

WRIT PETITION Nos.13224, 21877,
21916, 22092, 22093 and 22094 of 2010

Between :

.....Petitioners

And

.....Respondents.

WRIT PETITION Nos.13224, 21877,
21916, 22092, 22093 and 22094 of 2010

COMMON ORDER :

As common questions of law and fact are involved in all these writ petitions, they are heard together and are being disposed of by this common order. For the purpose of disposal of these writ petitions, I refer to the facts as arise in W.P.No.21916 of 2010.

2. This writ petition is filed, seeking for a writ of mandamus; (1) declaring the notification issued by the 1st respondent-Nizam's Institute of Medical Sciences, in Rc.No.74/EC/SS/2010, dated 10.05.2010, to the extent of reserving seats in favour of the in-service candidates, as illegal and arbitrary; (2) to declare that respondent No.3 is not entitled for admission into D.M (Medical Oncology), and consequently, to set aside the same; (3) to direct the respondents to consider and allot D.M (Medical Oncology) seat to the petitioner; and (4) to pass such

other order or orders in the interest of justice.

3. In this batch of cases, the core issue which falls for consideration is, whether, in filling up the seats in super-speciality medical courses, namely D.M. and M.Ch., can there be a separate number of seats earmarked for in-service candidates, and further question is, whether in making admissions to such courses, the procedure adopted by the Nizam's Institute of Medical Sciences is in accordance with the norms and standards notified by the Medical Council of India, constituted under the provisions of the Indian Medical Council Act, 1956.

4. The State of Andhra Pradesh has enacted Act.13 of 1989 i.e. Nizam's Institute of Medical Sciences Act, 1989, an Act to provide for establishment of Nizam's Institute of Medical Sciences, Hyderabad, and to confer the status of University on such institution, in the matters connected therewith and incidental thereto. The Nizam's Institute of Medical Sciences, Hyderabad is notified as such, by the Government of Andhra Pradesh, in exercise of powers under Section 3 of the Act. As evident from Section 4 of the Act, the primary objects of the Institute are; (a) to create a centre of excellence for providing medical care, educational and research facilities of high order in the field of medical sciences in the existing super-specialities and such other super-specialities as may develop in future, including continuing medical education and hospital administration; (b) to develop patterns of teaching in post-graduate level and in super-specialities so as to set a high standard of medical education; (c) to provide for training in para-medical and allied fields, particularly in relation to super-specialities; (d) to function as a referral hospital and (e) to provide for post-graduate teaching and conduct of research in the relevant disciplines of modern medicine and other allied sciences, including inter-disciplinary fields of Physical and Biological sciences. The authorities of the Institute comprise of the Governing Council, The executive Board, the Academic Council and the Finance Committee. Under various other provisions, the Executive Board, Governing Council, Academic Council and Finance Committee are given specific powers. There is also a provision under Section 40 of the Act, which empowers the Governing Council, with the prior approval of the Government, to make Regulations in connection with the matters and powers of the Institute on various aspects, including for award of Degrees, Diplomas and other academic distinctions and titles, which may be granted by the Institute.

5. The 1st respondent-Nizam's Institute of Medical Sciences has issued admission notification, dated 10.05.2010, in Rc.No.74/EC/SS/2010, inviting applications from the eligible candidates for the entrance test for admission into D.M/M.Ch. super-speciality courses for the academic year 2010. In this batch of cases, concern is only with regard to the courses in D.M (Cardiology), D.M (Neurology), D.M (Nephrology) and D.M (Medical Oncology). The names of courses, number of seats in regular quota and number of seats earmarked to

in-service candidates, the qualifications prescribed and duration of courses, as mentioned in the notification, with regard to the aforesaid courses, read as under;

Sl.No.	Name of the Course	Duration	Prior qualification	No.of seats in regular quota	No.of seats earmarked for in-service quota
1	DM (Cardiology)	3 years	MD Gen.Medicine/ Paediatrics/ Respiratory Medicine	3	3
2	DM (Neurology)	3 years	MD Gen.Medicine/Paediatrics	4	2
3	DM(Nephrology)	3 years	MD Gen.Medicine/Paediatrics	1	1
4
5	DM(Medical Oncology)	3 years	MD Gen.Medicine/Paediatrics/Radiotherapy	2	1

6. As per the eligibility criteria notified, admissions to the courses shall be regulated as per the A.P. Educational Institutions (Regulation of Admission) Order, 1974, popularly known as ‘The Presidential Order’, and instructions issued by the Government for implementation of the said order in G.O.P.No.646, dated 10.07.1979. In the eligibility criteria, a separate criteria is notified for candidates eligible under in-service quota. As per Regulation V(4), ‘In-Service candidate’ means, a candidate who has put in; (a) two years of continuous regular tribal service (or) (b) three years of continuous regular rural service (or) (c) six years of continuous regular service. Under Regulation VII, the method of selection is notified, as per which, the selection of candidates for D.M/M.Ch. three year-courses will be made on the basis of entrance test consisting of 90 multiple choice questions in the concerned speciality, carrying 90 marks, to be answered in 90 minutes duration, and each subject will have a separate paper. It is also notified that 50% is the minimum marks for qualification, and the seats earmarked for regular and in-service candidates are not inter-changeable even if there is any vacancy.

7. In the writ petition, the impugned notification is questioned to the extent of quota earmarked to the in-service candidates and selections made, selecting respondent No.3 in the subject of D.M (Medical Oncology). The other writ petitions in the batch relate to the other subjects in the same super-speciality course of D.M for the specialities of Cardiology, Neurology and Nephrology. In the affidavit filed in support of this writ petition, it is stated that the petitioner has completed his MBBS course from Andhra Medical College, Visakhapatnam in the year 2005 and did his post-graduation in M.D (General Medicine) during the year 2006-09 from Rangaraya Medical College, Kakinada. In response to the notification issued by the 1st respondent-Institute, he has applied for D.M (Medical Oncology), which is a three-year course. He appeared for the written examination with hall-ticket No.8305 and secured 69 marks, and in the merit list

published by the 1st respondent-Institute on 28th of August 2010, his name stands at Serial No.3. It is the case of the petitioner that having regard to the marks secured by him and his rank in the merit list, which is at serial No.3, although he is entitled for admission into the said course, the respondents have selected the 3rd respondent herein, as notified in the provisional selections, who has merely secured 51 marks and who is at serial No.7 in the merit list. It is stated that the said selection is on the ground that he is an in-service candidate, as such, he is selected in the quota earmarked for in-service candidates.

8. When the notification was issued inviting applications by the 1st respondent-Institute on 10.05.2010, at first instance, a writ petition in W.P.No.13224 of 2010 was filed, which came up for admission on 14.06.2010 and thereafter, it was adjourned for a couple of times, and by an order dated 29.06.2010, passed in the said writ petition, this Court, while permitting to proceed with the written test, issued directions not to finalise the admissions until further orders. After filing of counters, another order was passed on 28.07.2010, directing the 1st respondent-Institute to consider the issue of quota for in-service candidates in the light of the letter issued by the Medical Council of India on 30th June 2010, issued in Letter No.MCI-23(1)/2010/15385. Thereafter, liberty is given to fill up the seats. At that stage, in view of the urgency expressed by the counsel appearing for the parties, the writ petitions are directed to be listed for hearing before this Court.

