

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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W.A.NOS.733, 735, 736, 738, 739 and 740 of 2014.

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JUDGMENT (Per the Hon'ble Sri Justice G.Chandraiah)

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Writ Appeal Nos.733, 735 and 739 of 2014 have been filed by the Dr.N.T.R. University of Health Sciences (for short 'the Health University') against the common order dated 16.4.2014 passed by the learned single Judge in W.P.Nos.20283, 20362 and 21547 of 2013. Challenging the said common order, the Governments of State of Andhra Pradesh and the State of Telangana filed the other appeals in W.A.Nos.736, 738 and 740 of 2014.

2. Heard Sri A.Prabhakar Rao, learned Standing Counsel for the appellant – Health University, represented by its Vice-Chancellor, learned Government Pleaders for Medical, Health and Family Welfare for the appellants in W.A.Nos.736, 738 and 740 of 2014 for Governments of the State of Telangana and the State of Andhra Pradesh respectively and Sri Bojja Tarakam, learned Senior Counsel and Sri V.Ravinder Rao for the contesting respondents – writ petitioners.

3. As the issue involved in all the writ appeals is common and they arise out of the common order passed by the learned Single Judge, they are heard together and are being disposed of by this common judgment.

4. The writ petitioners in all the writ petitions are M.B.B.S. graduates belonging to Backward Class – (C) and Scheduled Caste categories and some of them are in Government service. They appeared for entrance

examination for admission to medical postgraduate courses conducted by Health University for the academic year 2013-14 and remained unsuccessful in securing admissions, though they could secure ranks. The preparation of seat matrix and the selection procedure is governed by G.O.Ms.No.43 Health, Medical and Family Welfare (E1) Department dated 13.3.2013 and the writ petitioners have questioned certain clauses in said G.O. Before recording the grievance and contentions of the respective parties and conclusions arrived by the learned single Judge, for better appreciation, it is necessary to note the relevant portion of G.O.Ms.No.43 dated 13.3.2013 as under:

I. PREPARATION OF THE SEAT MATRIX:

The Dr.NTR University of Health Sciences shall prepare the seat matrix for the Competent Authority seats as per the guidelines given below:-

- a. The reservations to SC, ST and BC shall be 15, 6 and 29 % in each broad specialty in each University area.
- b. The number of seats for SC,ST and BCs shall be maintained as per reservations in each broad specialty in each University area.
- c. The 29% of seats for BCs shall be distributed as BC.-A – 7%, BC-B – 10%, BC – C – 1%, BC – D – 7% and BC – E – 4%.
- d. The seats for BCs shall be allotted as per the percentage of reservation limiting to 29%. In determining the number of seats for each sub group, the highest fraction shall be counted as one followed by the next highest one and so on.
- e. The reservations for BC sub groups shall be maintained broad specialty wise as far as possible, when a seat cannot be earmarked for a sub group, the seat shall be allotted to any BC sub group by merit.
- f. When the number of seats in a broad specialty for BC is 1 or 2, the BC seats shall be allotted to any sub-group on merit.
- g. When the number of BC seats in a broad specialty and in a college are 4 or more than 4 at least one seat shall be allotted to each sub group of BCs as per percentage of sub group reservations.
- h. When the seats for all the BC sub groups cannot be allotted in a college, the seats to sub groups shall be rotated among the

colleges every year.

- i. 30% of seats in clinical broad specialty and 50% of the seats in pre and para clinical broad specialty for Degree and Diploma broad specialty separately are reserved for in-service candidates under service quota. The reservations to SC, ST and BC shall be followed in clinical and non-clinical broad specialty. The principle of reservation and merit needs to be followed for in-service candidates. Candidates selected on merit in respective category shall be however counted against service quota. Service rendered shall be calculated as per date specified by Dr. NTR University of Health Sciences.
- j. 33 1/3% and 3% of PG Degree and Diploma broad specialty shall be reserved for women differently-abled candidates respectively which are also horizontal reservations.
- k. The unreserved seats shall be calculated broad specialty wise and university area wise and shall be limited to each institution depending upon the number of seats in that broad specialty and in that college.
- l. The reservations shall also be maintained as far as possible for the unreserved seats also.
- m. When the number of seats are 2, one seat shall be reserved under OC and one seat shall be rotated amongst SC, ST and BC in that order every year.
- n. When the number of reserved seats are more than unreserved seats for OC and categories shall be rotated among the colleges every year viz.

Osmania University:

OC rotation will begin from Govt. colleges preferably Osmania/Gandhi/Kakatiya Medical Colleges, Warangal followed by private colleges.

Andhra University:-

OC rotation will begin from Govt. Colleges preferably Andhra Medical college / government Medical College Guntur / Rangaraya Medical College, Kakinada followed by the Private colleges.

Sri Venkateshwara University:-

OC rotation will be begin from Govt. colleges preferably Kurnool Medical College, Kurnool / S.V. Medical College, Tirupati followed by private colleges.

- o. Seat matrix shall be prepared separately for Andhra University / Osmania University / Sri Venkateshwara University and Statewide broad specialty.

II. SELECTION PROCEDURE:

- i. Dr. NTR University of Health Sciences will announce the dates and centre at which selections will be made.
- ii. The selections shall be done separately for service and non-service seats.
- iii. The selections are broad specialty wise and university area wise.
- iv. As per the G.O.Ms.No.42, the unreserved seats will be filled first and then the local seats.
- v. Both local and non-local candidates are eligible for unreserved seats.
- vi. First all the OC seats in a broad specialty in all the colleges shall be filled and then the reserved category seats shall be filled.
- vii. A reserved category candidate selected under OC in a college in a broad specialty shall be permitted to slide into the same broad specialty to another college. The seat vacated shall be filled with the candidate of the same reserved category.
- viii. A reserved category candidate selected under OC in a college in a broad specialty shall be permitted to slide into another broad specialty. The seat vacated shall be filled with the OC candidate in the subsequent counseling treating the same as OC.
- ix. A reserved category candidate selected under OC and does not join the broad specialty; the said vacancy shall be treated as OC and shall be filled in the subsequent counseling.
- x. A reserved category candidate selected under OC and slides into a category seat in another college and does not join in the broad specialty, the seat vacant under OC category shall be treated as OC and the category into which he has slid not joined shall be treated as respective category seat in the subsequent counseling.
- xi. Where a reserved category candidate slides to another college or broad specialty such seat vacated shall be filled by another reserved candidate of the same category.
- xii. . . .
- xiii. . . .

xiv. . . .”

5. From the above extracted portion, the writ petitioners have mainly questioned sub clauses (e) and (f) of Clause I and sub clause (viii) and (ix) of clause II of the impugned G.O..

6. The contention of the learned counsel appearing for the writ petitioners has been that under second limb of sub clauses (e) and (f), if the broad specialty seats available for allocation for BCs are 1 or 2 and when the seat cannot be earmarked to any sub group, the same can be allotted to any sub-group among B.Cs., on merit. Their grievance is that those seats which could not be allocated in view of the contingency under first limb of clauses (e) and (f), were pooled and were sought to be allotted on merit, disregarding the percentage of reservation to the respective backward category classes. As per the allotment papers produced by the writ petitioners, those seats were reserved for BC-A or BC-D and women. They stated that under sub clause (a) of clause I of the impugned G.O., reservation is required to be maintained in the percentage of 15, 6 and 29 percentages for SC, ST and BCs respectively and among the 29%, for B.Cs., the ratio to each sub groups is mentioned in sub clause (c) of Clause I. In view of the procedure adopted by the Health University authorities, the number of seats that were required to be allocated to B.C.-C, were not allotted and more number of seats, than the entitled percentage, were allotted to candidates belong to sub groups like A and D among B.Cs. The grievance of the writ petitioners, is that the ratio stipulated under sub clause (c) could not be maintained and this worked out to the detriment of B.C-C candidates. To support their contentions, the learned counsel for the writ petitioners produced provisional selected list. With regard to sliding option contained under sub clause (viii) in clause II of the G.O., a reserved category candidate

selected under OC in a college in a broad specialty, is permitted to slide into another broad specialty and the seat vacated, shall be filled with the O.C. candidate. They stated that the same is in violation of the law laid down by the Apex Court in ***RITESH R SHAH vs. DR. Y.L.YAMUL***^[1], wherein it is categorically held that such vacant seat shall be allotted to same reserved category, as there is only exchange of subjects, but not seats.

