

A SAMTA AANDOLAN SAMITI & ANR.
v.
UNION OF INDIA & ORS.
(Writ Petition (Civil) No. 677 of 2013)

B DECEMBER 11, 2013

[K.S.RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Education – Admission – Medical admissions – MBBS – Choice given by respondents to SC/ST/OBC candidates taking admission in open competition, to opt for better Institution of their choice for which he/she would have been eligible as per the rules of reservation – Challenged – Whether once a candidate in reserved category had taken admission under the open competition, he could not have been given a choice for better Institution on the premise that he/she will be governed by Rules of reservation – Held: Respondents, at the time of counseling, only accorded a higher/better choice to meritorious reserved candidates (MRC) who got recommended against general/unreserved seats vis-à-vis those reserved category candidates who were accommodated against their quota – It was an inter-se adjustment between two kinds of persons belonging to reserved category – In inter-se merit, persons who were able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of candidates belong to reserved category – If between two categories of persons belonging to same class, higher choice is not given to the persons who are better in merit viz. the MRCs, it would clearly be injustice to them – Action of the respondents not prejudicial to the interests of the petitioners in any manner.

The petitioners filed the instant Writ Petition under

Article 32 of the Constitution pleading that while making admissions in the MBBS course, the respondent-All India Institute of Medical Sciences (AIIMS) was not strictly adhering to the reservation policy; and questioning the manner in which seats were allotted to the candidates belonging to reserved category. As per them, the AIIMS far exceeded the quota prescribed for the reserved category candidates resulting in more than 50 % reservations of the seats, which is contrary to the law laid down by this Court.

The petitioners objected to the choice given by respondents to SC/ST/OBC candidates who had taken admission in the open competition, to opt for a better Institution of their choice for which he/she would have been eligible as per the rules of reservation. This, according to the petitioner, was impermissible as once a candidate in reserved category had taken admission under the open competition, he could not have been given a choice for better Institution on the premise that he/she will be governed by Rules of reservation.

The stand of the respondent-AIIMS, on the other hand, was that the methodology adopted by the AIIMS for admission in MBBS course was perfectly valid and justified. The respondent maintained that 50% quota had not been breached and what was done in fact was *inter se* adjustment among those who belong to reserved class i.e. those who were selected on their own merit and found their way into general category vis-a-vis those who were admitted on the basis of reservation provided in the respective reserved categories. It was contended on behalf of the respondent that this was necessary as otherwise those persons from reserved category who were more meritorious would be in a disadvantageous position vis-à-vis those who secured admission on the basis of relaxed standard under the reserved quota meant for them.

A Dismissing the petition, the Court

B HELD: 1.1. When certain persons belonging to reserved category get selected in open competition on the basis of their merit, they are not to be counted in the reserved category against the reserved category quota. It is open to the authorities to fill the posts meant for reserved category candidates from amongst the persons in such categories after excluding those who have found their place in general merit. As a fortiori, while calculating the limit of 50% reservation, those candidates belonging to reserved category who have found their place on the basis of their merit competing with general candidates are not to be taken into consideration. [Para 15] [1143-G-H; 1144-A]

D 1.2. Those members who belong to reserved category but get selected in the open competition on the basis of their own merit have a right to be included in the general/unreserved category. Such Meritorious reserved candidates (MRC) not to be included in the quota reserved for Scheduled Caste etc. It is an admitted position that if these persons are excluded, the respondents have not exceeded the quota meant for reserved category. The respondents, at the time of counseling, have only accorded a higher/better choice to these meritorious reserved candidates (MRC) who got recommended against general/unreserved seats vis-à-vis those reserved category candidates who are accommodated against their quota. It is, therefore, an inter-se adjustment between the two kinds of persons belonging to reserved category. In their inter-se merit, these persons who have been able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of candidates belong to reserved category. Thus, if between these two

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categories of persons belonging to same class, higher choice is not given to the persons who are better in merit viz. the MRCs, it would clearly be injustice to them. In the instant case, neither upper limit of 50% reservation is breached, nor any rights of the petitioners are violated or the action of the respondents have been to their prejudice in any manner. [Paras 19 and 24] [1145-E-H; 1146-A; 1148-G]

