

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**WRIT PETITION NOs.9829, 10017, 10114, 10194, 10230,
10461, 10687 AND 10903 OF 2018**

W.P.No.9829 of 2018:

Between:

Dr. M. Vasurchana Reddy and others.

.... Petitioners

and

State of Telangana rep., by its Principal Secretary to the
Government, Health, Medical & Family Welfare Department,
Telangana State Secretariat, Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 09.04.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? ----
2. Whether the copies of judgment may be marked
to Law Reports/Journals -Yes
3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? -Yes-

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

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% Dated:09.04.2018

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.... Respondents

! Counsel for Petitioners: Sri Vedula Venkataramana, Sri P. Sri Raghuram and Sri G. Vidya Sagar, Learned Senior Counsel, and Sri M. Jagannatha Sarma, Sri K.V. Simhadri, and Sri B. Venkateswarlu, Learned Counsel for the petitioners.

^ Counsel for respondents: Special Government Pleader appearing on behalf of the Learned Additional Advocate-General, Sri K. Lakshman, Assistant Solicitor General, Sri A. Prabhakar Rao, Sri Taddi Nageswara Rao, Standing Counsel and the Learned Government Pleader for Medical, Health and Family Welfare.

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> HEAD NOTE:

? Citations:

- 1) (1990) 1 SCC 411
- 1) (2013) 4 SCC 540
- 2) 2003 (3) ALD 512 = 2003 (4) ALT 32
- 3) (2015) 6 SCC 685
- 4) (2016) 9 SCC 749
- 5) (2002) 2 ALD 96
- 6) (1995) 4 SCC 104
- 7) (1999) 7 SCC 120
- 8) (1992) 2 SCC 26
- 9) (1999) 9 SCC 700 = AIR 1999 SC 1867
- 10) AIR 1956 SC 35 = (1955) 2 SCR 842
- 11) (2001) 5 SCC 175 = AIR 2001 SC 1832
- 12) (1989) 1 SCC 760
- 13) (1995) 3 SCC 17
- 14) (1985) 2 SCC 512
- 15) (1995) 6 SCC 614

- 16) (2002) 4 SCC 638
- 17) (1996) 11 SCC 361
- 18) (1987) 3 SCC 66
- 19) (2006) 1 SCC 430
- 20) (1984) 2 SCC 402
- 21) (1984) 2 SCC 324
- 22) (2004) 5 SCC 568
- 23) (1997) 6 SCC 450
- 24) (2003) 1 SCC 707
- 25) (1995) 1 SCC 259
- 26) (1993) 3 SCC 29
- 27) (1985) 1 SCC 260
- 28) (2001) 2 SCC 186
- 29) (1972) 1 All ER 801
- 30) AIR 1974 SC 1
- 31) (1997) 10 SCC 264
- 32) (1997) 2 SCC 713
- 33) (1994) 2 SCC 630
- 34) (1996) 3 SCC 493
- 35) AIR 1955 SC 425
- 36) (1994) 2 SCC 481
- 37) (2005) 6 SCC 138
- 38) (2000) 2 SCC 617
- 39) AIR 1987 SC 2235
- 40) AIR 1989 SC 1972
- 41) (2008) 12 SCC 481
- 42) (2005) 5 SCC 245
- 43) AIR 1952 SC 192
- 44) (2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315
- 45) (2014) 13 SCC 681
- 46) (1971) 2 SCC 747
- 47) (1965) 1 SCR 413 : AIR 1965 SC 745
- 48) AIR 1961 SC 232
- 49) AIR 1955 SC 123
- 50) 2007 (4) ALD 209
- 51) AIR 1989 SC 44
- 52) AIR 1989 SC 48
- 53) AIR 1991 AP 1 = 1990 (2) ALT 567
- 54) 1998 (1) ALD 53 = 1997 (6) ALT 290 (FB)
- 55) AIR 1995 AP 86 (FB)
- 56) 1991 (6) SLR 56 (SC)
- 57) AIR 1967 SC 1889



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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**WRIT PETITION NOs.9829, 10017, 10114, 10194, 10230,
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COMMON ORDER:

The relief, sought for in these Writ Petitions, is to declare G.O.Ms. No.21, Health, Medical & Family Welfare (C1) Department dated 20.03.2018, in so far as Rules 4 and 7 thereof are concerned, as illegal and arbitrary and contrary to the provisions of the A.P. Reorganization Act, 2014; to declare G.O.Ms. No.22, Health, Medical & Family Welfare (C1) Department, dated 20.03.2018, in so far as 50% of the Post Graduate seats in Government Medical colleges have been earmarked to the All India quota, as arbitrary, illegal and contrary to Section 95 of the A.P. Reorganization Act, 2014; and to, consequently, set aside the G.Os, and direct the respondents to make admissions to MD/MS/PG Degree/Diploma courses, 2018 in terms of G.O.Ms. No.260 dated 10.07.1997 and G.O.Ms. No.27 dated 10.04.2017.

The petitioners are all doctors who have either passed their MBBS course or their Post-graduate diploma course. They are employed by the State Government. In exercise of the powers conferred by Section 3 read with Section 15(1) of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act 1983 (hereinafter called the "1983 Act"), and in supersession of the rules in force governing admission into post graduation courses, the Governor of Andhra Pradesh made the Andhra Pradesh Medical Colleges Admission into Post Graduate Medical Courses) Rules, 1997 ("the 1997 Rules" for short) which were notified in G.O.Ms. No.260, Health, Medical & Family Welfare

(E2), dated 10.07.1997. Rule 3 thereof related to reservations and, under sub-rule (2) thereof, 15% of the seats in clinical subjects i.e., in Medicine, Surgery, Obstetrics & Gynaecology Groups and 30% of the seats in non-clinical subjects in each group for Degree and Diploma courses separately, were reserved for in-service candidates in each category under the service quota. Candidates selected on merit, in the respective categories, were to be counted against the service quota; and the service rendered was to be calculated as per the date specified by the University of Health Sciences. Explanation -1 of Rule 3(2) of the 1997 Rules clarified that in-service candidates had to put in (a) two years of continuous regular tribal service, (b) three years of continuous regular rural service; or (c) six years of continuous regular service to be eligible to be considered under the “in-service category”. Explanation -2 defined ‘Tribal Service’, ‘Rural Service’ and ‘Continuous regular service’.

G.O.Ms. No.27, Health, Medical & Family Welfare (C1) Department dated 10.04.2017 was issued notifying the Telangana Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 2017 (for short the “2017 Rules”). The 2017 Rules were made in the exercise of the powers conferred by Section 3 read with Section 15(1) of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (the “1983 Act” for short), and in supersession of the earlier rules regarding preparation of seat matrix, and the selection procedure for admission into PG broad speciality in the competent authority quota. Rule 3(II) of the said Rules related to reservation and, under clause (b) thereunder, 30% of the seats in clinical

broad specialities, and 50% of the seats in pre and para-clinical broad specialities, for Degree and Diploma broad specialities separately, were reserved for in-service candidates, under the service quota, which were horizontal reservations. Reservation to SC, ST and BC category candidates was to be followed in clinical and non-clinical broad specialities. The principle of reservation and merit was required to be followed among the in-service candidates for admission into these courses. Candidates selected on merit, in the respective categories, were however to be counted against the in-service quota, and the service rendered by them was to be calculated as per the dates specified by the KNR University of Health Sciences. Rule 4 prescribed the service candidate eligibility criteria, and defined “in-service candidate” to mean a candidate who had put in (a) two years of continuous regular tribal service, (b) three years of continuous regular rural service, and (c) six years of continuous regular service.

The 1997 Rules were in force in the State of Andhra Pradesh, and the 2017 Rules were in force in the State of Telangana, when the National Board of Examination, New Delhi issued a notification in the last week of October, 2017 inviting applications for admission into MD/MS/Post graduate diploma courses, 2018. Online registration, for the National Eligibility-cum-Entrance Test (“NEET” for short) were held from 31st October, 2017 to 27th November, 2017. The examination date for NEET PG, 2018 was fixed as 07.01.2018, and the results were declared on the 31st of January, 2018. The Information Bulletin, issued by the National Board of Examination, also provided, in clause 13 thereof, for reservation. Clause 13.2 related to the 50% State quota seats and

seats in private medical colleges/institutions/Universities/Deemed Universities. Under clause (a), thereunder, the reservation policy and guidelines, applicable in different States/Union Territories of India, were to be followed for the State or Union Territory quota seats. Clause 13.2(b) stipulated that the National Board of Examination would provide only the data of candidates, and the marks scored by them in NEET PG, to the State Government/Counselling Authority without applying the reservation prevalent in the concerned States/Private Medical Colleges/Institutes/Universities. The merit list, and the category-wise merit list for the concerned State, should be generated by the State themselves as per the applicable Regulations, the qualifying criteria, the applicable guidelines and the reservation policies. After the results of the NEET examination were declared, counselling for admission to the All India 50% quota was scheduled to be held on 25th and 26th March, 2018, and the results of the first round of counselling was to be published on 27.03.2018. The candidates were required to report to the allotted medical colleges between 28th March, 2018 and 3rd April, 2018; and the second round of counselling is scheduled to start from 06.04.2018, and conclude on 11.04.2018.

While matters stood thus, the Vice-Chancellor of the Health University is said to have addressed a letter dated 12.03.2018 proposing amendments to the Rules by contributing 50% of the PG seats, in Government Medical colleges, to the All India Pool; and to award weightage of marks, in the place of reservation, for in-service candidates. Based on the said proposal of the Vice-chancellor, the Government of Telangana issued G.O.Ms. No.21 and 22 dated 20.03.2018. The Telangana Medical Colleges

(Admission into Post-graduate medical courses) Rules, 2017, issued in G.O.Ms. No.27 dated 19.04.2017, was sought to be amended thereby. Rule 2(b) of the 2017 Rules which provided for reservation of 30% of seats in clinical broad specialities, and 50% of the seats in pre and para clinical broad specialities for Degree and Diploma broad specialities separately, in favour of in-service candidates, was deleted. Rule 4 of the 2017 Rules, which related to the service candidates eligibility criteria, was substituted by Rule 4 and, under sub-rule (4)(1) thereof, candidates were required to fulfil the eligibility criteria prescribed for a local area as stipulated in the Telangana Education Institutions (Regulation of Admission) Order, 1974 as amended from time to time. Rule 4(2) stipulated that candidates should have qualified in the National Eligibility-cum-Entrance Test (NEET) PG exam, as per the cut-off marks prescribed for different categories, to be eligible for addition of the incentive of weightage marks. Rule 4(4) prescribed the criteria for adding incentive weightage marks. Rule 4(4)(a) prescribed weightage of marks for service rendered in a tribal area, and Rule 4(4)(b) for service rendered in rural areas. While weightage of marks, for services rendered in Tribal Areas, was upto a maximum of 30%, the weightage marks for services rendered in Rural Areas was upto a maximum of 24%. Rule 4(5) stipulated that candidates, who had availed the incentive of weightage marks, should serve in the same area (Tribal/Rural) for a period of three years after completion of the course.

By G.O.Ms. No.22, Health, Medical and Family Welfare C1 department, dated 20.03.2018, the 2017 Rules were amended, and the earlier Rule (1) was substituted. The substituted Rule (1)

requires the number of seats, in postgraduate degree and diploma courses in various disciplines in each Medical College, to be notified before counselling (after excluding the 50% seats contributed to the All India quota). Rule 6 of the 2017 Rules, which provided for reservation in favour of local candidates, was substituted; and the substituted rule provided for reservation in favour of local candidates, as a consequence of contributing 50% of the post graduate seats in Government Medical Colleges to the All India Quota. Admission, to the remaining 50% of the seats, was to be reserved in favour of local candidates in relation to the local areas as provided in the Andhra Pradesh Educational Institutions (Regulations of Admission) Order 1974 as amended from time to time.

By virtue of the amendments made, to the 2017 rules, by G.O.Ms. Nos.21 and 22 dated 20.03.2018, 50% of the total seats in post graduate medical courses (both post graduate degree and diploma courses in various disciplines) is to be contributed to the All India quota; and the local area reservation, which was hitherto applicable to all the Seats, is now confined only to 50% of the seats remaining after contributing 50% of the Post Graduate seats, in Government colleges, to the All India quota as against the earlier 2017 Rules which provided for local area reservation for all the seats. The reservation provided in favour of in-service candidates, under the 2017 Rules, i.e., of an extent of 30% of the seats in clinical broad specialities and 50% of the seats in broad specialities for degree and diploma broad specialities separately, has been given a go-bye, and the substituted rules now provide only for weightage marks. While the substituted rules now provide

a maximum weightage of 30% marks to be given for tribal area service, a maximum weightage of 24% marks is given to rural area service. The present Writ Petitions are filed questioning the validity of the amended rules as notified in G.O.Ms. Nos.21 and 22 dated 20.03.2018 and the rules notified in G.O.Ms.No.29 dated 22.03.2018.

