

(3) Such reserved category candidate who is selected on the basis of his merit, shall be counted against 50% vacancies in the open merit category and not against the reserved category vacancies.

(4) Women of Backward Classes means women of all reserved classes and includes women of Scheduled Castes, Scheduled Tribes, Extremely Backward Classes and Backward Classes.

(5) No other reservation shall be made except reservation per centage granted by the concerned educational Institute and amended of reservation per centage granted by them from time to time for the candidates out of Bihar.

(6) (a) After providing the opportunity for admission to the candidates having decending order of merit of lower qualification as to marks obtained etc. fixed by the concerned educational Institutions, if the reservation per centage of any reserved category is not filled shall



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be regulated in the following manner:-

(i) Exchange shall be possible between the

Scheduled Castes and Scheduled Tribes.

(ii) Exchange shall be possible between the

Extremely Backward Classes and

Backward Classes.

(b) After having completed the procedure contained in clause (a) of sub-section (6) if the reservation per centage of any reserved category is not exhausted then candidates belonging to unreserved category shall be admitted against such vacancy or duly declared it dereserved through the administrative deptt. during the session by the Administrative Department for the said session.

(c) In case of non availability of suitable candidates for the vacancies reserved for women of Backward Classes, the vacancies shall be filled in order of preference as follows:-

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(1) by the candidates of the Schedules Castes.

(2) by the candidates of the Scheduled Tribes.

(3) by the candidates of the Extremely

Backward Classes

(4) by the candidates of Backward Classes.

6. Removal of difficulties.- If any difficulty arises in given effect to the provisions of this Act, the State Government may take such steps or issue such orders not in consistent with the provisions of this Act as it may consider necessary for removing the difficulty.

Rival Contentions

On behalf of M.C.I.

10. On behalf of M.C.I., it was submitted that in view of the Constitution Bench judgment of the Apex Court in the case of **Dr. Preeti Srivastava and another Vs. State of M.P. and others** since reported in **(1999) 7 SCC 120 = AIR 1999 SC 2894**, the M.C.I. regulations being mandatory and binding on the State Government, it was not open to the learned Single Judge to direct the State Government, much less by

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resorting to Section 6 of the Bihar Reservation In Admission Act, 2003, nor is it was open for the State Commission to pass any direction to lower the minimum eligibility criteria as fixed by the M.C.I. for admissions to M.B.B.S./B.D.S. courses, which were already reduced by the M.C.I., in respect of reserved categories candidates and no exception could be made to that. It is further submitted that Bihar Reservation In Admission Act, 2003, by virtue of Section 2(6)(b), specifically provided that any seat left unfulfilled in the reserved category, after various adjustments as provided in Section 2(6), had to be made open to the general category candidates, could not be overridden and the powers under Section 6 of the said Act could not permit alteration of the said situation. It was also submitted that the BCECE Board and the State Government at the first instance were right in refusing to relax the minimum eligibility criteria for reserved category candidates and the refusal by M.C.I. to reduce the eligibility criteria could not be questioned.

Contentions on behalf of the writ petitioners/ respondents in Appeal

11. Mr. Y.V. Giri, learned Senior Counsel, supporting the writ petitions and the order passed by the learned Single Judge, submitted that in view of the judgment of the

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Apex Court in the case of **State of M.P. Vs. Kumari Nivedita Jain & Ors.** since reported in **AIR 1981 SC 2045** and that of the Apex Court in **Aarti Gupta and others Vs. State of Punjab and others** since reported in **AIR 1988 SC 481** dealing with admission to graduate medical course held that the M.C.I. regulation was merely recommendatory and not mandatory and the State was authorized to lower the minimum eligibility criteria fixed by the M.C.I. to fill up vacant reserved category seats. His further submission would be that the judgment in the case of **Dr. Preeti Srivastava (supra)** did not deal with nor is an authority for graduate medical entrance as it dealt with admission to post-graduate courses. His further submission would be that the whole purpose of the Bihar Reservation In Admission Act, 2003 was to ensure reservation of seats in admission to educational institutions in favour of the reserved category candidates and, if those seats remained unfulfilled, then in exercise of powers on the State by virtue of Section 6 thereof, being power to remove difficulty, in view of the “aspiration of the people” as reflected by the Bihar Reservation In Admission Act, 2003, State was bound to lower the eligibility criteria to enable the reserved seats to be filled up by the reserved category candidates alone. Therefore, the learned Single Judge rightly

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directed the State to pass orders in terms of Section 6 of the Bihar Reservation In Admission Act, 2003 towards and in furtherance of this object.

