

(2013) 07 DEL CK 0381

Delhi High Court

Case No: Writ Petition (C) 3952 of 2013

Smit Rajput and Another

APPELLANT

Vs

Guru Gobind Singh Indraprastha
University and Others

RESPONDENT

Date of Decision: July 29, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 16, 41, 47
- Delhi University Act, 1922 - Section 4

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: Manoj Goel, Mr. Shuvodeep Roy and Mr. Gopal Verma, for the Appellant; Mukul Talwar, Sradhananda Mohapatra, Advocate for GGSIPU, Mr. S.D. Salwan, Advocate for Respondent Nos. 7 to 16, Mr. Mohinder J.S. Rupal, Advocate for Respondent/University of Delhi, Mr. Rajeeve Mehra, ASG and Mr. Roshan Lal Goel, Advocate for Respondent No. 4/UOI, Dr. Rakesh Gosain, Advocate for Respondent No. 6, Ms. Sana Ansari for Ms. Zubeda Begum, Advocate for Resp. No. 2 and Mr. Ashish Kumar, for MCI, for the Respondent

Final Decision: Disposed Off

Judgement

V.K. Jain, J.

Prior to the current academic year, the admissions to various Post Graduate courses were being made by, drawing students from two different sources, on the basis of two different entrance examinations, one being the All India Post Graduate Medical Entrance Examination in which all the medical graduates from the country were eligible to appear and the other being the medical examination conducted by the respective State where only the students who passed out from the medical colleges within that State were eligible to appear. In terms of Post Graduate Medical Education (Amendment) Regulations, 2010 (Part-II) and the Post Graduate Medical Education (Amendment) Regulations, 2012 (Part-I), framed by respondent No. 5-Medical Council of India, a common all India examination called National

Eligible-cum-Entrance Test for Post Graduate Courses (NEET-PG), 2012, was conducted by respondent No. 6-National Board of Examinations. The seats in PG Courses are equally divided into two quotas, one known as All India Quota and the other as State Quota. Declaring results for the said examination, respondent No. 6 notified two lists, one for admission under the All India Quota and the other for admission under the State Quota. Admissions against All India Quota can be made only from amongst the candidates whose names appear in the all India merit list, whereas admission against the seats under the State Quota can be made only from amongst candidates whose names appear in the State list of the concerned State. Thus, the admission against State Quota in Delhi can be made only from amongst the candidates whose names appear in the list notified by respondent No. 6 for Delhi. This list contains names of those candidates who passed their MBBS examination from a University/Institute in Delhi. The medical colleges in Delhi, except All India Institute of Medical Sciences, are affiliated to two Universities, i.e., respondent No. 3-University of Delhi and respondent No. 1 Guru Gobind Singh Indraprastha University (hereinafter referred to as "I.P. University")

2. Clause 4.1.1 of the Bulletin of Information, issued by University of Delhi for admission to the Post Graduate (Degree/Diploma and MDS courses), stipulates that a candidate must have passed final MBBS examination (for MD/MS/Diploma Courses) and BDS examination for MDS courses from University of Delhi. Thus, the students, who passed final MBBS or BDS examination, as the case may be from I.P. University, are not eligible for admission to the Post Graduate Medical Courses in Delhi University. Similarly, the Admission Brochure, issued by respondent I.P. University, stipulates that only medical graduates of I.P. University are eligible for admission to the Post Graduate Medical Courses.

3. The petitioners before this Court, who passed out MBBS from Delhi University, are aggrieved by their exclusion from the admission to be made by the respondent I.P. University in the State Quota. Based upon the lists of candidates, who qualified in NEET-PG, 2013, Delhi University as well as I.P. University has drawn their own respective lists of the candidates, who are eligible to take admission in their respective Post Graduate Medical courses. The contention of the petitioners before this Court is that their exclusion by the respondent-I.P. University from the list of candidates eligible for admission in the said University under the State quota is unconstitutional, being violative of Article 14 of the Constitution since it defeats the principle of meritocracy and excludes persons who are similarly situated and have passed MBBS from the same State, i.e., Delhi. In fact, the petitioners claim to be more meritorious than many candidates whose names appear in the list of eligible candidates, issued for admission in the PG medical courses of I.P. University. This claim is made on the basis of their comparative rank in the merit list, issued by respondent No. 6-National Board of Examinations. This is also the case of the petitioners that in none of the other States this kind of reservation exists and no distinction by the State is made on the basis of the University from which the

candidate passes his MBBS, provided the University from which he passed MBBS is situated in the same State. Yet another contention of the petitioners is that though there are only 88 candidates, who passed MBBS from I.P. University, have qualified for admission to PG seats in the said University, on the basis of their NEET-PG, 2013 score, the number of post graduate seats being 122, I.P. University would have to surrender at least 34 seats from State quota for inclusion in the all India Quota.

4. This is also the contention of the petitioners that institutional preference/reservation in Post Graduate medical courses can be justified only on considerations of geographical heterogeneity when there is a marked perceivable disparity between regions, but when there is a homogeneity within the State, there can be no further classification on the basis of region or institution, since equals cannot be treated as unequals. According to them, the philosophy behind having a State Quota being to promote local tenant to serve the health care need of the State, there can be no further discrimination amongst the medical graduates from the same State, which has no regional disparity. Yet another contention of the petitioners is that there cannot be reservation to the extent of 100% of the seats under the State Quota, for the candidates of the same institution.

5. The writ petition has been contested primarily by respondent No. 1-Guru Gobind Singh Indraprastha University, respondent No. 2-Government of NCT of Delhi, respondent No. 3-University of Delhi, respondent No. 4-The Union of India and private respondents No. 7 to 16., who are MBBS from I.P. University.

6. Respondent No. 6-National Board of Examinations in its counter-affidavit stated that it has prepared all India rank list, all India 50% quota list as well as State list, for a particular State NEET-PG Regulations 2010 permits common merit list for the entire State known as State list and once such lists are prepared then the counseling has to be done by the concerned State or its agency and no institutional counseling for the State medical colleges is permitted. It is also claimed that any deviation from NEET-PG Regulations, 2010 by any Institute is illegal being violative of the said regulations.