Both Sri P. Sriraghuram and Sri G. Vidya Sagar, Learned Senior Counsel, would submit that, since the process of admission to Post-graduate medical courses commenced in the last week of October, 2017, when the National Board of Examinations made the information bulletin available, it is only the 2017 Rules (the Rules then in force) which can be made applicable to the petitioners herein; the amended Rules notified in G.O.Ms.Nos.21 and 22 dated 20.03.2018, made after the results of the NEET PG examination were declared and just a few days prior to the commencement of counselling for the All India quota seats, can only be applied for admission to Post-graduate medical courses for the academic year 2019-20, and not to PG medical admissions for the academic year 2018-19; the Rules governing admission cannot be changed midway after commencement of the admission process; the information bulletin, issued by the National Board of Examinations in the last week of October, 2017, informed all applicants that the existing guidelines, relating to reservations, were applicable; consequently the 2017 Rules, relating to reservations in favour of in-service candidates which were in force when the information bulletin was published by the National Board of Examinations in the last week of October, 2017, would alone apply for admissions into the 2018 Post-graduate medical courses; amendment of the

2017 Rules, made by the Rules notified in G.O.Ms. No.21 and 22 dated 20th March, 2018, affects the on-going selection process; Section 15(1) of the 1983 Act, which confers power to make Rules, does not enable Rules to be made retrospectively; as the subordinate legislation (the amendment made to the 2017 Rules by the Rules notified in G.O.Ms. No.21 and 22 dated 20.03.2018), has not been expressly applied retroactively, the amended Rules must be held to be prospective in its application; consequently both G.O.Ms. Nos.21 and 22 dated 20.03.2018 can only be applied for admissions into Post-graduate medical courses, the process of selection for which commences after the amendments came into force, on its being notified, on 20.03.2018; the amended Rules also fall foul of the proviso to Rule 9(4) and Rule 9(7) of the 2000 MCI Regulations which obligate reservation to be provided for in-service candidates in Post-graduate diploma courses; the High Court should exercise its equitable jurisdiction to mould the relief, and direct the official respondents to implement G.O.Ms. No.27 dated 10.04.2017, more so as the validity of the said Rules are not under challenge; the petitioners were offered admission into PG degree and diploma courses on the basis of a selection process which commenced in October, 2017 when reservation for in-service candidates, in terms of G.O.Ms. No.27 dated 10.04.2017, was in force; as the Rules of the game cannot be changed midway, the petitioners cannot be denied in-service reservation based on G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms.No.29 dated 22.03.2018 which were made long after the results of the NEET examination were announced on 31.01.2018; as a result of the Rules being changed midway, the petitioners, who were all in-

service candidates, are now called upon to compete with others; in terms of the Rules, notified in G.O.Ms. No.27 dated 10.04.2017, a separate quota of 30% of the seats/50% of the seats were reserved in their favour; in-service candidates had only to compete among themselves, and not with others; the prescription of weightage of marks, instead of reservation of seats, now requires in-service candidates to compete with other students; the change in the rule affects their vested right to reservation, and no vested right can be taken away with retrospective effect; and G.O.Ms. No.21 dated 20.3.2018 should not be made applicable to them. Reliance is placed by the Learned Senior Counsel on **P. Mahendran v. State of Karnataka**¹; **Tej Prakash Pathak v. Rajasthan High Court**²; **A. Ranganath v. Andhra University, Visakhapatnam**³.

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the petitioners in W.P. No.10461 of 2018 would submit that if the State makes a law/rule repugnant to, or not in conformity with, the law declared by the Supreme Court, and if it is a State subject, then, in that State, the Court can direct the State to abide by the law made by it which is in force within the State; notwithstanding the judgment of the Supreme Court in **Sudhir. N. v. State of Kerala**⁴ and **State of Uttar Pradesh v. Dinesh Singh Chauhan**⁵, a mandamus can be issued by this Court to the Government of Telangana to abide by the Rules notified in G.O.Ms. No.27 dated 10.04.2017 as the law, applicable within the territorial limits of this High Court, cannot be ignored; G.O.Ms. No.21 only substitutes a part of the Rules notified in

¹ (1990) 1 SCC 411

² (2013) 4 SCC 540

³ 2003 (3) ALD 512 = 2003 (4) ALT 32

⁴ (2015) 6 SCC 685

⁵ (2016) 9 SCC 749

G.O.Ms. No.27 dated 10.04.2017, and is not in supersession thereof; since it is only an amendment to the existing Rules notified in G.O.Ms. No.27 dated 10.04.2017, and as no date is specified for the Rules, notified in G.O.Ms. No.21 dated 20.03.2018, to come into force, they will apply only for admissions made for the academic year 2019-20; the process of admission for the academic year 2018-19, commenced long prior to the notification of the amended Rules in G.O.Ms.No.21 dated 20.03.2018, with the NEET notification issued in October, 2017; the law laid down by the Supreme Court, in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**, were in the context of the 2000 MCI Regulations, and the challenge before the Supreme Court were to the Law/Rules made by the States of Kerala and Uttar Pradesh; there was no challenge, in either of the aforesaid judgments, to the validity of the Rules notified in G.O.Ms. No.27 dated 10.04.2017; since the rules notified in G.O.Ms.No.27 dated 10.04.2017 were made in the exercise of the powers conferred by the 1983 Act, and are statutory in character, there is a presumption regarding its constitutionality; in the absence of any challenge to the rules notified in G.O.Ms.No.27 dated 10.04.2017, this Court cannot be called upon to ignore the law and, instead, apply the law laid down by the Supreme Court in the context of the laws/rules made by the States of Kerala and Uttar Pradesh; this Court should enforce the State law (G.O.Ms. No.27 dated 10.04.2017) as it has neither been challenged nor struck down; while the law laid down by the Supreme Court in **Sudhir. N⁴** was on 12.01.2015, and in **Dinesh Singh Chauhan⁵** on 16.08.2016, the Government of Telangana made the rules, notified in G.O.Ms. No.27 dated 10.04.2017,

providing reservation for in-service candidates; accepting the submission, put forth on behalf of the State, that the law laid down in the aforesaid judgments of the Supreme Court must be applied, notwithstanding the validity of the Rules notified in G.O.Ms. No.27 dated 10.04.2017 not being subjected to challenge, would require this Court to set aside admissions made for the earlier academic years 2015-16, 2016-17 and 2017-18 also; G.O.Ms. No.27 dated 10.04.2017 is capable of being enforced by a mandamus from this Court, despite the law declared by the Supreme Court in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**, since Courts are obligated to implement the law laid down by the legislature and the Rule making authority; while no mandamus can be issued by the Court directing authorities to violate the law, it can always direct the State Government to implement its own laws/rules in force; to determine the date, from which it would come into force, the introductory part of G.O.Ms. No.21 dated 20.03.2018 must be read in conjunction with Rule 4 thereof; and when so read it would apply only to the NEET examinations from the academic years 2019-2020 onwards; Rule 5.1 of the Rules notified in G.O.Ms. No.21 dated 20.03.2018 provides for deputation to in-service candidates, selected after weightage of marks, to be restricted to three years i.e., 36 months; however under Rule 5(4), a candidate who has already undergone PG diploma course before joining Government Service, if he is selected for a P.G. degree course, he will be given deputation only for 12 months; a post graduate degree is for a minimum period of three years, and granting deputation only for twelve months would deny eligible in-service candidates, seeking admission into post graduate degree courses, the benefit of

deputation for the remaining two years; the second limb of Rule 5(4) is irrational, and is in violation of Article 14 of the Constitution; it does not satisfy the tests of a valid classification; and, therefore, the second limb of Rule 5(4) of the Rules, notified in G.O.Ms. No. 21 dated 20.03.2018, is liable to be struck down.

Sri M. Jagannadha Sarma, Learned Counsel for the petitioner in W.P. No.10114 of 2018 while adopting the arguments advanced by the Learned Senior Counsel, would further submit that the stipulation of a minimum of three years of tribal service should be deleted, as no such Rule was in force when the petitioner was appointed by the State Government, and was called upon to service in tribal areas; the proviso to Rule 9(iv) of the Post Graduate Medical Regulations, 2000 (the “2000 Regulations” for short) does not prescribe a minimum service in remote or difficult areas and merely prescribes weightage of marks of 10% for each year of service in remote and difficult areas, and upto a maximum of 30% of marks obtained in NEET to be given to them; the prescription in Rule 4(4)(a) of the 2017 Rules (as amended by G.O.Ms.No.21 dated 20.03.2018) for completion of a minimum of three years of regular and continuous service in Tribal areas falls foul of the proviso to Rule 9(iv) of the 2000 Regulations and must, therefore, be set aside.

Sri K.V. Simhadri, Learned Counsel for the petitioner in W.P. No.10230 of 2018, would submit that, vide G.O.Ms.No.29 dated 22.03.2018 which was published on 23.03.2018, the Government of Andhra Pradesh had amended the earlier Rules which provided for reservation in favour of in-service candidates; the Rules notified in G.O.Ms. No.29 dated 22.03.2018 provides only weightage of

marks for in-service candidates as against reservation provided in their favour by the earlier Rules. While adopting the submissions put forth by the Learned Senior Counsel, in challenge to the Rules notified in G.O.Ms.Nos.21 and 22 dated 20.03.2018, Sri K.V. Simhadri, Learned Counsel, would submit that, if not for admission into Post-Graduation medical degree courses, the petitioners should atleast be provided in-service reservation for admission into Post-Graduation diploma courses; the petitioner had studied upto intermediate in the State of Andhra Pradesh; thereafter he completed his MBBS course from a medical college located in the State of Karnataka; and, even if the petitioner is held ineligible to compete in the 85% quota reserved for local candidates, he should atleast be considered for admission in the remaining 15% unreserved seats, in the light of para 11 of G.O.P. No.646 dated 10.07.1979.

Sri Bethi Venkateswarlu, Learned Counsel appearing on behalf of the petitioner in W.P. No.10194 of 2018, would draw our attention to the petitioner's appointment letter whereby he was informed that he would be eligible for in-service reservation. Learned Counsel would refer to Clause 4(c) of the NEET examination procedure which prescribes the eligibility criteria for admission into post graduate medical courses, and to Rule 2(3) of the prospectus of the University of Health Sciences for the academic year 2017-18, to submit that the petitioner had passed his MBBS course from Ukraine, he was appointed only after successfully completing the screening test conducted by MCI, his house surgery from Gandhi Medical College, and his registration in 2007; he cannot now be denied the benefit of in-service

reservation; the petitioner is also entitled for the protection of para 11 of G.O.P. No.646 dated 10.07.1979; he had studied upto Intermediate in the State of Telangana, and his parents are employed within the State of Telangana; and he, therefore, fulfils the criteria stipulated in paragraph 11 of G.O.P.No.646 dated 10.07.1979 for being considered for admission under the 15% unreserved category prescribed in terms of the Presidential Order.

On the other hand, the Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General, would submit that, while the State Government was justified in contributing 50% of the seats, in Government Medical Colleges, to the All India quota, it may not be necessary for this Court to examine this issue, since the petitioners have not pressed for the relief, sought for by them in their Writ Petitions, to delete the 50% seats earmarked for the All India quota, and to add them to the existing State pool of 50%; the rules made in G.O.Ms. No.27 dated 10.04.2017 fall foul of the law declared by the Supreme Court in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**; as Regulation 9 of the 2000 MCI Regulations does not provide for in-service reservation in post graduate medical degree courses, and only stipulates weightage of additional marks to such candidates, the State Government had, necessarily, to amend the Rules to bring them in conformity with the law declared by the Supreme Court in the aforesaid judgments; weightage of marks for in-service candidates is now applicable even for admission into private medical colleges to the extent of the 50% convenor quota seats; the State Government would continue to provide in-service reservation for admission into post graduate medical diploma courses, in terms of

the 2000 MCI Regulations, though there is no such provision in the amended Rules notified in G.O.Ms. No.21 dated 20.03.2017; deletion of in-service reservation, and provision for weightage of marks, would be restricted only to post graduate medical degree courses; both the Universities of Health Sciences, in the States of Andhra Pradesh and Telangana, have issued a notification for filling up of seats under the 50% State quota, only after the amended rules in G.O.Ms. No.21 were notified on 20.03.2018; and since the Rules, notified in G.O.Ms. No.27 dated 10.04.2017, were amended to conform to the 2000 MCI Regulations, and the law declared by the Supreme Court in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**, the State Government was justified in deleting the earlier prescription of in-service reservation for Post Graduate Medical degree courses, and in providing them weightage of marks; the rules notified in G.O.Ms. No.21 dated 20.03.2018 have only been applied prospectively on a notification being issued by the concerned Universities after the amended rules were notified; the petitioners cannot claim any vested right, for in-service reservation, in admission into Post-graduate medical degree courses; the unreserved category of upto 15% seats, in terms of the 1974 Presidential Order, has, by the policy decision of the State Government, been increased to 50% which is now being contributed to the All India pool; the petitioners can no longer claim the benefit of reservation under the unreserved category of the Presidential Order; alternatively, the Government of Telangana undertakes that, in the event the petitioner is selected in the All India pool without weightage and in accordance with the 2000 MCI Regulations, he will be extended lien by the Government of

Telangana, even though 15% seats have not been made available to the unreserved category; and, in such circumstances, it may not be necessary for this Court to examine whether in-service candidates are entitled to seek admission on the basis of 15% of the seats being made available to the unreserved category in terms of the Presidential order. He would rely on **Sudhir. N⁴; Dinesh Singh Chauhan⁵** and **B. Meenakshi v. Government of A.P.⁶**.

