IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5290 OF 2013

WITH

CIVIL APPLICATION NO. 491 OF 2014
IN
WRIT PETITION NO. 5290 OF 2013

1 Dr. Narote Amol Sadashivrao,
Age 30 years,
Medical Officer PHC, Manikwada,
Tal. Nerparsopant,
District Yavatmal, Date of Joining
9/05/2005, Address- Shivajinagar,
Nerparaspant, District Yavatmal.

2 Dr. More Sunil Martorao,
Age 36 years, Date of Joining 31/01/2004,
Place of working of Present and
Medical Officer PHC, Pingali, Tal. &
District Parbhani, Address- Sarnath Colony,
Dhar Road,
Parbhani 431401.
Mobile No. 9422111650
E-mail : dr.sunilmore45@gmail.com

3 Dr. Niras Kalidas Vishwanathrao
Age 42 years, Date of joining 4/10/1998,
Mobile No. 9405780760,
Address PHC Mahatpuri, Tal. Ganga..
District Parbhani
Place of working- PHC Mahatpuri
Medical Officer.

4 Dr. Salunkhe Shashikant Shivajirao,
Age 37 years, Medical Officer PHC

Ghatmanchaer, Taluka Ambejogai,
District Beed, Date of joining-06/04/2002,
Address- A-4, Shradha, Vidyanagar,
Taluka Parel, District Beed.

5 Dr. Gaware Sudam Zumber,
Age 37 years, Date of Joining 29/2/2000
Working Place- THO Mandha,
Tal. Mantha, District Jalna,
Address- Zumber, Plot No. 64, Maulinagar,
Ambad Road, Jalna District Jalna.

6 Dr. Kshar Amit,
Age- 31 years, MO, PHC-Umbarda Bazar,
Taluka Karanja, District Washim,
Date of joining-6/2/2009. .... Petitioners.

Vs.

1 State of Maharashtra,
(Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908).

2 The Secretary,
Medical Education and Drugs Department,
Government of Maharashtra,
Mantralaya,
Mumbai-400 032.
(Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908).

3 Medical Council of India,
Having its office at Pocket-14,
Sector 8, Dwarka Phase 1,

New Delhi 110077.

4 Director of Medical Education and Research, Government of Maharashtra, Mumbai.
(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908).

5 The Director of Health Sciences, Government of Maharashtra, Mumbai
(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908).

6 The Secretary, Public Health Department, Mantralaya, Mumbai.
(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908). ....Respondents.

WITH
CIVIL APPLICATION NO. 1509 OF 2013
IN
WRIT PETITION NO. 5290 OF 2013

1 Dr. Nilesh Wasmatkar, MBBS,
Age 25 years, Occu- Doctor,
Having address at Jaywanti Nagar,
Ambajogai, Dist. Beed, Pin-431 517

2 Dr. Santosh Pandurang ghagare, MBBS,
Age 25 years, Occu. Doctor,

Having address at Near Kolekar Hospital,
Dhulsam Road, A/P & TQ. Kavathe,
Mahakal, Dist. Sangli, Pin-416 405.

3 Dr. Prashant Meshram, MBBS
Age 24 years, Occu. Doctor,
Having address at 404, Sai Prem CHS,
C Wing, Charkop, Sector 8,
Kandivali (W),
Mumbai-400 067.

4 Dr. Shewale Sundar, MBBS,
Age 25 years, Occu. Doctor,
Having Address at Yenape
Shewale Wadi), Tal. Karad, Dist. Satara.

5 Dr. Arshad Shaikh, MBBS
Age 25 years, Occu. Doctor,
Having Address at Plot No. 15/16,
House of Sayeed Hussaini, Rahat Colony,
Aurangabad-431 001. ..Applicants/
Intervenors.

IN THE MATTER BETWEEN

Dr. Narote Amol Sadashivrao & Ors. …. Petitioners.

Vs.

State of Maharashtra & Ors. ….Respondents.

ALONG WITH
WRIT PETITION NO. 1933 OF 2014

1 Vedprakash Balaji Biradar
26 years, having address at
Vikas Nagar, Deglur Road, Udgir
District Latur, Maharashtra 413 517

2 Kunal Vishwas Paithane, aged 27 years, having address at 16/17, Prithviraj Nagar Vadiay Vihar, Garkheda, Aurangabad, Pin-431 001

3 Omkar R. Shinde, Aged 27 years, having address at A1, Parajpe Apartment, Madhav Nagar Road, Sangli, Maharashtra, Pin – 416 416

4 Priyank Shantaram Dumade, aged 25 years, having address at B/102, Akansha Apartment, Sai Nagar, Mahim Road, Palghar (West), District Thane, Maharashtra Pin 401 404

5 Pushkraj Prakashrao Deshmukh aged 25 years, having address at Magalmurti Nagar, Near Deshmukh Hotel, Karegaon Road, Parbhani.

6 Rakesh Sudhir Shinde, aged 27 years, having address at Rukhmai Smirti, Gimhavane, Taluka Dapoli, District Ratnagari, Maharashtra

7 Radhika Gangaram Kale, aged 25 years, having address at Kalewadi, Post Vaduj, Tal. Khatav, District Satara,

8 Tauseef Afmed Abdul Gani, aged 23 years, having address at Dukhi Nagar, Old Jalna, District Aurangabad, Maharashtra – 431 213

9 Sameera Avikshit Rane, aged 25 years, having address at Shri Sadguru Krupa, Matunga Road,(W), Mumbai 400 016

10 Swapnil Shridhar Ingole, aged 24 years,
having address at Ward-1, Plot No.1,
Kulkarni Layout Akola Road,
Mangrulpir, District Washim,
Maharashtra 444403

11 Raj Nawal,
aged 26 years, having address at
House No.6 Near Railway Station
Bijai Nagar, Ajmer, Rajasthan 305624

12 Aniruddha Ramsevak Kaushik, aged
22 years, having address at Ranjan Nagar,
Bilaspur, Chhatisgarh

13 Rahul Prakash Zalse, aged 24 years,
having address at 42, Shree Bunglow,
Opp. Vaishanvi Row House, Behind
Mauli Lawns Kamatwadi,
Nasik 422 010

14 Prashant Raju Jadhav, aged 25 years,
having address at Jadhav Niwas,
Netaji Nagar, Near Pashu Vaidyakiya
Hospital, latur 413 512

15 Gaurav Bathla, aged 26 years,
having address at 215-B, Talwandi Kota,
Rajasthan 324005, Maharashtra-431 515 .... Petitioners

Vs.

1 State of Maharashtra,
Through Government Pleader

2 The State of Maharashtra,
through Secretary of
Medical Education and Drugs Department,
Government of Maharashtra,
Mantralaya,

Mumbai-400 032.

3 The Secretary,
Medical Council of India,
Having office at Pocket-14,
Sector 8, Dwarka Phase 1,
New Delhi 110077.

4 Director of Medical Education and
Research, Govt. of Maharashtra,
Mumbai.

5 The Secretary, Public Health Department,
Mantralaya, Mumbai 400032,
(Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908).

6 The Secretary, Public Health Department,
Mantralaya, Mumbai.
(Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908). ….Respondents.

ALONG WITH
WRIT PETITION NO. 1937 OF 2014

1 Dr. Kishor Gulabrao Nandre
Age: 29, Occupation: Medical Officer,
Address: C/o: Prof. G.K Patil,
Dattanagar, A/P: Samode,
Tal: Sakri, Dist: Dhule

2 Dr. Sanjitkumar Sant

Age: 30 years, Occupation: Medical Officer,
Address: C/o Mrs. Sanjitkumar Sant

3 Dr. Sachin Chheganrao Gadekar
Age: 31 years, Occupation: Medical Officer,
Address: Yashodhara Nagar,
Near Gajanan Maharaj Mandir,
Khargaon ... Petitioners

Vs.

1 The State of Maharashtra,
Through Secretary,
Department of Medical Education and Drugs,
Mantralaya, Mumbai 400 032

2 The Director,
Department of Medical Education and Research,
St. George Hospital Campus,
Near C.S.T, Station, Mumbai

3 The Director,
Health Services, Arogyabhavan,
St. George Hospital Campus,
Near C.S.T Station, Mumbai

4 The Secretary,
Public Health Department,
Mantralaya, Mumbai 400 032

5 Medical Council of India,
Pocket- 14, Sector 8,
Dwarka, Phase – 1,
New Delhi 110 077 … Respondents

ALONG WITH
WRIT PETITION NO. 2017 OF 2014

1 Dr. Kapildeo Sahadeo Patil,

Age: 33 years, joining date 21.1.09
Address – c/o Shree S.D. Patil,
24, Shahu Mnagar, Near Bhushan Mangal
Karyalay, Bhadgaon Road,
Chalisgaon, Pin 424 101,
Dist Jalgaon

2 Dr. Pradeep Kundlikrao Ingole
Age : 35 years, Date of joining 19.3.02,
Address Sarnath Colony, Dhar Road,
Parbhani 431 401,

3 Dr. Sanjay Rawanrao Jadhav,
Age 40 years, Date of joining 20.9.02,
Address R. H. Nerparsopant,
Dist. Yavatmal.

4 Dr. Vaishali Dilip Pawar,
Age 32 years, R/o "A2", 704,
Mohan Pride, Wayle Nagar, Kalyan (W),
Dist. Thane

Vs.

1 State of Maharashtra,
Through its Secretary,
Departments of Public Health
and Medical Education, Mumbai

2 The Secretary,
Medical Education and Drugs Department,
Government of Maharashtra,
Mantralaya,
Mumbai-400 032.

3 Medical Council of India,
thru : Secretary,
having its office at Pocket-14,
Sector 8, Dwarka Phase 1,
New Delhi 110077.

4 Director of Medical Education and
Research, Government of Maharashtra,
Mumbai.

5 The Director of Health Sciences,
Government of Maharashtra, Mumbai,
Thru : Secretary, Mumbai.

6 The Secretary, Public Health Department,
Mantralaya, Mumbai 400032. ….Respondents.

ALONG WITH
WRIT PETITION NO. 2019 OF 2014

1 Dr. Jayant C. Parwate
Age: 29, Occupation: Medical Officer,
Address: C/o: Ashok m Yawale ,
Flat no.A/2 ,Rameshwar Apartment,
Shivganaga Nagar, Amabarnath East,
Thane, Mumbai.

2 Dr. Tushar Mukhiram Dahake
Age: 30 years, Occupation: Medical Officer,
Address: C/o Mrs. Arvind Durge,
Ambarnath, Thane Mumbai.

3 Dr. Deepak Ashok Munde
Age- 30 years, Occupation- medical officer,
R.o.-PHC Chowk, Tal. Malwan
Sindhudurg

4 Dr. Anant B.Puri
Age- 31 years, Occupation- medical officer,
Address: PHC Adeli, Tal. vengurla
Sindhudurg

5 Dr. Vaibhav H. Bhoyar
Age- 26 years, Occupation – Medical officer,

Add: Tal. Saoil, District. Chandrapur.

6 Dr. Krishna Yadav,
Age: 30 years, Occu: Medical Officer,
Add: PHC Brahmangaon, Tal: Satana,
Dist: Nashik

7 Dr. Rajeshkumar Ghansham Dwivedi
Age:29 years, Occupation: Medical Officer,
Address: C/o Mrs. Arvind Durge,
Ambarnath, Thane Mumbai.

8 Dr. Praful Khuje
Age:29 years, Occupation: Medical Officer,
Address: PHC Bothali, Tal: Saoli,
Dist: Chandrapur

9 Dr. Gajendra Patil
Age: 31 years, Occ: Medical Officer,
Address: PHC Mangaon,
Tal: Chandgad, Dist: Kolhapur

10 Dr. Vijay Jaiswal
Age: 32 ,Occ: Medical Officer,
Address: PHC Adsul, Tal: Shegaon,
Dist: Buldhana

11 Dr. Amol Badge
Age: 30, Occu: Medical Officer,
Address: Rural Hospital Saundal,
Tal: Sadakarjuni, Dist: Gondia

12 Dr. Kiran Chavan
Age: 30 Occ: Medical Officer,
Address: PHC Shivna, Tal: Sillod,
Dist: Aurangabad

13 Dr. Sandeep Gofne
Age: 31 years, Occ: Medical Officer
Address: PHC Sewli,

Tal & Dist: Jalna

14 Dr. Samadhan Raut
Age: 30 years, Occ: Medical Officer
Address : PHC Muller,
Tal : Satana, Dist: Nashik

15 Dr. Naresh Raolani
Age: 30 , Occu: Medical Officer
Address: PHC Jawala,
Tal: Shegaon, Dist: Buldhana

16 Dr. Syed Waseem Yousuf
Age: 29 , Occ: Medical Officer,
Add: PHC Kasar, Balkunda
Tal: Nilanga, Dist: Latur

17 Dr. Mahendra Ghagare,
Age: 32 , Occu: Medical Officer,
Add: Rural Hospital Salekasa,
Tal: Salekasa, Dist: Gondia

... Petitioners

Vs.

1 The State of Maharashtra,
Through Secretary,
Department of Medical Education and Drugs,
Mantralaya, Mumbai 400 032.

2 The Director,
Department of Medical Education and Research,
St. George Hospital Campus,
Near C.S.T, Station, Mumbai

3 The Director,
Health Services, Arogyabhavan,
St. George Hospital Campus,
Near C.S.T Station, Mumbai

4 The Secretary,

Public Health Department,
Mantralaya, Mumbai 400 032.

5 Medical Council of India,
Pocket- 14, Sector 8,
Dwarka, Phase – 1,
New Delhi 110 077 … Respondents

ALONG WITH
WRIT PETITION NO. 2402 OF 2014

1 Dr. Chandrakant Dattatray Patil,
Age : 31 years, Joining date 10.02.2011
having address at c/o. Mr. P. L. Mahajan,
C-45, Rajaji Path, New Aayare Road,
Opposite Sai Baba Mandir,
Dombivali (East) Thane 421201
And also address PHC Londhe,
Tal Chalisgaon, Dist. Jalgaon Pin 425 401

2 Dr. Yogesh Kantilal Pawar,
Age : 28 years, Date of joining 3.02.2011,
Address Plot No.8, Dheku Road,
Kele Nagar, Amalner, Dist. Jalgaon,
Pin : 425 401.

3 Dr. Vaishali Ramesh Lohar,
Age: 28 years, Date of joining 3.02.2011,
Address – Plot No.8, Dheku Road,
Kele Nagar, Amalner, Dist Jalgaon,
Pin : 425 401.

4 Dr. Kishor Bapuji Jadhav,
Age : 32 years, Date of joining 19.02.2011,
Address – Adarsh Nagar Dhule Road,
Chalisgaon, Dist. Jalgaon,
Pin 425 401.

5 Dr. Prashant Shelke,
Age : 30 years, Date of joining 5.02.2011,
Address – Plot No.35, Astvinayak Nagar,
Pachora, Dist.-Jalgaon,
Pin 425 401.

Vs.

1 State of Maharashtra,
Through its Secretary,
Department of Public Health and
Medical Education, Mumbai

2 The Secretary,
Medical Education and Drugs Department,
Government of Maharashtra,
Mantralaya,
Mumbai-400 032.

3 Medical Council of India,
Thru: Secretary Having its office
At Pocket-14,
Sector 8, Dwarka Phase 1,
New Delhi 110077.

4 The Director,
Department of Medical Education and
Research, Government of Maharashtra,
Mumbai.

5 The Director of Health Sciences,
Government of Maharashtra, Mumbai
Thru : Secretary, Mumbai.

6 The Secretary, Public Health Department,
Mantralaya, Mumbai 400032. ….Respondents.

Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Sandeep Phatak and Ms. Kalyani tulankar for the Petitioner in WP No. 5290/2013.
Dr. Gunratan Sadavarte for Petitioner in WP No.1933/14 and for the Applicant in CAW 1509 of 2013 in WP No. 5290 of 2013.
Mr. Pratik Sakseria i/b. P. D. Paranjape for Petitioner in WP No. 1937/2014.
Mr. Mayur Khandeparkar with Raturaj Pawar I/b. P. D. Paranjape for the Petitioner in WP No. 2019/2014.
Mr. Rahul D. Matkari for Petitioner in WP No. 2017/2014 and WP No. 2402/14.
Mr. S. K. Shinde – Government Pleader a/w Ms. S.S. Bhende for the State in all matters.
Mr. Ganesh K. Gole a/w. Mr. Ritesh Ratnam for MCI in all matters.

CORAM : ANOOP V. MOHTA AND
M.S.SONAK, JJ.
DATE : 20 MARCH 2014

ORAL JUDGMENT:- (PER ANOOP V. MOHTA, J.)