Findings and conclusions:-

12. To us, the legal issues have to be dealt with in two ways as would be shown. First, in our view, once pursuant to the prospectus issued, examinations were conducted, then the eligibility conditions as stipulated in the prospectus, for the examination, could not be altered, after the results were declared, making people eligible who were otherwise ineligible. The Bihar Reservation In Admission Act, 2003 itself provided by virtue of Section 2 (6) (b) as to what is to be done in case reserved seats remained unfulfilled by the reserved category candidate. That being the legislative provision, resort to Section 6, the power to remove difficulty was impermissible. Secondly, to us, the constitutional and statutory scheme cannot now be doubted. In the case of **Dr. Preeti Srivastava (supra)** the Constitution Bench judgment clearly noticed the case of **Kumari Nivedita Jain (supra)** and **Aarti Gupta (supra)** with disapproval and in no uncertain terms held that the M.C.I. regulations are binding and mandatory even for graduate

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medical course. This decision has been followed by the Apex Court in series of decisions as we would notice and there cannot be any dispute on this count at all much less as being submitted by Mr. Giri, learned Senior Counsel appearing on behalf of the writ petitioners/respondents in these appeals.

13. Now, we may consider whether it was permissible for the State or the State Commission to direct lowering of the minimum eligibility marks of the reserved category candidates and whether the learned Single Judge was correct, keeping in view, “people’s aspiration” to so direct the State to exercise powers under Section-6 of the Bihar Reservation In Admission Act, 2003.

14. The first thing we would like to notice is, the M.C.I. Graduate Medical Admission Regulation, 1997 clearly provided the minimum eligibility criteria for the general candidates, physically challenged and reserved categories. The Bihar Reservation In Admission Act, 2003 provided the respective quotas, as noticed above. It also provided that in case the required reserved quotas were not filled up how it has to be dealt with. First, there has to be adjustment in between the reserved categories. If this also does not fill up the quotas then Section-2 (6) (b) clearly provides that it would then go to the

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general category candidates, satisfying the minimum eligibility thereof. Thus, a contingent right has been created in favour of the general category candidates upon failure of reserved category to qualify. Consistent with the M.C.I. regulations and the Bihar Reservation In Admission Act, 2003, when the BCECE Board was set up by the State, the admission prospectus made provisions both with regard to the quotas of reservation and the minimum eligibility criteria for different categories. It is on basis of this that the candidates applied. After all adjustments, 67 seats appertaining to reserved quota could not be filled up because eligible candidates were not available. At this stage, after the final merit list and counselling was over, the State Commission intervened and directed reduction in minimum eligibility criteria for reserved candidates. The BCECE Board expressed its inability to modify the eligibility criteria unless directed by the State. State knowing full well its responsibility also expresses inability to reduce the eligibility criteria unless approved by M.C.I. The M.C.I. refuses to lower the minimum eligibility criteria for the reserved categories candidates, which was already fixed at a lower level than the general category. It is then on the intervention of the learned Single Judge that the State, contrary to their earlier stand,

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lowered the eligibility criteria and permitted reserved category students to be admitted in M.B.B.S. courses. The effect of this, at this late stage, is to change the initial eligibility criteria in respect of the reserved category candidates after the selection process was over and, that too, to the detriment of more meritorious general category candidates who were now entitled to be admitted.

15. In our view, once the admission process was duly notified and completed, it would be absolutely impermissible to change the basic eligibility criteria. The rules of the game cannot be changed once the game has started, especially when the change would prejudicially affect a particular class of person. What the change did, was make eligible those who were ineligible and make those who are eligible ineligible. Nothing can be more arbitrary than this. It would be clearly violative of Article-14 of the Constitution. It is impermissible to be done. Therefore, we have no hesitation in holding that the learned Single Judge was clearly in error in virtually directing the State to change the eligibility criteria after the admission process was over.