It is convenient to examine the rival submissions made by Sri Vedula Venkataramana, Sri P.Sri Raghuram and Sri G.Vidya Sagar, Learned Senior Counsel, and Sri M.Jagannatha Sarma, Sri K.V. Simhadri, and Sri B. Venkateswarlu, Learned Counsel for the petitioners, on the one hand and the Learned Special Government Pleader appearing on behalf of the Learned Additional Advocate-General on the other, under different heads.

I. IS THE STATE GOVERNMENT OBLIGATED TO PROVIDE RESERVATION FOR IN-SERVICE CANDIDATES IN POST GRADUATE MEDICAL DEGREE COURSES?

The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the Seventh Schedule to the Constitution. In the Seventh Schedule, as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III. Entry 11 of List II was deleted, and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution (Forty-second Amendment) Act of 1976. Entry 25 in the Concurrent List relates to education, including technical education, medical education and universities, subject to the

⁶ (2002) 2 ALD 96

provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. Entry 25 of List III is subject, inter alia, to Entry 66 of List I which relates to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. (**State of T.N. v. Adhiyaman Educational & Research Institute**⁷; **Sudhir N.**⁴).

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and, in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention. (**Adhiyaman Educational & Research Institute**⁷; **Sudhir N.**⁴).

A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for

⁷ (1995) 4 SCC 104

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

(Adhiyaman Educational & Research Institute⁷; Sudhir N.⁴).

Standard of education, and admission criteria, can be laid down under Entry 66 of List I and under Entry 25 of List III. Both the Union as well as the State have the power to legislate on education including medical education, and the State has the right to control education so far as the field is not occupied by any Union legislation. **(Adhiyaman Educational & Research Institute⁷; Sudhir N.⁴).** The State Governments, however, have no authority to enact any law that may undermine the procedure for admission to Post-graduate medical courses enunciated by Central legislation, and the Regulations made thereunder, as it is a subject falling within Entry 66 of List I of Schedule-VII to the Constitution of India. The procedure for selection of candidates, for admission to Post-graduate medical degree courses, is one such area on which the Central legislation and regulations must prevail. **(Preeti Srivastava v. State of M.P.⁸; Dinesh Singh Chauhan⁵).** To the extent it is in conflict with the Central legislation though it

⁸ (1999) 7 SCC 120

is purported to have been made under Entry 25 of the Concurrent List, but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, the State Legislation would be void and inoperative. If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation, being repugnant to the Central legislation, would be inoperative. (**Adhiyaman Educational & Research Institute**⁷; **Sudhir N.**⁴).

Bearing these principles in mind, let us now examine the relevant statutory provisions governing admission into Post-graduate medical courses, including reservation provided, with respect to such seats, in favour of doctors in Government service. Under the Indian Medical Council Act of 1956, (hereinafter called the “1956 Act”) the Indian Medical Council (hereafter called “MCI”) is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers under Section 20 read with Section 33, the MCI has framed Regulations which govern Post-graduate medical education. These Regulations, therefore, are binding and the States cannot, in the exercise of their power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for Post-graduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List

III is subject to Entry 66 of List I. It is not the exclusive power of the State to frame rules and regulations pertaining to education, since the subject is in the Concurrent List. Therefore, any power exercised by the State, in the area of education under Entry 25 of List III, will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254. (**Adhiyaman Educational & Research Institute**⁷; **Sudhir N.**⁴).

The Post-Graduate Medical Education Regulations, 2000 (the 2000 MCI Regulations for short) were framed by the MCI in the exercise of the powers conferred by Section 33 read with Section 20 of the 1956 Act. Regulation 9 of the 2000 MCI Regulations has undergone amendments from time to time. Regulation 9, as notified and made applicable from the academic year 2013-2014 onwards vide Notification No. MCI-18(1)/2010-Med/62052 dated 15-2-2012, reads thus:

“9. Procedure for selection of candidate for postgraduate courses shall be as follows.—

(I) There shall be a single eligibility-cum-entrance examination, namely, “National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses” in each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India.

(II) 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%:

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% before they are included in the annual sanctioned seats for general category candidates:

Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions.

(III) In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test for Postgraduate courses" held for the said academic year. However, in respect of candidates belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause (II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the all-India common merit list in "National Eligibility-cum-Entrance Test" for postgraduate courses:

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to postgraduate courses, the Central Government in consultation with the Medical Council of India may at its discretion lower the minimum marks required for admission to postgraduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

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

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

(V) No candidate who has failed to obtain the minimum eligibility marks as prescribed in clause (II) above shall be admitted to any postgraduate courses in the said academic year.

(VI) In non-governmental medical colleges/institutions, 50% (fifty per cent) of the total seats shall be filled by the State Government or the Authority appointed by them, and the remaining 50% (fifty per cent) of the seats shall be filled by the medical colleges/institutions concerned on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

(VII) 50% of the seats in postgraduate *diploma* courses shall be *reserved for medical officers in the government service*, who have served for at least three years in remote and/or difficult areas. After acquiring the PG diploma, the medical officers shall serve for two more years in remote and/or difficult areas as defined by State Government/competent authority from time to time.

(VIII) The Universities and other authorities concerned shall organise admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super speciality courses each year. For this purpose, they shall follow the time schedule indicated in Appendix III.

(IX) There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super speciality courses under any circumstances. The Universities shall not register any student admitted beyond the said date.

(X) The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognised qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year.”

Regulation 9 of the 2000 MCI Regulations is a self-contained code regarding the procedure to be followed for admissions to medical courses. The opening part of clause (IV) of Regulation 9, which provides for reservation of seats in medical colleges/institutions for reserved categories as per applicable laws prevailing in States/Union Territories, is with reference to

reservation as per the constitutional scheme (for the Scheduled Caste, the Scheduled Tribe or the Other Backward Class candidates), and not for in-service candidates or medical officers in service. (**Dinesh Singh Chauhan**⁵).

Regulation 9(IV) further stipulates that the all-India merit list as well as State-wise merit list of eligible candidates shall be prepared on the basis of marks obtained in NEET, and admissions to Post-graduate courses in the State concerned shall be as per the merit list only. Regulation 9(IV) mandates admission of candidates strictly as per the merit list of eligible candidates for the respective medical courses in the State. This provision, however, contains a proviso. It predicates that, in determining the merit of candidates who are in service of the Government or a public authority, weightage in the marks may be given by the Government/competent authority as an incentive @ 10% of the marks obtained for each year of service in specified remote or difficult areas of the State upto the maximum of 30% of the marks obtained in NEET. This provision, even if read liberally, does not provide for reservation for in-service candidates, but only for giving weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified remote and difficult areas in the State). From the plain language of this proviso, it is clear that it does not envisage reservation for in-service candidates in respect of Post-graduate “degree” courses. This proviso postulates giving weightage of marks to “specified in-service candidates” who have worked in notified remote and/or difficult areas in the State—both for Post-graduate “degree” courses as also for Post-graduate “diploma” courses. The weightage of marks, so allotted, is required

to be reckoned while preparing the merit list of candidates. **(Dinesh Singh Chauhan⁵).**

The 1956 Act, and the 2000 MCI Regulations, do not provide for reservation for in-service candidates in Post-graduate “degree” courses. There is nothing in Regulation 9 to even remotely indicate that a separate channel for admission to in-service candidates must be provided in respect of Post-graduate “degree” courses. In contra-distinction, however, 50% seats are earmarked for the Post-graduate “diploma” courses for in-service candidates, as is discernible from clause (VII). If Regulation 9 intended a similar separate channel for in-service candidates, even in respect of Post-graduate “degree” courses, that position would have been made clear in the said Regulation itself. In its absence, it must be presumed that a separate channel for in-service candidates is not permissible for admission to Post-graduate “degree” courses. Thus, the State Government, in law, **had no authority** to provide to the contrary. **(Dinesh Singh Chauhan⁵).**

The proviso to Regulation 9 (iv) of the 2000 MCI Regulations recognises the principle of giving weightage to in-service candidates while determining their merit. In that sense, incentive marks, given to in-service candidates, is in recognition of their service rendered in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in NEET. Weightage or incentive marks, specified in the proviso to Regulation 9(iv), are thus linked to the marks obtained by the in-service candidate in NEET, and to reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage medical

graduates/doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is a permissible differentiation whilst determining their merit. It is an objective method of determining their merit. (**Dinesh Singh Chauhan**⁵).

The real effect of the proviso to Regulation 9(iv) is to assign specified marks, commensurate with the length of service rendered by the candidate in notified remote and difficult areas in the State, linked to the marks obtained in NEET. That is a procedure prescribed for determining the merit of the candidates for admission to Post-graduate “degree” courses for a single State. This serves a dual purpose. Firstly, the fresh qualified doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to Post-graduate “degree” courses of their choice. Secondly, the rural healthcare units run by the public authority would be benefited by doctors willing to work in notified rural or difficult areas in the State. A Regulation, such as this, subserves larger public interest. (**Snehelata Patnaik v. State of Orissa**⁹; **Dinesh Singh Chauhan**⁵). The procedure evolved in Regulation 9 in general, and the proviso to clause (IV) of Regulation 9 in particular, is just, proper and reasonable and also fulfils the test of Article 14 of the Constitution, being in larger public interest. (**Dinesh Singh Chauhan**⁵).

⁹ (1992) 2 SCC 26

While the proviso, to Regulation 9(IV) of the 2000 MCI Regulations, only provides for weightage of marks at 10% of the marks obtained for each year of service in remote and/or difficult areas upto a maximum of 30% of the marks obtained in NEET, Regulation 9 (VII) stipulates that 50% of the seats in Post-graduate diploma courses shall be reserved for medical officers in government service who have served for at least three years in remote and/or difficult areas and, after acquiring the Post graduate diploma, the medical officers should serve for two more years in remote and/or difficult areas as defined by the Government or competent authority from time to time.

The distinction in the language employed in Regulation 9(VII), which provides for reservation in 50% of the seats in Post-graduate diploma courses for medical officers in government service, and in the proviso to Regulation 9(IV) which only provides for weightage of marks as an incentive at the rate of 10% marks for each year of service in remote/and or difficult areas is clear. Unlike Regulation 9(VII) which provides for reservation in favour of candidates who have put in at least three years of service in remote and/or difficult areas, the proviso to Regulation 9(IV) does not stipulate any minimum period of service in the remote and/or difficult areas, but only prescribes incentive marks at 10% for each year of service upto a maximum of 30%.

Different use of words in two provisions of a statute, or two different Articles in the Constitution, is for a purpose. If the field of the two provisions/Articles were to be the same, the same words would have been used. (**B.R. Enterprises v. State of U.P.**,¹⁰).

¹⁰ (1999) 9 SCC 700 = AIR 1999 SC 1867

When words of different import are used in a Statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the two expressions have different connotations. (**Member, Board of Revenue v. Arthur Paul Benthall**¹¹). When the legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the legislature. If, in relation to the same or similar subject-matter, different words of different import are used in the same statute, there is a presumption that they are not used in the same sense. (**Arthur Paul Benthall**¹¹; **Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala**¹²). If the legislative intention was not to distinguish, there would have been no necessity of expressing the position differently. When the situation has been differently expressed the legislature must be taken to have intended to express a different intention. (**CIT v. East West Import and Export (P) Ltd.**,¹³).

The very fact that the proviso to Regulation 9(iv) and Clause (VII) of Regulation 9, both of which were inserted by the notification dated 15.02.2012, are differently worded, and Regulation 9(VII) prescribes reservation in Post Graduate Diploma courses and makes no mention of Post Graduate Degree Courses, would clearly show the intent of the Rule making authority to deny reservation for in-service candidates in Post-graduate medical degree courses. The law declared by the Supreme court, in **Sudhir. N**⁴ and **Dinesh Singh Chauhan**⁵, is that Regulation 9 of

¹¹ AIR 1956 SC 35 = (1955) 2 SCR 842

¹² (2001) 5 SCC 175 = AIR 2001 SC 1832

¹³ (1989) 1 SCC 760

the MCI Regulations is a complete Code, and any law/rule made by the State Government contrary thereto is a nullity. Consequently, the Rules notified in G.O.Ms.No.27 dated 10.04.2017 and G.O.Ms.No.260 dated 10.07.1997, in so far as they provided reservation for in-service candidates in Post-graduate medical degree courses, fall foul of the proviso to Regulation 9(IV) as amended by notification dated 15.02.2012 which came into force on 27.02.2012.