Rule, returnable forthwith.

Learned counsel appearing for the respective Respondents waive service. Heard finally, by consent of the parties, in view of urgency expressed by all, as the issues relate to the admission of Post Graduate course in Medicine for the year 2014-2015.

2 The relevant information of the Rule is as under:-

"1.2 This procedure will be called as "Procedure for selection and admission to medical postgraduate courses at the State Government Medical Colleges,

Brihanmumbai Municipal Corporation Medical Colleges, Central Government Institutions like Tata Memorial Hospital and all other Private Medical Colleges/Institutions who opt for admission to PG courses through PGM-CET 2014."

The relevant rules of Post-Graduate seat distribution are as under:-

"7.1 The seats available for admission to medical postgraduate courses will be distributed as 50% to all India Quota & remaining 50% to the State Quota. From the State quota all the PG Degree Seats will be distributed to regular PGM CET (Non In-service) Candidates. From the state quota 50% Diploma Seats from Government Medical Colleges will be distributed to the In-Service Candidates from Public Health Department and ESIS Department as per GR. of Medical Education & Drugs Department No. MED 1013/CR 137/Edu-2 Deated 02 July 2013.
In-Service seats distribution for In-service BMC Candidates will be as per the policy of BMC and these seats will be exclusively from the BMC Medical Colleges.

7.2 Any seats remaining vacant from all India Post Graduate quota and In-services quota will be reverted back to State quota, after these seats are surrendered by the Concerned Authorities.".....

The other relevant clause of In-service candidates is as under:-

"8.3.1 Eligibility for In-service candidates will be as per criteria laid down by the Public Health Department for M.M. & H.S. Medical Officer candidates and by commissioner of E.S.I.S. for E.S.I.S. in-service

candidates. For BMC In-service Candidate eligibility criteria will be as per criteria laid down by Municipal Commissioner/Director of Brihanmumbai Municipal Corporation."

The common entrance test was over on 5 January 2014. All the Petitioners have passed the same also. They are eligible to participate in the process of Post-Graduate admission Degree and Diploma.

3 The Petitioners, after passing the MBBS examination and based upon the then existing policies of the State of Maharashtra have joined the services of the State of Maharashtra/ Local Authorities/ Corporation (for short "the State") for many years, as averred in the respective Petitions. Some of them have been in service till this date. For the purpose of their service record and future career, they are treated as *"Medical Officer"* in various tribal, interior, naxalite and difficult areas of the State of various Government Hospitals, Primary Health Centers (PHC) and Clinics. (For these admission referred to as "In-service candidates).

4 Though we are concerned with the admission to the Medical Post Graduate Degree Courses (MD/MS) of academic year

2014-2015, it is required to go back to the State circulars/policies (for short, GR) dated 6 January 1990, by which it was declared and announced that 15% seats for Post Graduate Degree Course (the Degree Course) and 25% seats for Post Graduate Diploma Course (the Diploma Course) were reserved for in-service candidates, as and by way of providing candidates an incentive to serve in the Hospitals/PHC as referred above, throughout the Maharashtra State. The students/candidates based upon the same have been acting upon regularly and so also the concerned Respondents.

5 The State Government issued another notification on 22 February 1996 by which, the reservation for Post-Graduate Decree Course increased to 25% in place of 15%. The reservation of 25% for Post Graduate Diploma Course, kept intact. There is no much quarrel with regard to the existence of these two recognized sources for in-service candidates for the purpose of participating and/or applying for such Post Graduate Course, subject to the conditions of those circulars.

6 The necessity and need of this incentive/weightage has

been well recognized, accepted and appreciated by all. This also mean and read as a consistent representation by the State, as they intended to achieve various purposes, apart from giving practical experiences to these medical students/officers to utilize their services for the people in rural areas. The State therefore, able to provide medical services to the needy patient of all strata. Merely because students after completing their MBBS Degree have been working with the State, these candidates therefore, never intended that they would be continuing in service on the basis of MBBS Degree throughout their life. Their future avenue for the higher study is not barred for the special Degree Course. The whole purpose of weightage/incentive, is always meant and treated as an additional factor for them to proceed further and/or to pursue their higher study as and when and whenever possible.

7 The Apex Court has recognized this in-service class, as a class for the purpose of providing weightage/benefits as recorded above. They are in-service and/or in-service candidates, therefore, are not prevented and/or restricted from taking their higher education of their choice. The weightage/incentive for the Post Graduate Degree

and/or Post Graduate Course, as recorded above, itself means that the Government throughout intended and wanted such Medical Officers to work and/or render their services in the areas referred above, apart from getting extra weightage/higher education, besides the Common Entrance examination marks.

8 To add to that, the State again represented by another circular dated 3 May 2011, specifying the minimum number of years of service as an entitlement for the Post Graduate Degree and Diploma. The strict condition of the compulsory bond and/or penalty clause in case of default of Rs.50 lacs is also circulated and imposed upon, whosoever wants to pursue their study and/or career through their channels. Everything was in order for such candidates. There was amended regulation of 2009 (17 November 2009) to the Medical Council Regulation 2000 of Medical Council of India (for short, MCI) in the field whereby, the restriction was imposed to have 50% reservation for the Post Graduate Diploma Course. Nothing mentioned about the Post-Graduate Degree Course. The amended MCI regulation of 50% quota to in-service candidates was on record even on 20 October 2008.

9 The State therefore, knowing fully the effect of MCI Regulations under the Indian Medical Council Act (for short, the IMC Act) proceeded to continue with 25% seats for Diploma and for Degree Courses for in-service candidates, practically every year. Throughout the State, based upon the same, the respective students/officers have opted as per the declaration and joined and completed the Degree Courses. There is nothing on record to show that the MCI and/or such body, at any point of time, taken any decision and/or passed any order against the State and/or any other State, principally because, this has nothing to do with "the standard of education" and/or "qualification", for which they are empowered to regulate and control the education and its institutions.

10 We are not concerned in these cases any constitutional reservation issues and/or any such policy. The incentive/weightage so declared and announced is always in addition to the Constitutional Reservation as contemplated under Articles 15, 16 and other provisions. We are also not dealing with the rights and/or aspects of minority institutions as contemplated under Articles 29 and 30 of the

Constitution of India.

11 There was issue even based upon the policy so declared by the Government to what extent the reservation should be extended for Diploma/Degree Courses. Some students/candidates therefore, filed Writ Petition No. 5214 of 2012 ***(Dr. Vaishali Dilip Pawar & Ors. Vs. The Director of Medical Education and Research, (CET Cell) & Ors.)*** in this High Court. Even on that day the 2009 MCI regulation was in force. There was no issue whatsoever with regard to the percentage of providing seats only to the Diploma and not to the Degree Courses. The issue was with regard to the modality, which the State should follow and consider for these two courses. The Division Bench of this Court by Judgment dated 5 July 2012, in ***Dr. Vaishali (supra)*** after considering the various facets of Post Graduate admissions has recorded as under:-

> *"4 In order to understand the grievance of the Petitioners, it would be necessary to advert briefly to the factual position. In the State of Maharashtra, medical colleges fall into three categories : (i) Government Medical Colleges; (ii) Medical Colleges conducted by the Municipal Corporations; and (iii) Medical Colleges of private institutions including deemed universities. The in service quota to which the present proceedings relate is the quota that is available for candidates in the service of the Government of Maharashtra and are desirous of pursuing*

postgraduate degree or diploma courses. There is a similar quota for municipal employees in colleges conducted by Municipal Corporation(s) with which the present proceeding is not concerned. Of the total number of postgraduate seats, 50% are allocated to the All India quota. For the balance of the available seats, a Common Entrance Test is conducted. A separate merit list is prepared for in service candidates who are also required to appear for the CET. There are 23 subjects in which postgraduate degree courses are available in the State, but insofar as the Government Medical Colleges are concerned, only 21 subjects are available. These subjects fall into two categories viz. (i) clinical subjects involving contact between the patient and the doctor such as medicine, surgery, pediatrics and gynecology. There are 13 such subjects; (ii) Non-clinical subjects. The State Government has taken the position that for in service candidates, the 13 clinical subjects are of relevance because in service candidates are obliged to continue in government service after passing their postgraduate examinations. Consequently the reservation of 25% for in service candidates is applied after excluding seats allocated to the all India quota and non-clinical postgraduate seats. Presently a total of 237 seats in government colleges were available for degree courses in clinical subjects, of which 59 have been allotted to in service candidates. For diploma courses, of the total number of 96 seats, 24 are available for in service candidates.

5 The submission of the Petitioners is that the rationale for the Government Resolution dated 22 February 1996 and as noted in the earlier Government Resolution dated 24 October 1991, is the need to provide an incentive for candidates to enter government service after completing their M.B.B.S. Since medical graduates are unwilling to do so, government service was sought to be incentivised by setting apart a certain proportion of seats for in service candidates to pursue their

postgraduate studies either for a degree or diploma. Hence, it has been submitted that bearing in mind the aforesaid justification, there is no reason to exclude 50% seats of the all India quota and seats in non-clinical subjects, while working out the reservation for in service candidates. As noted earlier, the reservation for in service candidates was increased to 25% by a Government Resolution dated 22 February 1996.

6 ….

7 However, we find that there is a lack of clarity on the part of the government in the sense that it would have been appropriate for the government to come out with a comprehensive Government Resolution setting out the basis on which the reservation of 25% for in service candidates should be worked out. Since that has not been done, candidates are left in a state of uncertainty of the manner in which the reservation for in service candidates would be implemented. This is an unsatisfactory state of affairs. As we have noted earlier, even this Court was considerably handicapped without the Government Resolution dated 24 October 1991 being placed before it. Though the hearing of the Petition was adjourned on more than one occasion, that Government Resolution was not forthcoming. The Court has now been informed that admissions for postgraduate degree and diploma courses had been completed and there are no vacant seats for in service candidates.

8 In this view of the matter, we consider it appropriate to direct that in order to obviate the situation that has occurred for the present year, the State Government shall come out with a Government Resolution specifying the manner in which the reservation for in service candidates shall be worked out from the next academic year. We would expect that this exercise should be completed expeditiously and well in time, so that in service candidates for whom the reservation is intended to act as

an incentive, are not left in a state of uncertainty. The Petition is accordingly disposed of."

12 There is nothing even suggested and/or even argued with regard to the restriction of 50% for Diploma Course only in 2009 MCI Regulation. The Division Bench of this Court directed the State to come out with a GR, specifying the manner in which the reservation for in-service candidates should be worked out from the next academic year.

13 On 24 November 2012, without complying with the orders and directions given by this Court, the State Government proceeded for common entrance test. There is nothing on record to show and suggested that the State have challenged these two orders, at any point of time and/or till this date.

14 On 20 June 2013, in Writ Petition No. 5290 of 2013 this Court by an interim order directed not to proceed with the select list till 25 June 2013, (later on vacated also) and prayed to apply Resolution dated 22 February 1996. The modality and the manner was only the issue. The reference was also made to the earlier

Judgment. The Respondent-State issued a State quota for Post-Graduate Courses by notification dated 13 June 2013.

15 This Court again by order dated 4 July 2013 dealing with the distribution and reservation of the seats, including in-service candidates for Degree and Diploma Courses, by referring to the earlier judgment of Division Bench, ***Dr. Vaishali (Supra)*** (Writ Petition No. 5214 of 2012) dated 5 July 2012, again reiterated and directed the State in the following words:-

> *"4. The Common Entrance Test was held on 24/11/2012. One would have expected that in view of the directions given by Division Bench of this Court, the Government would have acted well in time and it ought to have issued the appropriate Resolution as per the directions given by this Court. However, unfortunately, no Resolution was issued either prior to 24/11/2012 or immediately thereafter. The Government however has issued two Resolutions, the first Resolution is dated 21/6/2013 and the other Resolution dated 2/7/2013 in which totally new stand has been taken by the State Government.*
>
> *5 Without going into factual aspect as to what decision has been taken by the Government in the first Resolution dated 21/6/2013 and second Resolution dated 2/7/2013, in our view, it would be appropriate to direct as an interim measure that since the Government has not issued the Resolution well in time as directed by Division Bench of this Court, the position which prevailed prior to the judgment of Division Bench of this Court (Coram:-*

Dr.D.Y. Chandrachud & R.D. Dhanuka, JJ) dated 5/7/2012 should prevail after this order. The interim stay which has been granted by this Court by order dated 20/6/2013 is vacated. Further process of admissions should commence.

6 So far as the effect of two Resolutions viz. Resolution dated 21/6/2013 and 2/7/2013 is concerned, the same can be taken into consideration at the final hearing of this Petition. Petition shall be heard and disposed of finally at the stage of admission. Further affidavit in reply, rejoinder to be filed within eight weeks from today."

The matters were kept thereafter for final disposal. Now listed accordingly.

16 In pending Writ Petition No. 5290 of 2013, as recorded above, on 4 July 2013, this Court has again directed the State to consider and distribute the seats based upon the then existing reservation policy and specially 1990/1996 qua Degree and Diploma Course in question.

17 The issue is that on 21 June 2013, the State again reiterated their own stand and 25% seats in each category reserved for in-service candidates after excluding the seats of all India quota. On 2 July 2013, the State for the first time relying on the Clause 9 (1)(b)

Regulation of the MCI and increased the Post-Graduate Diploma Course to 50% for in-service candidates, who are serving in remote and difficult areas.

18 Strikingly, in Resolution dated 21 June 2013, the State in preamble referred and mentioned the decision of this Court dated 5 July 2012 ***Dr. Vaishali (supra)***. By this Resolution, they have superseded the earlier Resolution dated 22 February 1996.

19 The State (Medical Education Department) within two weeks issued another impugned resolution dated 2 July 2013. Even in 2 July 2013 G.R., reference was made to the order passed by the Division Bench in ***Dr. Vaishali (Supra)*** dated 5 July 2012, though they referred also 2009 MCI Regulation. The reservation increased in respect of the Post-Graduate Diploma Course to 50% to in-service candidates. In this background, this Court on 4 July 2013, in a way stayed the implementation of GR dated 21 June 2013 and 2 July 2013 and directed the State for the purpose of continuing the admission process, to follow the earlier two GRs of prior to 15 July 2012. It is relevant to note that, till academic year 2012-2013, the State (Public

Health Department) followed 6 January 1990 and 22 February 1996 GRs/policy.

20 On 28 November 2013, the brochure of 2014 was published on the website by the Director of Medical Education and Drugs Department and Research (DMER), in which clause 7.1 announced that the seats will be distributed as per the GR dated 2 July 2013. At this stage, it is relevant to note that the confusion and representation made to the people at large and specifically the concerned students, with regard to the seats distribution for PGM-CET-2014, which reads as under:-

"NOTICE

In the PGM-CET 2014 brochure it is mentioned that the In-service quota shall be 50% of all diploma seats in Government Medical College after excluding All India Quota. Accordingly, seat position & category wise distribution (excluding all India Quota & In-service Quota).....

However it is requested by DHS that the In-service Quota shall be 25% of diploma & 25% of Degree seats as it was given since many years. Accordingly the seal position & category wise distribution (excluding all India Quota & In-service Quota).....

PGM CET 2014 – category wise seal distribution of private Unaided Medical College excluding Management Quota....."

21 The representation was continued with regard to the separate reservation of candidates from all the purposes, so also GR dated 3 May 2011, about the incentive and weightage. The website itself, in addition to the brochure in question i.e. Regulation for admission mentioned that the distribution of seats shall be either as per GR dated 2 July 2013 and/or as per the requisites received from the DHS prevailing the earlier 25% reservation for Diploma and 25% for Degree for the Post Graduate.

22 Such confusion was continued and as there was no communication whatsoever, the Petitioners filed Writ Petition No. 1937 of 2014 on 20 February 2014. On 21 February 2014, by tagging all these Writ Petitions, this Court has granted the relief on the statement made by the learned Government Pleader appearing for the State-Respondents. In view of this, the selection list not declared/published till this date. The statement again made and recorded in the order itself that they would like to consider the representation made by the Petitioners (Medical Officers) to restore the declared 50% for the Degree Course also. We have granted the

time accordingly.

23 Importantly, the respective contesting relevant departments of the State of Maharashtra are not in agreement with each other to grant 50% seats only for Diploma Holders and to take away the reservation seats of Degree Courses, in question. The State has issued clarification letter dated 1 March 2014 for the same.