7. In its short reply, respondent No. 1-I.P. University has taken a preliminary objection that the brochure, which states that only those who completed their MBBS from I.P. University would be eligible to apply for admission to the PG course in the said University, came out sometime in March-2013, the writ petition was filed only in June, 2013, so the petitioners cannot be permitted to file the writ petition at this late stage. On merits, it is alleged that the interpretation being placed by the petitioners is contrary to various decision of Supreme Court, including its decision in [Saurabh Chaudri and Others Vs. Union of India \(UOI\) and Others](#), where the Apex Court clearly upheld preference by an Institute to its own graduates for the purpose of admission to the Post Graduate medical courses.

8. In its counter-affidavit, the respondent University of Delhi has justified the institutional preference in the light of the decision of Supreme Court in Pradeep Jain and others vs. Union of India and others (supra). It is also alleged that the academic session has already started in Delhi University from 25.06.2013 and the second round of counseling is scheduled to be held on 27.07.2013 and 30.07.2013. The private contesting respondents, in their additional affidavit dated 24.07.2013, have stated that u/s 4 of Delhi University Act, the said University is within its right to hold examination of students for PG Courses, only for those who have pursued a course of study in the said University and similarly u/s 5(25) of Indraprastha Vishvavidhyalaya Act, I.P. University has power to adopt any process of examination and also decide upon the method of selection. This is also their case that institutional preference is also adhered to in the BHU, Gujarat and Saurashtra.

9. In their additional affidavit, the petitioners have stated that in the States of Uttar Pradesh, Karnataka, Haryana, Assam, Kerala, Punjab, Tamil Nadu and Jammu & Kashmir, all the medical graduates passing from the medical institutes in these States are eligible for admission against all post graduate seats of those States under the State Quota. The same, according to them, is the position in Madhya Pradesh, Bihar, Orissa and Gujarat University. As regards Aligarh Muslim University (AMU) and Banaras Hindu University in Uttar Pradesh, it is stated that the said universities have no reservations in Uttar Pradesh institutions of MBBS level though Delhi University reserves 81% of seats for MBBS level for the students who have passed their class XII from Delhi. As against this, the Indraprastha University reserves only 51% of seats of MBBS level for Delhi students.

10. As regards, the contention of the respondents that the petitioners did not approach this Court immediately after the procedure for the academic year 2013-2014 was issued, the petitioners have stated that they had filed W.P.(C) No. 352/2013 before the Supreme Court on 4.6.2013 and vide order dated 7.6.2013, they were granted liberty to approach this Court, pursuant to which they preferred the present writ petition on 10.6.2013.

11. The following is the comparison of the relative merit of the candidates qualified from I.P. University and Delhi University in NEET, PG, 2013:-

12. In Minor P. Rajendran versus State of Madras and others [(1968) 2 SCR 786], the Apex Court, struck down the District-wise allocation of seats in Madras, in the ratio of population of each district to the population of the State, since such classification had no nexus with the object of selecting the best talent. In Minor A. Peeriakaruppan versus [Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others](#), declared unconstitutional, the unit-wise scheme under which the medical colleges in the city of Madras were constituted as one unit and each of the other medical colleges in Mufassil was constituted as a unit.

13. In [D.N. Chanchala Ors. Vs. The State of Mysore and Others](#), three medical colleges in Karnataka, set up in three different places, held common examination, State Government framed rules called Mysore Medical Colleges (Selection for Admission) Rules, 1970, which provided for the university-wise distribution of general pool seats whereby candidates passing from a particular university could be considered for admission in the MBBS course of that university alone. However, the proviso stipulated that upto 20% seats in each university could be filled by the candidates from other universities, in the discretion of the Selection Committee. Noticing that the three concerned universities had been established to cater to the needs of their respective areas, the Court found nothing undesirable in ensuring that the candidates attached to a particular university was to pursue higher education in a specialized subject only in the said university. The Court was of the view that the Rules did not make it impossible for the meritorious students to get admission since 20% of the seats were provided for the students from other universities. The Court was also of the view that the Government which provides funds for functioning of an institute has a right to decide the source from where admission could be made set up in three different places. The Court was of the view that since the university had been set up for satisfying the educational needs of different areas where they were set up and medical colleges were established in those areas, it could be safely presumed that they were also set up to satisfy the need for medical training of those areas attached to those universities.

14. In [Dr. Pradeep Jain and Others Vs. Union of India \(UOI\) and Others](#), the constitutional validity of residential requirements and institutional preference in regard to the admission in medical colleges in Karnataka, Uttar Pradesh and Delhi was under challenge. The position in Delhi University at that time was that out of the total 410 seats available for admission to MBBS course, 148 were reserved seats and 263 were non-reserved seats. For filling up the un-reserved seats, an entrance examination was held. The first 20 seats were filled from amongst the eligible candidates who passed the entrance examination, in the order of merit and the remaining 212 seats were filled, again on merit, but by the candidates, who had passed their qualifying examinations from the schools situated in Delhi only. Various writ petitions were then filed seeking admission to the medical colleges affiliated to Delhi University, Karnataka University and King George's Medical College, Lucknow, affiliated to Lucknow University. The challenge in the writ petitions was to the constitutional validity of the residential requirements and institutional preference. The Apex Court was informed, during the course of hearing, that it was a uniform and constitutional practice for admission of the students to provide for residential requirements or institutional preference. However, it is not known from the judgment as to whether, at the time the matter was heard, the mechanism of providing institutional preference in various States envisaged preference/reservation for all the students passing out from various colleges in the same State or it was preference/reservation for the students passing out from the

very same University where admission to the higher course was sought.