9. The impugned notification to the extent of earmarking seats for in-service candidates, is questioned in the writ petition, alleging that providing such quota is unconstitutional and ultra vires. It is stated that the respondents have no power or authority to earmark the seats even for in-service candidates, so far as the super-speciality courses are concerned, and to make admissions, contrary to the regulations framed under the Medical Council of India Act, 1956. It is stated that the sacrifice of merit at the stage of super-speciality is a prospect fraught with disastrous consequences as the medical incompetence to handle serious diseases would endanger the scopes of lives, as such, it offends Article 14 of the Constitution of India. It is stated that such a procedure adopted by the respondents not only offends equality clause under Article 14 of the Constitution of India, but it is in violation of the authoritative pronouncements of the Apex Court in **Dr.Jagdish Saran Vs. Union of India**^[1], in **Dr. Pradeep Jain Vs. Union of India**^[2], in **Sourabh Chaudri Vs. Union of India**^[3], in **Dr.Gulshan Prakash Vs. State of Haryana**^[4] and in the judgment of the Constitutional Bench of the Supreme Court in the case of **Dr.Preeti Srivastava Vs. State of Madhya Pradesh**^[5]. It is also stated in the affidavit that in view of the clarification given by the Medical Council of India,

there is no provision of quota in P.G. super-speciality courses as per the Medical Council of India Regulations and also as per the Rules framed by the Government of Andhra Pradesh in G.O.Ms.No.740, dated 22.11.1983, titled as "The A.P. Regulation of Admission to Super Specialities in the Medical Colleges Rules, 1983", framed in exercise of powers under Section 3 (1) read with Section 15 of The Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983. As per the Regulations notified by the Medical Council of India, which is the Apex body on the subject, in the absence of any provision for separate quota to in-service candidates, there is no authority or jurisdiction for the 1st respondent-Institute to earmark the seats separately for the in-service candidates. It is also stated that having regard to the nature of the courses, which are at highest level, merit alone should be the criteria and departure from such a procedure, runs contrary to the National interest to tap meritorious candidates for super-speciality courses.

10. At first instance, a separate counter affidavit is filed in W.P.No. 13224 of 2010, but when the provisional selection list was published and other writ petitions are filed impleading the selected candidates by seeking relief to set aside such selections, a common counter affidavit is filed in W.P.Nos.21877, 21916, 22092, 22093 and 22094 of 2010. From the stand point of view, the stand of the respondents is the same in all the writ petitions, as such, I refer to the common counter affidavit filed in this batch of cases. In the counter affidavit, while referring to the constitution of the 1st respondent-Institute under the provisions of the Nizam's Institution of Medical Sciences Act, 1989, and the various provisions and powers of the authorities, namely the Governing Council, Executive Board, the Academic Council and the Finance Committee, it is stated by the respondents that the 1st respondent-Institute is not only an authority and instrumentality under the State, as defined under Article 12 of the Constitution of India, but also an agency under the State Government, as such, the State has power to lay down the policy matters relating to health, education including medical education and to control its functions. It is stated that it has been always the endeavour of the State of Andhra Pradesh as well as the 1st respondent-Institute to see that the medical facilities and benefits of super-speciality medical courses are extended to the remotest corners of the State. It is submitted that the State Government, as a matter of fact, is a major facilitator in providing medical services to the citizens at large, as such, the State Government is intending to train its Doctors in super-speciality courses so that they not only discharge their functions in the State, helping the poor and needy, but also render services in teaching colleges. It is stated that the State Government experience lack of well-trained Doctors in super-speciality courses, which impaired not only the medical services being rendered by the State Government, but also affected

functioning of the teaching colleges in the State. It is averred in the counter that as the Nizam's Institute of Medical Sciences, being an instrumentality of State, has to adhere to the policy of the State, therefore, a conscious decision has been taken by the State to provide accommodation for the in-service Doctors for getting themselves equipped with super-speciality courses. Having regard to the above objective and intention, the 1st respondent-Institute seeks to justify the quota reserved for in-service candidates.

11. Referring to a Committee constituted by the Government to examine the issue, it is stated that the Committee, by addressing a letter, dated 02.02.2010, to the Principal Secretary to Government, HM & FW Department, recommended 30% of the total available seats in each super-speciality course for providing quota to in-service candidates. The Committee also recommended to examine the possibility of increasing the in-service quota to the extent of 50% in future years. However, in paragraph 14 of the counter, it is stated that the recommendations of the Committee are placed before the Government and appropriate decision in the matter will be taken by obtaining necessary views from the persons and officers concerned. It is stated that the State Government is contemplating to take steps as per the recommendations of the Committee from the next academic year, but however, it may not prevent the 1st respondent-Institute from providing quota for in-service candidates from this academic year. It is stated that as the Nizam's Institute of Medical Sciences is an autonomous body, its Executive Board took a decision to provide quota for in-service candidates from this year. Counter specifically pleads that not providing seats in favour of service candidates in the Government-run teaching hospitals, would not in any way prevent the Executive Board of the Nizam's Institute of Medical Sciences to take a decision for earmarking seats for in-service candidates. A reference is also made to the Post-graduate Medical Education Regulations, 2000, framed under the Medical Council of India Act, 1956 and also to the 52nd meeting of the Executive Board of the Nizam's Institute of Medical Sciences, held on 02.02.2009, wherein, a decision was taken to increase the Post-graduate seats in broad and super-speciality courses for the academic year 2010-11. Referring to the increased number of seats in various subjects, it is stated that the 1st respondent-Institute proceeded further in terms of the policy of the State in defining the criteria for eligible service candidates under in-service quota as the one who has put in two years of continuous regular tribal service or three years of continuous regular rural service or six years of continuous regular service. Referring to the object of the State to take steps for improving the rural health, it is stated that a conscious decision has been taken without reducing the number of seats, which were hitherto available for non-service candidates. Referring to the provisions under Article 15 of the Constitution of India, it is admitted that

reservations are not provided under the said provisions so far as post-graduate medical and super-speciality courses, but it is stated that so far as in-service candidates are concerned, they constitute a class, which fits into the policy of the State, which is intended to improve the Government hospitals, as such, it cannot be termed as unconstitutional. Reference is also made to the decision of the Executive Board of the Nizam's Institute of Medical Sciences, which has taken a decision to provide quota for in-service candidates while filling up the post-graduate medical and super-speciality courses. In the counter, it has also been averred that the State could always regulate the admission policy with regard to post-graduate and super-speciality medical courses while adhering to the standards determined by the Medical Council of India. In the counter, while defending the quota for such in-service candidates, it is stated that the admissions have been made, however, subject to the result of the writ petitions, as such, the writ petitions are to be dismissed as there is no infraction on the rights guaranteed to the petitioners.

12. A separate counter affidavit is filed by the Deputy Secretary on behalf of the Medical Council of India, wherein, it is stated that the Medical Council of India is the Statutory authority constituted by the Central Government under an Act of Parliament i.e. the Indian Medical Council Act, 1956, with an objective inter alia, to regulate medical education in the country and to formulate Regulations and guidelines with regard to standards and conduct of medical education in India. It is stated that the aforesaid legislation empowers the Medical Council of India to prescribe standards in medical education and to frame Regulations on the said subject, as such, the Regulations are framed by Medical Council of India under Section 33 of the Act, with the prior approval of the Central Government. It is stated that all such Regulations are Statutory in character and are held to be mandatory in view of the judgment of the Hon'ble Supreme Court in the case of **Medical Council of India Vs. State of Karnataka**^[6] and in the case of **Dr. Preeti Srivastava** (5 supra). Reference is also made in the counter, to the effect that the Post-Graduate Medical Education Regulations, 2000 were approved by the Government of India on 22.05.2000 and published in the gazette on 07.10.2000. Reference is also made in the counter with regard to the amendments made to the said Regulations, by amendment, dated 17.11.2009, by which, a proviso was added to Clause 9(2)(d) of the Regulations. It is also stated that in response to a letter addressed by the Nizam's Institute of Medical Sciences, the Medical Council of India, vide its letter No.MCI-23(1)/2010/15385, dated 30th June 2010, addressed to the Nizam's Institute of Medical Sciences, Hyderabad, inter alia, stated that a proviso is added to Regulation 9(2)(d) , and in view of the same, no quota is available in post-graduate degree (M.D/M.S and Super-speciality courses) for Medical Officers in Government service. In paragraph 20 of the counter, it is stated that all the admissions in any medical college in

P.G. courses are to be made in terms of the Post-graduate Medical Education Regulations. Counter also refers to the admission schedule, by which time the course is to be commenced at the stage of post-graduation and super-speciality courses.