24 This Court on 12 March 2014, therefore, recorded as under:-

> *"1] Writ Petition No.2402 of 2014 is not on board, mentioned. Taken on board.*
>
> *2] All these matters are heard in view of the urgency expressed. The learned GP appearing for the State of Maharashtra, who is contesting party, submitted that the Medical Education and Drugs Department, State of Maharashtra insisting that no seats would be made available to the in service Medical Officers (MBBS Degree holders) in Government Hospital for the Post Graduation Degree Courses. That decision as alleged based upon the Resolution/Policy of MCI (MCI Regulations 2000).*
>
> *2] However, the Public Health Department (State of Maharashtra) seriously contending that the said Policy is not in the interest of Medical Officers working in Health Department. Therefore, there is a clear conflict within the Department itself of the State of Maharashtra.*

3] Learned counsel appearing for the Petitioners in Writ Petition No.1937 of 2014 pointed out, apart from other judgments, a recent judgment in case of Christian Medical College Vellore & ors. Vs. Union of India, where according to them a Medical Council of India Regulations of 2000 has substantially superseded and therefore in view of the decision, the present Government Circular/Resolution whereby, the Medical Officers (MBBS Degree Holders) rights have been taken away, need to be tested/considered. Therefore, in view of above, at this stage, we are inclined to grant one week time, as a last chance, to resolve the dispute/conflict so referred above. Stand over to 18.3.2014, high on board.

4] Interim relief, based upon the statement made, to continue till then."

The interim order so passed based upon the statement made is still continues.

25 The State (Public Health Department) deals with providing medical services to tribal and non-tribal or rural area in Maharashtra. They have mechanism to appoint/select specialists which are required for the community. All, inspite of bonds, are not joining rural services. Once the in-service candidates joined Post-Graduate Degree Course, they would have no choice but to join such services after post graduation also. No reason to restrict only for Diploma Course, by

overlooking the importance of Degree Courses and need of speciality services. Nothing on record to show that the State's Public Health Department was even consented for the sudden change. This itself shows non-application of mind by the Public Health Department of the State , apart from needs of the community. It is certainly not within the domain and authority of the State. In Writ Petition No. 2019 of 2014, ***Dr. Jayant C. Parwate and ors. (Supra),*** for above supporting material is placed on record, which also remained uncontroverted. The following observations made in ***Christian Medical College Vellore & Ors. Vs. Union of India & Ors.***[1] supports the case of Public Health Department, requirement of Degree avenue for in-service candidates also. It noway eliminates the right and entitlement of the Petitioners and so also the requirement of special doctors, degree holders in rural areas. The relevant paragraph reads as under:-

> *"176. There can be no controversy that the standard of education all over the country is not the same. Each State has its own system and pattern of education, including the medium of instruction. It cannot also be disputed that children in the metropolitan areas enjoy greater privileges than their counterparts in most of the rural areas as far as education is concerned, and the decision of the Central Government to support a single entrance examination would perpetuate such divide in the name of giving credit to merit. In a single window competition, the disparity in*

1 (2014) 2 S.C.C. 305

educational standards in different parts of the country cannot ensure a level playing field. The practice of medicine entails something more than brilliance in academics, it requires a certain commitment to serve humanity. India has brilliant doctors of great merit, who are located mostly in urban areas and whose availability in a crisis is quite uncertain. What is required to provide health care to the general masses and particularly those in the rural areas, are committed physicians who are on hand to respond to a crisis situation. Given the large number of people who live in the villages in difficult conditions, the country today has more need of such doctors who may not be specialists, but are available as general physicians to treat those in need of medical care and treatment in the far-flung areas of the country, which is the essence of what was possibly envisaged by the Framers of the Constitution in including Article 30 in Part III of the Constitution. The desire to give due recognition to merit is laudable, but the pragmatic realities on the ground relating to health care, especially in the rural and tribal areas where a large section of the Indian population resides, have also to be kept in mind when policy decisions are taken in matters such as this. While the country certainly needs brilliant doctors and surgeons and specialists and others connected with health care, who are equal to any in other parts of the world, considering ground realities, the country also has need for "barefoot doctors", who are committed and are available to provide medical services and health care facilities in different areas as part of their mission in becoming doctors."

(Emphasis added)

26 Importantly, in all these new matters the Respondents have not filed any reply till this date, though time was granted on various occasions. There is urgency in view of the case so referred above,

apart from the interim order passed by this Court. Only in Writ Petition No. 5290 of 2013, a reply was filed prior to order passed by this Court on 4 July 2013.

27 On 12 March, 2014, this Court again granted one more opportunity and adjourned the matter, so that the Chief Secretary and/or the State/Higher Authority can take a decision in the matter, in view of clear conflict between two relevant State Departments. It is not because there is a conflict between the Departments, but it is because, if the State has a power to change a policy/decision, it cannot be on the basis of such shaky foundation in view of conflict of views between the concerned Departments itself.

28 There cannot be any dispute with regard to the power and authority of the State Government and/or such authority to take decision. But should be based upon the sufficient and clear material and specifically when it is a question of change in alleged policy of abolishing the reservation of 25% for Degree courses, based upon the alleged (17 November 2009) Clause 9(3) of MCI Regulation. The amendment itself recognized the requirement of in-service seats,

though insistence made for Diploma Course only.

29 The conflict between the two departments itself shows that they themselves are not sure before taking such a drastic decision to abruptly change the long standing policy. The Respondent-State to implement and/or to abrupt change of policy, definitely required sufficient material and the circumstances in the interest of people at large.

30 The conflict between the two departments that they themselves are not sure which part of the policy prior and/or new is in the interest of public at large. Normally, the scope of writ jurisdiction is very limited so also the power of judicial review, but when it goes to root of deciding the action and/or inaction of the State, even with regard to the change in distribution of seats, thereby completely restricted the admission of the students/Medical Officers for the Degree Course, it is revocable.

31 We are not deciding and/or neither there is an argument made that the other reservation so granted, qua diploma and/or open

candidates and/or All India Quota, are bad in law. The restrictive submission is the change of policy decision, as alleged only with regard to the students/Medical Officers, who wants to and/or who are in a given case, could have opted for the Degree Course. There is no much issue with regard to the rights and entitlement of in-service candidates. The class is recognized and accepted by all and so also its Authorities. There is no even change to that effect in the rules. Therefore, there is no reason to deal with the requirement and/or existence of in-service clause/sources so created in so many years. The restriction so put up without assessing or discussing anything suddenly, is an additional factor as there are apparently absent from the preamble and/or impugned circulars/notification. Though the reference is made to the earlier order of this Court ***Dr. Vaishali (Supra),*** they overlooked and misinterpreted the judgment. The state relied upon those 2009 Regulations in support of their change in stand. This sudden and abrupt decision by overlooking the pending Petitions and decisions given by this Court, definitely required to be tested under Article 226 of the Constitution of India.

32 The learned Government Pleader appearing for the State ,

in his argument submitted that those concerned 2009 MCI Regulations even if any, are directory only to this extent of distribution of in-service seats between Diploma and Degree Course. We are not concerned with ongoing procedure or qualification and/or percentage of marks. Even these medical regulations recognizes the importance of percentage and weightage for in-service candidates. We are also not concerned with infrastructure or teaching standard of medical education. The MCI or such authority cannot control admission procedure or take away the rights or power of the State to frame admission rules and distribution of seats as per requirement. Those 2007/2000 regulations are in doubts and questioned. The learned counsel appearing for the MCI and other Petitioners of open candidates category however, referring to various Supreme Court Judgments and observations submitted that those are mandatory. The learned counsel appearing for the Petitioners referring to the Supreme Court Judgment ***Christian Medical College (Supra)*** and even referring to the relevant notifications under the Indian Medical Council Act (for short, "the IMC Act") including the subsequent notifications, (amending the 2000 MCI Regulations) pointed out that 2009 Regulations are superseded and/or cannot be relied upon by the

State, in view of subsequent Regulation of 15 February 2012 w.e.f. 27 February 2012.

33 The reference to Clause 9(b) of 2009 Regulation dated 17 November 2009 in the State Resolution by overlooking subsequent regulations and/or effect of the Supreme Court Judgment ***Christian Medical College (Supra)*** on the same, is an another factor. The State has taken this decision by not applying its minds, not only to the direct Judgments passed by this High Court but also to the Supreme Court. They have changed the policy stating it to be in the interest of Diploma Course only. There is no challenge so far as the MCI Regulations to the extent of insistence for 50% reservation only for Diploma. Even if there is any insistence so referred, in no way accepted and/or followed even by the State till the impugned circulars/policy. The MCI Regulations, even if we read, no way restricted and/or debar that there should be no reservation whatsoever for Degree Course. It is relevant to note that we are not dealing with the "standard of education" and/or "qualification issue" and "Constitutional reservation". It is legally recognized two sources, for the Post-Graduate Courses. The restriction so imposed by this

notification/the circulars of the State only for the Post-Graduate Degree Course, therefore needs to be tested on the touch-stone of Article 14 of the Constitution of India.

34 There cannot be any issue so far as the State's rights to frame or change the State policy or such Regulation. The admission rules flows from Article 162 read with entry 25, 26 of the list III, subject to entry 66 Scheduled VII, List I of the Constitution of India. But, at the same stroke, it is difficult to overlook all these provisions which entitled and/or empowered the State and/or MCI to control and/or regulate, even the admission process of this nature, all are *"subject to"* other Constitutional provisions. This definitely includes, Article 14, as well as, the Article 41 of the Constitution of India. The concept *"subject to"* is discussed by this Court in ***National Seed Association of India & Anr. Vs. The State of Maharashtra & Ors.***[2]. The relevant portion of the same reads as under:-

> *"23 .....*
>
> *18. In K.R.C.S. Balakrishna Chetty & Sons & Co. v. State of Madras, this Court was interpreting Section of the Madras General Sales Tax Act, 1939 in which the words "subject to" were used by the legislature.*

2 2014 (1) Mh.L.J. 34

This Court held that the use of words "subject to" had reference to effectuating the intention of law and the correct meaning of the expression was "conditional upon". To the same effect is the decision of this Court in South India Corpn. (P) Ltd. v. Board of Revenue where this Court held that the expression "subject to" conveyed the idea of a provision yielding place to another provision or other provisions to which it is made subject.

19. ….

20. In B.S. Vadera v. Union of India this Court interpreted the words "subject to the provisions of any Act", appearing in the proviso to Article 309 and observed: AIR p. 124, para 24),

> *"24. It is also significant to note that the proviso to Article 309, clearly lays down that 'any rules so made shall have effect, subject to the provisions of any such Act'. The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning unless hedged in, by any limitations. The rules, which have to be 'subject to the provisions of the Constitution', shall have effect, 'subject to the provisions of any such Act'. That is, if the appropriate legislature has passed an Act, under Article 309, the rules, framed under the proviso, will have effect, subject to that Act; but, in the absence of any Act, of the appropriate legislature, on the matter, in our opinion, the rules, made by the President or by such person as he may direct, are to have (full) effect, both prospectively and retrospectively."*

21. ...

> *22. There is in the light of the above decisions no gainsaying that Section of the Act is by reason of the use of the words "subject to the provisions of Section 31" made subordinate to the provisions of Section 31. The question whether an appeal would lie and if so in what circumstances cannot, therefore, be answered without looking into Section 31 and giving it primacy over the provisions of Section 30. That is precisely the object which the expression "subject to the provisions of Section 31" appearing in Section 30(1) intends to achieve.*

This itself means that the State Legislature is empowered to enact laws even if it falls within the ambit of Concurrent List. However, it is "subject to" the Central enactment's provisions. The State, therefore, is competent to enact the laws after taking note of above provisions. The State Legislature, therefore, if enacts laws for the respective State based upon the need and to achieve the object revolving around the State conditions and in the interest of particular class or community, in the present case consumer/farmer/agriculturist the issue of repugnancy and/or inconsistency even if any, need to be tested on the basis of actual comparisons of the respective provisions of Central as well as State enactments. The comparison itself requires the existence of two conflicting laws."

There is no repugnancy and/or conflict of any power by the State. In the present case as it is prerogative of State to frame Post-Graduate admission rules in question, based upon the declared policy. The State's power and authority flowing from Article 162 of the Constitution of India, is also "subject to" all other constitutional obligations and provisions including the boundaries of Articles 14 and 41.

35 The facet of Article 14 includes the reasonable classification. For whatever may be the reason, at this stage, in view of their own conflicts in between the two departments, it is sufficient to observe that as they themselves are not clear to implement and/or not to implement, therefore, they have clearly taken shelter of 2009 MCI Regulation and tried to justify their abrupt stand. The rights of the Petitioners to opt for Degree, if curtailed by such decision, they ought to have provided with the reason and/or the decision. They cannot act abruptly and discriminately by taking away the rights of in-service candidates, to have an option of higher Degree Courses and/or specialized courses in the field but kept open avenue only for Diploma Course.

36 At this stage, it is necessary to observe that every student, one who passed MBBS examination, though they are treated as Medical Officer "in-service candidate", their rights and entitlement to have a higher study of their choice, just cannot be curtailed in such fashion without even giving sufficient time and/or notices. We are referring to this notices and intimation in the present facts and

circumstances for the simple reason that even pending these Petitions, it was pointed out that the State would like to consider the representation made by the Petitioners. One Department is not agreeing with the another department, therefore, it is difficult for them to file reply even to these Petitions. Sudden decisions, therefore, as taken, in my view, cannot be stated to be within the State Government powers/domain and even if they have such powers, required to be and are liable to be tested. In the present case, it difficult to accept that it is well within the framework of law and the Regulations apart from their long standing and consistent representation/circulars. The State, for want of specific challenge cannot take away the seats of in-service candidates, on the foundation of "Reservation for in-service candidates affect also the open seats which are available to meritorious students". This is contrary to their own circulars and other clauses of the impugned circular.

37 It is necessary here to note again that the State under the Constitution itself required to provide all resources to all the concerned for the education. When we deal with the rights of education and which just cannot be restricted in such fashion by any

authority including the State and/or MCI to insist for arbitrarily directed avenue to these in-service candidates only for Diploma. The situation is, the person who have based upon the original consistency declared policy since 1990, proceeded and actually acted upon by joining the services with clear intention to get the weightage/incentive so declared, the impugned order/action, therefore, even not taken care of such situation and/or rights of such candidates. The submission that even Diploma holders have an avenue for higher education including Ph.D is of no assistance, when the avenue of Degree Course and/or Specialized Course in fact recognized and acted upon by the students/Petitioners like person, including the State.

38 The effect of this policy, if we accept, means hereinafter the representation is given to the students at large and basically when we are dealing with the medical education, where right from a preliminary examination, the student decides and determines to proceed in the particular field of medicines. The specialized doctors and/or specialized Degree holders and their demand in the society, just cannot be overlooked. Whatever the material, the State cannot compel such in-service candidates to join and/or avail avenue of

Diploma only. It was never contemplated and/or even represented, till they completed the basic course, which now entitled them, as of right, to claim weightage/incentive.

39 For the students and/or the Medical Officers and whosoever wants to go to higher study, there is always a competition. The level of competition, because of various reason, is to the extent even to one or two marks, that changes their career and life. The students after taking note of incentive/weightage, read with own intellectual capacity, if has decided to go through the declared channel, which is permissible policy in law, and they acted accordingly, so also the State by providing them incentive, including requisite payment at the relevant time and facilities as they were working and rendering their services in the rural areas, now to say that the State has power to change the policy at any time, and no one should interfere and/or entertain and/or interfere with the domain of government, in my view, is unacceptable from the point of view of the Petitioners' crystalized rights and entitlement.

40 The Supreme Court, in ***Monnet Ispat and Energy Limited***

Vs. Union of India & Ors.[3] recently and even otherwise recognized the doctrine of "Legitimate Expectation" "Promissory Estoppel" to mean and read and include "rule of law", "trust". The relevant principles are as under:-

> *"1. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.*
>
> *2. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.*
>
> *3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.*
>
> *4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.*
>
> *5. The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."*

41 Here again, the aspect of government domains and the

3 (2012) 11 SCC 1

policy decision, including the change of admission rule of any course, at any time, always read and means on the sufficient material and/or justifiable reason for the same. The policy can be tested, being discriminatory, arbitrary and not in the interest of people at large. It is difficult to accept the submission that they are also achieving some announced purpose.

42 There is no incentive/weightage given, if in-service candidates want to go for Degree Course. Such restriction is contrary to the Constitutional provisions for the simple reason that the State's obligation to provide/give medical services at the rural areas will be restricted. The student one who wants to go for Diploma Course will join the services for incentive/weightage. The issue is, if the whole world recognized that the Degree course including the specialized medical field and some one who after taking note of Government policy, actually worked in the rural areas now wants to claim the weightage and incentive rights, but now in view of this, the insistence is, as the State has a power, they can change this policy and control even such students career and restricted everyone whosoever in-service and directed to go for the Diploma, in no way can be stated to

be achievable object and/or it is in the Public interest.