As the aforesaid State Rules are not in conformity with the 2000 MCI Regulations, they are void and inoperative, and cannot be enforced. The State Governments are, therefore, prohibited from providing reservation in Post-graduate degree courses for doctors in Government service, and can only provide them the incentive of weightage of marks in accordance with the proviso to Regulation 9(iv). This is what both the State Governments have done by amending the then existing Rules by G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018. Even if the amended Rules in G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018 had not been made, the petitioners could not have claimed in-service reservation in Post-graduate degree courses, based on the earlier Rules notified in G.O.Ms. No.260 dated 10.07.1997 and G.O.Ms. No.27 dated 10.04.2017 as both these Rules are contrary to the proviso to Regulation 9(iv) which came into force on 27.02.2012. From the academic year 2013-14 onwards, reservation of seats in Post-graduate medical degree courses, for doctors in Government service, was impermissible in terms of the proviso to Regulation 9(iv) of the MCI regulations, notwithstanding the rules made by the Government of A.P. in

G.O.Ms. No.260 dated 10.07.1997 and the Government of Telangana in G.O.Ms. No.27 dated 10.04.2017 to the contrary.

II. LAW DECLARED BY THE SUPREME COURT, IN *SUDHIR. N⁴* AND *DINESH SINGH CHAUHAN⁵*, IS BINDING ON THE HIGH COURT:

Section 5(1) of the Kerala Medical Officers' Admission to Post Graduate Courses under the Service Quota Act, 2008 (Act 29 of 2008) enabled the Government of Kerala to set apart seats, not exceeding 40% of the total seats available to the State quota, in an academic year, for selection of Medical Officers under service quota, considering their service under the Government, for admission to Post-graduate medical courses in the Medical Colleges of the State in such manner as may be prescribed. Section 5(4) required the Post-graduate Course Selection Committee to finalise the selection list strictly based on the seniority in service of the Medical Officers, and following such other criteria as may be prescribed. The constitutional validity of Section 5(4) of the Kerala Act, in so far as it provided that admission to Post-graduate medical courses, for the in-service quota, shall only be made on the basis of seniority, was subjected to challenge before the Kerala High Court which held that Section 5(4) of the Kerala Act provided a basis for selection of candidates different from the one stipulated by the 2000 MCI Regulations; and it was beyond the legislative competence of the State Legislature. On the matter being carried in appeal, the Supreme Court, in **Sudhir N.⁴**, held that Regulation 9 of the MCI Regulations remained as the only effective and permissible basis for granting admission to in-service candidates, the provisions of Section 5(4) of the Kerala Act notwithstanding.

In **Dinesh Singh Chauhan**⁵, the U.P. Government Order dated 28.02.2014 stipulated that 30% of the seats in Post-graduate degree courses, in medicine and other disciplines, were reserved for in-service candidates who had completed three years or more of rural service in notified and difficult areas. The Allahabad High Court, following the judgment of the Supreme Court in **Sudhir N.**⁴, held that the State Government could not, by an executive order, change the method of selection for admission of candidates to Post-graduate courses in medical sciences, so as to violate or dilute the Regulations framed by the Medical Council of India.

The law laid down by the Supreme Court is binding on all courts and tribunals in the country. (**Union of India v. Kantilal Hematram Pandya**¹⁴). Under Article 141 of the Constitution, the law declared by the Supreme Court is of a binding character, and as commandful as the law made by a legislative body or an authorised delegatee of such body. (**Shenoy & Co. v. CTO**¹⁵; **Nand Kishore v. State of Punjab**¹⁶). The plenary function of the Supreme Court, under Article 141 of the Constitution, is not merely as the interpreter of the law as existing, but much beyond that. The Supreme Court, as a wing of the State, is by itself a source of law. The law is what the Supreme Court says it is. (**Shenoy & Co.**¹⁵ and **Nand Kishore**¹⁶). Declaration of law is, therefore, an essential function of the Supreme Court.

The law which is binding under Article 141 would extend to all observations on points raised and decided by the Supreme Court in a given case. (**Director of Settlements, A.P. v. M.R.**

¹⁴ (1995) 3 SCC 17

¹⁵ (1985) 2 SCC 512

¹⁶ (1995) 6 SCC 614

Apparao¹⁷). What is binding is the ratio of the decision, the principle found upon a reading of the judgment as a whole, in the light of the questions before the Court, and not any particular word or sentence. (**M.R. Apparao**¹⁷). General principle of law, laid down by the Supreme Court, are applicable to every person irrespective of whether he was a party to the earlier order or not. (**M.S.L. Patil, Asstt. Conservator of Forests, Solarpur v. State of Maharashtra**¹⁸; **D. Navinchandra & Co. v. Union of India**¹⁹; **Hombe Gowda Educational Trust v. State of Karnataka**²⁰). When the Supreme Court decides a principle it is the duty of the High Court, or a Subordinate Court, to follow the decision of the Supreme Court. A judgment of the High Court, which refuses to follow the decision and directions of the Supreme Court, is a nullity. (**Narinder Singh v. Surjit Singh**²¹; **Kausalya Devi Bogra v. Land Acquisition Officer**²²; **M.R. Apparao**¹⁷). Judicial discipline to abide by the declaration of law by the Supreme Court, cannot be forsaken, under any pretext by any authority or court, be it even the highest court in a State, oblivious to Article 141 of the Constitution. (**State of Orissa v. Dhaniram Luhar**²³).

When a position in law is well settled, as a result of judicial pronouncements of the Supreme Court, it would amount to judicial impropriety for the Subordinate Courts, including the High Courts, to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism is impermissible. (**Hombe Gowda**

¹⁷ (2002) 4 SCC 638

¹⁸ (1996) 11 SCC 361

¹⁹ (1987) 3 SCC 66

²⁰ (2006) 1 SCC 430

²¹ (1984) 2 SCC 402

²² (1984) 2 SCC 324

²³ (2004) 5 SCC 568

Educational Trust²⁰; Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engg. Works (P) Ltd.²⁴; Ajay Kumar Bhuyan v. State of Orissa²⁵. The singular Constitutional role of the Supreme Court under the Constitution, and correspondingly of the assisting role of all authorities - civil or judicial in the territory of India - towards it, mandate the High Court, which is one such judicial authority covered under Article 144 of the Constitution, to act in aid of the Supreme Court. While the High Court is independent, and is a co-equal institution, the Constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of the Supreme Court which are binding on all courts within the territory of India. (**Spencer & Co. Ltd. v. Vishwadarshan Distributors (P) Ltd.,²⁶; Bayer India Ltd. v. State of Maharashtra²⁷; CCE v. Dunlop India Ltd.,²⁸; E.S.P. Rajaram v. Union of India²⁹.**

In the hierarchical system of courts which exists in our country, it is necessary for each lower tier, including the High Court, to accept loyally the decisions of the higher tiers. The judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted. The better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system. (**Dunlop India Ltd.,²⁸; Kausalya Devi Bogra²²; Cassell & Co. Ltd. v. Broome³⁰.** Judicial discipline requires, and decorum known to law warrants, that the law declared by the Supreme

²⁴ (1997) 6 SCC 450

²⁵ (2003) 1 SCC 707

²⁶ (1995) 1 SCC 259

²⁷ (1993) 3 SCC 29

²⁸ (1985) 1 SCC 260

²⁹ (2001) 2 SCC 186

³⁰ (1972) 1 All ER 801

Court should be followed. (**Kausalya Devi Bogra**²²; **Cassell & Co. Ltd.**³⁰).

Both in the executive order issued by the Uttar Pradesh State Government, and the law made by the Kerala State Legislature, reservation was provided to doctors in Government service in the available Post-graduate medical degree seats. These provisions are similar to the Rules prescribed in G.O.Ms.No.27 dated 10.04.2017 and G.O.Ms.No.260 dated 10.07.1997. While Rule II(b) of 2017 Rules, notified in G.O.Ms.No.27 dated 10.04.2017, provided for reservation of 30% of the seats in clinical broad specialities, and 50% of the seats in pre and para-clinical broad specialities for Degree and Diploma courses to be reserved for in-service candidates, Rule 3(2) of the 1997 Rules, notified in G.O.Ms.No.260 dated 10.07.1997, prescribed 15% of the seats, in clinical subjects i.e. in Medicine, Surgery, Obstetrics and Gynaecology groups, and 30% of the seats in non-clinical subjects in each group for degree and diploma courses, to be reserved in favour of in-service candidates.

While the law declared by the Supreme Court has to be applied to the facts of a given case, and not applied mechanically, in the present case the similarity of facts, and the relevant provisions relating to in-service reservation, are so clear that no scope is available for us to get over the opinion expressed by the Supreme Court in **Sudhir. N**⁴ and **Dinesh Singh Chauhan**⁵. On the facts, as established on record, this Court has no option but to refuse relief to the petitioners.

III. ARE THE RULES, NOTIFIED IN G.O.Ms.No.21 DATED 20.03.2018 AND G.O.Ms.No.29 DATED 22.03.2018 APPLICABLE ONLY FROM THE NEXT ACADEMIC YEAR 2019-2020, AND NOT FOR THE ENSUING ACADEMIC YEAR 2018-2019?

A candidate does not get any right merely by making an application for admission, but a right is created in his favour for being considered for admission in accordance with the terms and conditions of the advertisement and the existing admission rules. If a candidate applies for admission, in response to the advertisement issued in accordance with the prescribed Rules, he acquires a right to be considered for selection in accordance with the existing Rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. In the absence of any express provision contained in the amending Rules, enforcing the amended Rules with retrospective effect, it must be held to be prospective in nature. Rules, which are prospective in nature, cannot take away or impair the right of candidates as on the date of making admissions as well as on the date of scrutiny of applications. (**P. Mahendran**¹). Once the Rules of admission are prescribed, and candidates are called upon to apply for admission on the basis of the said Rules, it is not open for the authorities to alter the rule of admission after the examination has been held. It may be open to the University to alter the rule of admission before inviting applications, but once applications are called for on the basis of the existing rule, it is not open for the authorities, at a later stage, to alter the said rules of admission. (**A. Ranganath**³).

In **Tej Prakash Pathak**², on which reliance is placed on behalf of the petitioners, the Supreme Court, while holding that it

was a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” in so far as the prescription of eligibility criteria was concerned, in order to avoid manipulation of the recruitment process and its results, observed that the questions whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection, more particularly when the change sought is to impose a more rigorous scrutiny for selection, required an authoritative pronouncement of a larger Bench of the Supreme Court.

It must, however, be borne in mind that the operation of a service rule cannot be characterized as retrospective only for the reason that it applies to existing employees. A rule, which denies reservation of seats in Post-graduate medical degree courses to doctors in government service, undoubtedly operates on all those government doctors who entered service before the framing of the Rule, but it operates in future, in the sense that it governs the future right of consideration, of those who are already "in service" for admission to Post-graduate medical degree courses. The impugned rules do not recall an admission already made. They deny reservation in admission into P.G. medical degree courses, to in-service Government doctors, only after notification of such rules. Such a rule cannot be assumed to be retrospective. (**State of J & K v. T.N. Khosa**³¹; **B. Meenakshi**⁶).

In **B. Meenakshi**⁶, a Division Bench of this Court, while dealing with a similar issue of providing reservation for in-service candidates in Post-graduate medical courses, held that the

³¹ AIR 1974 SC 1

distinction between a legislation which operates retrospectively, and a legislation with retro-activity, is well established; merely because a legislation is brought into existence from a date anterior to the date of passing the same, cannot be held to be retro-active; a retro-active legislation is one which deals with matters which occurred long prior to the passing of the legislation, and retrospective legislation is one which operates and is enforced in relation to a situation anterior to the passing of the legislation or making of rules, but not with reference to actions and conduct long prior thereto; the 1997 Rules did not confer any benefit on any MBBS candidate to seek admission to PG course; appearance in the entrance test, or making an application, did not create any indefeasible right for admission; mere appearance in the entrance test did not create any right; and the petitioners could not, therefore, contend that, being "in service" candidates, they had any right for such "in service" reservation, and that the same cannot be taken away by the impugned Rule.

While the Division Bench of this Court, in **B. Meenakshi**⁶, held that mere appearance in the entrance test, or making an application, did not create any indefeasible right for admission, and the petitioners therein could not contend that, being in-service candidates, they had any right for in-service reservation which could not be taken away by the impugned Rule, let us, for the purpose of these batch of Writ Petitions, proceed on the premise that the amended Rules, made by both the State Governments, have only prospective application. Just like the Government of Telangana amended the 2017 Rules by G.O.Ms.No.21 and 22 dated 20.03.2018, to bring the 2017 Rules in conformity with Regulation

9 of the 2000 MCI Regulations, the Government of Andhra Pradesh also amended the 1997 Rules (issued in G.O.Ms.No.260 dated 10.07.1997) vide G.O.Ms.No.29 dated 22.03.2018. These amended Rules stipulate weightage of marks to be calculated at 10% per year, upto a maximum of 30% marks, for service rendered in tribal areas, and at 8% per year upto a maximum of 24% marks for service rendered in rural areas.