13. A separate counter affidavit is also filed by Sri P.Girikrishna, appearing for respondent No.3 in W.P.No.21916 of 2010, wherein, it is stated that in response to the notification, dated 10.05.2010, he has applied for D.M. (Medical Oncology) three-year course, and he has secured 51 marks in the written examination and came up for selection in the service quota provided for Oncology. It is further stated that the petitioners, having appeared in the examination, cannot question the selection when he has not come up for selection in the open category seats. While stating that merit cannot be judged only with reference to test and it includes experience of the Doctors, has prayed for dismissal of the writ petition.

14. Some of the in-service Doctors have got themselves impleaded as party-respondents by filing implead petition in W.P.No.13224 of 2010. In the affidavit filed in the said implead petition, while referring to the notification issued by the 1st respondent-Institute, a reference is made to the letter addressed by the Medical Council of India to the Nizam's Institute of Medical Sciences, and it is stated that if it is appreciated in true perspective, there is no negative covenant to manifest that the autonomous institutions like the Nizam's Institute of Medical Sciences and the State Government are debarred from introducing quota for in-service Doctors. It is stated that when the Regulation is silent about in-service Doctors quota in the super-speciality courses, it is to be deemed that the authority do have the right to introduce the quota for in-service candidates. In the affidavit, further reference is made to a judgment of the Apex Court in the case of **K.Doraiswamy Vs. State of Tamilnadu**[\[7\]](#) and it is pleaded that the State Governments do have discretion in the matter of providing quota to the service Doctors. Reference is also made to the provision of quota in other States and it is further averred that quota for service candidates cannot be equated with communal reservations as provided under Article 15(4) of the Constitution of India. A reference is also made to the judgment of a Division Bench of this Court in W.P.No.5382 of 2006, dated 21.04.2006, which approved such provision of quota at post-graduate level. Counter further states that the quota provided to non-service students and also the in-service Doctors are distinctly separate, as such, the petitioners cannot be said to be aggrieved in view of the notification issued by the Nizam's Institute of Medical Sciences, earmarking separate seats for in-service candidates.

15. A reply affidavit is also filed on behalf of petitioners, wherein, it is stated that the State Governments have no power to take independent decisions with regard to standards to fill up the posts in post-graduate and super-speciality courses, unless there is a concurrence from the Medical Council of India, constituted under the Medical Council of India Act, 1956. Referring to the averments made in the counter affidavit, it is stated that the stand of the respondents is contradictory, as at one point of time, they have taken a stand that no decision has been taken by the Government, and inspite of the same, the 1st respondent-Institute has taken a decision, referring to a policy of the State Government. Further, it is stated that the letter, dated 02.02.2010, addressed by the Director of Medical Education to the Principal Secretary to Government, wherein the recommendations of the Committee were conveyed, cannot be equated to the decision of the Government, as such, in the absence of any decision by the Government, there is no basis for the decision taken by the 1st respondent-Institute. It has been alleged that subsequent to the notification, dated 10.05.2010, issued by the Nizam's Institute of Medical Sciences, Dr.N.T.R. University of Health Sciences, A.P., Vijayawada, has issued a notification, dated 06.07.2010, offering admissions to super-speciality courses in the Government medical colleges and other institutions, but there is no quota or preference to in-service Government Doctors. A reference is also made to another notification issued by Sri Venkateswara University of Medical Sciences (SVMS), dated 26.04.2010, which is also issued without earmarking any seats to the in-service candidates. It is stated that in the absence of any decision by the State Government, the 1st respondent i.e. the Nizam's Institute of Medical Sciences unilaterally cannot take a decision for implementation of quota for in-service candidates, and the same is contrary to law and is illegal. It is stated that segregation of available seats, which are being offered for admission to super-speciality courses to only certain class of persons, amounts to reservation and as such, it runs contrary to the law laid down by the Hon'ble Supreme Court in various decisions. Referring to the decision of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Dayanand Medical College and Hospital**^[8], it is stated that it is not open for the Universities or Governments to dilute the standards set out by the Medical Council of India. Referring to the recent amendments made to the Medical Council of India Regulations, it is alleged that the judgments relied on by the learned counsel for respondents in the counter affidavit, will not have any affect on the issue, which arise for consideration in this batch of cases. Reply affidavit further states that there is no rationale in providing certain seats of super-speciality courses to in-service candidates, and the same is discriminatory and violative of Article 14 of the Constitution of India.

16. Heard learned counsel for petitioners Sri G.Vidyasagar, Sri A.Satya

Prasad, learned Additional Advocate-General appearing for the Nizam's Institute of Medical Sciences and the learned Government Pleader for Medical, Health and Family Welfare, Sri S.Niranjana Reddy, learned counsel appearing for the Medical Council of India, Sri K.Pratap Reddy, learned Senior Counsel appearing for the impleaded respondents, Sri P.Girishna, learned counsel appearing for respondent No.3 in W.P.No.21916 of 2010 and Sri M.N.Narasimha Reddy, appearing for some of the un-official respondents.

17. In view of the urgency expressed by the learned counsel for the parties, this Court permitted the counsel for Nizam's Institute of Medical Sciences, to serve notices on the unofficial respondents, while serving notice, with an endorsement of the unofficial respondents, the proof of service is filed, which is placed on record. But, only the respondent No.3 in W.P.No.21916 of 2010 has appeared and there is no appearance on behalf of the other unofficial respondents in other writ petitions.

18. Sri M.N.Narasimha Reddy, learned counsel appeared for some of the un-official respondents in these matters, brought to the notice of this Court, that for the purpose of admission to in-service quota, a separate State Legislation is enacted so far as Kerala State is concerned, which is titled as "The Kerala Medical Officers Admission to Post Graduate courses under Service Quota Act, 2008 (Act 29 of 2008)"

19. Learned counsel for petitioners has referred to the various provisions under the Medical Council of India Act, 1956 and the Regulations made thereunder and also the provisions of the Nizam's Institute of Medical Sciences Act, 1989 and also the impugned notification issued by the respondents, and it is contended by the learned counsel that in spite of Hon'ble Supreme Court repeatedly and authoritatively holding that there cannot be any separate quota at the stage of super-speciality courses i.e. at the stage of D.M and M.Ch., contrary to the judgments of the Apex Court, the impugned notification is issued, providing quota to the in-service Doctors. It is submitted by the learned counsel that although it is the case of the respondents that it is a quota separately reserved, but, as such seats are not open for all the candidates who are aspiring to get admitted into the super-speciality courses, they are nothing but reserved for a particular category of persons, namely, the in-service candidates. The learned counsel would further contend that the in-service candidates as notified in the notification, does not confine to the in-service candidates in the Nizam's Institute of Medical Sciences, but the said quota is sought to be applied to the in-service candidates serving in the State of Andhra Pradesh in various Government hospitals and Government services, those who fit into the definition as defined in the impugned notification with regard to the in-service candidates. It is contended by the learned counsel that in view of the highest level of the courses, where, even the protective reservations as

contemplated under Article 15(4) of the Constitution of India are not applied having regard to the importance of the subject, there cannot be any quota for any category, including the in-service candidates. Learned counsel would contend that any quota at the stage of super-speciality level, would be contrary to the National interest, as the object of such courses is to tap the brilliant minds to render expert service for the needy sufferers in the society. It is further contended that the Medical Council of India, a body constituted under the provisions of the Medical Council of India Act, 1956, is the Apex body to notify the standards with regard to medical education and in view of the Regulations framed under the aforesaid Act, there is no provision to provide separate quota to the in-service candidates, in the absence of which, it is not open for the 1st respondent-Institute to earmark certain vacancies for in-service candidates. There is no policy decision as pleaded, even as per the counter, in the absence of the same, the decision taken by the 1st respondent-Institute, earmarking certain seats to the in-service candidates is irrational and there is no intelligible differentia to achieve the object for imparting such courses. It is submitted that the 1st respondent-Institute, which is a Statutory body under Act 13 of 1989, cannot make any Regulations, which run contra to the Regulations governing the post-graduate medical courses, framed by the Medical Council of India.