15. In *Dr. Pradeep Jain and others (supra)*, the Apex Court noted that though theoretically speaking, if admissions are given on the basis of all India national entrance examination, each individual would have equal opportunity of securing admission, but that would not take into account diverse consideration, such as, differing level of social, economic and educational development of different regions, disparity in the number of seats available for admission to the MBBS course in different States, difficulties which may be experienced by students from one region who might in the competition on all India basis get admission to the MBBS course in another region far remote from their own and other allied factors. The Court felt that though admission on All India basis is a desirable policy, it would be unrealistic to achieve the idea in the present circumstances since the real equality of opportunities cannot be achieved unless there is complete absence of disparities and inequalities. The following view taken by the Court is relevant:

19....There are massive social and economic disparities and inequalities not only between State and State but also between region and region within a state and even between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them. They do not have the social and material resources to take advantage of these opportunities which remain merely on paper recognised by law but non-existent in fact. Students from backward States or regions will hardly be able to compete with those from advanced States or regions because, though possessing an intelligent mind, they would have had no adequate opportunities for development so as to be in a position to compete with others. So also students belonging to the weaker sections who have not, by reason of their socially or economically disadvantaged position, been able to secure education in good schools would be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had the best of school education and in open All India Competition, they would be likely to be worsted. There would also be a number of students who, if they do not get admission in a medical college near their residence and are assigned admission in a far of college in another State as a result of open All India competition, may not be able to go to such other college on account of lack of resources and facilities and in the result, they would be effectively deprived of a real opportunity for pursuing the medical course even though on paper they would have got admission in medical college. It would be tantamount to telling these students that they are given an opportunity of taking up the medical course, but if they cannot afford it by reason of the medical college to which they are admitted being far away in another State, it is their, bad luck: the State cannot help it, because the State has done all that it could, namely, provide equal opportunity to all for medical education.

The Court felt that a certain percentage of reservation on the basis of residence requirements may legitimately be made in order to equalize the opportunities for medical admission, such percentage of reservation may also include institutional reservation for students passing from the same college or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the States and for that purpose there could be no distinction between the schools affiliated to the State Board and the schools affiliated to the Central Board. The Court, however, held that the reservation based on residential requirement or institutional preference could not exceed the outer limit of 70% of the total number of seats after taking into account the other kinds of reservations validly made. The Court also desired that this outer limit of 70% should be gradually reduced over a period of time.

As regards, the admission to Post Graduate Medical Course, the view of the Court was as follows:

We are therefore of the view that so far as admissions to postgraduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to border considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the postgraduate course in the same medical colleges or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course.

16. In [Saurabh Chaudri and Others Vs. Union of India \(UOI\) and Others](#), strongly relied upon by the respondents, the petitioners, who were original residents of Delhi joined various medical colleges out of Delhi for undertaking MBBS course against 15% All India Quota. They applied for admission to the Post Graduate Medical courses in Delhi University. Delhi University, however, notified that the students who had taken admission under the 15% All India Quota will not be eligible to seek admission against 75% seats reserved for the students from Delhi. Being aggrieved from the notification of Delhi University, they challenged the aforesaid institutional preference. To the extent relevant for the purpose of this case, the said judgment reads as under:-

39. The Ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to show that India is not ready

therefore. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said Articles for all intent and purport are species of Article 14 which is the genus in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in our constitutional scheme. Whereas larger interest of the country must be perceived, the law makers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India.

64. The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means - (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis.

66. The court while adjudicating upon the constitutionality of the provisions of the statute may notice all relevant facts whether existing or conceived.

67. The Court may therefore notice the following:

(i) The State runs the Universities.

(ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in Post Graduate Courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for last about two decades.

(v) Even those States which defied the decision of this Court in Dr. Pradeep Jain's case (supra) had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criteria.

(vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in all India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation.

108. As regards the constitutional validity of institutional/regional/university wise reservation/preference, in view of this court's emphasis on the need to strive for excellence which alone is in the national interest, it may not be possible to sustain its constitutional validity. However, the presently available decisional law is in support of institutional preference to the extent of 50% of the total available seats in the educational institutions concerned.

The Court, however, held that the institutional preference should be limited to 50%, the rest being left for open competition based primarily on merits on all India basis.

17. In [Nidamarti Maheshkumar Vs. State of Maharashtra and Others](#), a judgment delivered by Hon'ble Mr. Justice P.N. Bhagwati, who was also the author of the judgment in Pradeep Jain, the rules impugned before the Apex Court stipulated that the students who passed out their 12th examination from schools/colleges situated within the jurisdiction of one University would not be eligible for admission to medical colleges situated in the jurisdiction of other University. The admission to medical colleges were thus made subject to region wise classification, depending upon the region in which a particular University was situated. The writ petition was rejected by the High Court relaying upon the decision of the Apex Court in Pradeep Jain (supra). This regional classification for admission to medical colleges was sought to be defended on the ground that Vidharbha and Marathwada regions were backward as compared to Pune and Bombay regions which were far more advanced. Rejecting the contention, the Apex Court inter alia as under:-

We do not think it is possible to categorise the regions within the jurisdiction of the various universities as backward or advanced as if they were exclusive categories and in any event there is no material placed before us which would persuade us to reach that conclusion. But even if the regions within the jurisdiction of the universities in Vidharbha and Marathwada can be said to be backward and regions within the jurisdiction of the universities in Bombay and Pune can be said to be advanced, we do not think that region wise classification for admission to medical colleges can be sustained. There is no reason why a brilliant student from a region which is within the jurisdiction of a university in Vidharbha or Marathwada area should be denied the opportunity of medical education in Bombay or Pune. Why should he remain confined to the so-called backward region from which he comes? Should an equal opportunity for medical education not be made available to him as is available to students from regions within the jurisdiction of Bombay and Pune Universities? Why should mobility for educational advancement be impeded by geographical limitations within the State? Would this clearly not be a denial of equal

opportunity violative of Article 14 of the Constitution? The answer must clearly be in the affirmative. It would plainly be violative of the mandate of the equality clause to compartmentalize the State into different regions and provide that a student from one region should not be allowed to migrate to another region for medical education and thus be denied equal opportunity with others in the State for medical education. This is precisely the reason why this Court struck-down unit-wise scheme for admission to medical colleges in the State of Tamil Nadu in *A. Peeriakaruppan's* case.

...The ratio of this decision applies fully and completely to the present case. Here also as a result of the region wise classification a student from one region who has secured lesser marks than another from a different region may be selected for admission to the medical college or colleges within his region while the student who has secured higher marks may not succeed in getting selected for admission to the medical college or colleges within his region. And moreover, a student from one region would have no opportunity for securing admission in the medical college or colleges in another region, though he may have done much better than the student in that other region. The region wise scheme adopted by the State Government in Rule B(2) clearly results in denial of equal opportunity violative of Article 14 of the Constitution.