7. On the other hand, the case of the Health University was that the present G.O. was issued replacing the roster system and introducing reservations in subject wise. Their case is that the ratio of reservation contained in sub clause (c) of clause I of the G.O., is perfectly maintained and when the number of seats in a broad specialty to be allotted to B.Cs. are 1 or 2, then those seats are pooled and allotted on merit, and may be in such allotment, the sub groups among the B.Cs., as alleged by the writ petitioners, have got more number of seats. But that cannot be taken, to say that the percentage of reservations was not maintained. With regard to sliding option contained in sub clauses (viii), the case of the Health University was that the judgment of Ritesh R Shah (1 supra), has no application, since in the said case, the Apex Court dealt with graduate courses i.e., M.B.B.S. and B.D.S., seats, where the seats are homogenous and in medical postgraduate, the seats are heterogeneous and in the said judgment, what should happen to the very same seat vacated by the reserved category candidate selected in open category and opts for a different seat under reserved category, is not dealt with and the issue is covered by the analogy of law laid down by the Apex Court in the subsequent judgment in ***UNION OF INDIA v. RAMESH RAM***.^[2]

9. Considering these rival contentions, the learned single Judge, while allowing the writ petitions passed the following directions:

48. Conclusions:

- a. Second limb of Clause I (e) and Clause I (f) of the Rules notified in G.O.Ms.No.43 dated 13.3.2013 are struck down as being discriminatory and offenders Article 14 of the Constitution of India and are inconsistent with the mandate of percentage of reservation fixed to each of the backward classes categories.
- b. In common pool category seats reserving certain seats to categories of BC-A, BC-D and women is declared as illegal. Consequently, the University is directed to ensure that percentage of reservation fixed for each of the backward class categories and women are filled.
- c. Pooling together residuary seats to be filled by BC candidates does not amount to creating a new class within the BC category. It is permissible for respondents to pool residuary seats in broad specialty reserved for backward classes into common pool.
- d. Allocation of seats in common pool should be to ensure proportionate representation to each of the backward classes categories as per percentage of reservations earmarked to each of the categories and after ensuring that each of the categories of backward classes are adequately represented, allocation of seats on broad specialty wise can also be ensured.
- e. The principle laid down by the Supreme Court in Ritesh R shah followed by two Full Benches of this Court, applies to admissions to post graduate medical courses. The contrary provision earmarking the open competition seat vacated by the reserved category candidate initially secured by him as per his merit, consequent to he/she choosing another specialty/college in a seat reserved for his/her reserved category and earmarking the said vacancy to open competition as contained in clause II (viii) of the Rules is struck down as being arbitrary, discriminatory and unconstitutional.
- f. Clause (II) (x) is held valid and legal.
- g. The respondents are directed to earmark the seat vacated by a reserved category candidate in the open competition in a specialty initially allotted to him as per his over all merit to the same reserved category consequent to his option to another specialty or colleges in the seat reserved for that category in the admissions which are scheduled to be held henceforth.
- h. The selections already made for the academic year 2013-14 are not disturbed."

10. Assailing the above orders of the learned single Judge, the Health University and the respective Governments of Andhra Pradesh and Telangana filed the present appeals. This court admitted the writ appeals and granted interim direction. For ready reference, the interim order made in WAMP.No.1578/2014 in W.P.No.735 of 2014 dated 8.5.2014 is extracted as under:

“There shall be interim stay as prayed for. However, counseling for admission will be subject to the further orders that may be passed in the writ appeal.”

11. Sri A.Prabhakar Rao, learned Standing Counsel appearing for the Health University contended that the learned single Judge has not considered the issue in proper perspective and erred in setting aside the impugned G.O. Referring to the object sought to be achieved in the preamble of the G.O., he submitted that the present G.O. was issued replacing the roster system introducing reservations in subject wise, so that seats in important broad specialty, would be reserved for respective category candidates and their selection to the desired specialties is ensured and in future it would facilitate them to pursue super specialty courses relating to the broad specialty chosen by them. He submitted that when there is only one seat in any specialization of P.G. medical course, it cannot be given to a particular sub group in B.C. and it can be given only to the meritorious among B.Cs. on merits as per sub clause (e) of clause I. He submitted that the allegation of the writ petitioners, which has been accepted by the learned single Judge that among the pooled residuary seats, reservation is provided to sub groups A and D in B.Cs., is factually incorrect. He stated that those seats were allotted on merit. He stated that the ratio mentioned in sub clause (c) of Clause I, is sought to be maintained and no sub group among

B.Cs. is provided seats in excess of their ratio. The learned counsel produced a copy of the list of provisionally selected candidates, signed by the Registrar of the Health University and submitted that percentage of reservations as per the ratio in sub clause (c) of clause I is maintained and that candidates under B.C.-C were allotted 30 seats, which include service and non-service and that no segregation can be made among the candidates of service and non-service. The learned counsel also produced copy of the Presidential Order to show that among the unreserved seats, 15 per cent of non-locals and locals can complete. He stated that the list relied on by the writ petitioners before the learned single Judge, and which has been taken as the basis to come to the conclusion that no seat was allotted to B.C.-C and that sub groups A and D were allotted with excess number of seats, is incorrect and the said list contains arithmetical mistakes. He stated that in certain specializations like surgery, general medicine, seats could not be allotted to B.C.-C, as the seats are very less and the reservations to all the sub groups is not possible. He submitted that no extra seat is given to any particular sub group and they were allotted as per the percentage of reservations in each subject and in case, if there are only one or two seats, they are being allotted on rotation basis i.e., if the seat in a particular broad specialty wise is given to a particular sub group in the present year, in the next year, the same will be allotted to another sub group till the cycle is completed, as per the percentage of reservations and the learned single Judge has not considered this aspect. With regard to sliding provided sub clause (viii) of clause II, the learned Standing Counsel submitted that the learned single Judge erred in placing reliance on Satish Shah's case, since in the said judgment, the issue considered was with regard to disadvantage that may suffer by more meritorious reserved category candidate when compared to less meritorious reserved category candidate on account of not providing him option to choose seat in a course/college of his choice, which

is kept reserved for same category candidate and in that process, the Apex Court has laid down process of sliding, and further held that candidates entitled to be admitted on basis of merit though belonging to reserved category, cannot be considered to be admitted against seats reserved for reserved category. In the said judgment, the Apex Court has not specifically dealt with the allotment of the seat falling vacant consequent to the reserved category candidate selected in open category, shifts to the seat meant for reserved category candidate. He stated that the Apex Court in the case of Ramesh Ram (2 supra), while dealing with the service law, has considered similar circumstances and held that reserved category candidates selected on merit, if adjusted in reserved category, has to be counted as part of reserved pool for computing aggregate reservation quota and the vacancies occurring in general category due to migration of such candidates, are to be offered to general category candidates. In consonance with the law laid down by the Apex Court, sub clause (viii) of clause II in the impugned G.O., is drafted and though the Apex Court was dealing with the service law, the analogy enunciated by the Apex court vis-à-vis the facts of the present case, can be made applicable. He further submitted that in Satish R Shah's case the Apex Court was dealing with undergraduate courses, whereas in the present case, the issue involved in sliding of seats in post graduate studies in medicine, with varying importance and hence the laid down by the Apex Court in Ramesh Ram's case is applicable. With these submissions, he sought to aside the order of the learned single Judge and to uphold the impugned G.O.

12. The learned Government Pleaders appearing for the State of Telanana and the State of Andhra Pradesh also made similar submissions and sought to allow the writ appeal.