Ritesh R.Sah vs. Dr. Y.L. Yamul & Ors. (1996) 3 SCC 253: 1996 (2) SCR 695 – held applicable

Indira Swhney vs. Union of India (1992) Suppl. 3 SCC 212; *Union of India vs. Ramesh Ram & Ors.* (2010) 7 SCC 234: 2010 (6) SCR 698 and *Yoganand Vishwasrao Patil vs. State of Maharashtra* (2005) 12 SCC 311 – referred to.

Case Law Reference:

1996 (2) SCR 695	held applicable	Para 12
(1992) Suppl. 3 SCC 212	referred to	Para13
2010 (6) SCR 698	referred to	Para 15
(2005) 12 SCC 311	referred to	Para 22

CIVIL ORIGINAL JURISDICTION : Under Article 32 of the Constitution of India.

Writ Petition (Civil) No. 677 of 2013.

A. Mariarputham, M.L. Lahoty, Paban K. Sharma, Shobhit Tiwari, Gargi B. Bharali, Lal Pratap Singh, Ram Niwas, Umesh Pratap Singh, Ruchi Kohli, Gopal Shankarnarayanan, Vikramaditya, Dr. R.R. Kishore, Shiva Pujan Singh, Niranjana Singh, Kumar Rajan Mishra, Narender S. Yadav, Alok Prasanna Kumar, D.L. Chidananda, B. Krishna Prasad, Yusuf Khan, Mehmood Pracha, Suit Babbar, Naresh Kumar (for AIIMS) for the appearing parties.

A The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. The petitioners have approached this Court by way of filing the present Writ Petition filed under Article 32 of the Constitution of India with the grievance that while making admissions in the MBBS course, the respondent All India Institute of Medical Sciences (AIIMS) is not strictly adhering to the reservation policy and have questioned the manner in which seats are allotted to the candidates belonging to reserved category. As per them, the AIIMS have far exceeded the quota prescribed for the reserved category candidates which has resulted in more than 50 % reservations of the seats, which is contrary to the law laid down by this Court. The stand of the AIIMS, on the other hand, is that there is no violation of the law laid down by this Court in this behalf and the methodology adopted by the AIIMS for admission in MBBS course is perfectly valid and justified. The controversy has arisen in the following backdrop:

2. "The All India Institute of Medical Sciences (AIIMS), New Delhi issued Prospectus for admission in the MBBS course starting from August, 2013 along with admission in Six New AIIMS at Bhopal, Patna, Jodhpur, Rishikesh, Raipur and Bhubaneswar with an intake of 100 students in each new AIIMS. The reservation policy was notified to be 7.5% ST, 15% SC, 27% OBC and Indian Nationals, 3% reservation for Orthopedic physically handicapped to be provided on horizontal basis. Para 4.2 of the prospectus prescribe the procedure for selection into the MBBS course hereunder:

"4.2 PROCEDURE OF SELECTION:

G Based on the result of the Competitive Entrance examination, merit lists will be prepared as below:

(a) Common Merit List: Subject to the Govt. of India, DOPT. O.M.No.36011/1/98.Estt.(Res), dated 1st July 1998. It is clarified that only such SC/ST/OBC candidates

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who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBS candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for General Category candidates etc. the SC/ST/OBS candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against the unreserved vacancies. Therefore the reserved candidate will be considered on General Seat only if no relaxation of the eligibility level (i.e. % of marks) and at cut off level of marks in MBBS entrance examination is given.