43 The Petitioners in Writ Petition No. 1933 of 2014 (open category)(Non- in-service category), supported the stand of the State, as well as, the MCI and contended that the Regulations need to be implemented as it is. The open candidate/non-service candidate challenged only with regard to the Degree avenue, and not the Diploma, itself shows that they are apprehending that the candidates one who get admission in Degree course through their in-service channel/sources, are direct competitor with the meritorious students, based upon academic marks. The challenge is not bonafide. It is half hearted. The 50% Diploma or 25% in two part, the quota of open category remain same. It is settled that the meritorious candidates need to be given preference, the open category candidates on their own merits are entitled to get the Degree avenue. But the Petitioners like person, in view of above, have deprived of their rights to get Degree avenue, therefore, the challenge and/or the case of the Petitioner/open category for the reasons so recorded above, is difficult to accept.

44 The other submission that being Government employee of the Government and as there was no condition and/or advertisement provided at any point of time while permitting them to join the services that they would be provided this incentive and/or weightage, is absolutely unacceptable for the simple reason that their incentive has nothing to do with their service conditions. Both things are difficult. There was nothing expected and/or declared that for want of such service condition and/or whosoever join such services, they are not entitled for any weightage and/or such incentive for Degree Course. Both these rights are different from the respective point of view and in any way, not acceptable. I am deciding the issue of their weightage and incentive, based upon the admitted fact of their service in rural areas. The submission was also made that higher study avenue is also available for the Diploma holder and therefore, there is nothing prevent them from having higher study including PhD. It is hard to accept such submission as the third person and/or party cannot dictate how, when and which course student should adopt to get the higher degree. For the reasons recorded above, there is no question to entertain the Petition filed by the non-in-service candidates.

45 The reference was made to a full bench judgment of this Court in ***Ashwin Prafulla Pimpalwar Vs. State of Maharashtra***[4] saying that the power of State to change the admission rules, just cannot be interfered with and/or tested. They have power to change the admission rules. Apart from the facts of the case and the reasons so recorded above, the same Full Bench Judgment itself clarified that "if change warrants, then only change is permissible". The relevant paragraph 54 reads as under:-

> *"54. That in relation to policy matters the Courts would not ordinarily interfere with the Government decision does not, however, mean that the Government can act arbitrarily. That would be totally destructive of the Rule of Law and the Constitutional Scheme and the peculiar position of the Government in a constitutional set up. Arbitrary decisions would be inconsistent with Article 14 of the Constitution. The minimum that is, therefore, necessary is adverting to the relevant material, eschewing all irrelevant considerations and a proper exercise of mind. More serious thought process is required, and clearer indication of application of mind is mandated, when the change is striking, and the impact is massive, affecting a considerable segment of the society or an important aspect of life. In the present case, therefore, a change should have been, as indicated in the Gujarat case, preceded by views expressed by expert bodies like Medical Council, competent authorities like the University, or suggestions and views of a*

4 1991 (2) Mh.L.J. 1336

committee or a commission appointed in that behalf, and the like."

As reproduced itself provides the power of Writ Court if action/policy is arbitrary and reflects non-application of mind. This judgment itself recognized the requirement of clear view and opinion of all the departments/committee, which are missing here.

46 As I have recorded, there is nothing to support and/or can be the foundation for the State to change the rules for the first time, based upon the MCI Rules of 2000, which itself is in doubt. The Supreme Court Judgments on the "principle of promissory estoppel" and "legitimate expectations" and even otherwise, are required to be applied upon the undisputed facts and circumstances of the case. The Supreme Court has elaborated these doctrines referring to the earlier Supreme Court Judgments, which are not at all considered in the Full Bench of this Court. The Supreme Court therefore, elaborated the doctrines and expressed that there is no total bar however, certain conditions are required to be tested. The observations so recorded above, definitely falls within the ambit of those reasons which compel to test the action of the Respondents-State. The consistent representations according to the Supreme Court itself amounts to the

promise which the students or candidates have followed and acted upon it. (***State of Haryana & Ors. Vs. Jagdish[5]).*** In the present case even the State has acted upon it for long. Therefore, the State action is arbitrary, discriminatory and different treatment has been given to equals without clear elaborated reasons in spite of the judgments. Above doctrines itself are additional factors which required to be invoked against the State.

47 The law always regards and respects a reasonable classification for the declared purpose and object of the State. It is quite settled. Having recognized these two sources, Diploma and Degree Course and provided these channels to the person like the Petitioners, who have completed the required services, now to take away such avenue and restricting it to diploma, falls within the ambit of "discrimination", "breach of rule of law" and "trust". ***(State of M.P. & Ors. Vs. Gopal D. Tirthani & Ors.[6]).*** The crystallized rights of weightage/incentive which accrued, based upon the positive action/representation made by the Government, therefore, just cannot be taken away. There is no question of even asking for any

5 (2010) 4 SCC 216
6 (2003) 7 SCC 83

compensation and/or damages because of this complex policy decision, when the State itself is not sure to follow and/or not to follow their own conflicting decisions. Having provided option and/or avenue of higher education/specialty courses, which are essential in this competitive world, just cannot be restricted in such fashion, as it is not in the public interest and the community and for the future generation to come. This is for the simple reason that by this, the State is not encouraging the students and/or candidates to render their services in rural areas in State of Maharashtra, though for the fixed period, even after getting higher Degree. The encouragement is now, to continue to study without rendering service in Government hospitals, clinics and get the Degree Course. The experience of medical officers, who have been actually and practically working in these hospitals/clinics, cannot be stated to be of no use and cannot be stated to be that they are less meritorious compared to the open candidates, because of their academic merit. The non-in-service candidates are able to participate in this admission process, without attending and/or without going and/or without rendering their services in the rural areas. The merits, if we talk about, in this medical profession definitely need and mean, not only academic but

also of medical practice and experience. Therefore, to deny these Petitioners their avenue in such fashion is again treating "equals unequally" for no reason. This no way read to mean that meritorious students need not be given preference but that does not mean that the students one who have rendered such services and one who wants to avail Degree avenue, need to be denied their rights only because this time and this year, the Respondent-State wanted to take note of 2000 MCI Regulation and/or they have discovered undisclosed material, though there is conflict of views of their departments, to suggest that there is or no justification for restricting this higher study avenue only for the Diploma Course.

48 The submission is also made that, there are promotional posts for both the cadre, including the Civil Surgeon and the post of Dean of the Colleges. Normally the Dean is appointed in the State of Maharashtra on the basis of Degree only and not the Diploma. This fact just cannot be overlooked. It is difficult to accept the situation like this, where the State wants to cut down such promotional posts, which they have not actually deleted with regard to the promotional channel from Post-Graduate degree. The impugned action is not in

the public interest or in the interest of administration.

49 Even otherwise, the Constitutionally recognized percentage and reservation, just cannot be under the guidance and/or control of the authorities like MCI and/or the university. The state and all the concerned authorities required to follow the Constitutional reservation as per the law. Therefore, there is no question in the present case, even to issue any writ of mandamus and/or similar writ for the same. In the present matters, there is not even challenge to the entitlement of in-service candidates and/or their rights, though at present restricted to 50% for Diploma Course. No avenue whatsoever, made available for the Degree course. There is also no dispute with regard to the incentive/weightage so given/provided not by the Government but also by the MCI. Those incentive/ weightage/ provision is not restricted only for the Diploma, it is for all in-service candidates. However, the effect of subsequent MCI amendments, as referred and dealt with in ***Christian Medical College Vellore (Supra)*** was not at all considered by the State and even by the open candidates or MCI in their submissions and/or otherwise. In this process, there is nothing which affects and/or takes away the rights of

open candidates. The effect even if any, in view of the earlier policies so far as the State is concerned, will be of the candidates who wants to opt for Diploma Course only. There is no such challenge or opposition even raised by those candidates. Therefore, the challenge at the instance of State and the open candidates supporting the policy and opposing the Petitioners' contentions is unacceptable and liable to be rejected.

50 There is no case of change in policy which is intended to affect the qualification standard and standard of Education, or any financial burden. The issue is to direct them to continue with the last year policy of distribution of seats, which one of their own department, wants to continue and other department to abolish the same. The action cannot stated to be based upon the material and/or exigencies of the situation and any administrative necessity, specially when there is nothing to show that this historical and first time elimination falls within the public interest and necessarily of the administration. Considering the requirement of expert/specialised medicine doctors/officers/ is not in the interest of general public. The total abolish of Degree avenue is the issue, not the restrictive

percentage even if any. The writ Court, therefore, has no option but to interfere with the decision, based upon the vague and scanty material on record. The Government decision suffers from discrimination, arbitrariness, non-application of mind to the law and the requirement of medical education and its utility in the society, including rural/tribal areas. This is not even a case of financial implications. The consistency, trust, logical and valid and fairness regularity, certainly in State dealings are the essential elements of any public law for the public administration to perform multifaceted constitutional obligations. It should not be irrational, arbitrary, discriminatory, non-reasonable for public good. The Respondents have failed to consider and give weightage to their own consistent and effective practice of providing limited avenue for Degree course, in the present facts and circumstances of the case, therefore, acted arbitrarily and misused its power. The claim and the rights of the Petitioners are based on, admitted facts and the sanction of law, on established practice since so many years, which was in public interest. The claims are legitimate and protectable. The Judicial review is therefore, imperative.

51 These amended rules by the State are not applicable to the

local bodies in service candidates, though they are also under Supervision of IMC Act and regulations. The selection process, by which Post-Graduate Degree avenue is excluded totally from consideration by adopting wrong and vague methodology, such change in policy cannot be accepted. It prevents the entry of such medical officers to the Post-Graduate course itself. ***(Duddilla Srinivasa Sharma & Ors. Vs. V. Chrysolite)***[7]***.***

52 In the present situation, therefore, we are concerned with the earlier circulars/policies based upon the long standing representation of providing 25% avenue to the diploma and degree and related conditions. Therefore, once the action as recorded above is illegal, contrary to law, discriminatory, arbitrary and not in the interest for people at large, as well as, the Constitutional provisions including Articles 14 and 41 of the Constitution of India, the Court therefore, by invoking this writ jurisdiction and interfering the policy/circular only to this extent and to fill the lacuna/vacuum at this stage of the admission directing the State to stick to the last year scheme and policy of 2012-13 and 2013-14, as that will be in view of

7 AIR 2014 SC 558

their own earlier declaration and the representation to the students at large. This in no way can be stated to be directing the State Government to frame new policy and/or provide interference with the reservation policy at any point of time. It is also made clear that the State of Maharashtra and/or such authorities like corporation who runs their own hospitals, in a given case, are entitled to fix the percentage. In the present situation as no percentage whatsoever provided for Degree avenue therefore, their action tested in the present Petitions, which I am inclined to accept. To follow the last year percentage and practice/policy is workable solution, unless such policy and/or decision the State able to take before proceeding with the next stage as per the scheduled so recorded above. I am not interfering with the rest of the notification, not inclined to give opinion how to implement their own policy of providing avenue for Degree, as well as, the Diploma.

53 For the above reasons the submission revolving around the Maharashtra University Act is also unacceptable. The University and/or such authorities are also and always under obligation to follow the standards of education, including the qualification so prescribed

and announced including the directions, as well as, the orders issued by the State. They cannot have such regulations neither they have any jurisdiction to frame and control it.

54 The submission revolving around the Maharashtra University Health Science Act, 1998 (for short MUHS Act) with regard to “control and “regulate” and to distribute the seats at Graduate and post-graduate level is unacceptable. The power and authority based upon the constitutional provisions cannot be permitted by the University Act, so far as medical/dental education and relates aspects. The well recognized “control”, regulation/rules under the IMC Act and regulations cannot be taken away by the MUHS Act. This in no way sufficient to deny the Petitioners' right/entitlement. The limited role of the University to register and/or enroll students and to control examinations and its results in time, just cannot be overlooked. The power is different and so also the field. The submission revolving around the MUHS Act are rejected for above reason itself.

55 As noted above I am not concerned with the standard of education and/or qualification. The admission avenue based upon the

recognized mode and sources providing for Degree, as well as, the Diploma in no way can be stated to be the matter of breaching any alleged mandatory orders/directions of the MCI. The State's submission that these directions in question of providing 50% avenue only for Diploma holder is directory and not mandatory. Now, the same is fortified and confirmed even in the Supreme Court Judgment ***Christian (Supra) and Satyabrata Sahoo & Ors. Vs. State of Orissa & Ors.***[8], where the effect of such insistence have not been accepted. The State , the MCI, as well as, the open candidates submission by overlooking this and submission to maintain the notification as it is stating it to be within the domain and power of the State is therefore, unacceptable.

56 The issue of jurisdiction, the Petitioners being in-service candidates is also not acceptable in view of earlier orders passed by this Court and the pendency of the present Petitions, specially at this state of final hearing of the matter.

57 In view of this, it is necessary to make the position clear

8 (2012) 8 SCC 203

with regard to the entitlement of present Petitioners and/or similarly placed persons, with regard to the respective percentage of Diploma and/or Degree. The submission is therefore made that on the basis of GRs of 22 February 1996 and 21 June 2013, last year the seats were distributed. As I am accepting the submission that the reservation/distribution of the seats should be on the basis of original declaration of 1996 circulars, though circulars were already superseded, but as I am inclined to set aside 2/7/2013, 1/4/2014 impugned policy in question only with regard to deletion of degree course from such in-service reservation. There is no question of creation of vacuum, once the impugned circular/letter set aside. The position/rules/operating before coming into force of the impugned circular be restored for this year 2014-2015. The state may, if time permit frame policy/admission rule in view of above reasons. The admission process should not be hampered/stopped. I am inclined to observe so far as the rights of State to fix the percentage, as they are free to do so, the percentage so fixed for two sources each Diploma and Degree, need to be followed for the year 2014-2014 in the circumstances.

58 It appears from the material placed on record, including the judgments that the total degree seats available on 5 July 2012 were as under:-

(25% Degree and 25% Diploma from the available seats after excluding 50% All India Quota)

Sr. No.	TOTAL DEGREE SEATS AVALABLE	SEATS AVAILABLE FOR IN SERVICE CANDIDATES	SEATS AVAILABLE FOR NON IN-SERVICE CANDIDATES
1	248	62	186

(25% Degree and 25% Diploma from the available seats after excluding 50% All India Quota)

Sr. No.	TOTAL DIPLOMA SEATS AVALABLE	SEATS AVAILABLE FOR IN SERVICE CANDIDATES	SEATS AVAILABLE FOR NON IN-SERVICE CANDIDATES
1	92	23	69

This, therefore on similar line and scheme can be extended for this 2014-2015 year also to avoid further delay and confusion/complex.

59 The following schedule is fixed by the Supreme Court for

the admissions to the Post Graduate Medical Courses by order dated 14 March 2014, in WP (Civil) No(s). 433 of 2013 ***(Dr. Fraz Naseem & Ors. Vs. Union of India & Ors.)***:-

Schedule for admission of post graduate courses:-

	Broad Speciality State Quota	All India Quota
1st round of counselling	To be over by 30th March	Between 4th April and 16th April
Last date for joining the allotted college and course	7th April	26th April
2nd round of counselling for allotment of seats from waiting list	27th April to 3rd May	9th May to 13th May
Last date for joining for candidates allotted seats in 2nd round of counselling	10th May	24th May
3rd round of counselling (Round for filling up seats reverted fro AIQ/other vacant State Quota seats)	20th June to 25th June	25th May to 9th June
Last date for joining for candidates allotted seats in 3rd round of counselling	30th June	19th June
Commencement of academic session	30th June	30th June
Last date upt to which students can be admitted against vacancies arising due to any reason from the waiting list.	10th July	Not applicable.

60 There exists legal and constitutional infirmity, also in view of apparent conflict of opinion between the two State Departments. The decision taken to abolish the degree avenue for this year 2014-2015 in admission, is arbitrary, irrational, discriminatory and violation of Articles 14 and 41 of the Constitution of India. The present admission for Post-Graduate Degree Course be modelled on the last years 2012-2013/2013-2014 scheme as announced/noticed on inter-net for this year 2014-2015, as reproduced on paragraph No. 20 of this Judgment, and to act accordingly.

61 In view of above, the following order:-

ORDER

a) Government Resolution dated 2 July 2013 to the extend of deleting in-service reservation for a degree course, is set aside, so also following letter dated 1 March 2014. Rest of Resolution dated 2 July 2013 is maintained.

b) The Post-Graduate distribution scheme followed last years i.e. 2012-2013 and 2013-2014 should be made applicable for the in-service candidates for admission to Post-Graduate Degree of this year 2014-2015, also or by framing admission rules/policy immediately, if time and the law permits on the basis of the Judgments of this Court.

c) Interim orders stand vacated.

d) The State to act accordingly, as early as possible.

e) All the Petitions are accordingly disposed of.

f) There shall be no order as to costs.