20. On the other hand, it is submitted by Sri A.Satya Prasad, learned Additional Advocate-General appearing for respondents, that the quota, which is now earmarked for in-service candidates, cannot be equated with the protective reservations as prescribed under Article 15(4) of the Constitution of India. It is submitted by him that in view of the dearth of expert hands in various hospitals and to make good the deficiency of such hands, the Nizam's Institute of Medical Sciences, which is an autonomous body under the Nizam's Institute of Medical Sciences Act, 1989, has taken a decision to earmark increased seats in the various super-speciality courses in favour of the in-service candidates. It is contended by him that in the 52nd meeting of the Executive Board of the Nizam's Institute of Medical Sciences, such a decision was taken, which is also subsequently approved by the academic senate and the said decision was further approved in the 13th Meeting of the Governing Council, held on 07.09.2010. In support of his arguments, the learned Additional Advocate General has placed reliance on the judgments of Hon'ble Supreme Court in **Government of Andhra Pradesh Vs. Dr.R.Murali Babu Rao**^[9], in **Dr.R.K.Goyal Vs. State of U.P.**^[10], in **K.Doraiswami Vs. State of Tamil Nadu**^[11], in **Pre-P.G.Medical Sangarsh Committee Vs. Dr.Bajrang Soni**^[12], and in the case of **State of Madhya Pradesh Vs. Gopal D.Tirthani**^[13]. Relying on the aforesaid judgments, it is submitted by him

that in view of the said judgments, the 1st respondent-Institute has adopted the procedure providing two sources of entry of the students into P.G. courses and the same cannot be treated as a reservation. It is submitted that in the absence of any bar for treating the in-service candidates as a class and allocating a portion of seats for such in-service candidates, neither it is illegal nor arbitrary, which affects the rights of the petitioners. It is further submitted that in view of the increase of seats in the super-speciality courses, petitioners are not affected, as they were allowed to compete for the seats, which were hitherto available for entry into the super-speciality courses.

21. The learned Government Pleader for Medical, Health and Family Welfare, submits that in view of the vacancy position in a number of Government institutes, to fill up such vacancies and to take care of rural health, keeping in mind the recommendations of the Committed constituted, the 1st respondent-Institute has taken a decision to earmark certain seats to the in-service candidates.

22. It is argued by Sri S.Niranjan Reddy, learned counsel appearing for the Medical Council of India that in view of the various judgments on the subject by the Apex Court, particularly in the case of **Dr.Preeti Srivastava** (5 supra), it is not open to provide any separate quota so far as super-speciality courses are concerned. It is submitted by the learned counsel that the weightage in the marks, which is provided as an incentive in view of the proviso added to the Post-graduate Medical Education Amendment Regulations in 2009 and 2010, will apply only to the post-graduate courses, namely, M.D and M.S, but not to the super-speciality courses such as D.M and M.Ch. It is submitted by the learned counsel that if any quota is provided at the super-speciality level, it will dilute the standards notified by the Medical Council of India, which is the Apex body, as such, without any approval from the Medical Council of India, it is not open for the 1st respondent-Institute to reserve any seats to any category and the admissions are to be made strictly as per merit ranking in the entrance test conducted by the University.

23. Sri K.Pratap Reddy, learned Senior Counsel appearing for the impleaded in-service Doctors, submits that the quota, which is meant for in-service candidates, is not a class reservation as contemplated under Article 15(4) of the Constitution of India, but it is a different quota, which will not affect the open candidates, and which is made to improve the basic health care by providing super-speciality Doctors in rural hospitals. It is submitted by the learned Senior Counsel that it is the duty of the State to frame its policies towards securing the public health and raising the level of nutrition and standard of living, in view of the State's obligation as per the Directive Principles enshrined under Article 39(E) and 47 of the Constitution of India. It is submitted that to achieve such a goal, at the instance of the State, to improve the health care by providing

super-speciality Doctors in Government hospitals, such a decision is taken by the 1st respondent-Institute, as such, it cannot be said that such an action on the part of the 1st respondent-Institute is either illegal or offends the equality clause guaranteed under Article 14 of the Constitution of India, and in that view of the matter, the various judgments relied on by the learned counsel for petitioners would not render any assistance in support of their case. The learned Senior Counsel has relied on the judgment of the Supreme Court in the case of **K.Doraiswami** (11 supra), in support of his argument that the quota fixed for in-service candidates cannot be termed as class reservation envisaged under Article 15(4) of the Constitution of India. Further reliance is placed on an unreported Division Bench Judgment of this Court in the case of **Dr.G.Pradeep Kumar Vs. State of A.P.**^[14], wherein, a Division Bench of this Court has upheld the amendment made to Rule 3(3) of the Andhra Pradesh Medical Colleges (Admission into Post-Graduate Medical Courses) Rules, 1997, by which, the quota of in-service Doctors for post-graduate medical courses was increased from 15% to 30% for clinical subjects and from 30% to 50% for non-clinical subjects. It is submitted that the aforesaid judgment also will have a bearing on the issue involved in the present batch of cases, and will apply to the super-speciality courses also. Thus, it is submitted that there is no illegality or any infirmity in the notification issued by the 1st respondent-Institute, fixing the quota for in-service candidates. It is also contended by the learned Senior Counsel that as much as the proposed quota is provided in the process of implementation of the Directive Principles, for the public good, and that the rights of the parties, if any, under list-III of the constitution, are to be balanced with the obligation of the State for implementation of the Directive Principles and can be tilted in favour of the public good. The learned counsel has relied on the judgment of the Apex Court in the case of **I.R.Coelho Vs. State of Tamil Nadu**^[15].

24. It is contended by Sri P. Girikrishna, learned counsel appearing for respondent No.3 in W.P.No.21916 of 2010, that it is always open to the State Universities to fix the source of classification of candidates for admitting students in post-graduate medical courses. It is submitted that his client has put-in about six years of service and the experience gained by him is also to be counted as merit, for the purpose of admission into the super-speciality courses.

25. Before I deal with the various contentions advanced by the learned counsel for the parties, I deem it appropriate to refer to certain provisions, which will have a bearing on the issue. In view of Entry 66 in List-I of the Constitution of India, the Parliament enacted the Indian Medical Council Act, 1956 (Act 102/56), which provides for re-constitution of the Medical Council of India and the maintenance of Medical Register for India and for matters

connected therewith. Under Section 19-A of the Indian Medical Council Act, 1956, the Council constituted under the said Act is empowered to prescribe the minimum standards of medical education required for granting recognized medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India. Under Section 20 of the Act, the Council is empowered to prescribe the standards of post-graduate medical education for the guidance of the Universities and to advise the Universities in the matter of securing uniform standards for post-graduate medical education throughout India, and is also empowered to constitute the Committee namely, Post-graduate Medical Education Committee, to make such recommendations. Section 33 of the Act empowers the Council to make regulations generally to carry out the purpose of the said Act on various aspects, including on the aspects, namely, the courses and period of study and training to be undertaken, subjects of examination, standards of proficiency to be obtained in Universities or medical institutions for grant of recognized medical qualifications, the standards of staff, equipment, accommodation, training and other facilities for medical education.