(b) Scheduled Caste candidates list

(c) Scheduled Tribe candidates list

(d) Other Backward Classes candidates list"

3. Thirty seven (37) candidates from the common merit list, eleven (11) candidates from the merit list of Scheduled Caste category and five (5) candidates from the merit list of Scheduled Tribe and 19 (nineteen) candidates from the merit list of Other Backward Classes category will be admitted including 3% reservation for orthopaedic physically handicapped on horizontal basis in the seats available. The reservation will be 7 ½ % ST, 15% SC and 27% for OBC category. In case eleven (11) candidates from the Scheduled Caste or five (5) candidates from the Scheduled Tribe categories and nineteen (19) candidates belonging to OBC are not available, then the number of candidates selected on the basis of merit for general seats shall be correspondingly increased so that the total number of candidates selected for the MBBS course remains seventy two (72). The remaining candidates will be kept on the waiting list in order of merit. Inter

A se merit of two or more candidates in the same category
obtaining equal marks in the competitive entrance examination
will be determined in order of preference as under:

B (a) Candidates obtaining higher marks in Biology in
the entrance examination.

(b) Candidates obtaining higher marks in Chemistry
in the entrance examination.

C (c) Candidates obtaining higher marks in Physics
in the entrance examination.

(d) Candidates older in age to be preferred.

D A similar procedure for selection will apply for the six
new AIIMS where the number will be calculated for a total
of 100 admissions for each."

E 4. Petitioner No.2 being eligible in all respects under
unreserved category had submitted his application form and
was allotted application form number-1021016668. He was
issued the Admit Card for AIIMS-MBBS 2013 Entrance
Examination. Petitioner No.2 appeared in the competitive
entrance examination held on 1.6.2013 and secured 1066 over
all rank. A counseling letter was issued for counseling at Delhi
AIIMS on 10-12 July 2013 and the Petitioner No.1 was called
for counseling scheduled to be held on 10th July 2013.

F That as per the counseling letter the method of counseling
is:

G **4. Method of counseling:** The following process will be
adapted for counseling for all 7 AIIMS Institutes.

H i. In the counseling process, the seats to be filled by
open (UR) competition should be filled up first, wherein the
candidates should be called for counseling based on merit
alone irrespective of whether they belong to SC, ST or
OBC.

ii. Next, reservation categories like SC/ST/OBC candidates will be counseled to fill up the seats earmarked for them in their respective categories. During this process, if a candidate belonging to SC/ST/OBC who had taken admission under open competition, opts for a better institution of his/her choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open (UR) competition shall be filled with a candidate from the same reservation category only, in order of merit.

Note: All reserved category candidates who qualify in the open (general) merit list (i.e. 4 times of the open category seats) shall necessarily attend the counseling for open category seats and shall exercise his/her option and then if, he/she desires to opt for a different institution in his/her respective reserved category, he/she may attend the counseling meant for that reserved category.

Provided:

a. If he/she is not present or if present, fails to or refused to take a seat in open category, he/she shall not be allowed for attending the counseling for reserved seats.

b. He/she cannot opt for institution under reservation, if he/she had already opted the same institution in open category.

Methods of counseling: In the counseling process, the seats to be filled by open (UR) competition should be filled up first, wherein the candidates should be called for counseling strictly by merit alone till the last unreserved seat is filled, irrespective of whether they belong to SC, ST or OBC. The counseling for reserved category seat (which will also be strictly by merit) should commence only after filling up of all the unreserved seats (i.e. open category seats). Meritorious reserved candidate belonging to SC/

A ST/OBC category, who has taken unreserved seat in any
 institution after attending the open merit counseling, if
 exercises his/her option to take a different institute in the
 reserved category counseling, the seat so vacated by this
 B candidate should be available to next meritorious
 candidate belonging to that particular reserved category
 only. In other word if SC/ST/OBC candidate got any
 institution under unreserved category and if he/she opts
 different institution under reserved category of his/her
 choice the resultant vacated unreserved seat shall be
 C allotted to same category candidate in order of merit i.e.
 the vacated seat of meritorious reserved category
 candidate should be immediately added to the seats
 available under the reserved category in the institute he/
 she had opted during counseling for UR seat.

D Note: For example – if a SC meritorious candidate
 who has initially opted a X institution from open category,
 vacates a seat in open category because he wants to take
 Y institution from reserved category during the counseling
 in reserved category, the same seat (i.e. UR seat of X
 E institute) which is vacated by him/her shall be made
 available to the next SC candidate in order of merit.”