The Kaloji Narayana Rao University of Health Sciences, Warangal, Telangana issued a notification on 27.03.2018 inviting applications from eligible candidates for the Telangana State Competent Authority quota of respective categories using NEET PG 2018 scores from 23.03.2018 to 28.03.2018. This notification provided for verification of the original certificates from 31.03.2018 at the centres notified by the University. Likewise, a notification was issued by the Dr.NTR University of Health Sciences, Andhra Pradesh on 23.03.2018 inviting applications from eligible candidates, who secured the cut-off scores in NEET PG 2018, for admission into the State quota seats of Post-graduate medical degree/diploma courses. Applications were to be made available from 26.03.2018 to 31.03.2018. The verification of original certificates was to be undertaken from 03.04.2018 to 06.04.2018, and the date of release of the State final merit position, after verification of the original certificates, was stipulated as 09.04.2018. It is evident, therefore, that notifications were issued by the University of Health Sciences of both the States of Telangana and Andhra Pradesh, on 27.03.2018 and 23.03.2018 respectively, only after the respective Rules were amended vide

G.O.Ms.No.21 dated 20.03.2018 and G.O.Ms.No.29 dated 22.03.2018.

As noted hereinabove, the information bulletin issued by the National Board of Examinations in October, 2017 was for conducting NEET, 2018 Post Graduate examinations. The said bulletin made it clear that the Post-graduate seats of Andhra Pradesh and Telangana were likely to be included in the 50% All India quota seats; no State Government/Private Medical College/Universities, including the States of Telangana and Andhra Pradesh, would conduct any separate entrance examination for admission to their MD/MS/PG Diploma courses for the academic year 2018-2019; and, while the 50% All India quota seats were to be filled at the All India level by the Directorate General, Health Services, Ministry of Health and Family Welfare, Government of India, the State quota (which is the remaining 50%) was to be filled up by the concerned State Government/Designated Counselling Authority.

Clause 13.2 of the Information Bulletin related to reservation for States/Union territories, and the 50% State quota seats in Private Medical Colleges/Institutions/Universities/Deemed Universities. Clause 13.2(a) stipulated that the reservation policy and guidelines, applicable in different States/Union Territories of India, would be followed for the respective State/Union territory quota seats. Clause 13(2)(b) made it clear that the National Board of Examinations would be providing only the data of the candidates, and the marks scored by them in NEET-PG, to the State Governments / Counselling Authority without applying the reservation prevalent in the concerned States/Private Medical

Colleges/Institutions/ Universities, and the merit list and the category-wise merit list for the concerned State would be generated by the State themselves as per the applicable Regulations, the qualifying criteria, the applicable guidelines and reservation policies.

Clause 13.2 of the Information Bulletin makes it clear that, in so far as the 50% State quota seats are concerned, the National Board of Examinations had no role to play, and they would only be providing the data of candidates, and the marks scored by them in NEET-PG, to the State Governments/Counselling Authority without applying the reservation prevalent in the concerned States/Private Medical Colleges/Institutions/Universities. On the basis of the data furnished, it was for the State Government to provide reservation. It is evident, therefore, that, in so far as the 50% State quota seats are concerned, reservation, be it in favour of the Scheduled Castes, the Scheduled Tribes and the Backward Classes, or in favour of in-service candidates, is required to be provided only by the State Government in terms of its reservation policy after receipt of the data of candidates, and the marks scored by them in the NEET-PG examinations, from the National Board of Examinations.

The mere fact that the process, for appearing in the NEET examination, commenced in October, 2017 would not justify application of the Rules, prevalent prior thereto, for admission under the 50% State quota seats, as the process of filling up the 50% State quota seats was to commence only after receipt of the data of candidates, and the marks scored by them in the NEET-PG examination, from the National Board of Examinations. It is only

after G.O.Ms.Nos.21 and 22 were issued by the Government of Telangana on 20.03.2018, and G.O.Ms.No.29 was issued by the Government of Andhra Pradesh on 22.03.2018, have the respective Universities of Health Sciences of both the States issued notifications inviting applications for admission into Post-graduate medical degree and diploma courses, in their respective States. Reservation for in-service candidates is restricted only to the 50% State quota seats, and is not available in the 50% All India quota. Conducting a NEET examination, pursuant to the Information bulletin issued by the National Board of Examination in October, 2017, is only to identify candidates who have secured the minimum cut off marks for being eligible to be considered for admission into Post-graduate medical courses. It is not as if the minimum cut off marks, prescribed by the National Board of Examinations, has been done away with. The only consequence of the existing rules being amended by G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018 is to bring the existing rules in conformity with Regulation 9 of the 2000 MCI Regulations, in so far as in-service reservation in Post-graduate medical degree courses are concerned. Since the information bulletin issued by National Board of Examination in October, 2017 does not govern reservation for in-service Government doctors, as in-service reservation is available only in the 50% State quota, and as the process of filling up these seats commenced only after the amended Rules were notified in G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018, it cannot be said that the amended Rules have been applied retrospectively or that the Rules of the game have been changed mid-way.

The petitioners do not have any vested right to claim reservation for Government service. Their right is only to be considered for admission, into Post-graduate medical degree and diploma courses, on their merit. Consequently, the question of the amended rules, in G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018, affecting their vested rights, or taking them away with retrospective effect, does not arise. It is wholly unnecessary for us to examine whether or not Rules can be made retrospectively, under Section 15(1) of the 1983 Act, as we are satisfied that the amended Rules, notified in G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018, have been applied prospectively for admissions to the 50% State quota seats, in P.G. Medical courses, for the academic year 2018-19.

It is no doubt true that G.O.Ms. No.21 dated 20.03.2018 amended some of the 2017 Rules notified in G.O.Ms. No.27 dated 10.04.2017. It is wholly unnecessary for us to examine the distinction between an amendment to the Rules and its substitution by another, as we have already held that the amended Rules, notified in G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018, have only been applied prospectively i.e, to the notifications issued by the Kaloji Narayana Rao University of Health Sciences on 27.03.2018 and the NTR University of Health Sciences on 23.03.2018. As noted hereinabove, amended Rule 1 of G.O.Ms. No.22 dated 20.03.2018 requires the number of seats in Post-graduate degree and diploma courses, in various disciplines in each Medical College, to be notified before counseling (after excluding the 50% seats contributed to All India quota). Consequently the Rules in force, when the notification was issued

by the University of Health Sciences, would be applicable for admissions made to the seats in Post-graduate degree and diploma courses in each medical college, after excluding the 50% seats contributed to the All India quota. As the notifications were issued by the University of Health Sciences, after the amended rules were notified in G.O.Ms. No.21 dated 20.03.2018 and G.O.Ms. No.29 dated 22.03.2018, it is these amended rules which are applicable and not the 1997 or the 2017 Rules.

G.O.Ms.Nos.21 and 22 dated 20.03.2018, and G.O.Ms.No.29 dated 22.03.2018, have only been applied prospectively. The submissions to the contrary are, therefore, not tenable.

IV. WOULD THE RULE OF PRESUMPTION REGARDING THE CONSTITUTIONALITY OF THE RULES REQUIRE THIS COURT TO DIRECT THE RESPONDENTS TO PROVIDE RESERVATION, IN POST-GRADUATE MEDICAL DEGREE COURSES, IN FAVOUR OF DOCTORS IN THE SERVICE OF THE GOVERNMENT, BASED ON THE RULES NOTIFIED IN G.O.Ms.No.260 DATED 10.07.1997 AND G.O.Ms.No.27 DATED 10-04.2017?

It is no doubt true that there is a presumption regarding the constitutionality of Rules and, in the absence of a challenge thereto, this Court would, ordinarily, not declare the provision ultra-vires. However, in the present case, it has not even been contended before us, by the Learned Senior Counsel and the Learned Counsel for the petitioners, that the Rules notified in G.O.Ms.No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, providing in-service reservation in Post-graduate medical degree courses, does not fall foul of the proviso to Regulation 9(IV) of the 2000 MCI Regulations, and the judgments of the Supreme Court in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**. The contention, on the other hand, is that, notwithstanding the

aforesaid judgments and the proviso to Regulation 9(IV) of the 2000 MCI Regulations, a mandamus should be issued to the State Government to implement in-service reservation, in terms of the rules notified in G.O.Ms.No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, which were the Rules in force in the States of Andhra Pradesh and Telangana when the Information Bulletin was issued by the National Board of Examinations in October, 2017 for the NEET PG Medical Examinations, 2018.

It is only to bring its Rules in conformity, with the 2000 MCI Regulations, that both the State Governments have amended the said Rules and have done away with in-service reservation in Post-graduate medical courses. The amendments made to the earlier Rules, by G.O.Ms.No.21 dated 20.03.2018 and G.O.Ms.No.29 dated 22.03.2018, to the extent in-service reservation in Post graduate medical degree courses was deleted, are in accordance with the proviso to Regulation 9(iv) of the 2000 MCI Regulations. As similar Rules, providing reservation of seats for doctors in Government service in Post-graduate medical degree courses, have been declared ultravires and void by the Supreme Court in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**, it would be wholly inappropriate for us to exercise our discretionary jurisdiction, under Article 226 of the Constitution of India, to direct the respondents to implement the rules notified in G.O.Ms.No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, or to grant relief to the petitioners contrary to the proviso to Regulation 9(iv) of the 2000 MCI Regulations, and the law declared by the Supreme Court in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**, for it is well-settled that a mandamus cannot be issued to violate the law or to act in

violation of the law. (**University of Allahabad v. Anand Prakash Mishra (Dr.)**³²; **Santosh Kumar Verma v. State of Bihar**³³), and no mandamus would be issued directing the Government to disobey the law. (**J&K Public Service Commission v. Dr Narinder Mohan**³⁴; **State of Bihar v. Ramdeo Yadav**³⁵).

The 1956 Act, and the 2000 MCI Regulations, are referable to Entry 66 of List I and Entry 25 of List III of Schedule VII to the Constitution of India. The power of the State legislature to make laws, relating to Post-graduate medical admissions, is referable to Entry 25 of List III, and is not referable to any Entry in the State List ie., List II of the VII Schedule. Consequently, any law made by the State Legislature or any Rule made by the State Government, relating to Post-graduate medical admissions, cannot fall foul of either the provisions of the 1956 Act or the 2000 MCI Regulations. The contention that this Court can direct the State to abide by the Rules made by it, in G.O.Ms. No.260 dated 10.07.1997 and G.O.Ms. No.27 dated 10.04.2017, despite the proviso to Regulation 9 (iv), and the law declared by the Supreme Court in **Sudhir. N**⁴ and **Dinesh Singh Chauhan**⁵, does not merit acceptance. While the authorities concerned can be directed to implement the law made by the State legislature, or the Rule made by the State Government, no such direction can be issued if it is, *ex facie*, evident that the State law or the State rules, relating to admission into Post-graduate medical degree and Diploma courses fall foul of Regulation 9 of the 2000 MCI Regulations.

³² (1997) 10 SCC 264

³³ (1997) 2 SCC 713

³⁴ (1994) 2 SCC 630

³⁵ (1996) 3 SCC 493

On the question whether, even in the absence of a challenge to the validity of the Rules, the Courts can examine its validity, it is useful to note that, in **Dinesh Singh Chauhan**⁵, the petitioners therein, all of whom were members of the Provincial Medical Health Services in the State of Uttar Pradesh, claimed to be entitled to be considered for admission in Post-graduate medical degree courses against the 30% quota for in-service candidates. That plea was opposed on the ground that 30% quota was reserved only for in-service candidates who had worked in remote and difficult areas; and not for in-service medical officers generally. In the said petitions, the Allahabad High Court was primarily required to consider the question whether in-service medical officers in the State of Uttar Pradesh, who had working experience (in areas other than remote and difficult areas), could also be treated as eligible for admission against the reserved 30% quota for in-service candidates in Post-graduate degree courses. While considering this issue, the Allahabad High Court noticed that there was no provision in the 1956 Act, and the Regulations framed thereunder i.e the 2000 MCI Regulations, stipulating reservation for in-service candidates against 30% seats in “Post-graduate degree courses; the provision, however, was only to give weightage of marks to in-service candidates who had worked for specified periods in notified remote, difficult or backward areas of the State; and, on the other hand, reservation was limited to Post-graduate “diploma” courses by the said Regulations. The Allahabad High Court called upon the Medical Council of India to clarify its stand in this regard. The Medical Council of India stated, before the Allahabad High Court, that, unlike Post-graduate medical diploma courses, no reservation

for in-service candidates was permissible in respect of Post-graduate medical degree courses; and the State Government could not have framed any statutory rules, much less could it have provided a different dispensation by an executive fiat.