The respondents before the Apex Court relied upon its earlier decision in *D.N. Chanchala* (supra). Dealing with the said contention, the Court, inter alia, held as under:-

There are two basic differences between the region wise classification in the present case and the university-wise reservation in *D.N. Chanchala's* case (supra). Firstly, there was no common examination or uniform standard of evaluation in the different universities in *D.N. Chanchala's* case (supra) so that it could not be said that a candidate obtaining lesser marks in the PUC examination held by one university was necessarily less meritorious than another student getting more marks in the PUC examination held by another university. But here in the present case there is only one common examination for the 12th Standard held in the entire state with the same syllabus and the same set of questions and uniform standard of evaluation with the result that it can be safely predicated that a student who gets less marks in the 12th Standard examination may ordinarily be regarded as less meritorious than another student getting higher marks. If there were different examinations held by the three Division Boards with different sets of questions and different standards of evaluation the ratio of the decision in *D.N. Chanchala's* case would have inevitably and irresistibly applied. But the standard of comparison between students throughout the State being clear and well-defined on account of a common 12th Standard examination with same set of questions and uniform standard of evaluation the decision in *D.N. Chanchala's* case can have no application. Moreover in *D.N. Chanchala's* case (supra) the reservation in favour of

students passing PUC examination of a particular university was not total but 20 per cent of the seats were made available to those passing the PUC examination of other Universities. Here in the present case, however, the reservation in favour of students who have studied in schools or colleges situate in the region within the jurisdiction of a particular university is 100 per cent and no student who has studied in a school or college within the region of another university can possibly get admission in the medical college or colleges situate within the region of that the first mentioned university. We must therefore hold that the ratio of the decision in D.N. Chanchala's case does not compel us to take a view different from the one we are inclined to take on first principle.

The Apex Court, however, held that it would not be unconstitutional for the State Government to provide for reservation or preference in respect of certain percentage of seats in favour of those who had studied within that region and even if percentage stipulated by the State Government is on the higher side, it would not fall foul of the constitutional mandate of equality. The following view taken by the Court in this regard is pertinent:-

There are two reasons why such reservation or preference would be constitutionally permissible. In the first place it would "use a considerable amount of hardship and inconvenience if students residing in the region of a particular university are Compelled to move to the region of another university for medical education which they might have to do if selection for admission to the medical colleges in the entire State were to be based on merit without any reservation or preference regionwise. It must be remembered that there would be a large number of students who, if they do not get admission in the medical college near their residence and are assigned admission in a college in another region on the basis of relative merit, may not be able to go to such other medical college on account of lack of resources and facilities and in the result, they would be effectively deprived of a real opportunity for pursuing the medical course even though on paper they would have got admission in the medical college. The opportunity for medical education provided to them would be illusory and not real because they would not be able to avail of it. Moreover some difficulty would also arise in case of girls because if they are not able to get admission in the medical college near the place where they reside they might find it difficult to pursue medical education in a medical college situated in another region where hostel facilities may not be available and even if hostel facilities are available, the parents may hesitate to send them to the hostels. We are therefore of the view that reservation or preference in respect of a certain percentage of seats may legitimately be made in favour of those who have studied in schools or colleges within the region of a particular university, in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality.

18. In [P.K. Goel and others Vs. U.P. Medical Council and others](#), the Apex Court came to consider the validity of the college wise reservation/preference for admission to medical colleges under Lucknow University. At that time, there were seven medical colleges in Uttar Pradesh and a combined examination for admission to the said colleges was held by the University of Lucknow. Though the entrance examination was common, the seats in various colleges were filled on the basis of merit list prepared in each college, out of the institutional candidate of that college. The institutional candidate was defined to mean a student who had obtained MBBS/MD degree of that University/Institution. The aforesaid provision was challenged on the ground that it was violative of Article 14 of the Constitution. One of the contentions before the Apex Court was that the competitive entrance examination was held on the basis of a merit list for each college out of the institutional candidates of that college and had the applicants been aware that it was an Open Competitive Examination for the whole State and a combined merit list of the entire seats, the efforts by the students would be commensurate to the competition they were likely to face. The argument, however, was rejected by the Court wondering how the candidates could adopt different standards of preparation and effort if they would have known that the merit would be determined on the basis of a combined merit list for the whole State instead of merit college wise and observed that every student is expected and in fact does put all his efforts and energies in securing the best position in merit in every competitive examination. The Court also rejected the contention that setting the clock back would result in severe disappointment amongst a large number of successful candidates. The Court further rejected the contention that the students who had passed MBBS course from Gorakhpur, Jhansi and Agra were put to greater hardship and had less privileges at the place where there were more facilities.

Noticing that the Court in [State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others](#), and [Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others](#), had already struck down the rule of college wise institutional preference, the Apex Court found no difficulty in striking down the aforesaid rule.

19. In [A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others](#), an All India Entrance Examination for admission to Post Graduate courses in AIIMS was held by the said institute and any medical graduate who had scored at least 50% marks in the MBBS Examination was eligible to appear in the said examination. The number of seats in AIIMS in MBBS at that time was 40, whereas the number of Post Graduate seats was 132. One third of seats were reserved for in-house candidates of the institute and two separate merit lists were prepared. There was a further discipline wise reservation in favour of in-house candidates to the extent of 50% seats, subject to an overall reservation of 33%. At the time of counseling, the in-house candidates were given priority by calling them first in point of time and the left over seats were offered to the other candidates. One of the issues which arose in that case was

whether 33% seats could be reserved for AIIMS students on the basis of the principles applicable for a University wise quota.

Declaring the institutional reservation for AIIMS candidates ultra vires the Constitution, the Court permitted institutional preference to such candidates against 25% seats available to open category candidates. It was held that any seat left vacant out of preferential seats will be made available to the open General Category candidates. The following view taken by the Court in the course of the judgment is relevant:-

32. Reservation is guided by consideration of ensuring allotment of a privilege or quota to, or conferral of state largesse on, a defined class or category of limited persons dispensing with the need of competition with another defined class of persons or remaining persons. Beneficiary of reservation is necessarily a minor or smaller group of persons which deservedly stands in need of protection or push up because of historical, geographical, economic, social, physical or similar such other handicaps. Persons consisting in reserved category are found to be an underprivileged class who cannot be treated on par with a larger and more privileged class of persons and shall be denied social justice and equality unless protected and encouraged.

44. The basic rule is equality of opportunity for every person in the country which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels and education like post-graduate courses. Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped-the reservation geared up to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage.