5. Petitioner No.2 appeared in the counseling (1st
 counseling) conducted by the respondents. The petitioners aver
 F that the respondents had conducted the counseling in strict
 adherence of the procedure quoted hereinabove. However, the
 respondents forced reserve candidates to obtain the
 unreserved (UR) seats by note (4.2.a) in counseling call letter.
 In this way the respondents deliberately tried to convert UR
 G seats to reserve category seat because of note 4.2. Otherwise
 the candidates would have been provided freedom to opt seats
 under UR seats or category seats of their choice in different
 AIIMS. It is averred that the common practice in the counseling
 of NEET (National Eligibility cum Entrance Test), AIPMT (All
 H India Pre Medical Test) and states counseling for admission in

Government Medical Colleges, is parallel counseling for all categories on their merit cum choice basis in which unreserved seats are filled first as per rule framed by this Court in Indira Sawhney case.

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6. It is stated that the petitioner No.2 has secured rank 1066 in the competitive entrance examination and counseling for unreserved seats on 1st day of counseling could reach only up to 663 ranks only. In the counseling done for unreserved seats approx. around 140 reserve categories candidate found place on general seats.

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7. On the second day of counseling, which is for other backward classes (OBC) category, the counseling started from rank 1st for OBC and approx. around 120 OBC candidates, who has secured their merit position in unreserved category opted for better colleges from their counterpart in unreserved category by enjoying their reserve status on OBC seats. In other words, the seats/position occupied by meritorious reserved category candidates was vacated. All vacated seats and 181 reserve seats were filled on 11 July by comparative low rank OBC candidate. By adding this around 45 percent of candidates from OBC took the benefit of Quota instead of 27 per cent. The case sought to be set up is that by this procedure it exceeds the limit given by the Constitution.

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8. This position is sought to be highlighted by the following MBBS seat position in each AIIMS:

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Name of Institution	Total Seats	UR	OBC	SC	ST
AIIMS, New Delhi	72	37	19	11	5
AIIMS, Bhopal	100	50	27	15	8
AIIMS, Bhubaneswar	100	50	27	15	8
AIIMS, Jodhpur	100	50	27	15	8

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A	AIIMS, Patna	100	50	27	15	8
	AIIMS, Raipur	100	50	27	15	8
	AIIMS, Rishikesh	100	50	27	15	8
B	Total	672	337	181	101	53

9. It is stated that as against 181 seats meant for OBC category, 270 seats have been filled from amongst the candidates belonging to this category which is evidentially impermissible. By the time this matter was argued, as the third and final counseling had taken place and the allotment of the seats was done on the basis of that counseling. The final picture which emerged, is that the last unreserved candidates who secured admission in reserved category had rank of 1476. There were 79 candidates in OBC category who had higher rank than 1476 and were, thus, adjusted as meritorious reserved candidates (MRC) candidates in unreserved candidates. Likewise, this SC candidate with rank above 1476 could make their way to unreserved list.

10. On the aforesaid basis, following prayer is made in the Writ Petition:

(a) Pass writ, order or direction whereby respondents be directed to give admission to petitioner No.1 in unreserved category in MBBS course 2013,

(b) Pass writ, order or direction whereby directions No.4 (reproduced at para No.8 of the writ petition) in counseling letter prescribing procedure for counseling be quashed and set aside.

(c) Pass writ order or direction whereby respondents be directed to make strict compliance of the Hon'ble Supreme Court judgment passed in the case of *Union of India vs. Ramesh Ram* (2010) 7 SCC 234).

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(d) Pass writ order or direction whereby respondents be restrained to permit the reserve category candidates to occupy the seats in unreserved category vacated by meritorious category candidates, who have opted/chosen their reserve category for seeking admission in MBBS course 2013.

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(e) Pass writ order or direction whereby respondents be directed to undertake the admission exercise for MBBS course 2013 strictly in terms of prayer sought in Paragraph (c).

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(f) Pass such other or further order (s) as this Hon'ble Court may deem fit in the facts and circumstances of the case."