26. The Post-graduate Medical Education Regulations, 2000, are framed under the aforesaid Act, in exercise of powers under Section 33 read with 20 of the Indian Medical Council Act, 1956, with the previous sanction of the Central Government. As per the schedule annexed to the Regulations, there is a common schedule for post-graduate degree and diploma courses and also super-speciality subjects with regard to D.M (Doctor of Medicine) and M.Ch. (Master of Chirurgie). Regulation 9 of the Regulations deals with the selection of students for post-graduate courses, as per which, students for post-graduate medical courses shall be selected strictly on the basis of their inter se academic merit. Under Regulation 9(1)(b), 50% of the seats in post-graduate diploma courses shall be reserved for Medical Officers in the Government service, who have served for at least 3 years in the remote and difficult areas. After qualifying the P.G. Diploma, the Medical Officers shall serve for two more years in the remote and/or difficult areas. Under Regulation 9(2), for determination of the academic merit, the University/Institution may adopt any of the methods contemplated in the said Regulation, which reads as under;

- (a) "on the basis of merit as determined by a 'Competitive Test' conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of Universities in the same State; or
- (b) on the basis of merit as determined by centralized competitive test held at National level; or
- (c) on the basis of the individual cumulative performance at the first, second and third MBBS examinations, provided, admissions are University wise; or
- (d) combination of (a) and (c)."

Proviso to this Regulation reads as under :

“Provided that wherever entrance test for post-graduates admission is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to post-graduate medical course shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes, Scheduled Tribes and other backward classes”.

The other part of the said Regulation is not relevant for the purpose of disposal of this batch of cases. Regulation 9 of the aforesaid Regulations is amended from time to time. By notification, dated 17th of November 2009, the Post-graduate Medical Education Regulations, 2000 were amended and a proviso is added to Clause 9(2)(d) of the Regulations, which reads as under:

“Further provided that in determining the merit in the entrance test for post-graduate admission, weightage in the marks may be given as an incentive @ 10% of the marks obtained for each year of service in remote or difficult areas, up to the maximum of 30% of the marks obtained”.

It was further amended by notification, dated 16th of April 2010, which reads as under:

“In Clause 9(1)(b), after the words ‘remote and/or difficult areas’ and in the proviso to Clause 9(2)(d), the following shall be inserted, ‘as decided by the competent State authorities from time to time’.

27. In view of the said amended Regulations, in response to a letter addressed by the Nizam’s Institute of Medical Sciences in the letter, dated 1st of May 2010, the Medical Council of India, in proceedings No.MCI-23(1)/2010/15385, dated 30.06.2010, has amply clarified, stating that in the Medical Council of India Regulations, there is no quota of seats in post-graduate degree (M.D/M.S & super-speciality) courses for the Medical Officers who are in Government service. Further, when this Court has directed by way of interim order, to reconsider the issue in the light of the aforesaid clarification issued by the Medical Council of India, the same has not been considered in the light of the clarification given by the Medical Council of India, but the earlier stand to fill up the seats with in-service candidates is reiterated and such decision is taken in the 54th Meeting of the Executive Board, held on 23.08.2010.

28. In the letter, dated 01.05.2010, addressed to the Secretary, Medical Council of India, the Nizam’s Institute of Medical Sciences, taking note of Post-graduate Medical Education Regulations, 2000, as amended on 17th November 2009, sought clarification in the light of the proviso, which is added by way of amendment to Regulation 9(2)(d) to clarify whether weightage marks can be given to super-speciality courses. But curiously, losing sight of the above said Regulations and amended proviso, the admission notification is issued on 10.05.2010.

29. The Nizam's Institute of Medical Sciences is a Statutory body constituted under the Nizam's Institute of Medical Sciences Act, 1989, which is enacted in view of Entry-25 in List-III of the Constitution. As evident from Section 4 of the Act, the said Institute is established to create a centre of excellence for providing medical care, educational and research facilities of high order in the field of medical sciences in the existing super-specialities and such other super-specialities as may develop in future, including continuing medical education and hospital administration. Although there is a Statutory power conferred under Section 40 of the Act to frame Regulations by the Governing Council, it is submitted by the learned Additional Advocate General that the Regulations, which are issued along with the Notification, dated 10.05.2010, are not Statutory Regulations framed under Section 40, but they are termed as Regulations for the purpose of regulating the admissions, which are notified to fill up.

30. As much as the provisions of the Nizam's Institute of Medical Sciences Act, 1989 and Rules and Regulations framed under the said Act are confined to the 1st respondent-Institute, which is an autonomous body, there are also separate set of rules framed by the Government in exercise of powers conferred by Section 3(1) read with 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, which are titled as 'A.P. (Regulation of Admission to Super-specialities in the Medical College) Rules, 1983, framed under G.O.Ms.No.740, dated 22.11.1983. The aforesaid Rules apply to the admissions to the super-speciality courses in the medical colleges, but there is no provision for reservations or any quota either for scheduled castes, scheduled tribes or other backward classes or any further quota for in-service candidates separately, in the said Rules.

31. In the back-drop of the various legislations referred above, the questions, which fall for consideration are;

- a. Whether the earmarking of separate seats for in-service candidates for admission to D.M and M.Ch. courses and the procedure adopted for making such admissions, is valid and is in conformity with the standards notified by the Medical Council of India in the Post-Graduate Medical Education Regulations, 2000;
- b. Whether any policy decision is taken by the State of Andhra Pradesh for providing any quota/reservation to the in-service candidates, with regard to admission into super-speciality courses, namely, D.M. and M.Ch. Courses, for the purpose of improving the rural health care;
- c. Whether the admission procedure adopted by the Nizam's Institute of Medical Sciences for admitting the students into post-graduate super-

speciality courses, namely, D.M. and M.Ch. will amount to lowering the standards of academic excellence at the stage of super-speciality courses.

32. Before I proceed further, I also refer to the various judgments relied on by the learned counsel appearing on both sides. In the judgment in the case of **Dr.Jagdish Saran** (1 supra), the Hon'ble Supreme Court, while considering the scope and permissibility of reservations under Article 15 for admissions into medical courses in Delhi University, has held that Ph.D and M.D. are levels of higher proficiency, where, international measure of talent is made, where, losing one great scientist or technologist in the making, is a National loss, and therefore, held that students of post-graduate training should be selected straight-away on merit, judged on the basis of academic record in the undergraduate course. Paragraph 23 of the said judgment reads as under :

“Flowing from the same stream of equalism is another limitation. The basis medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.D., M.D. or levels of higher proficiency where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk. The Indian Medical Council has rightly emphasized that playing with merit for pampering local feeling will boomerang. Midgetry, where summitry is the desideratum, is a dangerous art. We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration:

“Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities.””