16. We may also point out, that it is well established, that when a procedure to do an act has been laid

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down, then that act has to be performed in that manner and all other modes are impliedly prohibited. This is what the Apex Court has consistently held. We may refer to the case of **Hukam Chand Shyam Lal Vs. Union of India and others** since reported in **AIR 1976 SC 789** and the relevant consideration is to be found in paragraph-18 of the reports, which is quoted hereunder:-

“18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden....”

17. We may also take note of what the Apex Court has held in the case of **Shri Mandir Sita Ramji, Vs. Governor of Delhi and others** since reported in **AIR 1974 SC 1868** “when a procedure is prescribed by the legislature, it is not for the Court to substitute a different one according to its notion of justice. When legislature has spoken, the Judges can afford to be wiser.” We may note, that we are, in the present case not dealing with validity of statute.

18. Thus, this entire exercise leading to grant of admission to the reserved candidates by lowering the eligibility

criteria was illegal and cannot be sustained. By operation of the legal procedure laid down, those seats had to be made open to the more meritorious general category candidates, who were wrongly deprived of their admission.

19. Now, it may be appropriate for us to deal with Section-6 of the Bihar Reservation In Admission Act, 2003 by virtue of which and noticing which the learned Single Judge directed the State to take an appropriate decision keeping in view the “aspirations of people”. This section, as quoted above, has its own limitation. The first limitation is that the State Government cannot issue an order, “which is inconsistent with the provisions of the Act”. This Clause in the said section is what validates the section which has otherwise been severely criticized by the Court. In absence of this clause in the section, the power would otherwise be exercised by the executive to virtually amend legislative enactment. That is impermissible. The section deals with “power to remove difficulty” and is to be found in many legislations. The Courts have held that where legislations are dealing with complex issues, contingencies may arise which are unforeseen. Therefore, such a power for effective implementation of the legislation is given to the State. It is otherwise frowned upon. It is termed as Henry-VIII clause

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and we can do better than to reproduce what the Apex Court said in the case of **Lachmi Narain Vs. Union of India and others** since reported in **AIR 1976 SC 714**, which is reproduced herein below:

62. There is nothing in the opinion of this Court rendered in Re: Delhi Laws Act, 1951 SCR 747 = AIR 1951 SC 332) (supra) to support Mr. B. Sen's contention that the power given by Section 2 could be validly exercised within one year after the extension. What appears in the opinion of Fazl Ali J. at p. 850 (of SCR) = (at p. 360-361 of AIR) is merely a quotation from the report of the Committee on Minister's Powers which considered the propriety of the legislative practice of inserting a "Removal of Difficulty Clause" in Acts of British Parliament, empowering the executive to modify the Act itself so far as necessary for bringing it into operation. This device was adversely commented upon. While some critics conceded that this device is "partly a draftsman's insurance policy, in case, he has

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overlooked something" (e.g. Sir Thomas Carr, page 44 of his book "Concerning English Administrative Law"), others frowned upon it, and nick-named it as "Henry VIII Clause" after the British Monarch who was a notorious personification of absolute despotism. It was in this perspective that the committee on Minister's Powers examined this practice and recommended:

"... first, that the adoption of such a clause ought on each occasion when it is on the initiative of the Minister in charge of the Bill, proposed to Parliament to be justified by him upto the essential. It can only be essential for the limited purpose of bringing an Act into operation and it should accordingly be in most precise language restricted to those purely machinery arrangements vitally requisite for that purpose; and the clause should always contain a maximum time-limit of one year after which the power should lapse."

63. It may be seen that the time-limit of one year within which the



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power under a 'Henry VIII Clause' should be exercisable, was only a recommendation, and is not an inherent attribute of such power. In one sense, the power of extension-cum-modification given under Sec. 2 of the Laws Act and the power of modification and adaptation conferred under a usual Henry VIII Clause, are kindred powers of fractional legislation, delegated by the legislature within narrow circumscribed limits. But there is one significant difference between the two. While the power under Section 2 can be exercised only once when the Act is extended, that under a 'Henry VIII Clause' can be invoked, if there is nothing to the contrary in the clause - more than once, on the arising of a difficulty when the Act is operative. That is to say, the power under such a Clause can be exercised whenever a difficulty arises in the working of the Act after its enforcement, subject of course to the time limit, if any, for its exercise specified in the statute.