11. After issuance of the show cause notice, respondents appeared. Since main contesting party is the AIIMS, counsel affidavit on its behalf filed by Dr.A.B.Dey, Dean, (Research) who had acted as Convener of the counseling in the aforesaid admission process. It is stated by him in his affidavit that the process of counseling was discussed and finalized in the meeting held on 26.5.2013 with all Directors, AIIMS, senior officials and senior faculties. The minutes of the meeting, inter-alia, mentioned that :

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"...it was mandatory for all candidates to be present in person for counseling on the days as given in the call letter. No request for authorized representative to be present on behalf of candidate would be entertained. If a candidate failed to come for counseling in person, she/she would be marked absent and her/his candidature would stand cancelled..."

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12. It is also stated in the counter affidavit that in this meeting it was decided to constitute a Counseling Committee to undertake three counts of counseling for MBBS and two rounds of counseling for B.Sc. (Hons.) Nursing for 7 AIIMS. For this reason, in the counseling letter, attention of the candidates

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A was drawn to the provision in the prospectus whereby candidates were asked to give choice about different AIIMS where they would like to be admitted. They were also informed that allocation of seats will be done on merit-cum-choice. In the counseling letter, therefore, candidates were informed that they

B would exercise their choice of the particular Institute when called during the counseling as per the rank in respective category. Notwithstanding whatsoever choices he/she had made while filling form, choice thus made was to be final and no claim whatsoever on the basis of choices made in admission form

C was to be entertained. This was widely circulated through newspaper advertisement and posted on AIIMS website as well, well in advance. It is pleaded that this method of counseling adopted by AIIMS was in tune with the judgment of this Court in *Ritesh R. Sah vs. Dr. Y.L. Yamul & Ors.* (1996) 3 SCC 253.

D The exact nature of the counseling method which was adopted is stated below :

1. In the counseling process, the seats to be filled by open (UR) competition should be filled up first, wherein the candidates should be called for counseling based on merit alone irrespective of whether they belong to SC,ST or OBC.

2. Next, reservation categories like SC/ST/OBC candidates will be counseled to fill up the seats earmarked for them in their respective categories. During this process, if a candidate belonging to SC/ST/OBC who had taken admission under open competition, opts for a better institution of his/her choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open (UR) competition shall be filled with a candidate from the same reservation category only, in order of merit.

Note: All reserved category candidates who qualify in the open (general) merit list (i.e. 4 times of the open category seats) shall necessarily attend the counseling for open

category seats and shall exercise his/her option and then if, he/she desires to opt for a different institution in his/her respective reserved category, he/she may attend the counseling meant for that reserved category.

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Provided

a. If he/she is not present or if present, fails to or refuses to take a seat in open category, he/she shall not be allowed for attending the counseling for reserved seats.

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b. He/she cannot opt for institution under reservation, if he/she had already opted the same institution in open category.

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Methods of counseling

In the counseling process, the seats to be filled by open (UR) competition should be filled up first, wherein the candidates should be called for counseling strictly by merit alone till the last unreserved seat is filled, irrespective of whether they belong to SC,ST or OBC.

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The counseling for reserved category seat (which will also be strictly by merit) should commence only after filling up of all the unreserved seats (i.e. open category seats). Meritorious reserved candidate belonging to SC/ST/OBC category, who has taken unreserved seat in any institution after attending the open merit counseling, if exercises his/her option to take a different institute in the reserved category counseling, the seat so vacated by this candidate should be available to next meritorious candidate belonging to that particular reserved category only. In other word if SC/ST/OBC candidate got any institution under unreserved category and if he/she opts different institution under reserved category of his/her choice the resultant vacated unreserved seat shall be allotted to same category candidate in order of merit, i.e. the vacated seat of meritorious reserved category candidate should be

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A immediately added to the seats available under that reserved category in the institute he/she had opted during counseling for UR seat.

B Note: For example – ‘if a SC meritorious candidate who has initially opted a X institution from open category, vacates a seat in open category because he wants to take Y institution from reserved category during his counseling in reserved category, the same seat (i.e. UR seat of X institute) which is vacated by him/her shall be made available to the next SC candidate in order of merit.”