59. The upshot of the above discussion is that institutional reservation is not supported by the Constitution or constitutional principles. A certain degree of preference for students of the same institution intending to prosecute further studies therein is permissible on grounds of convenience, suitability and familiarity with an educational environment. Such preference has to be reasonable and not excessive. The preference has to be prescribed without making an excessive or substantial departure from the rule of merit and equality. It has to be kept within limits.

We fail to understand why those who were assessed to be best in the country before entering the portals of the Institute fall down to such low levels as having perceptibly ceased to be best, not remaining even better, within a period of a few years spend in the Institute. They trail behind even such candidates as fall in

constitutionally reserved categories and yet steal a march over them in claiming creamy disciplines. The only reason which logically follows from the material available on record is that being assured of allotment of post-graduation seats in the same institution, the zeal for preserving excellence is lost. The students lose craving for learning. Those who impart instructions also feel that their non-seriousness would not make any difference for their taught. If that is so, there is no reason why at the point of clearing graduation and seeking entry in post-graduation courses of study they should not give way for those who deserve better, and much better, than them. AIIMS holds and conducts a common entrance examination for post-graduation wherein graduates of AIIMS and graduates from all over the country participate and are tested by common standards. The AIIMS students trail in the race and yet are declared winners, thanks to the ingenious reservation in their favour. One who justifies reservation must place on record adequate material enough, to satisfy an objective mind judicially trained, to sustain the reservation, its extent and qualifying parameters. In the case at hand no such material has been placed on record either by the institute or by the AIIMS Students' Union.

Will a less efficient post graduate or specialist doctor be a boon to society? Is the human life so cheap as to be entrusted to mediocre when meritorious are available? If the answer is yes, we are cutting at the roots of nation's health and depriving right to equality of its meaning. We have no hesitation in holding, and thereby agreeing with the Division Bench of High Court, that reserving 33% seats for institutional candidates was in effect 100% reservation for subjects.

Such a reservation based on institutional continuity in the absence of any relegation based on institutional continuity in the absence of any relevant evidence in justification thereof is unconstitutional and violative of Article 14 of the Constitution and has therefore to be struck down. The impugned reservation, obnoxious to merit, fails to satisfy the twin test under Article 14. Having taken a common entrance test, there is no inelible differentia which distinguishes the institutional candidates from others; and there is no nexus sought to be achieved with the objects of AIIMS by such reservation.

20. In Dr. Sahil Deepak vs. State of Maharashtra, W.P.(C) No. 1863/2009, the petitioners appeared in the Common Entrance Test conducted by the State Government for admission to Post Graduate Medical courses. The rules framed by the Government excluded the candidates who had obtained MBBS degree from certain deemed Universities, namely, D.Y. Patil Vidyapeeth and Bharti Vidyapeeth, both having their colleges in State of Maharashtra from sitting in the said examination. The question, which arose for consideration before the High Court, was whether the rules barring holder of MBBS degree from a deemed University situated in the State of Maharashtra to appear for admission to PG Course, whose admission is based on the marks obtained in the CET conducted by the State of

Maharashtra, was unreasonable and discriminatory, thereby violating Article 14 of the Constitution. The Government, however, contended that they were rightly excluded from appearing in the test since their original admission to MBBS course was not through CET. After taking into consideration the decision of Apex Court in Pradeep Jain (supra) and Nidamarti Maheshkumar (supra), the High Court held that the admission to the Post Graduate courses has to be on merit subject to reservations and the rules to the extent they excluded the students, obtaining MBBS from deemed University and Non-Agricultural Universities were illegal.

21. The right of a meritorious student to get admission in a Post Graduate Medical course is a fundamental right which cannot be whittled down, except for valid considerations. As observed by Supreme Court in [Islamic Academy of Education and Another Vs. State of Karnataka and Others](#), for the purpose of achieving excellence for the professional institutions, merit indisputably should be a relevant criteria and the merit, particularly for the purpose of admission in a profession institution, should be judged, as far as possible, on the basis of same or similar examination. It was further observed that inter se merit amongst the students similarly situated should be judged applying the same norm or standard. It was precisely for these reasons that an All India Entrance Test called NEET, 2013 was held for admission to all the medical institutions in the country so that all the candidates seeking admission to the medical institutions are subjected to same examination, same sets of questions and same ways of evaluating the answer books.

22. As observed by Supreme Court in Dr. Saurabh Chaudhary (supra), in an ideal situation, only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally. But, such a situation continues to be a mirage in our country, primarily because of diverse sociological conditions prevailing in India, thereby necessitating preference/reservation to certain classes, in the larger interest of the society. However, such classification to withstand the touchstone of equality enshrined in Article 14 of the Constitution must necessarily to be based on a reasonable and intelligible differentia, which, in turn, must be founded on a rational basis. As observed by Supreme Court in A.I.I.M.S. Students Union (supra), the beneficiary of reservation necessarily and deservedly stands in need of protection or push up because of historical, geographical, economic, social, physical or similar such other handicaps, who on account of such handicaps cannot be treated at par with those belonging to more privileged. The Apex Court was of the view that a candidate getting more marks is entitled to preference for admission and this proposition assumes greater significance when we reach the level of higher education such as Post Graduate courses, and reservation in such courses being an exception needs to be fully justified, the burden of proving justification being on the class which seeks preference in admission to such courses. As observed by the Apex Court if we entrusts human life to mediocre, when meritorious are available, we are only cutting at the roots of nation's health and depriving the right to equality of its meaning. A perusal of the table given in para 19 of the amended petition, which was

not disputed during the course of arguments shows that out of first 1000 All India ranks, the students of Delhi University held as many as 36 ranks, whereas not a single student from I.P. University got any rank up to 1000. Between 1001-1500, Delhi University graduates secured 16 ranks, whereas I.P. University graduates secured only 2 ranks. Between 1501-2000, Delhi University graduates secured 11 ranks, whereas I.P. University graduates secured only 1 rank. Between 2001-3000, Delhi University graduates secured 27 ranks, whereas I.P. University graduates secured only 3 ranks. Between 3001-5000, Delhi University graduates secured 40 ranks, whereas I.P. University graduates secured only 3 ranks. Between 5001-7500, Delhi University graduates secured 53 ranks, whereas I.P. University graduates secured only 6 ranks. Between 7501-10000, Delhi University graduates secured 51 ranks, whereas I.P. University graduates secured only 2 ranks. Thus, up to rank 10000, 234 positions were held by the student from Delhi University, whereas only 17 positions were held by the students of I.P. University. Therefore, it cannot be disputed that considered on the basis of their rank in NEET, 2013, the candidates who passed out from Delhi University were much more meritorious than the candidates who passed out from I.P. University. Therefore, the question which arises for consideration is as to whether excluding the candidates who passed out their MBBS/BDS course from Delhi University, despite their having obtained higher marks in an Entrance Test which was common to all the candidates in the country can be said to be constitutionally valid.