(ANOOP V. MOHTA, J.)

62 At this stage, my learned brother M.S. Sonak, J. expressed that he would like to give a differing judgment, however, needs time to deliver a differing judgment. Stand over to 24 March 2014 to pronounce the differing judgment.

(M.S. SONAK, J.) **(ANOOP V. MOHTA, J.)**

JUDGMENT:- (Per- M.S.SONAK, J.) (Dissenting)

Reserved on : 20 March 2014
Pronounced on : 24 March, 2014

1] With deepest respect to my elder brother, I am unable to agree with the opinion now expressed by him. Hence, the present dissent.

2] The Petitioners in these batch of Petitions (except Writ Petition No.1933 of 2014) in effect, seek an appropriate writ to direct the State of Maharashtra (State) to provide for '*reservation*' or a '*quota'* of 25% seats for "*in-service candidates*" at the Post Graduate Degree Courses for the academic year 2014-15 at State run Medical Colleges.

3] As of now, the PGM-CET 2014 Brochure issued by the Directorate of Medical Education and Research (DMER), at clause 7.1 provides that the seats available for admission to medical postgraduate courses will be distributed as 50% to all India Quota and remaining 50% to the State Quota. From the State quota all the PG Degree Seats will be distributed to regular PGM CET (Non In-service) candidates. Further, from the State quota 50% Diploma

Seats from Government Medical Colleges will be distributed to the In-service Candidates from the Public Health Department and ESIS Department as per GR of Medical Education and Drugs Department No. 1013/CR 137/ Edu-2 dated 2.7.2013.

4] Thus, in terms of clause 7.1 of the aforesaid Brochure to be read with GR dated 2.7.2013, the State has provided for a reservation or a quota to the extent of 50% Postgraduate Diploma Seats to the in-service candidates. By this batch of Petitions (except Writ Petition No.1933 of 2014), the Petitioners who are in-service candidates, seek reservation or quota in respect of Postgraduate Degree Seats for the academic year 2014-15. The reliefs in each of the Petitions are not happily worded. However, in substance, the Petitioners seek a writ of mandamus to strike down the GR dated 2.7.2013 and to provide for reservation or quota in respect of Postgraduate Degree Courses.

5] The facts necessary for appreciation of the challenge are few and not in serious dispute. There is no dispute that the Petitioners are employees of the State rendering services as "*Medical Officers".* Consequently, the Petitioners clearly answer the definition of '*in-service candidates'.* By Government Resolution (GR) dated 6.1.1990, the State was pleased to reserve 15% seats for

Postgraduate Degree Courses and 25% seats for Postgraduate Diploma Courses for in-service candidates in purported compliance with the directives of the Supreme Court in the case of *State of Maharashtra vs. Anjali Thukral. B*y GR dated 22.2.1996, the percentage of reservation for Postgraduate Degree Courses was increased from 15% to 25%. On or about 11.6.2012, Writ Petition No.5214 of 2012 came to be filed in this Court seeking *inter alia* a direction to the State to specify the manner and modality for determination of the precise content of 25% of reservation in Postgraduate Degree and Diploma Courses for the in-service candidates. This Petition was disposed of by judgment and order dated 5.7.2012 to which reference in some details shall be made hereafter. Suffice at this stage to mention that by judgment and order dated 5.7.2012 directions were issued to the State to come out with a GR specifying the manner in which the reservation for in-service candidates shall be worked out from the next academic year, i.e., 2013-2014, so that the in-service candidates for whom such reservation is intended to act as an incentive, are not left in a state of uncertainty. As there was no compliance with the directions issued by this Court on 5.7.2012, on or about 20.6.2013, Writ Petition No.5290 of 2013 came to be filed, in which an interim order was made restraining the State from displaying the select list until 25.6.2013. On 21.6.2013, the State issued a GR, which provided for

reservation for Postgraduate Degree and Diploma Courses to in-service candidates. Within a few days thereafter, i.e., on 2.7.2013, the State issued yet another GR, which provided for reservations to Postgraduate Diploma Courses to the in-service candidates, but did away with reservations for the Postgraduate Degree Courses. On 4.7.2013 this Court in Writ Petition No. 5290 of 2013, without going into factual aspects as to what decision has been taken by the State in GR dated 21.6.2013 and GR dated 2.7.2013, as an interim measure directed that for the academic year 2013-14, the position which prevailed prior to judgment and order dated 5.7.2012 in Writ Petition No.5214 of 2012 should prevail. In passing this interim order, this Court clarified that such interim order was being passed without going into the factual aspect as to what decision has been taken in GRs dated 21.6.2013 and 2.7.2013 and "*since the Government has not issued Resolution well in time as directed by the Division Bench of this Court".* This Court, in the interim order dated 4.7.2013, further made it clear that in so far as the effect of two GRs dated 21.6.2013 and 2.7.2013 is concerned, the same can be taken into consideration at the final hearing of the Petition and the Petition was directed to be disposed of at the stage of admission. On 28.11.2013, the State published the PGM-CET 2014 Brochure to govern admission to the Postgraduate Degree and Diploma Courses for the academic year 2014-2015. As noted earlier,

clause 7.1 of the Brochure, by reference to GR dated 2.7.2013 has provided that reservation for in-service candidates shall be only in so far as Postgraduate Diploma Courses are concerned. In these batch of Petitions (except Writ Petition No.1933 of 2014), questioning the GR dated 2.7.2013, this Court made an interim order on 21.2.2014 restraining the State from publishing final select list and further directing the State to consider the representation made by in-service candidates to the effect that benefit of reservation be extended to Postgraduate Degree Courses as well. The representations so made were considered and rejected by the State by communication dated 1.3.2014, which is also been impugned in some of the Petitions.

6] Mr. Anturkar, learned senior counsel appearing for the Petitioners, *inter alia,* in Writ Petition No.5290 of 2013 made two submissions:

A) Upon coming into the force of the Maharashtra University of Health Sciences Act, 1998 (1998 Act) with effect from 3.6.1998, the Maharashtra University of Health Sciences and alone has the power to frame rules relating to control and regulation of admission at the Graduate and Postgraduate level in Medical Colleges. This according to him is clear from the provisions of Section 5(k) of 1998 Act. In case of failure on the part of the University to frame rules

relating to control and regulation of admission, the State in terms of Section 9(4) of 1998 Act is empowered to issue a directive to the University for framing such rules, whereupon it shall be the duty of University to comply with such directive. As the field in this regard is covered by the statutory provisions contained in 1998 Act, the State is denuded of its power to issue any GRs in exercise of its executive powers conferred by Article 162 of the Constitution of India. Accordingly, Mr. Anturkar submitted that the GRs issued by the State after coming into force of 1998 Act, i.e., after 3.6.1998, which includes in particular, the GR dated 2.7.2013 is *ultra vires*, null and void and should be so declared. Upon such declaration, the GR dated 6.1.1990, which provided for reservation for in-service candidates, both for Postgraduate Degree as well as Diploma Courses revives. This is because in the year 1990, the field had not been occupied by a statute like the 1998 Act. On this basis, Mr. Anturkar submitted that the GR dated 2.7.2013 ought to be struck down and reservations to in-service candidates to Postgraduate Degree Courses provided by the GR dated 6.1.1990, ought to be restored;

B) Placing reliance upon paragraph 82 of the Supreme Court Judgment in the case of *Dr. Preeti Srivastava and anr*

vs. State of M.P. and ors. - (1999) 7 SCC 120, Mr. Anturkar contended that the Medical Council of India (MCI), by virtue of Entry 66 of List I of the Constitution of India may have the power to lay down standards of eligibility or basic qualifications for admission to Graduate or Postgraduate Medical Courses, but beyond this stage the field is covered by Entry 25 of List III of the Constitution of India and accordingly, the State alone is empowered to deal with the control and regulation of admissions to Graduate and Postgraduate Medical Courses. Mr. Anturkar, then submitted clause 9(1)(b) of the MCI Regulations 2000, which provide that 50% of seats in Postgraduate Diploma Course shall be reserved for in-service candidates who have served atleast three years in remote difficult areas, was really a clause beyond the purview of powers vested in the MCI. The State, therefore, had no reason to regard itself as being bound by such a clause. In any case, Mr. Anturkar submitted that a regulation framed by MCI in the matter of Postgraduate Medical Education are only directory or recommendatory. Thus, the State has erred in relying upon the MCI Regulations for the purposes of restricting reservation only to Postgraduate Diploma Courses.

7] Mr. Sakseria and Mr. Khandeparkar, the learned counsels appearing in some of the Petitions expressed their inability to agree with at least the first submission advanced by Mr. Anturkar. They, in unison, contended that it is a prerogative of the State to determine the manner and extent of reservation. The State, in absence of any statute regulating admissions to Medical Courses, is very much competent to issue GRs in exercise of powers conferred by Article 162 of Constitution of India. They submitted that 1998 Act is basically concerned with affiliation of health science Colleges and the provisions thereof have no role to play in the matter of actual grant of admissions or for that matter determination of the manner and extent of reservation. The Government Pleader appearing for the State, naturally supported such submissions and contended that the field in the matter of determination the manner and extent of reservation was by no means covered by the provisions of 1998 Act and consequently it was the prerogative of the State to deal with and determine such matters.

8] Mr. Sakseria and Mr. Khandepakar, however, attacked the denial of reservation to in-service candidates for the Postgraduate Degree Courses, primarily on the following grounds:

(a) That there is obviously a dispute between two Departments of the State as a result of which the State

itself is unclear as to what its policy is. This dispute and confusion is reflected not only in the correspondence on record, but also in the PGM-CET 2014 Brochure. In the circumstances, the GR dated 2.7.2013 cannot even be called as the policy decision of the State. The actual policy decision of the State is contained in GR dated 22.2.1996 or in any case GR dated 21.6.2013. Accordingly, for the academic year 2014-15, it is this policy decision that needs to be enforced;

(b) Assuming that the GR dated 2.7.2013 indeed represents the current policy decision, then the same is stated to be based upon the MCI Regulations of 2009 which provided for reservations to in-service candidates to the Postgraduate Diploma Courses. The 2009 Regulations had already been superseded by 2012 Regulations, by the time GR dated 2.7.2013 came to be issued. Further, 2012 Regulations have been struck down by the Supreme Court in the case of *Christian Medical College Vellore & Ors vs. Union of India – 2013 (9) SCALE 226*. As such, the GR dated 2.7.2013 is based upon non-existing material and consequently has no legs to stand on.

(c) Further, in the case of *Christian Medical College (supra)*, the Supreme Court has categorically ruled that

MCI is only concerned with specification of minimum standards and has no role to play in the matter of admissions to Medical Colleges. Such admissions fall within exclusive domain of the respective States. Determination of extent of reservation which is a part of admission process is therefore, not within the province of MCI. For this additional reason, the State was not at all justified in seeking to place reliance upon MCI Regulations in order to sustain the validity of GR dated 2.7.2013.

(d) Finally, it was urged that the policy of denial of reservation to in-service candidates for Postgraduate Degree Courses is ex-facie, arbitrary, unconstitutional and violative of Article 14 of the Constitution of India. The classifications between Postgraduate Degree and Diploma Courses, is a classification based upon no intelligible differentia. In any case, taking into consideration the objective of providing incentives to in-service candidates, such differentia has absolutely no rational nexus with such objective. The denial of reservation to in-service candidates to Postgraduate Degree Courses, would be contrary to social and public interest, inasmuch as medical graduates will be reluctant to work in remote and difficult areas for want of any such incentives. Accordingly, they urged that

denial of such reservation, would affect the health concerns of inhabitants of rural, remote and difficult areas. For all these reasons, they submitted that the policy of the Government, as expressed through GR dated 2.7.2013, is *ex-facie*, illegal, arbitrary, discriminatory, unconstitutional, null and void.

9] The Government Pleader Shri. S.K. Shinde defended the State action of restricting reservations for in-service candidates to Postgraduate Diploma Courses only. In this regard, he submitted that reservation in favour of in-service candidates can never be demanded as a matter of right. The same is purely within the realm of policy. If this be so, then surely the nature and extent of such reservation is also within the realm of State policy. Without going into the issue of whether the MCI Regulations are binding or not, if the State as a policy measure, has decided to fall in line with MCI Regulations, which referred to reservations for in-service candidates at Postgraduate Diploma Courses, such policy can never be regarded as arbitrary, irrational or absurd. The circumstance that there may be some better policy or that the policy now proposed is not perfect, is not a ground to exercise the powers of judicial review. The judgment and order dated 5.7.2012 in Writ Petition No.5214 of 2012 had directed the State to draw a balance bearing in mind

relevant considerations including that reservation for in-service candidates affect the open seats available to meritorious students and that in-service candidates foster the public health requirement of the community. There is absolutely no arbitrariness involved in the policy decision, inasmuch as, the class of in-service candidates has been treated equally. The classification in this case is really between in-service candidates on one hand and the non in-service candidates on the other. Such classifications is certainly based upon the intelligible differentia. The extent of reservation to be provided to in-service candidates, is within the policy domain of the State, which position has in fact been asserted by the Petitioners themselves. In such circumstances, there is no scope for judicial review. Further, Mr. Shinde submitted that no writ of mandamus can issue to the State to provide for reservation, which is infact the precise relief which the Petitioners in these batch of Petitions seek. For all these reasons, Mr. Shinde learned Government Pleader submitted that the Petitions may be dismissed.

10] At this stage, brief reference is necessary to Writ Petition No.1933 of 2014, which is filed by and on behalf of '*non-in-service candidates*'. As of now, such candidates support the Government Policy as expressed by the GR dated 2.7.2013. However, it is their case that should this policy be upset and the earlier policy restored,

then as observed by this Court in its judgment and order dated 5.7.2012 in Writ Petition No.5214 of 2012, the open seats available to meritorious students are bound to be affected. As of now, there is no reservation in favour of in-service candidates, insofar as Postgraduate Degree Courses are concerned. This means that Postgraduate Degree Courses, as of now, are to be filled-in on basis of open merit. No doubt, even in-service candidates are eligible to and entitled to compete in the open category for such Postgraduate Degree Courses. However, there is no reservation in their favour. In case, such reservation is reintroduced, Dr.Sadavarte, learned counsel appearing for the Petitioners in this Petition, contended that the non in-service candidates will be severely prejudiced. Dr.Sadavarte, further submitted that providing extent of reservations is a part of determination of standards as held by the Supreme Court in the case of *Dr. Preeti Srivastava (supra)*. Accordingly, it is within the domain of MCI to provide for extent of reservation. The State has no legislative and consequently executive competence to provide for any reservations over and above those which may be prescribed or provided by MCI in its Regulations.

11] Mr.Ganesh Gole, learned counsel, appearing for the Medical Council of India submitted that the Supreme Court in the case of *Christian Medical College (supra)* had only set aside the MCI

Regulations which provided for an All India Common Entrance Test (NEET). However, the rest of the provisions contained in Regulations of 2009 or 2012 were not in issue and consequently the same have not been struck down or set aside. Mr.Gole submitted that the MCI Regulations for Postgraduate Education are binding upon the State and further the MCI has acted well within its powers in prescribing reservation for in-service candidates to Postgraduate Diploma Courses and not for Postgraduate Degree Courses. Mr.Gole, submitted that the basic rule when it comes to admissions at Postgraduate level is that the same should be on basis of merit. Some dilution to this basic rule has been permitted, *inter alia* by way of reservations in favour of in-service candidates. However, such reservation can be only to the extent and manner provided by the MCI and not any further.

12] At the outset, it is clear that the main relief which the Petitioners seek in these Petitions is a writ of mandamus to direct the State to provide for reservation to in-service candidates to the Postgraduate Degree Courses for the academic year 2014-15. Therefore, the first and foremost issue to be decided, is whether a writ of mandamus can issue to the State to provide for a reservation or a quota to in-service candidates for admissions to Postgraduate Degree Courses.