13. On the other hand, the leaned counsel appearing for the

contesting respondents – writ petitioners, and the learned Senior Counsel Sri Bojja Tarakam submitted that the Health University is required to maintain the percentage of reservations meant for each sub-group among B.Cs. as stipulated in sub clause (c) of Clause I of the impugned G.O., and there cannot be any deviation. They contended that while providing reservations under broad specialty wise, the 1% reservation meant for B.C.-C was affected and the required number of seats among the total seats, as per the ratio of reservation, was not allotted to these sub group category candidates and the learned single Judge has taken notice of this fact from the writ averments. While reiterating the arguments in the writ petition, they submitted that there is no justification in pooling up the residuary seats and make the back ward classes compete among themselves. It is stated that except B.C.-C candidates, the other sub groups have been already allotted reserved seats as per their entitlement and again if they are allowed to compete for the seats in pool, on merit basis, the other sub groups will get more seats than their ratio and B.C.-C candidates will be left with no seat; and as the seats as per the ratio were not allotted to this sub group among B.Cs., B.C.-C shall not be made to compete with other sub groups and they shall be allotted seats as per the ratio mentioned in sub clause (c) of clause I of the impugned G.O. He submitted that the learned single Judge has rightly set aside the second limb of sub clause (e) of clause I of the G.O. With regard to sliding option contained in sub clause (viii) of clause II, the learned counsel referring to Ritesh Shah's case submitted that the reserved category candidate can be selected under the O.C. category based on merit. But when he slides to better category seat reserved for that particular B.C. sub group, the seat vacated by him in open category, shall go to same reserved category candidate. He submitted that the issue is covered by the law laid down in Ritesh Shaw's case. Eventually, the learned counsel submitted that as per Section 3 of Andhra Pradesh Educational Institutions

(Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (A.P. Act No.5 of 1983) of the Education Act, the amended rules under impugned G.O., are required to be placed before the House Committee of Legislative Assembly, for approval and as the said rule has not been complied with, the G.O. has no legal sanctity and on this ground alone, the G.O. is required to be set aside and fresh counseling is required to be made, following roster system.

14. To the above submissions, the learned Standing Counsel for the appellant – Health University and the Government Pleaders for Medical Health and Welfare, submitted that the learned single Judge has set aside certain portion of clauses and challenging the same, the Health University has filed appeal and the writ petitioners have not taken this ground in the writ petition and in the appeal filed by the Health University, they cannot be permitted to raise new grounds, which they have not taken before the learned single Judge. The Education Act contemplates the placement of the rules made under the impugned G.O. before the House Committee for approval, but the Act is silent for violation of the rule and in these circumstances, though the word ‘shall’ is used under the Act, such requirement has to be taken only as a ‘directory’ and not ‘mandatory’. In support of these contentions, the learned counsel relied on the judgments of the Apex Court, which will be referred to in the course of the judgment. With these submissions, the writ appeals were sought to be allowed.

15. In view of the above rival contentions the issue that arises for our consideration is whether the order of the learned single Judge warrants interference and if so, to what extent?

16. A perusal of the impugned G.O. makes it clear that that the Government in exercise of the power conferred by Section 3 read with sub-

section (1) of Section 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (A.P. Act No.5 of 1983), in supersession of the earlier rules regarding preparation of seat matrix and the selection procedure for admission into P.G. broad specialty in the competent authority quota, the Governor made the rules for preparation of seat matrix and the selection procedure for admission into PG broad specialty in the competent authority quota. The procedure for preparation of the seat matrix and the selections, under the impugned G.O., is already extracted above. The learned single Judge has set aside the second limb of sub clauses (e) and (f) of clause I of the impugned G.O., with regard to filling up of seats on merit from among the sub groups of B.C. category candidates, when the number of seats in a broad specialty wise for B.C. is 1 or 2 and when the seat cannot be allotted to any particular sub group in B.C.

17. Under the impugned G.O., as per sub clauses (a) and (c) of clause I, there is no second opinion or rather it is mandatory to maintain percentage of reservation provided to each sub group of backward classes. In the present case, the reservations are provided broad specialty wise and the object sought to be achieved is mentioned in the preamble of the impugned G.O. and for better appreciation the same is extracted as under:

“The proposal submitted by the Registrar, Dr.NTR University of Health Sciences, A.P.Vijayawada was examined in detail and amended to 100 point roster has been proposed to which Government has provisionally agreed. Previously, the admission process was as per “Roster System”. Now, it has been proposed to make admissions “broad specialty-wise”. The advantage of the system is that the seats in all the important broad specialties will be reserved for respective categories and their selection to the desired specialties is ensured. This would facilitate the category candidates to obtain seats in broad specialties is ensured. This would facilitate the category candidates to obtain seats in broad specialties to enable them to pursue Super Specialty courses related to the Broad Specialty chosen by them.”

18. From the above extract of the preamble of the G.O. it is clear that admission process which was hitherto made as per “roster system” is replaced with ‘broad specialty wise’ reservation system, so that the reserved category candidates are facilitated to pursue desired specialties, which would also enable them to pursue super specialty courses related to the broad specialties chosen by them. The State Government has discretion to provide reservations in the manner they chose for the maximum advantage of the category candidates. A Full Bench of this court in **DR. B. KALADHAR AND OTHERS v. GOVERNMENT OF ANDHRA PRADESH**^[3] held as under:

63. Placing reliance upon the judgment rendered by a Full Bench of this Court in *Koganti Jayakrishna’s* case (supra) and certain other decisions, it was argued that the respondents committed illegality in adopting different definitions for “course of study”, for the purpose of reservations under the Presidential Order, on the one hand, and those for the reservations under Article 15(4) of the Constitution of India, on the other hand. The petitioners contend that each specialization in the postgraduate medical courses was treated as a course of study for the purpose of Presidential Order, whereas, all the courses in degree and diploma, as the case may be, were clubbed together for the purpose of reservations under Article 15(4).

64. ‘Course of study’ is not a term of definite connotation. Its purport may change depending on the context in which it is used. It is not uncommon that the levels of study, specializations etc., are treated as the bases for this purpose. For example, the course will be known as under-graduate, post-graduate course, depicting the stage at which they are studied. Instances are also not lacking, where courses of study are understood with reference to the specialization of study, such as M.S. General Surgery, M.S. Ophthalmology. When the State has the absolute discretion in the matter of providing reservations, and to decide the extent and mode thereof, it cannot be precluded from adopting a particular unit, for enforcing the same. It is not necessary that the unit of reservation must be the same for all purposes. It is also to be noticed that the Presidential Order itself provides for unit of reservation, being “course of study”; whereas no such expression is found in Article 15(4). It is obviously in this context, that G.O. Ms.No.123 had adopted different terms and expressions in this regard.

Therefore, the respondents cannot be said to have committed any illegality in adopting different methods, in the matter of working out the reservations for the two categories referred to above.

66. Another submission made on behalf of the petitioners is that the respondents ought to have made course-wise reservations. The petitioners contend that on account of non-providing course-wise reservations, the reserved categories are deprived of courses of importance.

67. In the preceding paragraphs it has already been pointed out that course wise reservation and roster cannot go together. In a way, it can be said that both are mutually exclusive. Further, the importance of a course or specialization varies from time to time. Even at a given point of time, it would depend, much upon the likes and dislikes of candidates. During the current academic year itself the topper in the list has chosen the course in M.D. Radio-diagnosis. Annexure-B1 filed by the petitioners discloses that the candidate at roster No.2 in the Osmania University area has chosen M.D. Pediatrics, and it was only the candidate at roster point Nos.7 and 31, that have chosen the other two seats in the M.D. Radio-diagnosis. The same is the case with the other courses. One clear phenomenon, which cuts across all the admissions, is that the courses of study were guided, mostly by the choices of the candidates, than by any definite importance.”