After referring to **Sudhir N.**⁴, the Allahabad High Court held that Regulation 9 of the 2000 MCI Regulations was a complete code, and the admission process must strictly adhere to the norms stipulated therein; as per Regulation 9, at best, in-service candidates, who had worked in remote and difficult areas in the State, as notified by the State Government/competent authority from time to time, alone would be eligible for weightage of marks as incentive @ 10% of the marks obtained for each year of service in such areas upto a maximum of 30% of the marks obtained in the National Eligibility-cum-Entrance Test; and the State Government had no authority to frame any Rules, or issue any executive order, to provide for reservation in Post-graduate “degree” courses, contrary to the statutory regulations framed under the Medical Council of India Act, 1956 (the Central Enactment). The Uttar Pradesh Government Notification was quashed, and admissions to Post-graduate degree courses were directed to be proceeded strictly on merit amongst the candidates who had obtained the requisite minimum marks in the common entrance examination.

On the question, whether the Allahabad High Court had exceeded its jurisdiction in setting aside the Uttar Pradesh Government Order dated 28.02.2014 providing reservation to in-service candidates, when the writ petition filed by in-service candidates was limited to equate them with in-service candidates who had the experience of working in remote or difficult areas, the

Supreme Court, in **Dinesh Singh Chauhan**⁵, observed that the Allahabad High Court had invited parties to advance arguments on the validity of the said government order, before passing the final order; it had relied on the decisions of the Supreme Court, and had opined that it was not permissible in law for the State Government to provide reservation for in-service candidates in Post-graduate degree courses in violation of Regulation 9; concededly, action taken on the basis of such a void government order was nothing short of a nullity in law; as a result, the Allahabad High Court had proceeded to issue directions to follow the admission process for Post-graduate degree courses strictly in conformity with Regulation 9; the Allahabad High Court had moulded the relief on the basis of the settled legal position; that approach was unexceptionable; and the State Government was obliged to adopt a procedure as was stipulated by the Central Act, and the Regulations framed thereunder.

In **Dinesh Singh Chauhan**⁵, even though the validity of the executive order, providing in-service reservation, was not subjected to challenge, the Allahabad High Court, having noticed that it fell foul of the 2000 MCI Regulations, held the provision to be illegal. This view of the Allahabad High Court was affirmed by the Supreme Court, in **Dinesh Singh Chauhan**⁵, holding that any law/rule contrary to the Indian Medical Council Act, 1956, or the 2000 MCI Regulations, was a nullity. As in-service reservation in Post-graduate medical degree courses, as stipulated in G.O.Ms.No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, is indisputably contrary to the proviso to Regulation 9(IV) of the 2000 MCI Regulations, and similar provisions have

been held by the Supreme Court, in **Sudhir. N⁴** and **Dinesh Singh Chauhan⁵**, to be a nullity, it would be wholly inappropriate for this Court to exercise its discretionary jurisdiction under Article 226 of the Constitution of India to issue a mandamus directing the State Government to implement Rules, similar to those which have been declared null and void by the Supreme Court.

The discretionary power of this Court, under Article 226 of the Constitution of India, need not be exercised in every case. One of the limitations imposed by the Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. (**Sangram Singh v. Election Tribunal, Kotah³⁶**). Exercise of discretionary power should be for the sake of justice and, if granting relief results in greater harm to the society, the Court may refrain from exercising the power. (**State of Maharashtra v. Prabhu³⁷**). Discretionary power must be exercised with great caution and only in furtherance of larger public interest. (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd³⁸**; **Air India Ltd v. Cochin International Air Port Ltd³⁹**). Courts would not readily interfere save manifest injustice or a substantial question of public importance is involved. (**Rashpal Malhotra v. Mrs. Saya Rajput⁴⁰**; **Council of Scientific and Industrial Research v. K.G.S. Bhatt⁴¹**).

As the State Governments have amended the Rules to bring them in conformity with the 2000 MCI Regulations, at least in so far as Post-graduate medical degree courses are concerned, we see

³⁶ AIR 1955 SC 425

³⁷ (1994) 2 SCC 481

³⁸ (2005) 6 SCC 138

³⁹ (2000) 2 SCC 617

⁴⁰ AIR 1987 SC 2235

⁴¹ AIR 1989 SC 1972

no reason to direct the State Governments to apply the pre-amended rules, and provide in-service reservation for admission in Post-graduate medical degree courses under the 50% State quota.

V. SHOULD THE HIGH COURT EXERCISE ITS EQUITABLE JURISDICTION TO GRANT THE PETITIONERS THE RELIEF OF IN-SERVICE RESERVATION IN POST GRADUATE MEDICAL DEGREE COURSES?

The contention that the High Court should exercise its equitable jurisdiction, and direct the official respondents to implement G.O.Ms. No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, is only to be noted to be rejected. The jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. (**K.D. Sharma v. SAIL**⁴²), and is to be exercised “to reach injustice wherever it is found”. (**Secy., ONGC Ltd. v. V.U. Warriar**⁴³). The writs referred to in Article 226 of the Constitution are intended to be issued in grave cases where such act, omission, error, or excess has resulted in manifest injustice. (**Veerappa Pillai v. Raman & Raman Ltd.**⁴⁴; **V.U. Warriar**⁴³). Though no limits can be placed upon its discretion, the High Court must exercise its power along recognised lines, and not arbitrarily. One of the limitations imposed by courts on themselves is that they will not exercise jurisdiction unless substantial injustice has ensued, or is likely to ensue. They will not exercise jurisdiction to set right mere errors of law which do not occasion injustice in a broad and general sense. (**V.U. Warriar**⁴³; **Sangram Singh**³⁶).

⁴² (2008) 12 SCC 481

⁴³ (2005) 5 SCC 245

⁴⁴ AIR 1952 SC 192

A writ is issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of the law. The writ court has not only to protect a person from being subjected to a violation of the law, but also to advance justice and not to thwart it. The Constitution does not place any fetters on the extraordinary jurisdiction but leaves it to the discretion of the Court. As the power is discretionary, the Court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce. A Court of equity, when exercising its equitable jurisdiction, must act so as to promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. (**Ritesh Tewari v. State of U.P.**,⁴⁵).

Equitable jurisdiction is a system of justice designed to supplant the common law by taking action in a reasonable and fair manner which results in a just outcome. In law the term “equity” refers to a set of remedies distinguished from legal remedies. Equitable relief is granted by Courts where the legal relief is found insufficient or inadequate. They are judicial remedies to provide more flexible responses to changing social conditions. Equity mitigates the rigour of the common law and looks to substance rather than to form. Equity follows the law. Equity only intervenes when some important factor is ignored by the law. One of the ends of equity is to promote fair play. If a person has taken an undue advantage of the proceedings before it, the Court, in its extraordinary jurisdiction, would be within its domain to deny the

⁴⁵ (2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315

discretionary relief. (**Eastern Coalfields Ltd. v. Bajrangi Rabidas**⁴⁶).

The cases on hand do not present any special features warranting exercise of the equitable discretionary jurisdiction in favour of the petitioners. The equity jurisdiction is not to be exercised to frustrate the legitimate rights of the other parties. (**Ritesh Tewari**⁴⁵). Failure to grant relief to the petitioners would not result in mis-carriage of justice, for the proviso to Regulation 9(IV) (which is applicable notwithstanding any State Rules to the contrary) only provides for weightage marks to be given to in-service Government doctors for admission into Post-graduate medical degree courses. Extending to the petitioners the benefit of reservation of seats in Post-graduate medical degree courses, in terms of G.O.Ms. No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, would not only fall foul of the proviso to Regulation 9(IV) of the 2000 MCI Regulations, but would also be contrary to the law declared by the Supreme Court in **Sudhir N⁴** and **Dinesh Singh Chauhan**⁵.

While grant of weightage of marks in terms of G.O.Ms.No.21 dated 20.03.2018 and G.O.Ms.No.29 dated 22.03.2018 would, undoubtedly, give in-service Government doctors a head start, as against doctors who are not in government service, it would at least require in-service government doctors to compete with other doctors for admission into Post-graduate medical degree courses, instead of excluding all others and permitting doctors in government service to compete only among themselves if reservation is provided in terms of G.O.Ms. No.260 dated

⁴⁶ (2014) 13 SCC 681

10.07.1997 and G.O.Ms.No.27 dated 10.04.2017. While candidates, who are found far more meritorious than in-service Government doctors in the NEET examination, would be entitled to secure admission into Post-graduate medical degree courses if, instead of reservation, weightage of marks is extended to in-service government doctors, they would be denied the opportunity to compete for these seats if reservation were to be provided to in-service government doctors in terms of G.O.Ms. No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017.

This would result in far less meritorious in-service government doctors securing admission into Post-graduate medical degree courses at the cost of other candidates who are found far more meritorious in the NEET examination. It would be wholly inequitable, therefore, to extend to the petitioners the benefit of in-service reservation in Post-graduate medical degree courses.

It is no doubt true that the Supreme Court in **Dinesh Singh Chauhan**⁵ did not interfere with the admissions already made for the academic year 2015-16, and only directed that the law declared by it shall be followed for admissions for the academic year 2016-17 and onwards, though admission for the academic year 2015-16 was in issue in the proceedings before it. In this context the Supreme Court observed that, ordinarily, as the subject-matter of challenge before the High Court pertained to the academic year 2015-2016, the dispensation, directed in terms of the interim order dated 12-5-2016, should apply thereto; however, considering the fact that the said admission process had been completed, all concerned had acted on that basis, and the candidates admitted to the respective Post-graduate degree courses

in the colleges concerned had also commenced their studies, it may not be appropriate to unsettle that position given the fact that neither the direct candidates nor the eligible in-service candidates, who had worked in remote and/or difficult areas in the State, had approached the Court for such relief; and it was only in-service candidates, who had not worked in remote and/or difficult areas in the State, who had approached the Court for equating them with their counterparts who had worked in remote and/or difficult areas in the matter of reservation of seats for in-service candidates. The Supreme Court moulded the relief and directed all concerned to follow the admission process for the academic years 2016-17, and onwards, strictly in conformity with the Regulations in force, governing the procedure for selection of candidates for Post-graduate medical degree courses including determination of the relative merit of the candidates who had appeared in NEET by giving weightage of incentive marks to eligible in-service candidates.

The present batch of Writ Petitions relate to admissions to Post-graduate medical degree courses for the academic year 2018-19 and, consequently, the law declared by the Supreme Court in **Dinesh Singh Chauhan**⁵ would necessitate compliance. Viewed from any angle, the petitioners are not entitled for grant of equitable relief, of being extended the benefits of G.O.Ms.No. 260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, for admissions into Post-graduate medical degree courses for the academic year 2018-19.

VI. WOULD APPLICATION OF THE LAW, DECLARED IN *DINESH SINGH CHAUHAN*⁵ AND *SUDHIR. N*⁴, REQUIRE ADMISSIONS MADE IN THE EARLIER YEARS, FOR POST-GRADUATE MEDICAL DEGREE COURSES, TO BE SET AT NAUGHT?

It is no doubt true that, despite Regulation 9 of the 2000 MCI Regulations being amended by notification dated 15.02.2012, and though the judgments of the Supreme Court in **Sudhir. N**⁴ was delivered on 12.01.2015 and in **Dinesh Singh Chauhan**⁵ on 16.08.2016, the Government of Telangana thereafter amended the earlier Rules vide G.O.Ms. No.27 dated 10.04.2017 providing for in-service reservation in Post-graduate medical degree courses contrary to the proviso to Regulation 9(IV) of the 2000 MCI Regulations, and the law declared by the Supreme Court in **Sudhir. N**⁴ and **Dinesh Singh Chauhan**⁵. The Government of Telangana has since realized its error, and has brought the State Rules, atleast in so far as PG medical degree admissions are concerned, in conformity with Regulation 9 of the 2000 MCI Regulations.

While the Rules notified in G.O.Ms.No.27 dated 10.04.2017, providing for in-service reservation for admission to Post-graduate medical courses, cannot be made applicable for the admissions made for the ensuing academic year 2018-19, it would be wholly inappropriate for us to now recall the admissions made, to Post-graduate medical courses in the State, in the previous academic years, as neither has the admission of such candidates been subjected to challenge in these Writ Petitions nor are those, who were admitted in the previous academic years and are undergoing their Post-graduate medical courses, parties to these Writ proceedings. This contention, urged on behalf of the petitioners, also necessitates rejection.