13] This Court, in its judgment and order dated 5.7.2012 in Writ Petition No.5214 of 2012, has made it clear that in absence of Governmental Policy providing for reservation of seats for them, in-service candidates could not have asserted a legal or a constitutional right to a quota as "*in-service candidates*". This right originates in Governmental Policy. The relevant observations in this regard read thus:

> *In the absence of a governmental policy providing for the reservation of seats for them, in service candidates could not have asserted a legal or constitutional right to a quota as in service candidates. The right originates in governmental policy. Hence, while framing the policy, government is entitled to frame the terms of entitlement, though in a fair and non-discriminatory manner. An incentive is an encouragement and in conferring an incentive, government can lay down conditions to govern it. Reservation for in service candidates affect also the open seats which are available to meritorious students. The government has to draw the balance bearing in mind relevant considerations, including the fact that in service candidates as employees of government hospitals foster the public health requirement of the community.*
>
> *(emphasis supplied)*

14] From the aforesaid, it is clear that if the State were to have a policy of providing no reservations or a quota for in-service candidates, then the State would neither be infringing any legal or constitutional provisions nor would it be acting in any arbitrary or capricious manner. This means that there is neither any legal right vested in any in-service candidates to demand for such reservation

or quota nor is there any corresponding legal, statutory or constitutional duty in the State to provide for the same. Unless such basic predicates exist, there arises no question for issuance of a writ of mandamus.

15] In order to seek a writ of mandamus, the Petitioners who are in-service candidates have to demonstrate that they have a legal right to obtain reservations or quota for admission to the Postgraduate Degree Courses. Correspondingly, such Petitioners are also required to demonstrate that the Respondents owe a legal duty to them to provide for such reservations or quota. The condition precedent for issue of writ of mandamus is that there is in it one claiming a legal right to performance of legal duty by one against whom it is sought. In case of *Mani Subrat Jain vs. State of Haryana - (1977) 1 SCC 486*, the Supreme Court has observed thus:

> *"It is elementary though it is to be restated that no one can ask for mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something."*

16] Another principle in the matter of issuance of writ of mandamus is that such a writ will not lie to seek or enforce a mere

concession or a relaxation. For a writ of mandamus to issue, the right claimed must be judicially enforceable and legally protected. In case of *Rajalakshmia vs. State of Mysore – AIR 1967 SC 993*, a concession was extended in favour of one batch of employees. The applicants who were left out applied for a writ of mandamus. However, such writ was declined by observing that a concession could not be claimed as a matter of right by a writ of mandamus. Similarly, for a writ of mandamus to issue, it has to be established that there is dereliction of a legal duty. The duty which can be enforced by a writ of mandamus must be legal and not merely moral, equitable or permissible.

17] In the present case, as observed earlier there is no right as such vested in-service candidates to claim reservations. The origin of such reservations is itself in the realm of Government policy. Correspondingly, there is no legal duty in the State to provide for such reservation. No writ of mandamus would therefore lay at the instance of in-service candidates to direct the State to provide for any reservations to in-service candidates. Merely because the State, by way of policy has chosen to provide such reservations for admission to Postgraduate Diploma Courses, there is no warrant to issue a writ of mandamus directing that the State should also extend this benefit of reservations to Postgraduate Degree Courses.

18] Even in the matter of constitutional reservations, which undoubtedly stand upon a much higher pedestal, the Supreme Court of India in the case of *Dr.Gulshan Prakash & ors. vs. State of Haryana & ors. - AIR 2010 Supreme Court 288*, rejected a plea that the State was duty bound to provide for reservation for SC / ST and backward class category at the postgraduate level, by observing thus:

> *19) As stated earlier, Article 15(4) is an enabling provision and the State Government is the best judge to grant reservation for SC/ST/Backward Class categories at Post-Graduate level in admission and the decision of the State of Haryana not to make any provision for reservation at the Post-Graduate level suffers no infirmity. In our view, every State can take its own decision with regard to reservation depending on various factors. Since the Government of Haryana has decided to grant reservation for SC/ST categories/Backward Class candidates in admission at MBBS level i.e. under graduate level, then it does not mean that it is bound to grant reservation at the Post-Graduate level also. As stated earlier, the State Government, in more than one communication, has conveyed its decision that it is not in favour of reservation for SC/ST/Backward Classes at Post-Graduate level. In such circumstances, Court cannot issue mandamus against their decision and their prospectus also cannot be faulted with for not providing reservation in Post-Graduate Courses. However, we make it clear that irrespective of above conclusion, State of Haryana is free to reconsider its earlier decision, if they so desire, and circumstances warrant in the future years.*
>
> *(emphasis supplied)*

19] Again, in a context of reservations contemplated by Article

16(4) of the Constitution of India, the Supreme Court of India in the case of *P&T Scheduled Caste/ Tribe Employees' Welfare Association (regd.) and ors. vs. Union of India & ors. - (1988) 4 SCC 147,* has held that the provisions for reservation is only an enabling provision and consequently no writ can be issued compelling the Government to make such reservation. In the case of *Union of India vs. R. Rajeshwaran & anr.- (2003) 9 SCC 294,* the Supreme Court of India in the context of making a provision for reservation of seats for admissions to all-India pool in the MBBS and BDS list, ruled that no writ of mandamus would be issued to provide for such reservation. The Supreme Court went to the extent of observing that its previous decisions where such writ of mandamus was issued cannot be held to be laying down correct law. The relevant observations in para '9' read thus:

> *9. In Ajit Singh (II) v. State of Punjab – (1999) 7 SCC 209, this Court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation. Language of Article 15(4) is identical and the view in Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan – (1986) 2 SCC 679 and Superintending Engineer, Public Health v. Kuldeep Singh– (1997) 9 SCC 1999 that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be held to be laying down the correct law. In these circumstances, neither the respondent in the present case could have sought for a direction nor the High Court could have granted the same.*
>
> *(emphasis supplied)*

20] If therefore, no writ of mandamus can issue to the State to make reservations for even SC/ST and backward class categories for admissions at the postgraduate level, then in my opinion, no writ of mandamus can equally issue to the State to provide for any reservation or quota in favour of in-service candidates. Again, if no writ of mandamus can issue to the State directing it to provide for reservation in favour of in-service candidates, then surely no writ of mandamus can issue to the State directing it to provide for reservation or quota to in-service candidates to the Postgraduate Degree Courses.

21] The next important issue which arises for determination is whether the policy of the State to provide for reservation or quota to in-service candidates for admission only to Postgraduate Diploma Courses and not to Postgraduate Degree Courses is illegal, arbitrary, discriminatory absurd, irrational, null and void.

22] In order to attempt an answer to the aforesaid question, it is necessary to outline the scope of judicial review when it comes to testing Government policy.

23] This Court whilst exercising the power of judicial review of

administrative action does not act as an appellate authority. The scope of judicial review is confined to the question whether the decision taken by the State is against any statutory provisions or violative of the fundamental rights or other constitutional rights. The correctness of reasons which prompted the State to make a policy or to change a policy or to adopt one course of action instead of another, is normally not a matter of concern in judicial review of this nature. As long as policy decisions do not infringe legal or constitutional rights, a constitutional court will not substitute its own judgment for the judgment of the executive in such matters. In assessing legality or propriety of such policy decision of the State, the Court cannot interfere even if a second view is possible and in the opinion of the Court such second view is better or wiser or more practical. In matters of framing of policy, it is well settled that the State has sufficient liberty and freedom. The State has to take into consideration several complex factors and it is not possible for the Courts to consider the competing claims and conflicting interest for purposes of determining which way the balance tilts.

24] Thus the position in law is that normally, the Court while exercising power of judicial review will not interfere with the government policy, unless the same is established as being in violation of any statutory or constitutional provision. With the

question whether a particular policy is good, bad, wise or foolish, a Court of law is normally unconcerned. It is not for the Court to advise the government to adopt another policy, which in the opinion of the Court is fairer, wiser or more scientific. It is not within the domain of the Court to weigh the pros and cons of policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. It would be dangerous if the Court is asked to test the utility, beneficial effect of the policy or its appraisal merely on the basis of pleadings in a petition or statements in a counter. As observed by the Supreme Court in the case of *Bennett Coleman & Co. V. Union of India, (1972) 2 SCC 788,* that the Courts "cannot be *propelled into the unchartered ocean of Governmental policy*".

25] In the case of *Asif Hameed Vs. State of Jammu and Kashmir 1989 supp (2) SCC 364*, the Supreme Court observed thus :

> *"While exercising power of judicial review of administrative action, the Court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."*

26] *In the case of State of Maharashtra vs. Lok Shiksha Sanstha – (1971) 2 SCC 410, the Applications for opening of new schools were rejected by the State. The High Court issued a mandamus to the State directing the grant of permission. The Supreme Court reversed the High Court by observing thus:*

> *So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment.*

27] In the case of *Maharashtra Board of Secondary & Higher Secondary Education vs. Paritosh (1984) 4 SCC 27*, the High Court issued a writ of mandamus directing the Board to provide for reevaluation of answer papers. The Supreme Court reversing the High Court observed thus:-

> *"The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires* and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to

> effectuate the pur*poses of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it cane be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution".*

28] In the case of *Arun Roy Vs. Union of India - 2002(7) SCC 368*, the Supreme Court ruled that it is open for the State to take a decision upon National Education Policy and a Court of law cannot opine whether such policy is good or bad. A Court of law can only interfere if such policy contravenes statutory or constitutional provisions.

29] In the case of *Metropolis Theatre Company v. State of Chicago- 57 L Ed 730*, the Supreme Court of United States observed that in matters of the judicial review of Government policy, certain measures of freedom or '*play*' in the '*joints*' needs to be conceded to the executive. Mere errors are not subject to judicial review. It is only palpably arbitrary exercise which can be declared as void. The Court observed thus:

> *"The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or*

mala fide".

30] It is also settled position in law that the Government has the power to change policy. The executive power is not limited only to frame policy, but the executive also has the power to change, re-change, adjust and readjust the policy by taking into account the relevant and germane considerations. As long as the changed policy is not arbitrary, capricious or unreasonable, there is little scope for judicial review.

31] In the case of *Sangwan vs. Union of India - 1980 Supp SCC 559*, the Supreme Court was considering a position where in pursuance of 1964 promotion policy, a select list was prepared and the Petitioner included therein. However, just before the appointment, there was a change in the policy, as a result of which the Petitioner was denied appointment. The High Court ruled in favour of the Petitioner by observing that the State had acted in arbitrary manner to depart from its consistently held policy "*overnight by making fresh selection and without antecedent reformulation*". Disapproving the approach of the High Court, the Supreme Court observed thus:

> *"A policy once formulated is not good for ever, it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and imperatives of*

> *national considerations. We cannot, as Court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding the Union of India because it functions under the Constitution and not over it".*

32] In the case of *Union of India vs. S.L. Dutta - (1991) 1 SCC 505*, the High Court set aside the changed policy in the matter of promotion to the post of Air Marshal on the ground that "*the new promotion policy was not framed after an in-depth study*" and a writ of mandamus was issued to the State to consider a case of the Petitioner on the basis of old policy. Reversing the High Court, the Supreme Court observed thus :-

> *"A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reason of their training and experience."*

33] In the case of *Tamil Nadu Education Dept. Ministerial & General Subordinate Services Assn vs. State of Tamil Nadu – (1980) 3 SCC 97*, the change in seniority policy was challenged as arbitrary, discriminatory and violative of a constitutional guarantee. Negativing the challenge, the Supreme Court observed thus:-

> *"We cannot, as court, quarrel if administrative policy is revised. The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa. Nor can we predicate mala fides or ulterior motive merely because assembly interpellations have ignited rethinking or, as hinted by counsel, that the Education Minsiter's sensitivity is due to his having been once District Board teacher. Democratic processes – both these are part of such process – are not anathema to judges and we cannot knock down the order because government have responded to the Question Hour or re-exmained the decision at the instance of a sensitive minster.*

34] The policy or the changed policy as reflected in GR dated 2.7.2013, is therefore, required to be tested on the touchstone of restrictive judicial review emphasized by the Supreme Court of India time and again.

35] The Petitioners, apart from urging that the policy is *ultra vires,* null and void, have failed to demonstrate why it is so. Admittedly, the policy is not in breach of any legal or statutory provisions. There is no law which requires the State to provide for any reservation or quota in favour of in-service candidates. Accordingly, the policy does not fall foul of any law or statutory enactment.

*3*6] The contention of the Petitioners that the policy is arbitrary, does not appeal to me. The Supreme Court as also Medical Council

of India as time and again emphasized that admissions at the level of post-graduation or super speciality ought to be strictly on the basis of merit. At the stage of post-graduation some dilution in the merit criteria has been tolerated. However, the dilution is expected to be minimum.

37] In the case of *Dr. Pradeep Jain & ors vs. Union of India & ors. - (1984) 3 SCC 654*, the Supreme Court drew out the distinction between the admissions to MBBS Courses and MD or MS Courses by observing that at the stage of postgraduate admissions excellence cannot be allowed to be compromised by any other considerations because that would detrimental to the interest of the Nation. The observations in paragraph 22 deserve mention:

> *22. So much for admission to the M.B.B.S. course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to post graduate courses, such as, M.D., M.S. and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Jagdish Saran's case, and we wholly endorse what he has said:*
>
> > *"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 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 expended upon as important loss their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk."

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks then 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 of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs no disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post graduate or post doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tune performance at the difficult highest of some disciplines where the best alone is likely to blossom as the best. To sympathise

> *mawkishly with the weaker sections by selecting substandard 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 over ruling equality and quality all together, is a social risk where the stage is post graduate or post-doctoral."*

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and in deed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to post graduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration:

> *"Student 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."*

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located." So also in the policy statement filed by the leaned Attorney General, the Government of India has categorically expressed the view that:

> *"So far as admissions to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."*

We are therefore of the view that so far as admissions to post-graduate 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 post-graduate 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 post- graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the M.B.B.S. course. But, even in regard, to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.

(emphasis supplied)

38] In the case of *Dr. Preeti Srivastava (supra)*, the Supreme Court had ruled that at the level of super specialities, there cannot be any reservation because in dilution of merit at this level would adversely affect the national goal of having the post possible people at the highest level of professional and education training. In the context of next below stage of Postgraduate Education in medical speciality, the Supreme Court ruled that similar considerations should prevail though perhaps to a slightly lesser extent than in the super specialities. However, the Supreme Court cautioned that the element of public interest in having the most meritorious students at

this level of education is present even at the stage of postgraduate teaching. In this regard, reference can be usefully made to the observations in paragraph 24, which reads thus:

> *24. At the next below stage of postgraduate education in medical specialities, similar considerations also prevail though perhaps to a slightly lesser extent than in the superspecialities. 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 specialised 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 specialised field. For a student who enrols 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 specialised postgraduate 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 postgraduate 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 specialised 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 postgraduate 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.*
>
> *(emphasis supplied)*

39] In the case of *Satyabrata Sahoo vs. State of Orissa – (2012)*

8 SCC 203, the Supreme Court was called upon to rule on the validity of the proviso to clause 9(2)(d) of the MCI Regulations 2009, which provided for weightage in marks to be given as an incentive at the rate of 10% of the marks obtained for each year's service in remote or difficult areas upto the maximum of 30% of the marks obtained, when it came to determining the merit of in-service candidates. Based upon such clause, in-service candidates were not only claiming weightage when it came to competition with other in-service candidates, but also vis-a-vis open merit category candidates. The Supreme Court struck down this proviso by observing that the same permits encroachment upon open category, where merit alone ought to be the determining factor. The observations in paragraphs 24, 25 and 27, which are relevant, read thus:

> *24] We have referred to the above mentioned judgments only to indicate the fact that this Court in various judgments has acknowledged the fact that weightage could be given for doctors who have rendered service in rural/tribal areas but that weightage is available only in in-service category, to which 50% seats for PG admission has already been earmarked. The question is whether, on the strength of that weightage, can they encroach upon the open category, i.e direct admission category. We are of the view that such encroachment or inroad or appropriation of seats earmarked for open category candidates (direct admission category) would definitely affect the candidates who compete strictly on the basis of the merit.*
>
> *25] The purpose and object for giving weightage to in-service candidates who have rendered rural/tribal service*

is laudable and their interest has been taken care of by the Medical Council of India as well as the prospectus issued for admission to the various medical colleges in State of Odisha but they have to come through the proper channel i.e. the channel exclusively earmarked for in-service candidates and not through the channel earmarked for candidates in the open category. The in-service candidates are also free to compete through the open category just like any other who fall under that category. Further, it is also relevant to note that those who get admission in postgraduate courses through the open category have to execute a bond stating that they would serve rural/tribal areas after completion of their postgraduation. In fact, weightage is given to those candidates who have rendered service in rural/tribal areas when they compete for admission to PG (Medical) Courses in in-service category for whom 50% seats are earmarked.

26] .....