19. From the above excerpts of the judgment of the Full Bench, it is clear that the words “course of Study” occurring in Presidential Order, may convey different connotations depending upon the stages and levels of study and specialization etc. In the present case, reservations are provided ‘broad specialty wise’ and the object sought to be achieved is already noted above. The Full Bench further held that State has the absolute discretion in the matter of providing reservations, and to decide the extent and mode thereof, it cannot be precluded from adopting a particular unit, for enforcing the same. In view of the Full Bench Judgment that the contention of the learned Senior Counsel that the words ‘broad specialty wise’ has not been defined under the G.O. and that it is vague, cannot be countenanced.

20. As per sub clause (c) of clause I of the impugned G.O., the percentage of reservations to sub groups of B.Cs. in each broad specialty in each university area is required to be maintained. Up to this stage, there is no dispute and the learned single Judge also considered this aspect in the light of the judgment of the Full Bench of this court in Kaladhar's case, the relevant portion of which, is already extracted above. Hence further dilation on this aspect is not being made.

21. The controversy is with regard to second limb of sub clauses (e) and (f) of clause I of the impugned G.O. As per sub clause (c), broad specialty wise reservation is required to be mandatorily maintained. Visualizing a contingency when such maintenance of reservation is not possible on account of availability of seats meant for B.Cs. is one or two, a mechanism is devised to pool such seats and to allot the same among the sub groups on merit. The learned single Judge on this aspect considering the contention of the learned counsel appearing for the writ petitioners that a new class or group is created, by way of pooling, held as under:

"36.. . . in the facts of this case, the said contention has no merit. No new class or group is created. In the medical courses at the post graduation level in individual specialties number of seats are very few; thus as per the ratio of percentage of 5 categories of backward classes, it is very difficult to allocate seats in a broad specialty to all five categories. Thus, there are several seats which could not have been earmarked to each of the categories in backward classes. Therefore, in order to give effect to the mandate of filling up of 29% seats in favour of backward classes, such residuary seats were pooled together and sought to be filled up by the backward classes only. It does not amount to creation of a new classes as sought to be contended by the learned counsel. However, the procedure adopted to fill the seats in common pool is held bad."

22. For coming to the conclusion that the procedure adopted to fill the seats in common pool is bad, the learned single Judge has considered mainly the submission of the learned counsels for the writ petitioners that in

the common pool some of the disciplines were exclusively reserved for B.C-A or B.C.-D and/or women and this resulted in more representation of the said sub groups than their entitlement and to the exclusion of other sub groups, particularly B.C.-C. To demonstrate this, the learned counsel for the writ petitioners relied on the provisionally selected candidates list. While denying the correctness of the lists relied on the writ petitioners, the learned standing counsel for the Health University produced lists certified by the Registrar of the Health University and submitted that no such reservation to sub groups B.C-A and D and/or women is made in the pooled seats and the B.C.-C category candidates were provided with seats as per the percentage of reservations as provided under sub clause (c) of clause I of the impugned G.O. and based on the said list, brought to the notice of this court the seats allotted to B.C. – C candidates. He submitted that in certain specializations like surgery and general medicine, where number of seats are less, as per the percentage of reservations mentioned in sub clause (c), sub groups like A and D were allotted seats and those branches, which could not be allotted to any sub group under B.Cs., are being compensated by following the rotation system given under sub clause (h) of the impugned G.O.

23. The controversy is with regard to filling up of pooled seats under B.C. category while maintaining the respective percentage of reservations among the total of 29% reservations to B.C. category candidates. Therefore, as pointed out above, when the seats are 1 or 2 and cannot be allotted to sub group, some reasonable procedure is to be considered. As per sub clause (e), as far as possible, the reservations for B.C. sub groups shall be maintained broad specialty wise and in a given situation where it is not possible, the seats shall be allotted to B.C. sub groups by merit. As already noted above, there is no material on record that in these pooled seats,

reservation is made to sub groups A, D and women and the submissions of the learned Standing Counsel for the Health University is that in some specializations like surgery and general medicine, where there are less number of seats, while allotting these seats to B.C. category candidates, the percentage of reservations under sub clause (c) was followed and in that process, in those specializations, no seat could be allotted to B.C. -C. In the impugned G.O. under sub clauses (g) and (h), rotation of seats among sub groups of B.C. is provided. Therefore, the authorities are required to maintain the percentage by resorting to rotation system as given under sub clause (h). However, in the absence of any material to show that pooled up B.C. seats, were sought to be reserved to B.C. sub groups A, D and women, and in the light of the conclusion of the learned single Judge in not finding fault with the mechanism devised under second limb of sub clauses (e) and (f) of the clause I of the impugned G.O., setting aside these limbs, cannot be sustained and directions given by the learned single Judge under conclusions (a) and the first sentence of conclusion (b), are liable to be aside and accordingly set aside and the remaining directions under (b) (c) and (d), does not warrant interference.

24. The second issue is with regard to setting aside of sub clause (viii) of clause II of the impugned G.O. The said clause for better appreciation, is re-extracted as under:

“A reserved category candidate selected under OC in a college in a broad specialty shall be permitted to slide into another broad specialty. The seat vacated shall be filled with the O.C. candidate in the subsequent counseling treating the seat as O.C.”

25. A reading of the above provision does not clearly state whether the reserved category candidate selected under open category in a college, is permitted to slide into another broad specialty, reserved for the same

reserved category. The learned Senior Counsel Sri Bojja Tarakam also raised objection with regard to vagueness of the provision. But as sliding facility is obviously provided to meritorious reserved category candidate selected under open merit list, this court based on arguments made and the case laws cited, is inclined to presume that the reserved category candidate selected under open category in a college, is permitted to slide into another broad specialty kept reserved for the same reserved category.

26. The above option under sub clause (viii), is called 'sliding principle', introduced based on the judgment of the Apex Court in Ritish R shah case (supra). The learned single judge relying on the judgment of the Apex Court in Ritish R. Shah case (1 supra), which is followed in Full Bench judgments of this court in **KOGANTI JAYAKRISHNA v. STATE OF A.P.**^[4] and **DR.B.KALADHAR AND OTHERS v. GOVERNMENT OF A.P.** (3 supra), has set aside the above provision and directed the Health University to earmark the seat vacated by a reserved category candidate in the open competition in a specialty initially allotted to him as per his overall merit to the same reserved category consequent to his option to another specialty or college in the seat reserved for that category in the admissions which are scheduled to be held henceforth.

27. Before proceeding further, it is necessary to look into the relevant facts and the law laid down by the Apex Court in case of Ritish R Shah (supra). The relevant facts, discussion and the conclusions are extracted thus:

This writ petition under Article 32 of the Constitution of India raises the question ***whether a candidate belonging to the Scheduled Caste or any other reserved category even if he is entitled to be selected for selection for admission in the open competition on the basis of his own merit yet can he be counted against the quota meant for reserved category or will he be treated as an open competition candidate?*** The aforesaid

question arises because of the rules for selection to MBBS and BDS course for the year 1995-96 issued by the Government of Maharashtra in the Department of Medical Education and Drugs. The petitioner admittedly belongs to the reserved category. The petitioner's case in a nutshell is that Respondents 5 to 36 belonging to the reserved category though could have been admitted on the basis of marks secured in open merit, yet they were admitted as against the reserved category and as a result the petitioner was excluded from getting admission into the MBBS course. There is no denial of the aforesaid assertion of fact. But the stand of the State Government as well as Respondents 5 to 36 is that if the respondents are allowed to take admission in open merit then it will work out gross injustice and will be more harsh to them as they cannot get admitted to the colleges of their choice even though they have secured much higher marks than the other reserved category candidate and the candidates securing lower marks will get the premium of being admitted to the colleges of their choice. . . .

13. There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the constitutional mandate enshrined in Article 16(4).

14. In a case *Indra Sawhney v. Union of India*² commonly known as *Mandal case*— this Court held thus: (SCC p. 735, para 811)

“In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

15. In *R.K. Sabharwal v. State of Punjab*³ the Constitution Bench of this Court considered the question of appointment and promotion and roster points vis-à-vis reservation and held thus: (SCC p. 750, para 4)

“When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the

reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.”