C 13. It is pleaded that with the adoption of the aforesaid method, the authorities found out the candidates among reserved candidates who qualified on their own merit and are on the open merit list and then asking their option if they want to choose other Institute of their choice which is present in their reserved category and not in unreserved category. This method gives them option to change Institute in their better choice in reserved category and once that is done such candidates are given that reserved seats but while computing the percentage of reservation they are not counted against reservation pool.

D To achieve that objective, the seat which they vacated is offered to the same reserved category below in merit. It is thus pleaded that 50% of the ceiling is never broken in the present counseling and thus persons belonging to reserved category, who are able to come on their own merit while competing with the general candidates category can be put in the list of general/unreserved category, as held by this Court in the case of *Indira Sawhney vs. Union of India* (1992) Suppl. 3 SCC 212.

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G 14. We have already quoted the general proposition of law, in so far as extend of reservation is concerned, as laid down in *Indira Sawhney* (supra). Mr. Lahoti has placed reliance on paragraphs 804, 807 and 809 of this judgment whereas learned counsel for the respondent led emphasis on paras 811 and 813. In the case of *Indira Sawhney* (supra) the principle was

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stated in the following terms: We quote hereunder all these paragraphs: A

PART-V

(QUESTION NOS. 6, 7 AND 8)

Question 6: To what extent can the reservation be made? B

(a) Whether the 50% rule enunciated in Balaji a binding rule or only a rule of caution or rule of prudence?

(b) Whether the 50% rule, if any, is confined to reservations made under Clause (4) of Article 16 or whether it takes in all types of reservations that can be provided under Article 16? C

(c) Further while applying 50% rule, if any, whether an year should be taken as a unit or whether the total strength of the cadre should looked to? D

In Balaji, a Constitution Bench of this Court rejected the argument that in the absence of a limitation contained in Article 15(4), no limitation can be prescribed by the court on the extent of reservation. It observed that a provision under Article 15(4) being a "special provision" must be within reasonable limits. It may be appropriate to quote the relevant holding from the judgment. E

When Article 15(4) refers to the special provision for the advancement of certain classes or scheduled castes or scheduled tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exhaustive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to F
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A be made. But if a provision which is in the nature of an
 exception completely excludes the rest of the society, that
 clearly is outside the scope of Article 15(4) the Parliament
 intended to provide that where the advancement of the
 B Backward classes or the Scheduled Castes and Tribes
 was concerned, the fundamental rights of the citizens,
 constituting the rest of the society were to be completely
 and absolutely ignored ... A special provision contemplated
 by Article 16(4) must be within reasonable limits. The
 interests of weaker sections of society which are a first
 C charge on the State and the center have to be adjusted
 with the interests of the community as a whole. The
 adjustment of these competing claims is undoubtedly a
 difficult matter, but if under the guise of making a special
 D provision, a State reserves practically all the seats
 available in all the colleges, that clearly would be subverting
 the object of Article 15(4). In this matter again, we are
 reluctant to say definitely what would be a proper provision
 to make. Speaking generally and in a broad way a special
 E provision should be less than 50%; how much less than
 50% would depend upon the relevant prevailing
 circumstances in each case.

In Devadasan this rule of 50% was applied to a case
 arising under Article 16(4) and on that basis the carry-
 forward rule was struck down. In Thomas, however, the
 F correctness of this principle was seriously questioned,
 Fazal Ali, J. observed:

This means that the reservation should be within the
 permissible limits and should not be a cloak to fill all the
 posts belonging to a particular class of citizens and thus
 G violate Article 16(1) of the Constitution indirectly. At the
 same time Clause (4) of Article 16 does not fix any limit
 on the power of the Government to make reservation.
 Since Clause (4) is a part of Article 16 of the Constitution
 it is manifest that the State cannot be allowed to indulge
 H in excessive reservation so as to defeat the policy

contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50%. As I read the authorities, this is however, a rule of caution and does not exhaust all categories. Suppose for instance a State has a large number of backward class of citizens which constitute 80% of the population and the Government, in order to give them proper representation, reserves 80% of the jobs for them can it be said that the percentage of reservation is bad and violates the permissible limits of Clause (4) of Article 16? The answer must necessarily be in the negative. The dominant object to this provision is to take steps to make inadequate representation adequate.