23. In *D.N. Chanchala* (supra), the Apex Court had upheld the region wise classification primarily for two reasons. Firstly, there was no common examination or standard of evaluation in the different Universities which had been set up in three different places, established to cater to the needs of their respective areas. Therefore, it could not be said that a candidate obtaining lesser marks in the examination held by one university was necessarily less meritorious than another student getting higher marks in the examination held by another University. But, that would not be the position when the students of all the Universities are subjected to a common examination, have to answer same sets of questions and are evaluated by same set of examiners. It was this very consideration which prevailed with the Apex Court in striking down such classification in *Nidamarti Maheshkumar* (supra), when the Court said that if there were different examinations held by three different Boards with different sets of questions and different standards of evaluation, the ratio of the decision in *D.N. Chanchala*'s case (supra), would have been applied. The second reasons for upholding such classification in *D.N. Chanchala* (supra) was that the Universities/Medical Colleges were set up in different places, to cater to the need of different areas and the Court was of the view that the Government which provides funds for functioning of an institution has a right to decide the sources from where admission could be made to the Universities set up in three different places. However, in the case before this Court, both Delhi University as well as I.P. University are situated in the same territory and it cannot

be said that Delhi University caters to the need of one region, whereas I.P. University caters to the needs of another region in Delhi. Unlike many States, in Delhi, there are no backward or forward areas and in any case, there is no geographical division in the jurisdiction of I.P. University and Delhi University. In D.N. Chanchala (supra), the Court also found that 20% of the seats could be made available to the students passing from other Universities. However, in I.P. University, as far as the seats in the State Quota are concerned, all of them are proposed to be filled only from amongst the candidates who passed out their qualifying examination from that very University. Therefore, the justification of the Supreme Court in D.N. Chanchala (supra) cannot be applied to the case before this Court.

24. The only justification given by the private respondents for excluding the candidates who passed their qualifying examination from Delhi University was that since more meritorious candidates take admission to the Post Graduate Medical courses in Delhi University and consequently they also take higher rank in the competitive examination, the students of I.P. University will not get admission to PG course in their own University if the students of Delhi University are not excluded from admission to the seats falling in the State Quota. In my view, the justification given by them for excluding the candidates qualifying from Delhi University is wholly irrational and defies logic. This is nobody's case that the infrastructure such as equipments, faculty, etc. available in I.P. University is inferior or inadequate as compared to such infrastructure available in Delhi University. This is also not their case that there are any inherent disadvantages of studying in I.P. University. Once admitted in a medical college, irrespective of whether it is affiliated to Delhi University or I.P. University, every student gets equal opportunity to excel in the field of his education, by hard work and sincerity of purpose. Nothing prevents the students studying in I.P. University from working hard and competing with or even surpassing the students of Delhi University. Every medical college is required to have minimum infrastructure, as prescribed by Medical Council of India. Even the qualifications of the faculty members are fixed by the University. Therefore, it would be difficult to say that the students in I.P. University are placed at a disadvantage, as compared to the student of Delhi University. It would only be appropriate at this stage to take note of the view taken by the Apex Court in this Court in A.I.I.M.S. Students Union (supra). Referring to the contention that the students passing out MBBS from AIIMS were not able to compete with the candidates from other Universities/colleges on merit, the Apex Court observed that the only reason for their standard falling down could be the assurance of allotment of post graduate seats in the same institution, as a result of which they lost zeal for preserving excellence and became complacent. The court was of the view that there was no reason why such students should not give way for those who deserve better than them. The observation made by the Apex Court in respect of the candidates from AIIMS aptly applies to the candidates from I.P. University. Considering that the number of post graduate seats in the said University in State Quota was

comparatively large considering the number of MBBS students in the said University, it is quite possible that the students of the said University became complacent, assuming that they were, in any case, likely to get admission in the PG courses even if they do not work really hard. Such students cannot be allowed to take advantage of their own complacency and must make way for more meritorious students from Delhi University.

25. In *Nidamarti Maheshkumar* (supra), authored by the same Hon'ble Judge who also authored the judgment in *Pradeep Jain* (supra), the Apex Court rejected the University wise classification even in respect of the Universities situated in different regions and the contention that the Universities in Vidharbha and Marathwada were situated in backward regions as against Universities in Bombay and Pune, which were situated in advanced region, and held that there was no reason why a brilliant student from one region should not get admission in a University of another region. In the case before this Court even that justification is not available to the respondents since both I.P. University and Delhi University are situated in the same territory having no regional distinction. The decision of the Apex Court in *P.K. Goel and others* (supra) also squarely applies to the case before this Court. In the aforesaid case, there was a Common Entrance Examination for seven medical colleges in Uttar Pradesh, but the seats in various colleges were filled on the basis of merit list prepared in each college, out of the candidates from that very college. One of the arguments advanced before the Apex Court was that since the examination was held on the premise that there would be a separate merit list for each college, the candidates made efforts commensurate with the competition they were likely to face and had they been aware that it would be an open competitive examination for the whole State, their efforts would have been much more. The argument was, however, expressly rejected by the Apex Court which repelled the contention that the candidates would adopt different standards of preparation considering the level of competition they were likely to face. As observed by the Court every student sitting in a competitive examination is expected to do his best and put all his efforts and energies in securing the best position for him. The Court also rejected the contention that quashing college wise merit list would lead to disappointment amongst a large number of successful candidates. The view taken by the Apex Court equally applies to the case before this Court. It cannot be accepted that had the candidates of IP University known that they would have to compete with the candidates of Delhi University even for admission against the seats in the State quota, they would have worked harder to achieve higher rank in the competitive examination. Every candidate sitting in a competitive examination is expected to try his best to obtain the highest possible rank and put all out efforts, irrespective of the extent of the competition he is likely to face and if a student becomes complacent and accordingly does not study enough on the assumption that he is likely to get admission to higher course even if he does not work hard enough, he must make way for the more meritorious candidate whether he comes from Delhi University or

from I.P. University.