64. Thus, anything said in Re: Delhi

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Laws Act, (AIR 1951 SC 332) (supra), in regard to the time-limit for the exercise of power under a 'Henry VIII Clause', does not hold good in the case of the power given by Section 2 of the Laws Act. Fazl Ali J., did not say anything indicating that the power in question can be exercised within one year of the extension. On the contrary, the learned Judge expressed in unequivocal terms, at page 849:

"Once the Act became operative any defect in its provision cannot be removed until amending legislation is passed."

20. It may also be pointed out that the Bihar Reservation In Admission Act, 2003 only lays down the quotas ascribed for reservation and does not deal with eligibility criterion at all. Therefore, neither the State Commission nor the State nor this Court could have directed the State, in exercise of power under Section-6 of the Bihar Reservation In Admission Act, 2003, to reduce the eligibility criteria enabling ineligible candidates to take advantage of the reservations.

21. We may note yet another consideration. The Bihar Reservation In Admission Act, 2003 itself provides and

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creates right in favour of more meritorious general category candidate to take admission on failure of reserved category candidates to get admission, having not got the minimum eligibility. This specifically provided in Section-2 (6) (b) of the Bihar Reservation In Admission Act, 2003. It would thus be not permissible for anyone to deny and/or curtail this right which the legislature has provided in favour of general category candidates and any act or exercise to deprive them of this right would be surely inconsistent with the provisions of the Act and, thus, Section-6 of the Act could not be invoked to alter the import of the Act itself as has been done at the instance of the learned Single Judge. We disapprove of such an exercise. The legitimate expectation of general category candidates, as statutorily provided, could not be taken away by executive action.

22. We may also observe the strange way in which the State Commission, as also State officials proceeded. In none of their communications they ever thought it proper to refer to Section-2(6) (b) of the Bihar Reservation In Admission Act, 2003, which had provided for the contingencies of insufficient reserved category candidates. If the contingency was statutorily provided then unless there was statutory

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authorization to override the same, it could not be done. The State Commission and the State Government were aware of the provisions of the Bihar Reservation In Admission Act, 2003 because they are referring to Section-6 thereof but, for some peculiar reasons, they chose to wrongly gloss over and ignore the provisions of Section-2 (6) (b) of the Bihar Reservation In Admission Act, 2003. We cannot approve of such an action. It is vitiated on grounds of malice in law.

23. Now, we may come to the question whether the learned Single Judge or for that matter the State SC, ST and Backward Commission or for that matter the State had any authority to take steps for lowering the eligibility criteria below what was provided by the M.C.I.

24. At the cost of repetition, we may note the argument of Mr. Y.V. Giri, learned Senior Counsel, apparently as made before the learned Single Judge and so repeated in these appeals for the respondents. Referring to the judgment of the Apex Court in the case of **Kumari Nivedita Jain (supra)** and **Aarti Gupta (supra)**, it was submitted that the regulations of the M.C.I. were merely recommendatory and directory and not mandatorily binding on the State Government in matters of admission to M.B.B.S. courses. He maintains that the

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Constitution Bench Judgment in the case of **Dr. Preeti Srivastava (supra)** is not a binding law/precedent in respect of M.B.B.S./B.D.S. courses, as it deals only with post graduate medical courses. He, therefore, supports the order of the learned Single Judge, in noticing the cases aforesaid and permitting the State to take decisions contrary to and in conflict with M.C.I. regulation. We must hold that this is unsustainable argument for as we would show the judgments of the Apex Court in the case of **Kumari Nivedita Jain (supra)** and **Aarti Gupta (supra)** were specifically disapproved by the Constitution Bench in the case of **Dr. Preeti Srivastava (supra)** and, therefore, the judgments of **Kumari Nivedita Jain (supra)** and **Aarti Gupta (supra)** cannot be regarded as binding precedent. We will also show that **Dr. Preeti Srivastava (supra)** noticed under graduate medical courses as well and the effect of M.C.I. regulations in regard thereto and, consistently thereafter, the Apex Court has held that the M.C.I. regulations are binding on the State Government and it cannot deviate from that and the deviations have held to be illegal, especially in matters of eligibility criteria for admission. It would have been proper for the learned Single Judge to have examined the law before directing the State to act in a particular manner and had that been done, the State which

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had earlier taken a stand that it could not act contrary to the M.C.I. regulations and rightly so, it would not have changed its stand and lowered the eligibility criteria for the reserved seats.