16. In *Union of India v. Virpal Singh Chauhan*⁴ (SCC at p. 705) it has been held that while determining the number of posts reserved for Scheduled Castes and Scheduled Tribes, the candidates belonging to reserved category but selected/promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

17. In *Ajay Kumar Singh v. State of Bihar*⁵ a three-Judge Bench considered the same question for admission in postgraduate medical course. It was contended that once the candidates seeking admission to postgraduate medical course have already enjoyed the benefit of reservation at the stage of their admission to MBBS course, they are not eligible for admission to postgraduate medical course, as reserved candidates. The contention that provision for reservation at the stage of admission to postgraduate medical course is uncalled for and contrary to public interest, cannot be accepted. Firstly, the assumption on the basis of which this argument is addressed is untenable. A candidate who is seeking reservation at the stage of admission to postgraduate medical course may not have availed of the benefit of reservation at the stage of admission to MBBS course as he would have been admitted on his own merit in the general quota (open competition quota) but because the competition at the level of postgraduate medical course is extremely acute, he may have

to seek the benefit of reservation. Therefore, the assumption that a student seeking benefit of reservation at the stage of admission to postgraduate medical course has already enjoyed the benefit of reservation once previously is not necessarily true. Secondly, there is no rule under Article 15(4) that a student cannot be given the benefit of reservation at more than one stage during the course of his education career. Where to draw the line is not a matter of law but a matter of policy for the State to be evolved keeping in view the larger interests of the society and various other relevant factors. Unless the line drawn by the State is found to be unsustainable under the relevant article, the court cannot interfere. With regard to the observations in *Indra Sawhney case*² in paragraphs 834 and 839 relied upon to contend that the reservation for admission at the postgraduate level is unconstitutional, it was clarified in paragraph 8 that “the Court was not speaking of admission to specialities and super-specialities. Moreover, MS or MD are not super-specialities. In any event, this Court did not say that they were not permissible”. The argument that reservation at postgraduate level is detrimental to the interests of the society was not countenanced holding that “no one will be passed unless he acquires the requisite level of proficiency. Secondly, the academic performance is not guarantee of efficiency in practice. We have seen both in law and medicine that persons with brilliant academic record do not succeed in practice while students who were supposed to be less intelligent come out successful in profession/practice. It is, therefore, wrong to presume that a doctor with good academic record is bound to prove a better doctor in practice. It may happen or may not”. **In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.** The Full Bench of the Bombay High Court in *Ashwin Prafulla Pimpalwar v. State of Maharashtra*⁶, held that selection of

candidates for admission to postgraduate medical course in colleges run by or under the control of the State Government shall be regulated in accordance with the prescription in that behalf contained in the rule for selection of the candidates for admission to the postgraduate medical course notified by the Government. The contention that the candidates belonging to the Backward Classes admitted to MBBS course selected as general candidates are not eligible for admission as reserved candidates or for scholarship etc. and also for admission to postgraduate medical course as reserved candidates, is illegal for and in negation of Article 15(4). The memorandum issued by the Government on the basis of the statement made by the Minister of Health, Government of Maharashtra was placed before us showing that such candidates are entitled to all the benefits though admitted on merit basis. The said statement is consistent with Article 15(4). **Therefore, the candidates belonging to Backward Classes but selected as general candidates for admission to graduate or postgraduate medical course are entitled to the concessions or scholarships and other benefits according to the rules or instructions of the State Government or the Central Government as the case may be. . . .**

(Emphasis added)

28. A reading of the above judgment makes it clear that a meritorious reserved category candidate admitted under open merit list, shall be permitted to opt seat in different college of his choice reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats are available. And while computing the percentage of reservations he will be deemed to have been admitted as an open category candidate and not as a reserved candidate. Such candidate is also entitled to the concessions or scholarships and other benefits which will be provided as per rules or instructions of the State or the Central Governments as the case may be. A close reading of the case does not show that the Apex Court had laid down any law that the resultant vacancy by virtue of sliding, has to be necessarily filled with the lower ranked reserved category candidate. The Apex Court only held that after allowing the option of sliding to the meritorious reserved category candidate, less

meritorious reserved category candidate should be considered and they will have to be allotted seats in whichever colleges the seats are available.

29. In Kaladhar's case (3 supra) the Full Bench had considered the judgment of the Apex Court in case of Ritesh R Shah. It was also argued before this Full Bench that the law laid down by the earlier Full Bench in Dr.Koganti's case (4 supra), wherein it has been categorically held that seat vacated by meritorious reserved category candidate selected in open merit list, by availing option of sliding to occupy seat meant for reserved category candidate, shall be filled with the reserved category candidate and not by the open category candidate, is binding on the later Full Bench. The question that was referred by the Division Bench to Full Bench (3 supra) for answering, is as under:

"7.. . . So far as the purpose and application of principle laid down in *Ritesh Sah's* case (supra) is concerned, the Division Bench felt that the judgment of a Full Bench of this Court, in *Koganti Jaya Krishna and another v. State of A.P.*, 2002(4) ALD 389 (FB), would have a bearing on the issue, and is better that the matter be heard by a Bench of appropriate strength, on that limited aspect. The relevant portion of the order of reference reads as under:

"We consider it appropriate that the issue whether the principle enunciated in *Ritesh Sah's* case (supra) is relevant and applicable in the context of post-graduate medical admissions, independent of the implications of the Presidential Order; and whether a general seat declined by a meritorious reserved candidate who opts for a reserved seat invariably be reserved for being filled up by a lower ranked student belonging to the same reserved class are matters which require a consideration by a Bench of appropriate strength."

In view of the same, this Full Bench was constituted.

8. Though number of writ petitions have been listed before the Bench, for all practical purposes, the consideration of the matter is restricted to the one raised in W.P.No.9938 of 2005, that too, in relation to the application of the principle laid down by the Supreme Court in *Ritesh Sah's* case (supra).

29. Hardly there exists any doubt that the judgments of the Supreme Court, irrespective of the number of Judges comprising

of the Bench, are binding on the High Courts. The Supreme Court reiterated the same in *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engg. Works (P) Ltd.*, 1997(6) SCC 450 = 1997(4) ALD (SCSN) 12. In *Suganthi Suresh Kumar v. Jagdeeshan*, 2002 (1) ALD (CrI.)417 (SC) = (2002)2 SCC 420, the Supreme Court held that the High Court or any other subordinate Court cannot by-pass the judgment of the Supreme Court even by invoking the principle or doctrine of per incuriam. There may be an occasion for the Supreme Court, in an appropriate case to restate, by stipulating the guidelines to invoke the doctrine. However, the other principles referred to above are of universal application and there cannot be any second opinion about the same. The learned Senior Counsel sought to apply the same in the context of the reference to this Full Bench.

30. In this regard, it needs to be observed that the Division Bench that heard these very matters had in fact, decided certain points of controversy such as nature of rights of the persons admitted to various courses in accordance with the procedure prescribed under G.O.Ms.No.123, impermissibility of alternation of the rules of admission after the commencement of the admission process. Strenuous contentions were advanced by the learned Counsel for the parties, as to whether the principle laid down by the Supreme Court in *Ritesh Sah's* case (Supra) would apply to the situation, brought about by G.O.Ms.No.123. Heavy reliance was placed upon the said judgment as well as the one rendered by a Full Bench of this Court *Koganti Jayakrishna's* case (supra). The Division Bench did take note of the fact that the subject matter of *Koganti Jayakrishna's* case (supra) was, the admissions into engineering courses, where, the "course of study" was co-extensive with the one adopted for the purpose of Article 371-D. An ostensible and alleged difference between the principles laid down by the Supreme Court in *Ritesh Sah's* case (Supra) and *M.Neethi Chandra's* case (supra) was also projected before it. The reason for Division Bench to refer the matter to a Larger Bench was that *Koganti Jayakrishna's* case (supra) was decided by a Full Bench. It is rather difficult to discern that the correctness of the judgment in *Koganti Jayakrishna's* case (supra) was doubted by the Division Bench, which heard these matters. Further, G.O.Ms.No.123 brought about a new method of admissions, by adopting a 100-point roster and the necessity arose to examine the matter with reference to the settled principles of law. In that view of the matter, while agreeing with the principles enunciated by the learned Senior Counsel, with due respect to him, we are of the view that the occasion to apply them does not arise or exist in this case.