26. Coming to Pradeep Jain (supra), admittedly, at the time the aforesaid decision was rendered, there was only one University in Delhi, I.P. University having been set up much later. The issue before the Court was whether Delhi University was justified in excluding the candidates who had passed out from other States, while considering admission to 212 seats to medical courses in Delhi University. During the course of hearing, the Apex Court was informed of the practice of according preference to students on the basis of residence or institution from which they had passed out. The reason for upholding such rule was the diverse level of socio-economic and educational development of different regions, possible disparity in the number of seats available for admission to the MBBS course in different States and the difficulty which the students from one region may face while competing for admission in another region. The Court acknowledged that the students from backward State or region would hardly be able to compete with those advanced States or regions because they did not have adequate opportunities for development. However, none of these considerations are available to the students passing MBBS/BDS from I.P. University, since both the Universities are situated at the same place and the students from I.P. University do not suffer from any such disability or handicap which would give unfair advantage to the candidates from Delhi University, over them. More importantly, considering that there was only one University in Delhi at that time, the institutional preference approved by the Apex Court, when considered in the current scenario where there are two Universities in Delhi, should be construed as an institutional preference for both the institutions/Universities in Delhi. This is more so considering the decision of the Apex Court in Nidamarti Maheshkumar (supra), which was later in point of time and was authored by the same Hon"ble Judge who wrote the judgment in Pradeep Jain (supra). Had the Apex Court approved the University wise preference/reservation in Pradeep Jain (supra), it would not have struck down University based classification in Nidamarti Maheshkumar (supra).

The learned counsel for the respondents has placed reliance upon decision of Gujarat High Court in Prakash Yadav versus State of Gujarat and others, Special Leave Application No. 9018/2013 and connected matters decided on 26.6.2013, in support of his contention that IP University is entitled in law to reserve all the seats in the State Quota for the students who passed their qualifying examination from that university. In the aforesaid case, the petitioners in SCA No. 9018/2013 and 9639/2013 wanted that admission in PG Medical Courses in the colleges affiliated with Maharaja Krishnakumarsinh Bhavnagar University and M.S. University should be on the basis of the existing forms prevailing before the NEET was implemented, whereas the opposing group of students relying upon the NEET, called for preparation of merit list on NEET results and contended that the prayer made by the petitioners in those petitions runs counter to MCI Regulations and also amount to compelling the universities to violate the said regulations. The petitioners in SCA No.

9062/2013 and 9583/2013 had no objection to preparation of State Merit List based on NEET but wanted preference for the students of Gujarat University as per the rules of the said university. The students opposing them wanted admission strictly on the basis of NEET and contended that the rules, provided for preference to the students, are repugnant to PG-MCI Regulations. During the course of the hearing, it was pointed out that the Rule 4.1 of the statutory rules of Gujarat University provided for giving preference to its own students for admission in PG Medical Course, and the contention was that preparing the State-wise list would wipe out the university preference without any amendment to the statutory rules. It was also submitted that the rules framed by the Gujarat University were not repugnant to the MCI Regulations and therefore the State was not justified in interfering with the process of admission to be undertaken by the said University on NEET based merit list. The learned Single Judge, who delivered the judgment noted that Rule 4.1 of Gujarat University Rules had been challenged in SCA No. 5607/1996 and validity of the said Rule has been upheld by the Division Bench of that Court in another decision. The High Court then considered the decision of the Apex Court in D.N. Chanchala (supra) and Dr. Saurabh Chaudhary (supra) and held that the institutional preference embodied in the Rules of the university, unless taken away either by amending the Rules or by any Regulation, under the provisions of Medical Council of India, has to be adhered to. The Court was of the view that MCI Regulation had only taken away the choice available with the universities for determining the academic merit of the students by mandating them to accept the merit of the students through a single entrance test called NEET and the university preference provided in the statutory rules was not taken away since there was no provision in the said Regulations for doing away with the university preference. In Dr. Saurabh Chaudhary (supra), the Apex Court noted that the State runs the universities and has to spent a lot of money in imparting medical education to the students of the State and those who are given admission in the Post Graduate Courses are also required to be paid stipend and giving institutional preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution.

However, in the case before this Court, there is no statutory rule framed by IP University for giving preference/reservation to its students while making admissions in the State Quota. The Indraprastha Vishvavidhyalaya Act, 1998, on which reliance was placed by the respondents contains no such provision. Also, neither the Delhi Government has framed any rule providing for preference/reservation to the students from Delhi University, for admission against the State Quota seats nor has any Act, prescribing any such preference/reservation has been passed by Delhi Legislature in respect of IP University. Therefore, there is no statute or statutory rules permitting preference/reservation to the students passing their qualifying examination from IP University, for the purpose of admission to the Post Graduate Medical Course in the said University.

In fact, even Delhi University does not have statutory rules providing for preference/reservation to its own students in the matter of admission to PG Medical Courses. Therefore, reliance upon the decision of the Gujarat High Court by the respondents is wholly misplaced.

27. A mere administrative decision of the university to accord preference/reservation to its own students, in the matter of admission to PG Medical Course, cannot be treated at par with a statutory rule/regulation which could be framed either by the Government or by the university. Whether such a rule/regulation if made would withstand the test of equality and reasonableness in terms of Article 14 of the Constitution is yet another question which does not arise for consideration in this case.