Further, in the case of **Dr. Pradeep Jain** (2 supra), while considering the scope of reservations on the basis of residence, into medical courses, and its validity and reasonableness, the Hon'ble Supreme Court, while approving the view in the case of **Dr.Jagdish Saran** (1 supra), has held that the basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scale of speciality where the best skill or talent must be hand-picked by selecting according to capability. It has also endorsed the view stating that it is difficult to denounce or renounce the merit criterion when the selection is for post graduate or post doctoral courses in specialized subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some

disciplines where the best alone is likely to blossom as the best. In the judgment, Hon'ble Supreme Court held that to sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So, it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral. Further, in the case of **Dr. Preeti Srivastava** (5 supra), again, while considering the scope of reservations under Articles 15(4) and 16(4) of the Constitution of India, the Hon'ble Supreme Court has also taken the same view stating that at the level of super-specialisation, there cannot be any reservation, because, any dilution of merit at this level would adversely affect the National goal of having the best possible people at the highest levels and the preferential and educational training. Paragraphs 24 and 25 of the said judgment read as under :

“24. At the next below stage of post-graduate education in medical specialities, similar considerations also prevail though perhaps to a slightly lesser extent than in the super-specialities. But the element of public interest in having the most meritorious students at this level of education is present even at the stage of post-graduate teaching. Those who have specialized medical knowledge in their chosen branch are able to treat better and more effectively, patients who are sent to them for expert diagnosis and treatment in their specialized field. For a student who enrolls for such speciality courses, an ability to assimilate and acquire special knowledge is required. Not everyone has this ability. Of course intelligence and abilities do not know any frontiers of caste or class or race or sex. They can be found anywhere, but not in everyone. Therefore, selection of the right calibre of students is essential in public interest at the level of specialized post-graduate education. In view of this supervening public interest which has to be balanced against the social equity of providing some opportunities to the backward who are not able to qualify on the basis of marks obtained by them for post-graduate learning, it is for an expert body such as the Medical Council of India, to lay down the extent of reservations, if any, and the lowering of qualifying marks, if any, consistent with the broader public interest, in having the most competent people for specialized training, and the competing public interest in securing social justice and equality. The decision may perhaps, depend upon the expert body's assessment of the potential of the reserved category candidates at a certain level of minimum qualifying marks and whether those who secure admission on the basis of such marks to post-graduate courses, can be expected to be trained in two or three years to come up to the standards expected of those with post-graduate qualifications.

25. The speciality and super-speciality courses in medicine also entail on-hand experience of treating or operating on patients in the attached

teaching hospitals. Those undergoing these programmes are expected to occupy posts in the teaching hospitals or discharge duties attached to such posts. The elements of Article 335, therefore, colour the selection of candidates for these courses and the Rules framed for this purpose.”

In the aforesaid judgment, it is also held that the Universities have to be guided by the standards framed by the Medical Council of India and must shape their programs accordingly. The scheme of the Medical Council of India Act, 1956 does not give an option to the Universities to follow or not to follow the standards laid down by the Medical Council of India. Paragraphs 55 and 56 of the judgment read as under :

“55. We do not agree with this interpretation put on S.20 of the Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that the Council may prescribe standards of post-graduate medical education for the guidance of Universities. The second part of sub-section (1) says that the Council may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout. The last part of sub-section (1) enables the Central Government to constitute from amongst the members of the Council, a post-graduate medical education committee. The first part of sub-section (1) empowers the Council to prescribe standards of post-graduate medical education for the guidance of Universities. Therefore, the Universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the Universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a University or a medical institution have to be recognized under the Indian Medical Council Act, 1956. Unless the qualifications are so recognized, the students who qualify will not be able to practice. Before granting such recognition, a power is given to the Medical Council under S.16 to ask for information as to the courses of study and examinations. The Universities are bound to furnish the information so required by the Council. The post-graduate medical committee is also under S.17, entitled to appoint medical inspectors to inspect any medical institution, college, hospital, or other institution, where medical education is given or to attend any examination held by any University or medical institution before recommending the medical qualification granted by that University or medical institution. Under S.19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any medical institution or University concerned in the manner provided in S.19. Sec.19-A enables the Council to prescribe minimum standards of medical education required for granting recognized medical qualifications other than post-graduate medical education. The Universities must necessarily be guided by the standards prescribed under S.20(1) if their degrees or diplomas are to be recognized under the Medical Council of India Act. WE, therefore, disagree with and overrule the finding given in *Ajay Kumar Sing v. State*

of Bihar (1994 AIR SCW 2515), to the effect that the standards of post-graduate medical education prescribed by the Medical Council of India are merely directory and the Universities are not bound to comply with the standards so prescribed.

56. In *State of Madhya Pradesh v. Kumari Nivedita Jain* (AIR 1981 SC 2045), the provisions of Indian Medical Council Act, and the Regulations framed for under-graduate medical courses were considered by the Court. The Court said that while Regulation 1 was mandatory, Regulation 2 was only recommendatory and need not be followed. We do not agree with this line of reasoning for the reasons which we have set out above.”

Further, in the judgment in the case of **Sourabh Chaudri** (3 supra), again, dealing with the reservations in Government-run Medical colleges based on domicile, has also further endorsed the view that the higher the level of speciality, the lesser the role of reservation, and at the level of super-specialities, the rule of equal chance for equal marks dominates and the said view will apply to all the super-speciality institutions.

33. From a reading of the above said authoritative pronouncements of the Apex Court, it is clear that the Regulations and standards notified by the Medical Council of India constituted under the Medical Council of India Act, 1956, are to be applied by the Universities and medical institutions running the post-graduate super-speciality courses. There is no option left to the Universities in implementation of the standards notified by the Medical Council of India. Although in some of the earlier judgments, it was held that the Regulations are only recommendatory in nature and are directory, but now, in view of the judgments referred above, it is clear that they are mandatory and the institutions and Universities have no option except to follow the Regulations framed by the Medical Council of India. In the Post-graduate Medical Education Regulations, 2000, framed under Sections 33 and 20 of the Medical Council of India Act, 1956, Clause 9 of the Regulations deals with the selection of post-graduate students. Where the candidates applying in the open category or in the quota reserved for in-service candidates, they have to meet the requirements of the competitive test conducted by the institutions for the purpose of assessing merit. In terms of the amended Regulations for post-graduate courses, it is clear from the proviso, which is added by way of amendment by notification, dated 17th November 2009, that only weightage marks are to be given as an incentive i.e. @ 10% of the marks obtained for each year of service in remote or difficult areas, upto a maximum of 30% of the marks obtained. In spite of specific criteria even with regard to incentive to the in-service candidates and although the same is clarified by the Medical Council of India, by its letter, dated 30th June 2010, in response to the letter, dated 01.05.2010, addressed by the Nizam’s Institute of Medical Sciences, in spite of the same, such criteria is not adopted. Had such criteria was adopted, the

candidates, who are seeking admission to super-speciality courses, are eligible for the marks as per the proviso, subject to a maximum of 30% of the marks obtained in the written test. But failing to apply such Regulations, the 1st respondent-Institute has made selections by selecting the candidates coming from the in-service stream, who are far inferior in merit, to the candidates, who came up for selection and the petitioners, having regard to the marks and ranks secured by them in the competitive test conducted. In this batch of cases, it is to be noticed that for both the streams, a common test is conducted for assessing the merit.