25. The first judgment would be in the case of **Kumari Nivedita Jain (supra)** (Division Bench of three Judges). In this case, the question that have come up squarely before the Apex Court was, whether the State Government by an executive order could completely relax the conditions relating to the minimum qualifying marks in principle in medical examination for selection of students to the medical colleges in respect of scheduled caste and scheduled tribe category, contrary to the regulation 2 of the M.C.I. Referring the regulations in paragraph-20 of the reports, their Lordships held that such an exercise by the State was neither violative of the M.C.I. regulations nor of the Constitution. It further held in paragraph-21 that the regulations were merely directory and in the nature of recommendation and had no statutory force.

26. Now, we may refer to the judgment of the Apex Court in the case of **Arti Gupta Vs. State of Punjab** since reported in **AIR 1988 SC 481**. The Apex Court following the verdict in the case of **Kumari Nivedita Jain (supra)** held that the State's power to completely delete the prescription of

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eligibility so far as scheduled caste and scheduled tribe candidates are concerned, were upheld and following the same, it was held that State could reduce the eligibility criteria even below that stipulated by the M.C.I. to accommodate the reserved category candidates (Division Bench judgment of three Judges).

27. Now, we may refer to the Constitution Bench judgment of the Apex Court on the issue in the case of **Dr. Preeti Srivastava (supra)**. In this case, the matter of consideration before the Apex Court was, whether the State Government could do away with cut-off percentage of marks in respect of reserved category candidates for their admission to post graduate medical entrance examination in conflict with regulations of the M.C.I. We may at once notice that it is because of this fact, that the case related to post graduate medical courses, that apparently Mr. Giri wanted to persuade us that the case would be an authority only for the post graduate medical course admission and not to undergraduate i.e. M.B.B.S.

28. In our view, first the Apex Court drew a distinction between the undergraduate, post graduate and super specialty stages of medical education, for the purposes of providing reservations. The Court was of the view that so far as

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undergraduate courses are concerned, reservation within the permissible limit can be provided but, as we move higher, the quantum of reservation has to be minimal and when we come to super specialty there cannot be reservation. This is reflected in paragraph-26 of the reports, which is quoted hereunder:-

26. In the premises the special provisions for SC/ST candidates — whether reservations or lower qualifying marks — at the specialty level have to be minimal. There cannot, however, be any such special provisions at the level of super specialties.

29. From above, it is also clear that they also permitted that there could be lowering of qualifying marks for the reserved category. Their Lordships in paragraphs-27 & 28 of the reports have pointed out why common entrance examination is necessary. It is because the candidates may be coming from different institutions, boards with different standards of assessment and a common entrance examination, therefore, provides a uniform criteria for judging the relative merits of all candidates who come from different sources and different Universities. In paragraph-30 of the reports, they disapproved the disparity of 20% for reserved candidates and

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45% for general category candidates, as being unreasonable, to be sustained, in public interest at the post graduate level.

30. Then, their Lordships decided as to who would decide the qualifying marks and will it affect the standard of education. In paragraph-35 of the reports they referred to the change in Schedule VII to the Constitution, wherein in effect from 03.01.1976, Entry 11 of List II was deleted and Entry 25 in List III was amended, making it, subject to, inter alia, Entry 66 of List I. In paragraph-36, their Lordships clearly laid down that the norms for admission are connected with standards of education and that would be a matter covered in Entry 66 of List I to the Constitution and that being so, Entry 25 of List III would be subject to any legislation made with respect to Entry 66 List I. We may note here that M.C.I. Act and Regulations framed there-under would thus, fall under Entry 66 List I of the Constitution. In view of the aforesaid, in view of Article-245 of the Constitution, State would be denuded of the powers in respect of which M.C.I. Act and Regulations are there. In paragraph 46 of the report, their Lordships have in no uncertain terms disapproved the earlier judgment in the case of **Kumari Nivedita Jain (supra)**. They have further observed that the larger Bench judgment in the case of **Indra Sawhney Vs.**

Union of India since reported in (1992) Suppl. 3 SCC 217 did not approve **Kumari Nivedita Jain (supra)** in all its aspects. As noticed earlier, as also in this judgment, **Kumari Nivedita Jain (supra)** dealt with admission to M.B.B.S. courses, and as noted herein. It was disapproved. The Apex Court held, following the other judgments, it as not a good law. Again, this is what, their Lordships held in the case of **Dr. Preeti Srivastava (supra)** in paragraph 46 of the reports, which is reproduced herein below:-