30. After noting the referred question by Division Bench and the contentions of the respective counsel and the argument relating to the binding effect of precedents on the lesser strength benches of the same High

Court and Supreme Court, the Full Bench framed the question for consideration and answered accordingly. The relevant portion is thus:

31. . .

- (a) Whether the principle laid down by *Ritesh Sah's* case (supra) is applicable to the admissions to Post Graduate Medical Courses, in the context of the procedure stipulated under G.O.Ms.No.123, and if so,
- (b) Whether it has been followed by the respondents.

34. In the matter of implementation of reservations, several problems arose; not much as to the necessity or obligation of the State, to provide reservation, but in relation to the unreserved seats in the relevant courses. By their very nature, the unreserved seats or posts are to be filled, purely on the basis of merit. It is not uncommon that the candidates belonging to reserved categories secure admission and employment against Open Category seats or posts. In *Indira Sawhney* (supra) and *R.K.Sabharwal* (supra), the Supreme Court held that the seats or posts secured by candidates belonging to reserved category in the open competition cannot be reckoned against the number of seats or posts, reserved for that category. In the matter of admissions, the application of the said principle does not pose any serious problem or controversy as such, as long as the seats in a particular educational institution are uniform, in all respects. Where, however, the seats are of varying importance and are spread over in the colleges of different standards, certain complications do arise.

35. Let this illustration be examined. Course I to V of a level of study are available in colleges A,B,C and D, in the State. 40% of seats in each of the courses are unreserved. 10% is the reservation in favour of Schedule Castes and 30% for other categories. Let it be assumed that college 'A' has the faculty and infrastructure of comparatively high standards and that Course-III is in greater demand. If the admissions to all the four colleges are undertaken through a common counseling, it may so happen that candidate 'X' who belongs to SC, is able to secure admission in the 60% of open category seats in Course-I, in college 'B'. He is not satisfied with it. If his case is considered as a reserved candidate, he would be able to secure seat in Course-III in college 'A'. This would result in displacement of candidate 'Y', who is less meritorious, belong to the same category, but is entitled to be admitted against the said seat, on the basis of reservation. Two situations can be contemplated in such an event: a) If the candidate 'X' is precluded from switching over to reserved seats, the merit secured by him turns out to be a factor, disentitling him to a seat of his choice. b) If he is permitted to choose a seat in the reserved category, to that extent the category as whole would stand to loose one seat, and denial of admission to 'Y'. It was in a situation nearer to this, in relation to medical admissions, that the Supreme Court examined the matter in *Ritesh Sah's* case (supra).

In that case, there was only one variable factor viz., college and not the other variable i.e., the course of study. After referring to its judgment in *Indira Sawhney's case* (supra), *Ajay Kumar Singh v. State of Bihar*, (1994)4 SCC 401, etc., the Supreme Court held as under:

“In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates.”

36. Having laid down the principle, it proceeded to provide the solution and indicated the manner in which the admissions must be effected in such cases. It observed:

“The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available.”

37. From a reading of the latter passage, it is evident that the meritorious candidate among reserved category must be accorded the freedom to choose the course or college of his choice and the displaced candidate belonging to the same category must be allotted seat “in whichever colleges the seat should be available”. The principle, which applies to the institutions, equally governs the situations relating to courses also. In a given situation, it may be combination of both.

38. **The purport of the submissions made on behalf of the petitioners is that if a candidate born in reserved category is entitled to be admitted against a seat in a particular course, and in a particular college, as a candidate in the open category, and if he intends to get admitted against a seat reserved for the said category, the seat against which he was entitled to be admitted in the open category must be made available to the person who is displaced on account of the change of choice by an otherwise open category candidate. In the illustration given in the preceding paragraph, candidate 'X', who belongs to S.C. category was entitled to be admitted into course-I in college 'B' as an open category candidate. Not being satisfied with that, he gets admitted against a seat in Course-II in college 'A' which incidentally was reserved in favour of a S.C. category to which he belongs. Such an**

option by 'X' is to result in displacement of candidate – Y, who was eligible to get admission only as a reserved candidate. Accordingly to the petitioners, candidate-Y must be accommodate in course-I in college 'A' vacated by candidate-X.

39. We are of the view that the ratio of the judgment in Ritesh Sah's case (supra) does not support such a contention. The judgment, according to us, is to the effect that if candidate-Y faces displacement from reserved category, on account of shifting of priority by candidate-X, he must be accommodated in any course, may be I, III, IV, V and in any colleges C,D,E., depending on the availability, and not necessarily against the seat vacated by 'A'. It is different thing, if he gets that seat in the process. The number of seats so effected may have to be replenished, if necessary by displacing the candidate of other categories, from the bottom. The words "they be allotted seats in whichever college the seats should be available" used by the Supreme Court supports this view.

40. In *M.Neethi Chandra's* case (supra), the Supreme Court did not take note of its decision in *Ritesh Sah's* case (supra), rendered few months earlier. It is possible to argue that a slightly different note was struck, in that case, on the issue. However, the little doubt, if one may call it, as to the consistency between those two judgments stood cleared with the recent judgment of the Supreme Court in *Anurag Patel's* case (supra). Specific reference was made to both the judgments and the relevant portions were extracted. That case related to appointment to civil services in the State of U.P. The appellant therein, a candidate belonging to OBC, who secured 97th rank was appointed as Deputy Collector against a reserved vacancy, whereas candidate with superior ranks belonging to the same category were appointed against unimportant posts in the open category. Following the instructions issued by the Government on 19-10-1992, the appellant was replaced by a more meritorious candidate in that category. The contention of the appellant that he was entitled to be retained as Deputy Collector was not accepted, and support was taken from the principle in the *Ritesh Sah's* case (supra) and *M.Neethi Chandra's* case (supra).

41. In a common law system, which has been by and large inherited and adopted by our country, as distinguished from the continental system, judgments in decided cases are treated as source of law, with the same primacy as enacted law. However, in the matter of application, the Courts do not find themselves in the same comfortable situation, when it comes to a question of application of enacted law on the one hand, and a precedent on the other.

43. . . What becomes binding on the Courts, which happen to deal with similar situations, is the principle part of a precedent, and not the other components, referred to above, and that is known as

the *ratio decidendi*.

47. If we examine the judgments of the Supreme Court rendered in the cases of *Ritesh R.sah* (supra), *Neethi Chandra* (supra) and *Anurag Patel's* case (supra), referred to above, it emerges that the Supreme Court laid down a principle to the effect that the merit obtained by a candidate belonging to a reserved category cannot be treated, or permitted to become, a factor, to deprive or minimize the options to him, when compared to a candidate belonging to the same category, and accommodated in the reserved seats or posts. This principle, in turn came to be applied in different manners, in different cases, depending on the procedure adopted for selection of candidates. It is the principle, that becomes a guiding factor, than the application part of it. **The principle – the ratio decidendi, as we understand is that a higher ranked/merited candidate belonging to a reserved category, should not suffer a deprivation in the choices of either a seat or an institution of his choice vis-à-vis a lesser ranked/merited candidate of the same social class, by the operation of a reservation principle. Any admissions programme that accords with such principle is valid.**

48. In Koganti Jayakrishna's case (supra) the context was a bit different. The controversy was, whether each individual discipline in graduate engineering courses was liable to be treated as a course of study, in the matter of implementing the reservations for socially backward classes. Since the admissions do not provide for any other definition, the Court took the view that recourse can be had to the expression "Course of Study" occurring in the Presidential Order, which was also applicable to those admissions. The question as to whether the definition "course of study" must be the same for all purposes shall be considered a little later.