34. Having regard to the questions to be considered in this batch of cases, the question, namely, whether earmarking of separate quota for in-service candidates is permissible or not, is to be considered by linking the admission process as adopted by the 1st respondent-Institute, to such in-service candidates by conducting common test without following admission criteria notified in the Statutory Regulations framed under the Medical Council of India Act, 1956. It is appropriate to refer to the marks and ranks of the petitioners in this batch of writ petitions, in contrast to the un-official respondents, who were provisionally selected, in various speciality courses of Cardiology, Medical Oncology, Neurology and Nephrology, which are as under :

W.P.No.21877 of 2010 (Cardiology)

C.Mamatha Reddy (Petitioner)	57 marks secured	15 Rank
Sri Satyanarayana (Res.No.3)	46 marks secured	41 Rank
Sri Ramana Murthy (Res.No.4)	46 marks secured	43 Rank

W.P.No.21916 of 2010 (Medical Oncology)

Sri Muralidhar (Petitioner)	69 marks secured	3 Rank
Sri Presm Sagar (Res.No.3)	51 marks secured	7 Rank

W.P.No.22092 of 2010 (Cardiology)

C.Santhosh Kumar (Petitioner)	60 marks secured	10 Rank
Sri Sathayanarayana (Res.No.3)	46 marks secured	41 Rank
Sri Ramana Murthy (Res.No.4)	46 marks secured	43 Rank

W.P.No.22093 of 2010 (Neurology)

Ch.Murali (Petitioner)	58 marks secured	8 Rank
Sri Kondal Reddy (Res.No.3)	51 marks secured	18 Rank

W.P.No.22094 of 2010 (Nephrology)

Sri N.Pavan Kumar (Petitioner)	64 marks secured	3 Rank
Sri M.Pavan Kumar (Res.No.3)	53 marks secured	23 Rank

From the above reference, it is clear that the petitioner in W.P.No.21916 of 2010, who secured 69 marks in Medical Oncology, and who obtained 3rd rank, is not coming up for selection, whereas respondent No.3, who merely secured 51 marks, is provisionally selected for admission into Medical Oncology course, at the super-speciality level. Similarly, in Cardiology, the petitioner in W.P.No.22092 of 2010 has secured 60 marks, who is at 10th rank, and the petitioner in W.P.No.21877 of 2010, who secured 57 marks with 15th rank, are not coming up for selection, but respondents 3 and 4 in the said writ petitions, who secured 46 marks with the ranks at 41 and 43, are provisionally selected. In the subject of Neurology, the petitioner in W.P.No.22093 of 2010, who has secured 58 marks with 8th rank, is not coming up for selection, but respondent No.3, with 51 marks and 18th rank, is selected. Similarly, in Nephrology, petitioner in W.P.No.22094 of 2010, who secured 64 marks with 3rd rank, is not coming up for selection, whereas respondent No.3, who secured 53 marks with 23rd rank, is provisionally selected for admission.

35. The above said particulars demonstrate that although the Apex Court, while considering the reservations under Article 15(4) of the Constitution, repeatedly held that at the stage of super-speciality level, there should not be any reservation and best talent and merit alone should be the criteria, inspite of the same, by the procedure, which is adopted by the respondents, which is in contravention of the Regulations framed by the Medical Council of India, far less meritorious candidates are admitted into the super-speciality courses in the subjects of Oncology, Cardiology, Neurology and Nephrology.

36. Although it is the case of the respondents that the quota allotted to the in-service candidates cannot be equated with protective reservations within the meaning of Article 15(4) of the Constitution, but, whatever the nomenclature we use, either reservation or quota, or source of entry, but the fact remains that all are subject to same test for the purpose of assessing merit and all are to be competed only for the purpose of entry into super-speciality courses. It is true that in the judgment in the case of **K.Doraiswami** (7 supra), the Hon'ble Supreme Court has held that there is no legal bar to treat the in-service candidates as a class and allocating a portion of seats exclusively for their benefit, but, only to the extent of the quota reservation, the Apex Court has approved in the judgment referred above, but the further question, namely, the linked admission process for implementation of such quota, was not the

subject matter in the aforesaid case. When it is the case of the petitioners that the admission process adopted by conducting a common test in contravention of the Regulations made by the Medical Council of India, which are mandatory, the quota seats, which are meant for in-service candidates and the admissions made, is to be examined with reference to the Regulations governing the admission process also. In that view of the matter, the aforesaid judgment would not render any assistance to the respondents in the present batch of cases, so as to justify the admission process for super-speciality courses, even in the quota seats also. Similarly, reliance is also placed in the case of **Pre-P.G.Medical Sangarsh Committee** (12 supra), where, when reservations under Article 15(4) for admission into post-graduate medical courses was increased from 25% to 50%, the same was approved by the Supreme Court, but the said judgment also would not render any assistance to the respondents, as in the said case, the further questions did not fall for consideration with regard to standards notified by the Medical Council of India, for the purpose of admission to Post-graduate Medical Courses and the procedure adopted by the concerned University. In the said context, and in view of the recent amendments to the Post-graduate Medical Education Regulations, 2000, even the said judgment would not render any assistance to the respondents. Further, reliance is also placed on the judgment in the case of **State of Madhya Pradesh** (13 supra). But, in the said judgment also, the issue considered was only whether the allocation of 20% of seats for in-service candidates amounts to reservation or not, and it is held that such allocation cannot be considered as a reservation. Even in the said case, the amendments made to the Medical Council of India Regulations and the standards notified in the said Regulations, were not the subject matters, and further, the said judgment was much prior to the amendments made to the Post-graduate Medical Education Regulations, 2000, as such, the same also would not render any assistance to the respondents. Further reliance is placed on the judgment in the case of **Dr.R.K.Goyal** (10 supra), wherein, while considering the recommendations of the Medical Council with regard to the qualifications for appointment of teachers in Medical colleges, the Hon'ble Supreme Court, based on the earlier judgment in the case of **Government of Andhra Pradesh** (9 supra), has held that such recommendations are only directory, but in the subsequent judgments of the Hon'ble Supreme Court, it is clearly held that the Regulations and the Medical standards notified by the Medical Council of India are mandatory but not directory. In the light of the same, even the said judgment would not render any assistance to the respondents.

37. As evident from the counter affidavit, it is the case of the respondents that in view of the representations made for providing in-service quota in post-graduate and super-speciality courses, a Committee was constituted and the

same is communicated by the Director of Medical Education, to the Principal Secretary to Government, vide letter, dated 02.02.2010, in which, a recommendation is made to provide reservations upto 30% of total number of seats available in each super-speciality course as in-service quota, and as such, it is stated that it is the duty of the State to take health care in view of the Directive Principles of the Constitution of India, as mentioned under Articles 39(E) and 47 of the Constitution, and in implementation of such obligation of the State, recommendation was made to provide quota for in-service candidates. It is further stated in the counter affidavit that pursuant to the recommendations made by the Committee, decision is not yet taken by the Government, but however, the 1st respondent, being an autonomous body, has taken a decision on its own, to earmark a quota for in-service candidates, pursuant to the decision of the Executive Board in the 52nd Meeting held on 02.02.2009. So, from the counter affidavit and also from the arguments, as advanced by the learned Additional Advocate General, it is clear that based on the recommendations of the Committee, no decision has been taken by the State. In that view of the matter, it cannot be said that the impugned reservations are provided in implementation of the policy of the Government. In any event, even for the State, to complete the obligations under Directive Principles as enshrined under Articles 39(E) and 47 of the Constitution of India, it is not permissible to allow such actions, if the same run contrary to the Legislative provisions and the Statutory Regulations framed by the Parliament. The Nizam's Institute of Medical Sciences Act, 1989, is an Act enacted by the State of Andhra Pradesh in view of Entry-25 of List-III of the Constitution of India, which is subject to the power of the Union under Entry-66 of List-I of the Constitution. In that view of the matter, when the Statutory Regulations are in force, which govern the admission procedure for post-graduate super-speciality courses, framed under Section 33 of the Medical Council of India Act, 1956, it is not open for the State to take any steps for providing admissions to post-graduate super-speciality medical courses, under the guise of complying the obligation under Directive Principles, to make any such admissions, which run contra to the Statutory Regulations framed under the Medical Council of India Act, and as it is now held that the standards notified are mandatory, but not directory, in that view of the matter, no procedure for admission to the courses should be allowed, which will dilute the standards notified by the Medical Council of India and also the admission procedure notified in the Regulations. It is also to be noticed that as referred above, the Apex Court, repeatedly time and again, held that at the stage of super-speciality levels, there cannot be any compromise on merit and any selections made by giving a go-bye to the merit test, results in National loss.