46. There are, however, two cases where there are observations to the contrary. One is the case of *State of M.P. v. Nivedita Jain*, a judgment of a Bench of three Judges. In this case the Court dealt with admission to the MBBS course in the medical colleges of the State of Madhya Pradesh. The rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks were prescribed as 40%. Later on, the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court

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observed: (SCC p. 305, para 17)

That it was not in dispute and it could not be disputed that the order in question was in conflict with the provisions contained in Regulation II of the regulations framed by the Indian Medical Council.

But it held that Entry 66 of List I would not apply to the selection of candidates for admission to the medical colleges because standards would come in *after* the students were admitted. The Court also held that Regulation II of the regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in

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the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Although this judgment is referred to in the Constitution Bench judgment of *Indra Sawhney v. Union*

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of India the question of standards being lowered at the stage of postgraduate medical admissions was not before the Court for consideration. The Court merely said that since Article 16 was not applicable to the facts in *Nivedita Jain case* Article 335 was not considered there. For postgraduate medical education, where the “students” are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in *Nivedita Jain* is approved in all its aspects by *Indra Sawhney v.*

Union of India.

31. The submission of Mr. Giri, learned Senior counsel that **Dr. Preeti Srivastava (supra)** can no way be taken to be an authority for under-graduate M.B.B.S. course and the implication of M.C.I. regulations, in that regards, stand totally negated by what has been said in paragraph 47 of this judgment in the case of **Dr. Preeti Srivastava (supra)** and as quoted hereunder:-

47. The other case where a contrary view has been taken is *Ajay Kumar*

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Singh v. State of Bihar decided by a Bench of three Judges. It also held, following *Nivedita Jain* (at SCC p. 417, para 22) that:

Entry 66 in List I does not take in the selection of candidates or regulation of admission to institutes of higher education. Because standards come into the picture after admissions are made.

For reasons stated above we disagree with these findings.

32. Thus, to us, it is clear that the judgment of the Constitution Bench in the case of **Dr. Preeti Srivastava (supra)** is a settler on the issue, namely, (i) that the M.C.I. regulations in respect of admission to M.B.B.S courses are mandatory and binding on the State Government and (ii) State Government cannot reduce the criterion as set by the M.C.I. by its regulations. Thus, the reference by the learned Single Judge to the judgments of **Kumari Nivedita Jain (supra)** and **Aarti Gupta (supra)**, which followed **Kumari Nivedita Jain (supra)**, were rather misconceived as they were not good law, in view of the later Constitution Bench judgment in the case of **Dr. Preeti Srivastava (supra)**, as noted above.

33. We may then refer to the judgment of the

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Apex Court in the case of **State of Punjab Vs. Dayanand Medical College and Hospital** since reported in (2001) 8 SCC 664 and, in particular, in paragraph-17 thereof. Their Lordships have noticed the contention of **State of Punjab** that lowering the marks to less than 50%, as prescribed by M.C.I., for the scheduled caste and backward class, had twin objective of safeguarding the weaker sections of the society and to meet the constitutional obligation. This contention is similar to what was upheld and noted by the learned Single Judge. This was repelled by the Apex Court in no uncertain terms by observing that “we are afraid that the approach of the State of Punjab in this regards results in stultifying the logic.” Their Lordships then held that it was not open to the University or the State to dilute that standard, as fixed by the M.C.I. and, if they had any difficulty, they had to approach the M.C.I. for fixing the appropriate standard in that regard. The State could not unilaterally frame a scheme reducing the standard in violation of the terms of regulations as framed by the M.C.I., which is repeatedly stated by the Apex Court, to be repository of the power to prescribe standards.

34. From the aforesaid judgments, it would be seen that so far as the law is concerned, it makes no distinction

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between undergraduate or post graduate courses in respect of the binding nature of the regulation of the M.C.I. in relation to admission. Again, in the case of **State of M.P. Vs. Gopal D. Tirthani** since reported in **(2003) 7 SCC 83** the Court held that it was not open for the State to lower the standard set by the M.C.I. or change the same nor could the State provided for a different procedure. The State must comply with the requirements of the regulations framed by the M.C.I. and, even if the admission was from two separate channels, there had to be a common entrance examination and candidates had to secure minimum qualifying marks as fixed by the M.C.I. regulations. If the State wants to make a departure, then it must write to the Central Government or to the M.C.I. and make out a case of justification consistently (paragraph-26 of the reports).