49. In applying this principle, the distinction between cases where separate blocks of seats are allocated in favour of different categories, on the one hand, and those in which seats are filled up by following the roster, on the other hand; needs to be maintained. In the former case, the admissions are first undertaken for the open category of seats. The claims for these seats can be from the candidates belonging to any social group or category, and the only consideration would be merit. After the open category seats are filled up, the seats reserved for various categories are taken up, one after the other. Depending on the nature of course and the number of colleges in which it is imparted, occasions may arise, where the candidates belonging to a particular reserved category, who have secured or were entitled to secure admission against the seats earmarked for open category, may choose to get admitted against a seat reserved for that category. In such an event, a process known as sliding takes place, in relating to the nature of course or the college. The principle laid down in *Ritesh Sah's* case (supra), squarely applies in such cases.

(Emphasis added)

31. A reading of the above portion of the judgments it is clear that the Full Bench considering the judgment of the Apex Court in case of *Ritesh R Shah* (supra) has delineated the law laid down in the said judgment to the effect that merit obtained by a candidate belonging to a reserved category cannot be treated or permitted to become a factor to deprive or minimize the options to him, when compared to a candidate belonging to the same category and accommodated in the reserved seats or posts. Such meritorious candidate among reserved category, must be accorded the freedom to choose the course or college of his choice. While allowing option to the meritorious reserved category candidate, the other reserved category candidate who was displaced, shall be accommodated in whichever colleges the seat should be available and that the principle which applies to the institution, equally governs the situation relating the course. Further, the Full Bench has negated the contention that the seat vacated by the meritorious reserved category candidate should invariably be allotted to the same category candidate and categorically held that the ratio of the supreme court in *Ritesh Shah's* case does not support such a contention and as laid down in the said judgment of the supreme court, the displaced candidate from reserved category on account of shifting of meritorious reserved category candidate, must be accommodated in any course, where the same are available and that such displaced candidate need not be accommodated in the very same seat vacated by the meritorious candidate. The Full Bench further held that the principle that the higher ranked/merited candidate belonging to the reserved category, should not suffer a deprivation in the choices of either a seat or an institution of his choice vis-à-vis a lesser ranked merited candidate of the same social class by the operative of the reservation principle, is the *ratio decidendi* in the judgments of the Apex

Court in *Ritesh R. Shahs's* case.

32. In view of the later Full Bench judgment of this court, the contention of the counsel for the writ petitioners that the resultant open category seat in a broad specialty on account of meritorious reserved candidate availing option of sliding to occupy another broad specialty seat kept reserved for the same category in a different college, should invariably be filled with such displaced lower ranked reserved category candidate, cannot be countenanced.

33. A reading of the above excerpts of the judgments makes it clear that sliding principle as stated in *Ritish R shah* case is applicable to postgraduate medical courses. At the cost of repetition, no where, as considered by the Full Bench (3 supra), it is held that resultant vacancy by virtue of sliding, shall necessarily go to the displaced reserved category candidate.

34. As already noted above, as per the preamble of the impugned G.O, the reservations are provided broad specialty wise to see that much desired courses are allotted to B.C. candidates. The earlier Full Bench in Koganti Jayakrishna (4 supra) while considering impugned G.O. therein i.e., G.O.Rt.No.550, which stipulates that a candidate belonging to a reserved community who had secured meritorious rank and who had chosen a branch or college as per his choice in open competition will be again permitted to slide to any better branch or college under the reserved quota and the resultant seat so vacated by such reserved candidate in the open competition will be treated as seat belonging to reserved communities. The Full Bench upheld the said provision on the ground that it is in accordance with the principles laid down by the Supreme Court in *Ritesh R Shah* case.

35. The difference between the facts in Koganti case and the present case are required to be noticed to apply the law laid down in the said judgment, because it is settled principle that judgment cannot be read as a statute and the decision is the authority for what it decides and not which can logically be deduced and that even a little difference of facts or additional facts may make a lot of difference in arriving at a just conclusion.

36. In the present case, the level of study is medical post graduation, where reservations are provided broad specialty wise and the object that is sought to be achieved is noted in the earlier paragraphs and this system is introduced in the place of roster system. In the judgment of the F.B. in Koganti Jaya Krishna's case, the subject matter relates to admissions into engineering courses, i.e, under graduation, where, as pointed in the later Full Bench (3supra), the course of study is co-extensive with the one adopted for the purpose of Art. 371-D and the admissions therein were made following the roster system. The later Full Bench judgment found that course wise reservations and roster cannot go together and they are mutually exclusive. In view of the present set of facts and circumstances and the law laid down by the Apex Court in *Ritesh R Shah* case, which has been delineated by the later Full Bench, we are of the opinion that the judgment of the Full Bench (3 supra) is binding on this court.

37. At the cost of repetition, the reservations in the present case is being provided on broad specialty wise, because these subjects are much coveted by the category candidates and in order to ameliorate their grievance that they are being allotted less important seats under the roster system, the reservations under broad specialty wise was introduced, which is well within the competence of the Government. When there are

heterogeneous specialty subjects in medical post graduation, which are of varied importance and reservations is provided specialty wise and while maintaining the ratio of reservations to backward classes as stipulated in sub clause (c) of clause I under the impugned G.O., we are of the considered view, that on application of sliding principle provided by the Apex Court in *Ritish R Shah's* case, the open category seat vacated by the meritorious reserved category candidate to occupy another broad specialty kept reserved to reserved category, need not be filled up with the same reserved category candidate and the same is to be filled by next candidate in the open merit. Our view is supported with the analogy of law laid down by the Apex Court in *UNION OF INDIA vs. RAMESH RAM CASE* (2 supra) Though the said case pertains to service law, the Apex Court had considered the law laid down in the earlier decision both on postgraduate medical admissions and service law. In the said judgment, the Apex Court while considering Rule 16(2) of 2005 CSE Rules, which is akin to rule of sliding as provided under *Ritish R Shah's* case, held that by operation of Rule 16(2), reserved candidates selected on merit (MRCs) and recommended against unreserved/general vacancies, can choose to migrate to respective reserved category and accordingly they can be adjusted against reserved vacancies in order to get a service of higher choice at the time of service allocations. The MRCs so adjusted in reserved category under Rule 16(2) to be counted as part of reserved pool for computing aggregate reservation quota and the vacancies occurring in general category due to migration of MRCs are to be offered to general category candidates and however if MRCs does not choose to migrate to reserved category by availing benefit under Rule 16(2), he has to be counted as a general category candidate and seat vacated by him in the reserved category is to be filled by wait listed candidate belonging to same reserved category. In the process, no candidate recommended in the first list of

selected candidates for appointment, is ousted and only lower ranked wait-listed candidates for appointment, is ousted and only lower ranked wait-listed candidates are excluded, who have no right or even expectation to be recruited. The Apex Court further held that if seats vacated by MRCS in general category because of their adjustment against reserved category vacancies are further allotted to reserved category candidates, aggregate reservation may exceed 50% of all available vacancies, which is prohibited under Rules 19(2) and (5) and neither inconsistent with R. 16(1), nor violative of Articles 14, 16(4) and 335 of the Constitution of India. The relevant portion is extracted as under:

32. There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice. For example, most candidates opt for at least one of the first three services [i.e. Indian Administrative Service (IAS), Indian Foreign Service (IFS) and Indian Police Service (IPS)] when they are asked for preferences. A majority of the candidates prefer IAS as the first option. In this respect, a reserved category candidate who has qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the general category especially because if he had availed the benefit of his reserved category status, he would have got a service of a higher preference. With the obvious intention of preventing such an anomaly, Rule 16(2) provides that an MRC candidate is at liberty to choose between the general quota or the respective reserved category quota.

33. Some factual examples can clarify the position. In 2005, an MRC (OBC) candidate attained 21st rank overall. With respect to his position in the general merit list, there were general category IAS vacancies available, and he occupied the 17th out of 45 general vacancies in the IAS. Thus, he did not need the assistance of Rule 16(2) to get a post in a more preferred service since he was adjusted against the general list. Accordingly, he opted out of the reserved category. This was in line with the proposition that when a candidate is entitled to a certain post on his merit alone, he should not be counted against the reserved quota.