38. The plea of the respondents that by providing quota for in-service candidates, the seats, which were available for the petitioners were not

affected, is also cannot be accepted. The seats, which were increased, were not with reference to any quota request by the Nizam's Institute of Medical Sciences. When there was a general notification having regard to the amendments made to the infrastructure facilities and the student-Professor ratio etc., in response such notification issued by the Government of India, increase was sought for, and the increase of seats was considered in general for various institutions and Universities in India, but not with reference to any special request made by the Nizam's Institute of Medical Sciences, for the purpose of accommodating the in-service Doctors. In the absence of any increase in specific context of providing admissions to in-service candidates, it is not open to the respondents to plead that the number of seats, which are available hitherto, are not altered. If the seats are added without any reservation, every seat is to be filled up by subjecting the applicants to the merit test, but not otherwise. It is also to be noticed that in the case of **State of Punjab** (8 supra), while considering the case of fixing lesser marks than what is set out by the Medical Council of India, the Hon'ble Supreme Court has held that it is not open to the University or the Government to dilute the standard, by fixing the marks less than what is set out by the Medical Council of India. It is further held that if there is any difficulty, the Institutions can approach the Medical Council of India for fixing of appropriate standards in this regard, but the State Government could not unilaterally frame a scheme reducing the standards, in violation of the Regulations framed by the Medical Council of India. The above reference is made in the context of the argument made by the learned counsel appearing for respondents that to improve the rural health care, such a quota is inevitable, so as to fill up the unfilled vacancies in a number of Government hospitals. In such an event, it is always open to the Government or the Institutions, to approach the Medical Council of India, but, the institutions cannot make any admissions in contravention of the Statutory Regulations framed by the Medical Council of India. Though it is pleaded by the learned Additional Advocate General that earmarking of separate quota for the in-service candidates will not amount to diluting the standards notified by the Medical Council of India, it is to be noted that by earmarking separate quota, a common entrance test is conducted for assessing the merit, which itself is in contravention of the procedure prescribed to consider the candidature of in-service candidates, as contemplated under proviso to Regulation 9(2)(d) of the Post-graduate Medical Education Regulations, 2000. For the aforesaid purpose, it is appropriate to refer to the observations made by the Hon'ble Supreme Court in the case of **Dr.Preeti Srivastava** (5 supra), to the following effect:

“It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry-25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely

the standards of education prescribed by the Union in exercise of powers under Entry-66 of List-I.”

39. The further argument of the learned Senior Counsel Sri K.Pratap Reddy, that the plea that the quota which is prescribed for the in-service candidates is for the purpose of improving the health care in rural areas, which is for public good, as such, even in the context of balancing the rights of the parties under List-III of the Constitution vis-à-vis the Directive Principles, the balance is to be tilted in favour of the public good, also cannot be accepted, as it is to be noted that when the steps taken by a medical institute for allocating separate quota for in-service candidates and the admission policy adopted by it for admitting the candidates into super-speciality courses is in gross violation of the Statutory provisions and the Regulations framed under the Medical Council of India Act, the question of balancing will not arise. In support of this contention, the learned senior counsel has placed reliance on an unreported Division Bench judgment of this Court in the case of **Dr.G.Pradeep Kumar** (14 supra). But a perusal of the above said judgment shows that in clear terms, the Division Bench itself has observed that in principle, the petitioners in the said writ petition have any grievance against the reservation for in-service candidates. The subject matter was with regard to increase of seats from 15% to 30% in post-graduation. Further, it is also to be noticed that the issue fell for consideration before the Division Bench was not in the context of the Regulations framed under the Medical Council of India Act, 1956. As such, the said judgment also would not render any assistance in support of the case of the respondents, having regard to the facts and circumstances of the present batch of cases. Further, it is to be noted that the State of Andhra Pradesh has framed Rules, namely, The A.P. Regulation of Admission to Super Specialities in the Medical Colleges Rules, 1983, in exercise of powers under Section 3 (1) read with Section 15 of The Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, which govern the aspect of admissions into super-speciality medical courses, and in the said Rules also, there is no provision for any reservations either under Article 15(4) of the Constitution of India, or any quota allocation for in-service candidates. In the notifications issued by the NTR University of Health Sciences and Sri Venkateswara Institute of Medical Sciences (SVIMS), which were later in point of time than the impugned notification, dated 10.05.2010, also, there is no earmarking of seats for in-service candidates. It is also to be noted that in the said notifications, a bond is contemplated for the selected candidates, to serve the institution for a particular time, failing which, they have to pay substantial amounts to the institutions.

40. Though a contention is advanced by the learned counsel Sri P.Girikrishna, appearing for respondent No.3 in W.P.No.21916 of 2010, stating

that as the petitioners have appeared in the examination, and having failed to get admission, they cannot question the impugned notification, it is to be noticed that at first instance, writ petition No.13224 of 2010 was filed immediately after issuance of the impugned notification, questioning the earmarking of seats for in-service candidates, and when the matter was not reconsidered in the light of the interim orders passed by this Court on 30th June 2010 and admissions were made, further writ petitions are filed, questioning such selections. In that view of the matter, when it is the case of the petitioners that the selections are made contrary to the Statutory Regulations framed under the Medical Council of India Act, and as the first writ petition was filed even before the entrance test was conducted, I do not find any substance in the contention advanced by the learned counsel, so as to reject the relief sought for in these writ petitions.

41. As discussed above, this Court is of the view that the allocation of seats to the in-service candidates and the consequential process undertaken up by the Nizam's Institute of Medical Sciences for making admissions to various super-speciality courses in D.M. and M.Ch., are in contravention of the Statutory Regulations, namely, the Post-graduate Medical Education Regulations, 2000, framed under the Medical Council of India Act, 1956, and the subsequent amendments made thereto. This Court is also of the view that the process of admission as adopted by the 1st respondent-Institute also dilutes the standards notified by the Medical Council of India, as it results in admission of less meritorious students, leaving the meritorious students, who secured higher marks and ranks in the common entrance test conducted. Further, it is to be held that under the guise of dearth of specialist Doctors in Government hospitals, it is not open for the Universities and the State Government to take up any admission process, by lowering the standards notified by the Apex body on the subject, namely, the Medical Council of India, constituted under the Medical Council of India Act, 1956, in contravention of the Regulations framed by it.

42. For the aforesaid reasons, all these writ petitions are allowed, by setting aside the impugned notification, dated 10.05.2010, issued by the 1st respondent-Institute in Rc.No.74/EC/SS/2010, to the extent of earmarking seats for in-service candidates in the courses which are subject matter of these writ petitions, and admission of unofficial respondents herein into the super-speciality courses in D.M./M.Ch., which are subject matter of these writ petitions, is set aside. Consequently, there shall be a direction to the official respondents to forthwith consider the cases of petitioners for admission into the resultant vacancies, strictly in accordance with the merit, prepared as per the

entrance test conducted by the Nizam’s Institute of Medical Sciences for admission into such courses. No order as to costs.

R. SUBHASH REDDY, J

30th September 2010

N.B:

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[1] AIR 1980 SC 820
[2] (1984) 3 SCC 654
[3] (2003) 11 SCC 146
[4] AIR 2010 SC 288
[5] AIR 1999 SC 2894(1)
[6] (1998) 6 SCC 131
[7] AIR 2001 SC 717
[8] (2001) 8 SCC 664
[9] (1988) 2 SCC 386
[10] (1996) 11 SCC 658
[11] AIR 2001 SC 717
[12] 2001 (6) Supreme 130
[13] 2003 (5) Supreme 473
[14] W.P.No.5382/2006, dt.21.04.2006.
[15] AIR 2007 SC 861