VII. SHOULD IN-SERVICE RESERVATION BE PROVIDED IN POST-GRADUATE MEDICAL DIPLOMA COURSES?

While both G.O.Ms.No.21 dated 20.03.2018 and G.O.Ms.No.29 dated 22.03.2018 do not provide for in-service reservation even in Post Graduate Diploma courses, it is necessary to note that, in terms of Regulation 9(VII) of 2000 MCI Regulations, 50% of the seats in Post-graduate diploma courses are required to be reserved in favour of medical officers in government service, who have served for at least three years in remote and/or difficult areas. Consequently, Regulation 9(VII) of the 2000 MCI Regulations obligates the State Government to provide in-service reservation, in the 50% State quota seats in Post-graduate medical diploma courses, in favour of the medical officers in government service. The mandate of Regulation 9(VII) of the 2000 MCI Regulations would prevail notwithstanding anything to the contrary in the amended State Rules notified both by the Governments of Andhra Pradesh and Telangana.

Neither the Government of Andhra Pradesh nor the Government of Telangana have, even as on date, brought the State Rules in conformity with Regulation 9(VII) of the 2000 MCI Regulations, and have failed to provide reservation in the State Rules to in-service candidates in Post-graduate diploma courses under the 50% State quota. As no Court can issue a mandamus to the Legislature to enact a particular law, and similarly no Court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact (**Narinder Chand Hem Raj v. Lt. Governor & Administrator, H.P.**,⁴⁷), it would not be proper for this Court to issue a mandamus to the Government to

⁴⁷ (1971) 2 SCC 747

now amend the State Rules. Suffice it, therefore, to make it clear that till State Rules are made, in conformity with Regulation 9(VII) of the 2000 MCI Regulations, reservation in Post-graduate medical diploma courses shall be made strictly in accordance with Rule 9(VII) of the 2000 MCI Regulations; and in-service reservation, to the extent of 50% of the seats available in Post-graduate diploma courses, shall be provided exclusively to medical officers in Government service.

Both the Governments of Andhra Pradesh and Telangana shall provide in-service reservation, in Post-graduate medical diploma courses, in terms of Regulation 9(VII) of the 2000 MCI Regulations, from the academic year 2018-19 onwards.

VIII. ARE 15% UNRESERVED SEATS PRESCRIBED UNDER THE PRESIDENTIAL ORDER MADE UNDER ARTICLE 371-D OF THE CONSTITUTION AVAILABLE FOR ADMISSION IN POST-GRADUATE MEDICAL DEGREE COURSES UNDER THE 50% STATE QUOTA?

In a country governed by a written Constitution, it is the Constitution which is Supreme and Sovereign. Exercise of plenary legislative authority, and discharge of legislative functions, by the State Legislatures is by virtue of the powers conferred on them by the relevant provisions of the Constitution. The basis and the source of power is the Constitution itself. Though the State legislature has plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution. **(Powers, Privileges and Immunities of State Legislatures, In re,⁴⁸).** Article 245 of the Constitution, which deals with the extent of laws made by Parliament and by the

⁴⁸ (1965) 1 SCR 413 : AIR 1965 SC 745

Legislatures of States, begins with the words "*subject to the provisions of this Constitution*". In other words, the power of the State Legislature to make laws is subject to the provisions of the Constitution. (**Atiabari Tea Co. Ltd v. State of Assam**⁴⁹). The legislative authority conferred by Articles 245 and 246 to make laws subject-wise is also qualified by the declaration made in Article 13(2), that any law, which takes away or abridges the rights conferred by Part III of the Constitution shall be void. (**Behram Khurshid Pesikaka v. State of Bombay**⁵⁰). If any legislative instrument falls foul of any of the provisions of the Constitution it must, necessarily, be struck down. (**Government of A.P. v. P. Vema Reddy**⁵¹).

It is with a view to enable prescription of residence in a part of the State, in matters of admissions in Universities or other educational institutions, that the Constitution, under Article 371-D, has made special provisions with respect to the States of Telangana and Andhra Pradesh. (**P. Vema Reddy**⁵¹). The scheme of Article 371 -D is valid, intra vires the amending power of Parliament, and as not to militate against the basic structure of the Constitution. (**Dr. C. Surekha v. Union of India**⁵²; **Fazal Gafoor v. Union of India**⁵³; **B. Ramesh v. University of Health Sciences**⁵⁴; and **Devarakonda Rajesh Babu v. NIMS**⁵⁵; **P. Vema Reddy**⁵¹).

Article 371-D of the Constitution of India are the special provisions with respect to the States of Andhra Pradesh and

⁴⁹ AIR 1961 SC 232

⁵⁰ AIR 1955 SC 123

⁵¹ 2007 (4) ALD 209

⁵² AIR 1989 SC 44

⁵³ AIR 1989 SC 48

⁵⁴ AIR 1991 AP 1 = 1990 (2) ALT 567

⁵⁵ 1998 (1) ALD 53 = 1997 (6) ALT 290 (FB)

Telangana. Clause (1) thereunder stipulates that the President may, by order made with respect to the State of Andhra Pradesh or the State of Telangana, provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of education, and different provisions may be made for various parts of the State. Clause (2)(b)(iii) of Article 371-D stipulates that an order made under clause (1) may, in particular, specify any part or parts of the State which shall be regarded as the local area for the purposes of admission to any University within the State, or to any other educational institution which is subject to the control of the State Government, and under clause (c)(ii) to specify the extent to which, the manner in which, and the conditions subject to which, preference or reservation shall be given or made in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order, to or in favour of candidates who have resided/studied, for any period specified in the Order, in the local area in respect of such cadre, University or other educational institution, as the case may be. Clause (10) of Article 371-D of the Constitution of India stipulates that the provisions of Article 371-D, and of any order made by the President thereunder, shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force.

It is only the provisions of Article 371 -D and any order made by the President thereunder which, under Clause (10) of Article 371 -D, has been given over-riding effect over other provisions of the Constitution and other laws for the time being in force. It is

only if action is taken pursuant to the Presidential Order would such action be immune from attack for violation of any of the other provisions of the Constitution. Any statutory provision which is contrary to the provisions of the Presidential Order must, in view of the overriding effect given thereto under Article 371-D(10), be struck down. (**P. Vema Reddy**⁵¹). The provisions of Article 371-D and the Presidential Order are insulated from any attack or challenge based on any other provision of the Constitution or any other law for the time being in force. It is also not open to challenge on the ground of violation of Part III or any other provision of the Constitution, (**Dr. B. Sudhakar v. Union of India**⁵⁶; **Dr. Fazal Ghafoor**⁵³), since the Presidential Order has been given overriding effect. (**P. Vema Reddy**⁵¹).

Since Article 371-D, and the Presidential Order made thereunder, mark a departure from the general scheme of the Constitution, it is only if the action of the State is traceable to any specific provision in the Presidential Order would it be entitled for the protection of Clause (10) of Article 371 -D. (**P. Vema Reddy**⁵¹). Article 371-D is a special provision which makes a departure from the general scheme of the Constitution. (**Govt. of A.P. v. A. Suryanarayana Rao**⁵⁷). The area of departure cannot, therefore, extend beyond what is unmistakably and specifically delineated by the words employed therein or in the Presidential Order made thereunder. Clause (10) of Article 371-D gives overriding effect, both to the provisions of Article 371-D and an order made by the President thereunder, over other provisions of the Constitution and any other law in force. Thus, prescription of "residence" in a part

⁵⁶ AIR 1995 AP 86 (FB)

⁵⁷ 1991 (6) SLR 56 (SC)

of the States of Telangana and Andhra Pradesh is permissible, notwithstanding the prohibition under Article 16(2), provided such a prescription has been made under Article 371-D or the Presidential Order made thereunder. (**P. Vema Reddy**⁵¹).

In the exercise of the powers conferred by Clause (1) and (2) of Article 371-D of the Constitution of India, the President made, with respect to the then State of Andhra Pradesh, the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (the “1974 Order” for short) which was notified in G.S.R. 299(E), and came into force on 1st July, 1974. Para 2(1)(a) of the said Order defines ‘available seats’, in relation to any course of study, to mean the number of seats provided in that course for admission at any time, after excluding those reserved for candidates from outside the State. Para 2(b) defines ‘local area’, in respect of any University or other educational institution, to mean the local area specified in Paragraph 3 of the Order for the purposes of admission to such University or other educational institution. Clause 2(c) defines ‘local candidate’, in relation to any local area, to mean a candidate who qualified, under Paragraph 4 of the Order, to be a local candidate in relation to such local area.

Para 3 of the said Order relates to local area, and Para 4 to local candidates. Para 4(1)(a) stipulates that a candidate, for admission to any course of study, shall be regarded as a local candidate in relation to a local area if he has studied in an educational institution, or educational institutions, in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination.

Explanation (ii) defines 'relevant qualifying examination', in relation to admission to any course of study, to mean the examination, pass in which is the minimum educational qualification for admission to such course of study. As the relevant qualifying examination, for admission into Post-graduate medical degree and diploma courses, is MBBS, it is only if a candidate has passed his MBBS course from a medical college located within a local area, after undergoing a period of not less than the four consecutive years study prior thereto, would he be considered as a local candidate in terms of Para 4(1)(a) of the Order.

Para 5 of the Order relates to reservation in non-State-wide Universities and educational institutions, and admission to eighty-five percent of the available seats in every course of study, provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or the Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide Educational Institution) which is subject to the control of the State Government, shall be reserved in favour of local candidates in relation to the local area in respect of such University or other educational institution. Para 5.2 stipulates that while determining, under sub-paragraph (1), the number of seats to be reserved in favour of local candidates, any fraction of a seat shall be counted as one. Under the proviso thereto, there shall be atleast one unreserved seat.

As a result, while admissions to 85% of the seats are required to be reserved in favour of local candidates in relation to the local area in respect of such University or educational

institution, the remaining 15% seats are the unreserved seats. Para 8 relates to the power to authorise issue of directions, and Para 8.1 enables the President, by order, to require the State Government to issue such directions as may be necessary and expedient, for the purpose of giving effect to the Order, to any University or to any other educational institution subject to the control of the State Government; and the University or other educational institution shall comply with such directions. Para 9 stipulates that the provisions of the Presidential Order shall have effect notwithstanding anything contained in any statute, ordinance, rule, regulation or other order (whether made before or after the commencement of the 1974 Order) in respect of admissions to any University or to any other educational institution subject to the control of the State Government.

On the President requiring the State Government to issue directions, in terms of Para 8 of 1974 Order, the then Government of Andhra Pradesh issued clarifications, in G.O.P. No.646 dated 10.07.1979, on who should be considered eligible to apply as candidates belonging to the then State of Andhra Pradesh for the purpose of admission to courses of studies offered by educational institutions, subject to the control of the State Government, against the 15% available seats kept unreserved in terms of the 1974 Presidential Order. The State Government, vide G.O.P. No.646 dated 10.07.1979, clarified that the following categories of candidates may be treated as eligible to apply to educational institutions in the State, subject to the control of the State Government, as candidates belonging to the State against the 15%

available seats left unreserved in terms of the Presidential Order.

These categories are:

- (i) All local candidates defined in the Presidential Order;
- (ii) Candidates who have resided in the State for a total period of ten years excluding periods of study outside the State; or either of whose parents have resided in the State for a total period of ten years excluding periods of employment outside the State;
- (iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and other similar quasi-Public Institutions within the State; and
- (iv) Candidates who are spouses of those in the employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and educational institutions recognised by the Government, a University or other competent authority, and similar other quasi-Government institutions within the State.

Some of the petitioners, in this batch of Writ Petitions, claim to fall under category (ii) of Para - 11 extracted hereinabove. If that be so, they are entitled to be considered against the 15% available seats left unreserved in terms of the Presidential Order. The submission of the Learned Special Government Pleader that, since the State has given up 50% of the available seats in Government Medical Colleges to the All India Pool, it has, instead of leaving 15% of the seats unreserved, left 50% of the seats unreserved, does not merit acceptance. Surrender of 50% of the seats, in government medical colleges, to the All India Pool is not in terms of the Presidential Order. By surrendering 50% of the available seats, in government medical colleges within the State, to the All-India Pool, the Governments of Telangana and Andhra Pradesh have

enabled students, who have completed their under-graduate medical courses from both these States, to now compete for all the available seats in the All India quota of 50%. Surrender of 50% seats to the All-India quota is not in terms of the Presidential Order made under Article 371-D of the Constitution of India.

The question, whether surrender of 50% of the seats in government medical colleges to the All India quota falls foul of the Presidential Order made under Article 371-D of the Constitution of India, need not be examined in the present batch of Writ Petitions as these issues, though raised in the Writ Petitions, are not pressed during the course of hearing. All the Learned Senior Counsel, and the Learned Counsel appearing on behalf of the petitioners, fairly state that the petitioners' claim in the Writ Petition, for reservation in favour of in-service candidates, is confined only to the 50% seats to be filled up under the State quota, and not the 50% seats which have been made available to the All India quota.