28. In their additional affidavit filed on 24.7.2013, the private respondents have stated that university-wise preference is adhered to in Gujarat University, Saurashtra University and Banaras Hindu University. As against this, the petitioners have stated in their additional affidavit filed on 24.7.2013 that in 12 States with multiple universities i.e. Tamil Nadu, Maharashtra, Karnataka, Haryana, Uttar Pradesh, Madhya Pradesh, Kerala, Bihar, Gujarat, Assam, Orissa and Jammu and Kashmir, institutional preference is accorded to all the medical graduates passing out from any of the universities in the concerned State and there is no university/institution-wise reservation/preference. As regards Aligarh Muslim University and Banaras Hindu University, it is stated by them that they do not make any reservation for Uttar Pradesh candidates at MBBS level, whereas the Delhi University reserves 81% seats at MBBS level and IP University reserved 53% seats at MBBS level for Delhi students. Be that as it may, the issue before this Court is not as to whether the preference accorded only to the students passing out qualifying examinations from the same university in Gujarat, Saurashtra University, Aligarh Muslim University or Banaras Hindu University is justified or not. In the absence of those universities and full information regarding their respective rules, no informed view in this regard can be taken. But, if as many as 12 States with multiple universities are interpreting the institutional preference to mean preference for all the students passing out from various universities in the concerned State, the overwhelming practice in the country appears to be to give preference to the students passing their qualifying examination from any of the university in the State concerned and university/institution-wise preference/reservation is not being made. It would also be pertinent to mention here that as many as three States i.e. Arunachal Pradesh, Mizoram, and Nagaland have no medical college whereas five States viz. Rajasthan, Punjab, West Bengal, Andhra Pradesh and Himachal Pradesh have only one university/medical university. Five States i.e. Tripura, Manipur, Goa, Meghalaya, Haryana and Uttaranchal had only one medical college and, therefore, the question of institutional preference/reservation does not arise in their case. This, coupled with the fact that at the time the Supreme Court rendered its decision in Pradeep Jain and others (supra), there was only one university in Delhi, I am of the

considered view that the reservation/preference only for the students of IP University, for the purpose of admission to post graduate seats in the said university, in the State Quota, is arbitrary, unreasonable and irrational thereby violating Article 14 of the Constitution. There is no intelligible differentia between the medical graduate of IP University and the medical graduate of Delhi University, both universities being situated in the same territory without any regional disparity and geographical division or jurisdiction. In the context of Delhi, where both the universities are situated at the same place having no geographical division of jurisdiction, the classification based upon university from which the candidates passed their qualifying examination, has no rational nexus with the object to be achieved.

29. The learned counsel for the private respondents contended that since the amendment made to Regulation 9 has been struck down by the Supreme Court as unconstitutional, the admissions have to be governed by the State Regulations, as it stood prior to its amendment. Even if that be so, since the amended regulation does not lay down any eligibility criteria and only deals with the method of selection and does not provide for university-wise preference/reservation, in admission to the PG Courses, the reliance upon the un-amended Regulation, therefore, is wholly misplaced.

30. The final question which arises for consideration is as to what should be the extent of reservation, if any, for admission to PG Medical Course in IP University, in the State Quota for the students who have passed the qualifying examination from that university. The Apex Court has upheld the limited reservation or preference for the students who had studied in a particular region though as far as Delhi University and IP University are concerned, both of them are situated in the same region and therefore strictly speaking the consideration available for regional preference are not available to the students belonging to IP University. The contention of the petitioners is that even if preference for IP University is upheld, the same cannot exceed 15% of the open seats in PG Courses. According to them, the total number of PG seats in IP University being 122 [121 (degree) + 1 (diploma)], after excluding 18 seats for SC candidates, 9 seats for ST candidates and 33 seats for OBCs candidates, in which there can be no institutional reservation, and applying AIIMS case, reservation for IP University cannot exceed 15% of the open seats, which comes to 9 seats.

31. In *Nidamarti Maheshkumar* (supra), the Apex Court clarified that the total number of seats means the seats after deducting the number of seats required to be made available for admission on All India Basis. It was further held that the number of such seats has to be taken out and then the remaining number of open seats, after taking into account the other kinds of reservations validly made percentage of 70:30 must be applied for determining the extent to which regional reservation or preference can legitimately be made.

In AIIMS case (supra), the Apex Court did not approve the reservation of 1/3rd of the total seats for the in-house students and reduced the percentage to 25% of the post graduate seats. But, the Constitutional Bench in Dr. Saurabh Chaudhary (supra), when finding that even 25% of the total PG seats comes to 82.5% of the number of internal candidates, reduced the reservation to 50% of the total under graduate seats.

32. Considering all the facts and circumstances of the case and the view taken by the Apex Court in the cases mentioned hereinabove, I am of the view that 50% of the total seats for PG medical course available in IP University, under the State Quota, should be filled up purely on the basis of the ranks obtained by the candidates, passed out their qualifying examination either from Delhi University or from IP University and the remaining 50% of such seats should be filled from amongst the medical graduates of IP University alone. This direction would apply to reserved as well as un-reserved seats, meaning thereby that medical graduates of Delhi University as well as IP University will be considered in the order of their combined merit, for admission to 50% of the reserved seats out of State Quota whereas only the reserved category medical graduates of IP University will be considered, in the order of merit, for admission against remaining 50% reserved seats in the State Quota. Similarly, the General Category candidates of Delhi University as well as IP University shall be considered, in the order of their combined merit, for admission against 50% of the un-reserved seats in the State Quota whereas medical graduates only of IP University shall be considered, in the order of merit, for the remaining 50% un-reserved seats in the State Quota. If any of the reserved seats for which students of both the universities are to be considered in terms of this judgment remains unfilled, that shall be transferred to the General Category seats against which General Category students of both the universities are to be considered. Similarly, if any reserved seat against which only the medical graduates of IP University are to be considered in terms of this judgment remains un-filled, that seat would be transferred to the General Category seats against which only the medical graduates of IP University are to be considered in terms of this judgment. The applications from medical graduates of IP University have already been invited by the said university. It is directed to immediately issue public notice, in the leading newspapers of Delhi, inviting applications from the eligible medical graduates of Delhi University for being considered for admission to 50% PG seats in State Quota in terms of this judgment, giving them minimum required time for the purpose. The university is directed to prepare and issue two separate lists, one containing the names of the eligible medical graduates of both the universities, who are to be considered for admission to half of the State Quota seats and the second list containing the names of only eligible IP University medical graduates, who are to be considered for admission against the remaining 50% seats in the State Quota. The list shall be prepared without any delay and shall be duly notified. The counseling shall follow immediately, thereafter so as to avoid loss of teaching time. While

passing this order, I am conscious of the fact that the teaching which is to commence on 1.8.2013 is likely to be delayed by few days, but this is an unavoidable situation which has arisen only on account of IP University seeking to act in a manner which is contrary to law of the land.

With aforesaid directions, the writ petition stands disposed of. There shall be no orders as to costs.