27] We notice that the seats earmarked for the open category by way of merit are few in number and encroachment by the in-service candidates into that open category would violate clause 9(1)(a) of the MCI regulations, which says students for PG medical courses shall be selected strictly on the basis of the inter se academic merit i.e. on the basis of the merit determined by the competent test. Direct category or open category is a homogeneous class which consists of all categories of candidates who are fresh from college, who have rendered service after MBBS in Government or private hospitals in remote and difficult areas like hilly areas, tribal and rural areas and so on. All of them have to complete on merit being in the direct candidate category, subject to rules of reservation and eligibility. But there can be no encroachment from one category to another. Candidates of in-service category cannot encroach upon the open category, so also vice-versa.

(emphasis supplied)

40] The Supreme Court in the case of *Satyabrata Sahoo (supra)* took express cognizance of clause 9(1) (a) of the MCI Regulations

which clearly mandates that students for Postgraduate Medical Courses shall be selected strictly on basis of inter se academic merit. In the present case, if reservations are extended to Postgraduate Degree Courses, certainly the Postgraduate Degree Courses available to be filled-in on basis of open merit category will proportionately reduced. The postgraduate degree seats would be diverted to the quota or channel to be filled in by the reserved in-service category candidates. To that extent, this is bound to affect the open category seats which are to be filled-in strictly on basis of merit.

41] There is no question of any discrimination involved in not extending benefit of reservation to Postgraduate Degree Courses. The benefit of reservation is available to all in-service candidates uniformly. The in-service candidates constitute a distinct class and as long as there is equality amidst this class, there arises no question of discrimination or violation of Article 14 of the Constitution of India. It is settled principle that equality is amongst equals. The discrimination which the Petitioners perhaps allege, is, as between in-service candidates and non in-service candidates. This is because "*non in-service candidates*" are entitled to admission to Postgraduate Degree Courses retained under the State quota. However, there is no reservation in favour of the non in-service

candidates. The in-service candidates are also entitled to compete on merit to such Postgraduate Degree Courses. Thus, in the class of non in-service candidates again, there is no discrimination, but rather there is equality. The submission that in-service candidates are deprived of an opportunity to obtain admission to Postgraduate Degree Courses, is with respect, misconceived. There is absolutely no such deprivation. Absence of any reservation or quota does not amount to deprivation. All that the policy provides is that when it comes to Postgraduate Degree Courses, the admission shall be strictly on basis of *inter se* merit. There can be neither any arbitrariness, nor any discrimination in such an approach.

42] Again, there can be no discrimination as between in-service candidates and non in-service candidates. Admittedly, both belong to a different class. The classification between them, even according to the Petitioners themselves is based upon an intelligible differentia. The object of Postgraduate Medical Education is not, as may be perceived by the Petitioners, to offer incentives and encouragement to in-service candidates. Rather the object of Postgraduate Medical Education is to ensure that most meritorious students obtain admissions. The dilution of merit is permitted only to a certain extent and on account of certain peculiar exigencies. Accordingly, providing of reservation to in-service candidates for Postgraduate Diploma

Courses but not extending benefit of such reservation to Postgraduate Degree Courses, can neither be described as being arbitrary or discriminatory. It cannot be said that there is no rational nexus between the classification and the object which such classification seeks to achieve. Accordingly, the charge that in-service candidates have been discriminated against, for want of reservation to Postgraduate Degree Courses, fails and is required to be rejected.

43] In the case of *State of M.P. Vs. Gopal D. Tirthani - (2003) 7 SCC 83*, upon which the reliance was placed by the Petitioners themselves, it has been held that the classification between in-service candidates and non in-service candidates is based upon an intelligible differentia. On this basis setting aside separate and exclusive source of entry or channel for admission to in-service candidates came to be upheld. However, the further contention raised by the in-service candidates that a separate entrance exam ought to be held for them was repealed by the Supreme Court in emphatic terms. The in-service candidates had contended that they have served for the Government soon after their graduation in remote and hilly areas and were detached from theoretical studies and therefore it would be too much to expect from them such theoretical knowledge of Medical Science as would enable them to

compete with fresh medical graduates taking up pre-postgraduate test and to qualify for entry into Postgraduate Courses. On this basis, it was forcefully submitted that the State ought to be directed to conduct two separate examinations for the two classes, particularly since the two channels were separate, exclusive and assessment of merit of one class would not affect the assessment of merit of the other. Rejecting such contention, the Supreme Court observed thus :

> *23. In the case of Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors., the Constitution Bench has expressly discarded the submission that there need not be any qualifying marks prescribed for the common entrance examination. The Medical Council of India, as an expert body, is the repository of the nation's faith for laying down the extent of reservations, if any and the lowering of qualifying marks 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. Even when it is permissible to prescribe lesser qualifying marks for a reserved category (not a mere separate channel of entry of candidates) and the general category of candidates at the post-graduate level, there cannot be a big disparity between the two. The level of disparity in qualifying marks subject to its being permitted by the expert body, must be minimal so that the candidates seeking admission into post graduation can put up to a certain level of excellence. Referring to Ajay Kumar Singh and Ors. v. State of Bihar and Ors., Nivedita Jain, and Post Graduate Institute of Medical Education & research, Chandigarh and Ors. v. K.L. Narasimhan, the Constitution Bench observed that it is true that in spite of having been admitted through any channel or may be by reservation, merely because everybody has to take the same post-graduation examination to qualify for a post-graduate degree, it is not a guarantee of quality. A pass mark is not a guarantee of excellence. There is a great deal of difference between a*

person who qualifies with the minimum marks and a person who qualifies with high marks. It excellence is to be promoted at the post-graduate level, the candidates qualifying should be able to secure good marks while qualifying. Attaining minimum qualifying marks has a direct relation with the standards of education. Qualifying marks is an assessment of the calibre of students chosen for admission. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. The assemblage of students in a particular class should be within a reasonable range of variable calibre and intelligence, else the students will not be able to move along with each other as a common class. Hence, the need for a common entrance test and minimum qualifying marks as determined by experts in the field of medical education.

24. ...

25. ...

26. ...

27. The in-service candidates may have been away from academics and theories because of being in service. Still they need to be assessed as eligible for entrance in P.G. For taking up such examination, they must either keep updating themselves regularly or concentrate on studies preparatory to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services.

(emphasis supplied)

44] The next contention, though faintly urged was that assuming the policy may be proper, but the manner in which the change came to be brought out, renders the same arbitrary, null and void. As observed earlier, even the changed policy, in my opinion, does not

infringe any statutory or constitutional provisions. In fact, the policy is consistent with that formulated by the MCI and approved by the Supreme Court of India. The circumstance that the earlier policy held field for a considerable period even after the MCI Regulations of 2009 came in force, is hardly a ground to urge that the earlier policy should continue forever or the same should never be changed. As observed observed by the Supreme Court in the case of *Tamil Nadu Education Dept. Ministerial & General Subordinate Services (supra)*, *the wisdom of yesterday may obsolesce into folly of today, even as the science of old may sour into superstition now, and vice-versa*.

45] Besides, at this stage, it is necessary to refer to the decision of this Court dated 5.7.2012 in Writ Petition No.5214 of 2012 in which directions came to be issued to the State to come out with a Government Resolution specifying the manner in which the reservation for in-service candidates shall be worked out. In the said decision, this Court observed that the State while framing the policy is entitled to frame the terms of entitlement in a fair and non-discriminatory manner. An incentive is an encouragement and in conferring an incentive, government can lay down conditions to govern it. Reservation for in service candidates affect also the open seats which are available to meritorious students. The

government has to draw the balance bearing in mind relevant considerations, including the fact that in service candidates as employees of government hospitals foster the public health requirement of the community. There is no reason to presume that such considerations were not taken into account by the State in issuing GR dated 2.7.2013.

46] The next contention, that the GR dated 2.7.2013, cannot be regarded as a policy decision at all, is unacceptable. There is no dispute that GR dated 2.7.2013 has been issued by the State in exercise of executive powers vested in it by Article 162 of the Constitution of India. The circumstance that there may be or that there is some dispute between two Departments of the State, is quite irrelevant. That by itself does not rob GR dated 2.7.2013 of its legal efficacy. As long as the GR dated 2.7.2013 stands, and the intention of the State to implement the same is made known vide clause 7.1 of the PGM-CET 2014 Brochure, it cannot be said that there is no policy decision of the State in existence. Accordingly, the contention as to the non-existence of policy decision requires to be rejected.

47] The next issue is whether the policy is based upon MCI Regulations which were either non-existing or in any case not

binding upon the State. Strictly speaking, it is not necessary to delve upon this issue in great details, because even *de hors* such Regulations, it was within the domain of State policy to provide for or alter the reservations or quota for in-service candidates. The submission of Mr. Anturkar based upon paragraph 82 of the judgment in the case of *Dr. Preeti Srivastava (supra),* however needs to be rejected. The paragraph is a part of the minority opinion. In the case of *Harish Verma vs. Ajay Srivastava – (2003) 8 SCC 69,* the Supreme Court reversed the Full Bench of the Rajasthan High Court, which had placed reliance on the dissenting opinion of one Judge in the *Dr. Preeti Srivastava* case. As noted earlier, the majority in the case of *Dr. Preeti Srivastava (supra)* at paragraph 24 has observed that it is for an expert body such as MCI to lay down the extent of reservations, if any, in the context of postgraduate admissions.

48] The learned counsels for the Petitioners may be technically right in their submissions that the MCI Regulations 2009 were not in existence when the GR dated 2.7.2013 was issued, as by then MCI Regulations, 2012 were in force. However, the further submission that even the MCI Regulations, 2012 had by then being struck down by the Supreme Court in the case of *Christian Medical College (supra)* does not appear to be well founded. A careful reading of the

judgment in the case of *Christian Medical College (supra)* would

indicate that the Supreme Court was really concerned with the amendments to the MCI Regulations by which a National Eligibility-cum-Entrance Test (NEET) came to be introduced and further was to be actually conducted by MCI itself. Accordingly, by majority, the Supreme Court struck down the amendments to the MCI Regulations by which such NEET came to be introduced. Therefore, it cannot be said that clause 9(VII) of MCI Regulations 2012, which provides that 50% of seats in Postgraduate Diploma Courses shall be reserved for Medical Officers in Government service was not in-existence or had been struck down by the Supreme Court. Further, as observed earlier, this issue is irrelevant particularly as there can be no dispute that the State, even *de hors* MCI Regulations is competent to take a policy decision in this regard. Besides, in the present case, this Court by its judgment and order dated 5.7.2012 had issued specific directions to the State to come out with an appropriate policy keeping in mind the interest of both, in-service candidates as well as non in-service candidates. There is no reason to presume that the considerations adverted to by this Court in its judgment and order dated 5.7.2012 were not taken into account by the State in taking the policy decision.

49] The contention that MCI is only concerned with specifications of minimum standards and therefore has no role to play in the matter of admissions to medical colleges may be well founded. However, the issue as to whether determination of extent of reservation is not a part of determination of standards is not free from doubt. The Supreme Court in the case of *Dr. Preeti Srivastava (supra),* has in terms observed that it is for an expert body such as the MCI to lay down the extent of reservations (paragraph 24). The position appears to have been reiterated in paragraph 23 of the decision in case of *Gopal Tirthani (supra).* In the case of *Christian Medical Colleges (supra)***,** one of the issues framed was whether the views expressed by the Constitution Bench in the case of *Dr. Preeti Srivastava (supra)* have any impact on the issues raised in said batch of Petitions. A careful reading of the decision in the case of *Christian Medical College (supra)* would indicate that the contention of the learned counsels for the Petitioners that *Christian Medical College (supra)* has watered down the ratio of *Dr. Preeti Srivastava (supra)* is not at all well founded. In the case of *Christian Medical College (supra),* the Supreme Court has essentially ruled that the MCI, itself conducting NEET, as opposed to providing for NEET cannot be said to have determined standards for Postgraduate Medical Education. Accordingly, the notification to the extent it enabled the MCI to itself conduct NEET

came to be struck down.

50] In this case, it is not necessary to go into the larger issue as to whether the MCI Regulations bind the State in matter of formulation of policy when it comes to admission to Postgraduate Medical Courses concerned. Suffice to state that there is a long line of decisions which takes the view that Regulations framed by the MCI in the matter of Graduate or Postgraduate Medical Education relate to Entry 66 List-I of the Constitution of India. Accordingly, the State in exercise of its executive powers relatable to Entry 25 List – III of the Constitution of India cannot frame policies which may be inconsistent with or repugnant to the MCI Regulations. At this stage, however, it is not necessary to go into this issue, particularly as it is clear that the State could have formulated the policy contained in GR dated 2.7.2013, even without reference to the MCI Regulations and in exercise of its executive power under 162 of the Constitution of India.

51] It must be stated to the credit of Mr. Anturkar, learned senior Advocate appearing in some of the Petitions that he very specifically submitted that he is not raising any ground on the basis of *doctrine* of promissory estoppel or legitimate expectation, in view of the decision of the Full Bench of this Court in the case of *Ashwin P.*

Pimpalwar vs. State of Maharashtra – 1991 Mh.L.J. 1336. Mr. Sakseria and Mr. Khandeparkar were, however, unclear as to whether they were relying upon such doctrines in support of their respective Petitions or not.

52] Lest the point remains un-answered, it is necessary to point out that in none of the Petitions there are any specific pleadings sufficient to invoke the *doctrine* of promissory estoppel or legitimate expectation. In the case of *Dr. Ashok Kumar Maheshwari vs State Of U.P.- (1998) 2 SCC 502*, the Supreme Court has held that "*bald pleadings cannot be made the foundation for invoking the doctrine of promissory estoppel*". In the case of *Bannari Amman Sugars Ltd. vs. Commercial Tax Officer – 2005 (1) SCC 625,* the Supreme Court has held that in order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the Petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the *doctrine.*

53] Apart from absence of any specific pleadings, the decision of the Full Bench of this Court in the case of *Ashwin Pimpalwar*

(supra), which lays down that the doctrines of promissory estoppel and legitimate expectation will have no application in relation to admissions to Postgraduate Courses in Medical Colleges run by or under the control of the State Government, cannot be just brushed aside. Mr. Sakseria, learned counsel appearing for the Petitioners did not place reliance upon any decision of this Court or the Supreme Court of India which has taken a view contrary to the that expressed by the Full Bench of this Court in the case of *Ashwin Pimpalwar (supra).* In my opinion, the feeble contention based upon *doctrine* of promissory estoppel and legitimate expectation stands fully answered by the dictum of the Full Bench of this Court.

54] In the case of *Ashwin Pimpalwar (supra)* this Court was called upon to consider plea of promissory estoppel in respect of similar rules framed under Article 166 of the Constitution of India, though in a different context. Under the earlier Government Resolution of 1971, admission to the post graduate courses was on the basis of the marks obtained in the "*subject concerned*" at the final M.B.B.S. examination. The marks in the subject which was opted for post-graduation study were alone to be considered as decisive. However, under subsequent resolution of 1989, the "aggregate marks" obtained at the first, second and final M.B.B.S. examinations were the decisive criterion. This change in rules was challenged by

invoking the doctrines of promissory estoppel and legitimate expectations. The Full Bench rejected such challenge by observing that it was not possible to accept the contention that the prospectus once issued by the Government, cannot be altered at all at a subsequent stage. The Government which has competence to issue rules or regulations, has, as a corrollary, powers to amend or alter or even repeal and reissue such rules and regulations. It was difficult to accept the proposition that the rule of promissory estoppel operates even *qua* the rules for admission to the medical colleges. Altered situations needed alteration in the rules and if on the basis of the relevant material, the Government comes to the conclusion that the rules need a change, the plea of promissory estoppel cannot be urged to abort such a change. The Full Bench expressed itself, thus :

> *32. Does the rule of promissory estoppel operate so that the admission rules once issued could not be altered subsequently by the Government? It is assumed in some decisions that a student preparing for the qualifying examination on the basis of the Prospectus relating to postgraduate courses prevailing at that particular point of time is entitled to continue to receive benefits or advantages arising therefrom and consequently no change can be made to his prejudice. It is difficult to accept such a broad proposition. Students entering educational institutions with the ultimate aim of completing their scholastic career at the peak are expected to strive for academic excellence, and accordingly, it cannot be assumed that a student would only look at a GR operating at or about the time when he intensifies the preparation for the qualifying examination and regulating admission to post-graduate courses.*

Then again, a student is indeed expected to do his best throughout his scholastic career. The heights are reached not by a sudden flight. They are reached by those who toil upwards in the night while their companions slept. (The borrowing from the lines of Longfellow is acknowledged). In a highly competitive examination there is a neck to neck race even among those who spare no pains or times to achieve the coveted goal. Quite often, imponderable factors or fortuitous circumstances may affect the fate. Under such circumstances, it would be unrealistic to posit a theory of promissory estoppel based on the elusive concept of the preparation time for the qualifying examination.