Applying the Presidential Order, to this 50% State quota seats, would obligate the State Government to set apart 15% thereof as unreserved seats which would be available to be filled up with students from any of the four categories mentioned in Para - 11 of G.O.P. No.646 dated 10.07.1979. Suffice it, therefore, to hold that, such of the petitioners who do not satisfy the requirements of being a local candidate under the Presidential Order but satisfy any one of the criteria specified in Para - 11 of G.O.P. No.646 dated 10.07.1979, shall be considered for admission with respect to the 15% unreserved seats, under the 50% State quota, as are required to be earmarked in terms of the Presidential

Order. Surrender of 50% of the available seats, in Government Medical Colleges within the State, to the All India Pool/quota is not in terms of the Presidential Order, and any policy decision which the State Government may have taken in this regard is independent of the Presidential Order, and would not enable them to avoid complying with the conditions stipulated therein, as the Presidential Order has overriding effect over even the other provisions of the Constitution, in view of Article 371-D(10) thereof, and consequently over all laws/rules or policy decisions of the State Legislature/ Government.

IX. IS RESTRICTING THE BENEFIT OF WEIGHTAGE OF MARKS, ONLY TO CANDIDATES WHO HAVE COMPLETED A MINIMUM PERIOD OF THREE YEARS OF TRIBAL SERVICE, VALID?

The submission of Sri M. Jagannadha Sarma, Learned Counsel for the petitioner in W.P. No.10114 of 2018, is that the stipulation, in Rule 4(4)(a) of the amended Rules notified in G.O.Ms. No.21 dated 20.30.2018, restricting the benefit of weightage of incentive marks only to those candidates who had completed a minimum of three years of regular and continuous service in tribal areas/rural areas, is ultravires Rule 9 of the 2000 MCI Regulations. Unlike Rule 4(4)(a)(i) and (b)(i) of the Rules notified in G.O.Ms.No.21 dated 20.03.2018, which prescribes a minimum of three years of service in tribal areas/rural areas to be eligible for addition of incentive weightage marks in Post-graduate medical degree courses, the proviso to Rule 9(IV) of the 2000 MCI Regulations provides for weightage of 10% of the marks, obtained for each year of service, upto a maximum of 30% marks, irrespective of the length of tribal/rural service. Consequently if a

doctor in government service were to work even for one year in a tribal area/rural area, he would be entitled for the incentive of 10% marks for the one year service rendered by him in such tribal/rural areas. Regulation 9 of the 2000 MCI Regulations, as noted hereinabove, is a complete code by itself, and prescribes the basis for determining the eligibility of the candidates for admission into Post-graduate medical degree/diploma courses. Admissions, in all categories, must be made only on the basis of merit as determined in terms of Regulation 9. As Regulation 9 is the basis for admission into Post-graduate degree courses, to the performance in the entrance test can be added weightage of marks on account of rural/tribal service rendered by the candidates in the manner and to the extent indicated in Regulation 9 alone. **(Sudhir .N⁴)**. Regulation 9 remains as the only effective and permissible basis for granting admission to in-service candidates, the provisions of the state law/rule notwithstanding. **(Sudhir N.⁴)**. As Regulation 9 of the 2000 MCI Regulations must prevail, notwithstanding anything to the contrary in the State Rules, the words “*minimum three years*” in Rule 4(4)(a)(i) and Rule 4(4)(b)(i) of the Rules, notified in G.O.Ms. No.21 dated 20.03.2018, is contrary to the proviso to Regulation 9(iv) of the 2000 MCI Regulations and is, therefore, declared illegal. Consequently, candidates will be eligible for weightage of marks, of the percentage prescribed in G.O.Ms.No.21 dated 20.03.2018, for each year of service rendered by them, even if such service rendered by them is for a period less than three years, for admission into Post-graduate medical degree courses.

Unlike the proviso to Rule 9(IV) of the 2000 MCI Regulations, which does not prescribe a minimum period of service in Tribal/Rural areas, Rule 9(VII) prescribes a minimum period of three years service, in remote/difficult areas, for a medical officer in Government service to be eligible for reservation to 50% of the seats in Post-graduate medical diploma courses. Consequently Government doctors, who have rendered less than three years of Tribal/Rural service, will be ineligible for claiming the benefit of in-service reservation for the 50% State quota seats in P.G. medical diploma courses. It is only those medical officers in Government service, who have served atleast three years in remote/difficult areas, who will be eligible to compete, among themselves, for admission in the 50% seats, reserved in their favour, in Post-graduate diploma courses.

In so far as the petitioner in W.P. No.10194 of 2018 is concerned, Para 6 of his appointment order dated 24.01.2009 only provides that the appointee should work in rural areas for a minimum period of three years, or in tribal areas for a minimum period of two years or in urban areas for a minimum of five years, to get eligibility for PG studies as an in-service candidate. It was on the basis of the Rules then in force, was the appointment order issued to the petitioner. That does not mean that the applicable Rules cannot be changed thereafter or that the Rules in force, when the petitioner was appointed on 24.01.2009, should continue till he retires from service on attaining the age of superannuation.

The relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. It is much more than a purely contractual relationship

voluntarily entered into between the parties. Once appointed to his post or office, a Government servant acquires a status, and his rights and obligations are no longer determined by the consent of both parties, but by a statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The duties of status are fixed by the law and, in the enforcement of these duties, society has an interest. The terms of service of a government servant are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. (**Roshan Lal Tandon v. Union of India**⁵⁸; **B. Meenakshi**⁶).

Though employment under the Government may have a contractual origin, the Government servant acquires a status on appointment to his office. As a result, his rights and obligations are liable to be determined under a statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally. (**T.N. Khosa**³¹ and **B. Meenakshi**⁶). In the present case, the proviso to Regulation 9(IV) of the 2000 MCI Regulations provides for weightage of marks for in-service candidates in Post-graduate medical degree courses, and Regulation 9(VII) for reservation in Post-graduate medical diploma courses. It is the 2000 MCI Regulations which would govern

⁵⁸ AIR 1967 SC 1889

admission into Post-graduate medical courses notwithstanding any clause in the appointment order to the contrary.

X. IS RESTRICTION OF DEPUTATION FOR DOCTORS IN GOVERNMENT SERVICE, WHO COMPLETED THEIR P.G. DIPLOMA BEFORE ENTERING SERVICE, ONLY TO TWELVE MONTHS, IF THEY SECURE ADMISSION IN P.G. MEDICAL DEGREE COURSES, VALID?

While Rule 5(1), of the amended Rules notified in G.O.Ms. No.21 dated 20.03.2018, provides for deputation of in-service candidates, selected after weightage of marks, for a period of three years i.e., 36 months, Rule 5(2) provides for deputation for a period of two years with respect to Post-graduate diploma courses, and for three years with respect to Post-graduate medical degree courses, evidently because the duration of a Post graduate medical diploma course is of two years, and a PG medical degree course is of three years. Rule 5(3) makes it clear that no candidate shall be allowed deputation for prosecuting a second Post-graduate diploma course after addition of weightage marks. The validity of the second limb of Rule 5(4) is under challenge in some of these Writ Petitions, whereby, if a candidate has done his PG diploma course before joining Government service and he is selected for a PG degree course, he will be given deputation only for twelve months.

While the submission of the Learned Special Government Pleader that the intention of the State Government is to restrict the period of deputation to a maximum of 36 months for the entire duration of service of a Government doctor, and not beyond, may justify restriction of the period of deputation, on admission into a PG diploma course, to two years, and on admission to a PG degree course to three years, no explanation is forthcoming why deputation of a candidate, who did his PG diploma course before

joining Service, should be restricted only to twelve months on his selection for admission into a PG medical degree course. While a candidate, who did his PG diploma course after joining Government service, would have been extended the benefit of deputation for a period of two years while undergoing the PG medical diploma course and, in such circumstances, there may be some justification in restricting the deputation, for the PG medical degree course which such a candidate intends to pursue, after undergoing a PG medical diploma course while in service, only to one year, as the State Government intends restricting the maximum period of deputation, for any Government doctor, undergoing PG medical courses, only to three years in their entire service and not more, candidates, who completed their PG diploma course before they joined Government service, have evidently not been extended the benefit of deputation which is available only to a doctor in government service; and, consequently, the second limb of Rule 5(4), to the extent a candidate who has done his PG diploma course before joining Government service, is given deputation only for 12 months, on his selection for admission into a PG medical degree course, is irrational and in violation of Article 14 of the Constitution of India.

A feeble submission was made by the Learned Special Government Pleader to contend that even a candidate, who has completed his PG diploma course before joining Government service, is given stipend. We, therefore, called upon him to have an affidavit filed by the officials concerned furnishing details whether the stipend, paid to students undergoing PG medical diploma courses before joining Government service, is equal to the pay and

emoluments which a Government doctor would get during the period of his deputation to undergo a PG medical diploma course. Learned Special Government Pleader, later, informed us that, on enquiry with the officials concerned, he now learns that the stipend paid to students, undergoing PG medical diploma courses, is far lower than the salary which a Government doctor, within an MBBS degree, would get during the period of his deputation to undergo a PG diploma course. If the object in restricting the period of deputation of a medical officer in Government service, to pursue his Post-graduate medical courses, is for a maximum period of three years during his entire service, classification of in-service doctors (who completed their PG medical diploma course before they joined Government service) for the purpose of restricting their deputation, on their selection for admission into a PG medical degree course, only to twelve months has no rational nexus to the object sought to be achieved, since none of these doctors could have claimed the benefit of deputation when they underwent their Post-graduate diploma courses before they joined service. These doctors are similarly situated to doctors, who completed only their undergraduate medical course before they joined Government service, for being extended the benefit of deputation to undergo a P.G medical degree course. If doctors in government service, who joined service on completion of their MBBS course, are entitled for deputation of three years to pursue a Post-graduate degree course, in-service Government doctors, who completed their P.G. diploma in medical sciences before they joined Government service, are entitled to be treated on par, and be extended a similar benefit. Rule 5(4) of the Rules notified in

G.O.Ms.No.21 dated 20.03.2018, to the extent indicated hereinabove, is irrational, ultra-vires the equality clause in Article 14 of the Constitution of India, and is, accordingly, struck down. Consequently, in terms of Rules 5(1) and (2), any doctor, who completed his PG medical diploma course before joining Government service, would also be entitled for deputation for a period of three years if he is selected to undergo a PG medical degree course, provided, of course, that he has not been extended the benefit of deputation, by the Government of Telangana, any time earlier.

XI. CONCLUSION:

We summarise our conclusions as under:

- (1) The petitioners are not entitled for reservation, in terms of G.O.Ms.No.260 dated 10.07.1997 and G.O.Ms.No.27 dated 10.04.2017, in the 50% State quota seats in Post-graduate medical degree courses.
- (2) They are only entitled for weightage of marks, in accordance with the proviso to Regulation 9(IV) of the 2000 MCI Regulations, while seeking admission into Post-graduate medical degree courses.
- (3) The petitioners are entitled for reservation, in the 50% State quota seats in Post-graduate medical diploma courses, in terms of Regulation 9(VII) of the 2000 MCI Regulations.
- (4) The words “*a minimum three years of service*” in Rule 4(4)(a) of the 2017 Rules, as amended by G.O.Ms.No.21 dated 20.03.2018, are set aside as ultra-vires the proviso to Regulation 9(IV) of the 2000 MCI Regulations. Consequently, the petitioners shall be entitled for the benefit of weightage of marks for the services rendered by them in tribal areas, even if the service rendered by them

thereat is for a period less than three years. The incentive weightage marks shall, however, be calculated in terms of Rule 4(4)(a)(ii) of the 2017 Rules, as amended by G.O.Ms.No.21 dated 20.03.2018, at 10% per year of completed regular and continuous service in tribal areas.

- (5) In terms of Regulation 9(VII) of the 2000 MCI Regulations, the petitioners shall be entitled for reservation in the 50% State quota seats in Post-graduate diploma courses provided they have rendered a minimum period of atleast three years service in tribal areas.
- (6) As stipulated in Regulation 9(VII) of the 2000 MCI Regulations, Government doctors, who are admitted to the seats reserved in their favour in Post-graduate medical diploma courses, shall serve for two more years in tribal areas on completion of their P.G. medical diploma course.
- (7) The second limb of Rule 5(v) of the 2017 Rules, as amended by G.O.Ms.No.21 dated 20.03.2018, to the extent it relates to candidates, who did their Post-graduate diploma course before joining Government service, is struck down as irrational and ultra-vires Article 14 of the Constitution of India. Consequently Government doctors, who have completed their Post-graduate diploma courses before they joined Government service, shall be entitled for deputation for a period of three years in terms of Rule 5(1) and (2) while undergoing Post-graduate medical degree courses.
- (8) Such of those petitioners, who do not satisfy the conditions stipulated in Para 4 of the 1974 Order to be treated as a "local candidate", shall nonetheless be entitled to be considered for admission into Post-graduate medical degree courses, under the 15% unreserved seats, if they fall under any one of the categories stipulated in Para 11 of G.O.P.No.646 dated 10.07.1979.

Subject to aforesaid observations and directions, all the Writ Petitions are, accordingly, disposed of. Miscellaneous Petitions, if

any pending, shall also stand disposed of. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date:09.04.2018

Note: L.R. copy to be marked.
B/O
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