35. We may then refer to the case of **Harish Verma and others Vs. Ajay Srivastava and another** since reported in **(2003) 8 SCC 69** wherein similar relaxation provided by the State Government, in respect of in service doctors, was held to be improper, being in conflict with the M.C.I. regulations. The Apex Court also noticed that the High Court was wrong in relying upon the dissenting minority view in the case of **Dr. Preeti Srivastava (supra)** as it was, the

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majority judgment, binding and the Full Bench judgment of the Rajasthan High Court was set aside.

36. We may now refer to the judgment of **Chowdhury Navin Hemabhai Vs. State of Gujarat** since reported in (2011) 3 SCC 617. This case was directly in relation to the scheduled caste, scheduled tribe and socially and educationally backward classes for their admission to the M.B.B.S. courses. As the admission of the students had been made contrary to the M.C.I. Regulations for graduate medical education 1997, by lowering the qualifying marks in respect of these reserved categories, the same was held to be invalid and the notice of M.C.I. to the said students that their degrees would not be recognized was upheld. The State rules, which made the relaxation, were struck down by the High Court itself which decision of the High Court was upheld by the Apex Court. It may be noted here that as the appellants before the Apex Court, who were the aggrieved students, whose admissions were held to be illegal, had not been at fault, the fault lay in the rules framed by the State Government, the Apex Court held that as they had pursued their study, they would not be disturbed.

37. We may then refer to the case of **Deepa Thomas Vs. Medical Council of India** since reported in (2012)

3 SCC 430. Here again, the question was about irregularity in admission to M.B.B.S. course. The Apex Court again held in no uncertain terms that the M.C.I. regulations were paramount and mandatory in nature and deviation from that would render the admissions to be invalid but again, as they noticed that the admissions were given due to inadvertence/omission in the prospectus, they were allowed to continue.

38. In our opinion, these judgments clearly negate the finical distinction, as sought to be made in relation to post graduate or undergraduate course. The binding effect of M.C.I. regulations on the admission procedure and the eligibility criteria in respect of both the courses is unquestionable. Thus, in view of the laws aforesaid, we cannot approve the manner in which the directions were issued by the learned Single Judge to the State Government to reduce the eligibility criteria, keeping in view the “aspiration of people” to fill up the unfulfilled seats reserved for the reserved category candidates. Such an approach was clearly contrary to law and binding precedent.

39. Having said thus, we have no option but to hold, that the admissions given to the private contesting respondents, by virtue of the order of the State Government, relaxing the eligibility criteria for reserved category candidates,

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was invalid in law and the stand of the M.C.I. that the degrees as received by them would not be recognized as valid degree is correct.

40. Mr. Giri, learned Senior Counsel then submitted, that it was pursuant to the directions given by the Court, that those students were admitted and no one should suffer for mistake of the Court. Students have pursued their studies and, if now, they meet the proficiency standard in the course, it would be too harsh on them not to recognize their degrees or to cancel their admissions at this stage.

41. We have considered this aspect of the matter and, in our view, the students are not entirely to be blamed for the predicament they have landed. They were misled by the wrong stand taken by the State Commission and it was pursuant to a wrong direction issued by the learned Single Judge, that they got admission. Considering this aspect, we would consider it inequitable to hold that the students, though initially wrongly admitted but having pursued their studies, should now be regarded as non-entities.

42. Accordingly, though we set aside the judgment of the learned Single Judge and, consequently, the order of the State Government as also of the State Commission,

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we hold that the academic career of the students, who had got admission accordingly, should not be ruined, if they attained the necessary proficiency in leading to their degrees of M.B.B.S. it would be recognized as valid.

43. With the aforesaid observations and directions, these appeals by the M.C.I. are allowed and the judgment and order of the learned Single Judge and the order passed by the State Government, pursuant thereto, are set aside. There will be no order as to costs.

(Navaniti Prasad Singh, J.)

Nilu Agrawal, J. I agree.

(Nilu Agrawal, J.)

Trivedi/AFR

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