35. Consider, again, some actualities of life. It may be that the Government may feel that an amendment is needed even after the prospectus is published. Suppose, for example, a diploma or a degree or the study in a particular educational institution is treated as equivalent for the qualification provided in the prospectus. If subsequently the Government receives reliable evidence that the institution is either non-existent or a fraudulent one, cannot the prospectus be amended by deleting the equivalence accorded to such diploma or degree? There cannot be, on principle, any such prohibition for the Government to introduce such a change.

44. Is that principle attracted, having regard to the factual aspects and the circumstances available here? We have indicated earlier, while discussing the doctrine of promissory estoppel, some of the peculiar features of academic pursuits. They are not to be equated with commercial activities or trade dealings, which raise questions of immediate and easily exigible profits and other advantages. In particular, prosecuting a postgraduate professional course could not be linked with a narrow and selfish desire for promotion of private interest. The very concept of a profession is the antithesis of activities of a lesser calibre. Merely because of a promulgation of a particular rule or order by the Government authorities, a student particularly aspiring for a post-graduate degree, and that too in a professional course, cannot with grace or legal force contend that he could have a legitimate expectation in

> *the continuity of that advantage or benefit arising from the order which held the field at particular time despite an overriding or even a reasonable need of change. When viewed from the point of view of the duty of a Government to effect appropriate changes, whether it be in the matter of legislation, pure and simple, or in relation to its executive instructions, if and when circumstances warrant the same, such a restriction would be to make societies stagnant and the Government non-functional.*

55] There were neither any submissions made, much less any specific pleadings that the State had at any time held out any unequivocal representation that the policy of providing reservations or quota for in-service candidates for admission to Postgraduate Degree Courses would continue indefinitely or for some determinate tenure. In absence of such representation, there arises no question of invoking the doctrine of promissory estoppel. In the case of *Vyankappa N.Patki vs. State of Maharashtra – 1998 (2) Mh.L.J. 417*, a Division Bench of this Court declined to apply the doctrine of promissory estoppel, even when tuition fees were increased by the State whilst students were undergoing their course in Medical Colleges, by observing that no promise was made either in the prospectus or in the rules for admission that the fees prevailing at the time of entry to the course would remain unchanged throughout the entire course.

56] Merely because a case does not fall within the parameters of

the doctrine of promissory estoppel, the Petitioners cannot fall back upon the doctrine of legitimate expectation. There is a considerable and real difference between *expectation* and *anticipation*. There is no point in confusing one with the other. Besides, the decision of the Full Bench in the case of *Ashwin Pimpalwar (supra)*, affords the complete answer to such plea as well.

57] In the case of *Union of India vs. Hindustan Development Corporation – 1993 (3) SCC 499*, the Supreme Court has observed that the decision taken by the Authority must be found to be arbitrary, unreasonable and not taken in public interest, where the doctrine of legitimate expectation is to be applied. If it is a question of policy, even by way of change of old policy, the Courts cannot intervene with the decision on the ground of legitimate expectation.

58] In the case of *Punjab Communication Limited vs. Union of India – 1999 (4) SCC 727*, the Supreme Court observed that change in policy can defeat a substantive legitimate expectation if it can be justified on "*Wednesbury reasonableness*". The decision-maker has the choice in balancing of the pros and cons relevant to the change in policy. It is therefore, clear that the choice of policy is for the decision-maker and not the Court. The legitimate substantive

expectation merely permits the Court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based merely on legitimate expectation without anything more cannot *ipso facto* give a right. For legal purposes, expectation is not same as anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

59] In the context of the application of doctrine of legitimate expectation to education policy, the Supreme Court in the case of *State of Himachal Pradesh vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh – (2011) 6 SCC 597*, reversed the High Court which had granted relief applying doctrine of legitimate expectation, by observing thus:

> *21. The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education,*

training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the courts must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

22. With regard to the importance of human resources, especially manpower requirement in various professional and technical fields, the Government is free to frame its policy, alter or modify the same as to the needs of the society. In such matters, the courts cannot interfere lightly as if the Government is unaware of the situation.

60] The learned counsels appearing of the Petitioners then contended that the GR dated 2.7.2013 had in fact been stayed by this Hon'ble Court in its interim order dated 4.7.2013 in Writ Petition No.5290 of 2013 and therefore the State had no right whatsoever to rely upon the same as its policy in clause 7.1 of the Brochure of PGM-CET 2014. The learned counsels contended that by interim order dated 4.7.2013, this Court, upon due consideration of GRs dated 21.6.2013 and 2.7.2013 issued directions that the position which prevailed prior to the judgment of the Division Bench dated 5.7.2012 (supra) should prevail. This, according to the Petitioners, constitutes a clear judicial snub to the GR dated 2.7.2013.

61] A careful reading of the interim order dated 4.7.2013 in Writ Petition No.5290 of 2013 would indicate that such is not the position.

In the first place, the interim order dated 4.7.2013 concerns admissions to the Postgraduate Courses in the academic year 2013-14. The interim order came to be passed upon this Court being appraised that despite directions contained in the judgment and order dated 5.7.2012 (supra), the State has not issued any GR "*well in time*". Accordingly, this Court observed that it was making the interim order "*without going into factual aspect as to what decision has been taken by the Government in the GRs dated 21.6.2013 and 2.7.2013*". Further this Court made it clear that insofar as the effect of two GRs dated 21.6.2013 and 2.7.2013 is concerned, the same can be taken into consideration at the final hearing of the Petition and that the Petitions be disposed of finally at the stage of admission. From all this, it is clear that the interim order was not to apply for the admission to the Postgraduate Courses for the academic year 2014-15 as it was reasonably expected that the Petitions would be taken up for final hearing before the commencement of the academic year 2014-15. The Petitions have accordingly been so taken up for final hearing. In the circumstances, I see no merit in the submission that the GR dated 2.7.2013 was "*stayed*" by the interim order dated 4.7.2013. If this submission is to be stretched any further, then it would mean that even the GR dated 21.6.2013, of which the Petitioners now seek implementation was also similarly "*stayed*". In the context of admissions for the academic

year 2014-15, which were to commence in April 2014, it cannot be said that the GR dated 2.7.2013 or the admission Brochure dated 28.11.2013, which clarifies policy, was not issued "*well in time*". Clearly, therefore, there is no merit in the submission of the Petitioners that the GR dated 2.7.2013 could not have been made or accepted as the Government policy in the matter of reservations to in-service candidates.

62] In the present case, it cannot be said that the change in the policy is abrupt, so as to warrant interference. Admittedly, there was an issue with regard to determination of quota or seats for in-service candidates, which prompted the filing of Writ Petition No. 5214 of 2012. The said Petition was disposed of by judgment and order dated 5.7.2012, in which the manner of computation of seats was in fact upheld, but directions were issued to the State to come out with Resolution specifying the policy to be adopted from the academic year 2013-14. As there was delay in formulation of policy, Writ Petition No.5290 of 2013 came to be filed, wherein interim order was made on 4.7.2013 that admissions be proceeded with on basis of the position prevalent prior to the judgment and order dated 5.7.2012. By this time, the policy as contained in GR dated 2.7.2013 was already in place. The Brochure published on 28.11.2013, also made it clear that for the academic year 2014-15, reservations/quota

for in-service candidates would be in accordance with the policy contained in GR dated 2.7.2013. Thus, in the context of academic year 2014-15, it cannot be said that the GR was not issued "*well in time*". Accordingly, it is not possible to accede to the submissions of the learned counsels for the Petitioners that that the position which prevailed at the time when the interim order dated 4.7.2013 was made, prevails even now at the stage of final hearing of the Petitions. Further, there is no merit in the contention that the change in policy as disclosed in GR dated 21.6.2013 and 2.7.2013, amounts to an abrupt change. It is not and it can perhaps not be the case of any of the Petitioners that they have altered their positions drastically, relying upon the GR dated 21.6.2013 and consequently, it would be unjust or inequitable to permit enforcement of policy contained in GR dated 2.7.2013. In the context of admissions for the academic year 2014-15, the change between 21.6.2013 and 2.7.2013, is by no means such as to deride the same as being abrupt or arbitrary. If the submission of the Petitioners is to be accepted, then the State would be in no position to implement changed policy until all the current in-service candidates secure admissions against reservations or quota for Postgraduate Degree and Diploma Courses. This, in my opinion, would not be a reasonable or a rational manner of giving effect to State policy.

63] There is yet another aspect that needs mention. In the event, the Petitioners' plea that G.R. dated 2.7.2013 is arbitrary, unreasonable, null and void is accepted and the said G.R dated 2.7.2013 is struck down then, that by itself would not revive the GR dated 21.6.2013 which had been cancelled by the GR dated 2.7.2013. There is no such principle on basis of which it could be urged that once a GR is quashed, the earlier GR which it had superseded or cancelled automatically revives. Further it is not for the Court to order such revival, because under such guise, the Court would itself be enacting a policy. In case, a Court finds a policy to be arbitrary, discriminatory, unconstitutional, null and void, it is within the domain of the Court to strike down same. However, it is not for the Court to re-formulate any policy or to declare that any old policy stands revived.

64] In the case of *State of Uttar Pradesh vs. Hirendra Pal Singh – 2011 (5) SCC 305,* the Supreme Court observed thus:

> *27. Thus, the High Court erred in issuing directions to the State authorities to proceed, as an interim measure, under a non-existing law. Such an order seems to have been passed only to fill up the vacuum. Generally quashing of a subsequent notification would not affect in revival of an earlier notification in whose place the subsequent notification had been issued, however, the legal effect of an earlier law when the later law enacted in its place is declared invalid, does not depend merely upon the use of the words like substitution or suppression. It depends upon the totality of circumstances and the*

context in which they are used. (Vide B.N. Tewari v. Union of India & anr-AIR 1965 SC 1430; Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India & anr-, AIR 1986 SC 515; West U.P. Sugar Mills Association v. State of U.P. - AIR 2002 SC 948; Zile Singh v. State of Haryana - (2004) 8 SCC 1; and State of Kerala v. Peoples Union for Civil Liberties -(2009) 8 SCC 46).

28. In Firm A.T.B. Mehtab Majid and Co. v. State of Madras - AIR 1963 SC 928, this Court while dealing with a similar issue held :

" 20. .....Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid."

29. Therefore, it is evident that under certain circumstances, an Act which stood repealed, may revive in case the substituted Act is declared ultra vires/unconstitutional by the court on the ground of legislative competence etc., however, the same shall not be the position in case of subordinate legislation. In the instant case, the L.R. Manual is consisted of executive instructions, which can be replaced any time by another set of executive instructions. (Vide Johri Mal).

30. Therefore, question of revival of the repealed clauses of LR Manual in case the substituted clauses are struck down by the court, would not arise. In view of this, the interim order would amount to substituting the legal policy by the judicial order, and thus not sustainable.

(emphasis supplied)

65] In the case of *Brihanmumbai Mahanagar Palika vs. Secretary, Bar Council of Maharashtra - 2012(6) Mh.L.J. 407*, a Full Bench of this Court, in a similar context, observed thus:

30. For these reasons, we have arrived at the conclusion that the deletion of the second and third paragraphs of Rule 49 and the corresponding deletion by the State Bar Council of the exception cannot be regarded as ultra vires or unreasonable. Moreover, we

must also take note of the position in law that the Court cannot issue a writ of Mandamus to the legislature to enact a law and similarly a Court cannot direct a subordinate legislative body to enact a particular rule. In State of Tamil Nadu vs. K.Shyam Sunder, the Supreme Court held that if an amending Act of the legislature is struck down for want of legislative competence or on the ground that it is violative of the fundamental rights in Part-III of the Constitution, it would be unenforceable in view of Article 13(2) and the old Act would revive. But this proposition of law, the Supreme Court held, is not applicable to subordinate legislation. Hence, even if the Court were to strike down the amendment made to Rule 49, that would not result in a revival of Rule 49 in its original form. We must, however, clarify that for the reasons that we have already indicated, we have come to the conclusion that the deletion of the second and third paragraphs of Rule 49 was valid.

(emphasis supplied)

66] In the case of *Laker Airways Ltd.. Department of Trade – (1977) 2 ALL ER 182* , the Lord Lawton observed thus:

"In the United Kingdom aviation policy is determined by ministers within the legal framework set out by parliament. Judges have nothing to do with either policy – making or the carrying out of policy. Their function is to decide whether a minister has acted within the powers given to him by statute or the common law. If he is declared by court after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as Parliament gives him the powers he wants. In a case such as this I regard myself as a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play."

(emphasis supplied)

67] Therefore, even if this Court were to be persuaded to strike down the GR dated 2.7.2013, the issue as to what the policy should

be after such striking down, would have to be left to the determination of the State. Otherwise, as observed by the Supreme Court in the case of *Hirendra Pal Singh (supra)*, this Court would be substituting State policy by a judicial order.

68] Insofar as Mr. Anturkar's submission that the field is covered by the 1998 Act and therefore, the State is denuded of its executive powers to issue GR dated 2.7.2013 is concerned, the same is not acceptable. The perusal of the provisions of 1998 Act would indicate that the same primarily relate to establishment and incorporation of the University of Health Sciences in the State and to provide for matters connected therewith and incidental thereto. On the basis of provisions contained in Section 5(k) of the 1998 Act, it cannot be said that the power to prescribe the reservations or define the extent of reservation is vested exclusively in the University and the State shall have no say or powers in that regard. Besides, it is the contention of Mr. Anturkar himself that if the statute contains provision for making sub-ordinate legislation, then so long as such legislation has not been enacted, the statute although brought in force, cannot be made operative. However, even assuming that Mr. Anturkar's submission that the field stands occupied by the 1998 Act is to be accepted, then even in that case there is no question of revival of an executive instruction of 1990, on basis of which the

Petitioners can claim for any reservations for in-service candidates to Postgraduate Degree Courses.

69] There were no submissions advanced by the Petitioners with regard to the manner of working out of the reserved seats, although the reliefs were sought for in some of the Petitions in this regard. As a matter of abundant caution, therefore, it is made clear that this Court finds no infirmity whatsoever in the manner in which the percentage of seats has been worked out for purposes of reservations to in-service candidates to the Postgraduate Diploma Courses. In fact, in my opinion, this issue stands settled by the judgment of this Court dated 5.7.2012(supra) wherein at paragraph 6, this Court observed thus:

> *6. .....In that view of the matter, the question that can be considered by the Court is as to whether the modality which has been followed by the State Government as explained above is so patently arbitrary as to warrant the interference of this Court on the ground that there is a violation of the fundamental right under Article 14. The object of an in service quota is to provide an incentive for government service. The in service quota is made available to candidates who are in government service, to pursue postgraduate degree or diploma courses. It cannot be held that the underlying rationale for excluding the seats which are set apart for the All India quota and the seats in non-clinical subjects is violative of Article 14. The State Government has no control over the allotment of seats under the All India quota. If the government has taken a policy decision to the effect that since in service candidates are required to attend to patients, consequently, the reservation should be allocated to clinical seats, it would be difficult for the*

Court to set aside such a policy on the ground of an infringement of Article 14.

(emphasis supplied)

70] In light of aforesaid position, there is no reason to decide the issues raised in Writ Petition No.1933 of 2014. Dr. Sadavarte, made it clear that he has no quarrel with the policy expressed in clause 7.1 of the Brochure and the GR dated 2.7.2013, which according to him is consistent with MCI Regulations. The Writ Petition No.1933 of 2014, is accordingly disposed of.

71] In the result, I see no merit in any of the remaining Petitions. The same are liable to be dismissed and are so dismissed. There shall however, be no orders as to costs.

72] In view of disposal of main Petitions, Civil Application Nos.491 of 2014 does not survive and is accordingly disposed of. In so far as Civil Application No.1509 of 2013 for intervention is concerned, the same is formally allowed.

(M. S. SONAK, J.)

In view of above difference of opinion, it is necessary to

place the files/records, urgently before Hon'ble the Chief Justice for an appropriate order/direction, including for reference and/or to place the matters before a larger Bench on the following point of reference:-

a) Whether the State Government Circular dated 2 July 2013 and all actions based upon it, to the extent of deleting totally in-service reservation for the Post-Graduate Degree Course are valid or violative of Articles 14 and 41 of the Constitution of India, being arbitrary, discriminatory, irrational and invalid?

The interim order based upon the statement so made by the learned Government Pleader to continue till further order.

Parties are at liberty to apply for appropriate order at any time in view of urgency in the matter.

(M. S. SONAK, J.) **(ANOOP V. MOHTA, J.)**