34. In contrast, another candidate who was an MRC (OBC) candidate obtained 64th rank overall in CSE, 2005. At his position in the general list, he was entitled to a post in the IPS since the general category IAS vacancies had been exhausted by candidates above him in the general merit list. However, IPS was his second preference while IAS was his first preference. If he were to be considered against the vacancies in the reserved category, he would be entitled to a post in the IAS because the 22 OBC IAS vacancies had not been exhausted at that point of time. By the operation of Rule 16(2), he was able to secure a post in the IAS, while retaining his reserved status. Having availed of this benefit, he was adjusted against the reserved (OBC) category.

35. The learned counsel for the respondent questioned the rationale of declaring CSE results in two phases in order to support the proposition that even if MRC candidates are given a service of a higher preference, they should not oust lower-ranked reserved category candidates. However, Rule 16(2) should not be interpreted in an isolated manner since it was designed to protect the interests of MRC candidates. MRC candidates having indicated their status as SC/ST/OBC at the time of application, begin their participation in the examination process as reserved candidates. Having qualified as per the general qualifying standard, they have the additional option of opting out of the reserved category and occupying a general post. Where, however, they are able to secure a better post in the reserved list their placement in the general list should not deprive them of the same. In that respect, the adjustment referred to in Rule 16(2) does not, in fact, denote any change in the status of MRC from general to reserved. To the contrary, it is an affirmation of the reserved status of MRC candidate. Rule 16(2) exists to protect this reserved status of the MRC candidates.

36. We must also take note of the fact that when MRC candidates get adjusted against the reserved category, the same creates corresponding vacancies in the general merit list (since MRC candidates are on both lists). These vacancies are of course filled up by general candidates. Likewise, when MRC candidates are subsequently adjusted against the general category [i.e. without availing the benefit of Rule 16(2)], the same will result in vacancies in the reserved category which must in turn be filled up by wait-listed reserved candidates. Moreover, the operation of Rule 16 does not result in the ouster of any of the candidates recommended in the first list. Many of the wait-listed candidates are accommodated in the second stage, and the relatively lower ranked wait-listed candidates are excluded. It is pertinent to note that these excluded candidates never had any absolute right to recruitment or even any expectation that they would be recruited. Their chances depend on how MRC candidates are adjusted.

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39. A significant aspect which needs to be discussed is that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision of this Court in *Indra Sawhney v. Union of India*⁵. If MRC candidates are adjusted against the reserved category vacancies with respect to their higher preferences and the seats vacated by them in the

general category are further allotted to other reserved category candidates, the aggregate reservation could possibly exceed 50% of all of the available posts.

40. In *Post Graduate Institute of Medical Education and Research v. Faculty Assn.*⁶, G.N. Ray, J. had clearly stated that the upper ceiling of 50% reservations should not be breached: (SCC p. 22, para 32)

“32. Articles 14, 15 and 16 including Articles 16(4), 16(4-A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to reserved classes. Such a view has been indicated in the Constitution Bench decisions of this Court in *Balaji case*⁷, *Devadasan case*⁸ and *Sabharwal case*⁹. Even in *Indra Sawhney case*⁵ the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible. It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the Backward Classes, the State cannot ignore the fundamental rights of the rest of the citizens. The special provision under Article 15(4) [sic 16(4)] must therefore strike a balance between several relevant considerations and proceed objectively. In this connection reference may be made to the decisions of this Court in *State of A.P. v. U.S.V. Balram*¹⁰ and *C.A. Rajendran v. Union of India*¹¹. It has been indicated in *Indra Sawhney*⁵ that clause (4) of Article 16 is not in the nature of an exception to clauses (1) and (2) of Article 16 but an instance of classification permitted by clause (1). It has also been indicated in the said decision that clause (4) of Article 16 does not cover the entire field covered by clauses (1) and (2) of Article 16. In *Indra Sawhney case*⁵ this Court has also indicated that in the interests of the Backward Classes of citizens, the State cannot reserve all the appointments under the State or even a majority of them. The doctrine of equality of opportunity in clause (1) of Article 16 is to be reconciled in favour of Backward Classes under clause (4) of Article 16 in such a manner that the latter while serving the cause of Backward Classes shall not unreasonably encroach upon the field of equality.”

42. Therefore, we are of the firm opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the reserved category.

67. The order of CAT is valid to the extent that it relied on the ratio propounded by this Court in *Anurag Patel v. U.P. Public Service Commission*². Even though that decision had in turn relied on the verdict of this Court in *Ritesh R. Sah v. Dr. Y.L. Yamu*³, the latter case is distinguishable from the present case with respect to the facts in issue. However, we cannot approve of the conclusions arrived at in the Central Administrative Tribunal order as it failed to take note of the unique characteristics of UPSC examinations.

38. In the present case, the admission is to the postgraduate medical courses, where reservation is provided course wise i.e., broad specialty wise. Unlike admissions to undergraduate courses like M.B.B.S. or B.D.S., where the seats are homogeneous in nature, the seats in post graduation are heterogeneous having varied importance. In these circumstances, we are of the considered view that the principle enunciated by the Apex Court while considering different categories of posts under civil services in the Rameshram's case (supra), the excerpts of which, were extracted above, can be made applicable. Further, as laid down in Ritesh R Shah case (supra), the displaced reserved category candidate shall be allotted the seat in any course, in whichever college the same is available for the said category.

39. In view of the facts and circumstances and the law laid down by the Apex Court in Rameshram's case (supra), the reasoning and the directions of the learned single Judge in this regard at conclusions (e) and (g) are liable to be set aside and accordingly set aside.

40. The other contention of the learned Senior Counsel appearing for the writ petitioners is that the present amended rules as required under Section 3 of Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (A.P. Act No.5 of 1983) of the Education Act, are not placed before the House Committee of Legislative Assembly for approval and, therefore, the amended rules made

under the impugned G.O., has no legal sanctity and hence the entire counseling based on the said G.O. is liable to be set aside.

41. The above contention has not been taken before the learned single Judge. That apart, under the relevant provision, which stipulate placement of amended rules before the House Committee, no default clause is provided and in such an event, the provision has to be taken only as a 'directory' and not 'mandatory', because for the default on the part of the authorities in complying with the rules, the selected candidates who are pursuing the courses after facing the selection procedure, cannot be made to suffer. Our view is supported by the law laid down by the Apex Court in **D.K.KRISHNAN vs. REGIONAL TRANSPORT AUTHORITY, CHITTOOR**^[5], **JAN MOHAMMAD NOOR MOHAMMAD BEGBAN vs. STATE OF GUJARAT**^[6], **HUKAM CHAND vs. UNION OF INDIA**^[7], **ATLAS CYCLE INDUSTRIES v. THE STATE OF HARYANA**^[8], **BHARAT HARI SINGHANIA v. COMMISSINER OF WEALTH TAX (CENTRAL)**^[9], **THE QUARRY OWNERS ASSOCAITION v. THE STATE O F BIHAR**^[10] and, **THE ACCOUNTANT GENERAL MP. Vs. S.K.DUBEY**^[11].

42. For the foregoing reasons, the issued framed is answered in the affirmative and the order of the learned single Judge, to the extent indicated above, is set aside and the impugned G.O. Ms.No.43 dated 13.3.2013 is upheld and the writ appeals are accordingly allowed. No costs.

43. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

M.S.K.JAISWAL,J

Date:20—03—2014
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- [1] AIR 1996 SC 1378
 - [2] (2010)7 SCC 234
 - [3] 2006(1) ALD 1 (FB)
 - [4] 2002(4) ALD 389 (FB)
 - [5] AIR 1955 SC ____
 - [6] AIR 1966 SC 385
 - [7] AIR 1972 SC 2427
 - [8] (1979)2 SCC 196
 - [9] AIR 1994 SC 1355
 - [10] AIR 2000 SC 2870
 - [11] 2012(3) SCALE 124