Krishna Iyer, J. agreed with the view taken by Fazal Ali, J. in the following words:

I agree with my learned brother Fazal Ali, J. in the view that the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far. Overall representation in a department does not depend on recruitment in a particular year, but the total, strength of a cadre. I agree with his construction of Article 16(4) and his view about the 'carry forward' rule.

823. Mathew, J. did not specifically deal with this aspect but from the principles of 'proportional equality' and 'equality of results' espoused by the learned Judge, it is argued that he did not accept the 50% rule. Bag, J. also did not refer to this rule but the following sentence occurs in his judgment at page 962 and 963:

If a reservation of posts under Article 16(4) for employees of backward classes could include complete reservation

A *of higher posts to which they could be promoted, about*
which there could be no doubt now, I fail to see why it
cannot be partial or for a part of the duration of service
and hedged round with the condition that a temporary
 B *promotion would operate as a complete and confirmed*
promotion only if the temporary promotee satisfies some
tests within a given time.

Ray, C.J. did not dispute the correctness of the 50% rule but at the same time he pointed out that this percentage should be applied to the entire service as a whole.

C 807. We must, however, point out that Clause (4) speaks
of adequate representation and not proportionate
representation. Adequate representation cannot be read
as proportionate representation. Principle of proportionate
D representation is accepted only in Articles 330 and 332
of the Constitution and that too for a limited period. These
articles speak of reservation of seats in Lok Sabha and
the State legislatures in favour of Scheduled Tribes and
Scheduled Castes proportionate to their population, but
E they are only temporary and special provisions. It is
therefore not possible to accept the theory of proportionate
representation though the proportion of population of
backward classes to the total population would certainly
be relevant. Just as every power must be exercised
reasonably and fairly, the power conferred by Clause (4)
F of Article 16 should also be exercised in a fair manner and
within reasonable limits -and what is more reasonable than
to say that reservation under Clause (4) shall not exceed
50% of the appointments or posts, barring certain
extraordinary situations as explained hereinafter. From this
G point of view, the 27% reservation provided by the
impugned Memorandums in favour of backward classes
is well within the reasonable limits. Together with
reservation in favour of Scheduled Tribes, it comes to a
total of 49.5%. In this connection, reference may be had
H to the Full Bench decision of the Andhra Pradesh High

Court in *Narayan Rao v. State* , striking down the enhancement of reservation from 25% to 44% for O.B.Cs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.

“809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

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

“813....It is however, made clear that the rule of 50% shall be applicable only to reservation proper; they shall not be - indeed cannot be – applicable to exemptions, concessions or relaxations, if any provided to backward class of citizen’s under Article 16(4)...”

15. There is no quarrel upto this stage. It is now well entrenched principle of law that those members belonging to reserved category who get selected in the open competition on the basis of their own merit have right to be included in the general list/unreserved category and not to be counted against the quota reserved for Scheduled Caste. This was recognized by the Constitutional Bench judgment of this Court in *Indira Sawhney (supra)* and has been followed in series of judgments thereafter. Thus, when certain persons belonging to reserved category get selected in open competition on the basis of their merit, they are not to be counted in the reserved category against the reserved category quota. It is open to the authorities to fill the posts meant for reserved category candidates from amongst the persons in such categories after excluding those who have found their place in general merit. As a fortiori, while

A calculating the limit of 50% reservation, those candidates
 belonging to reserved category who have found their place on
 the basis of their merit competing with general candidates are
 not to be taken into consideration. It is also not in dispute that
 such OBC/SC candidates who have been included in general
 B category have come in that category on their own merit with no
 relaxation of the eligibility level i.e. percentage of marks.
 However, the objection of Mr. Lahoti, learned counsel for the
 petitioner, was to the method of counseling which was adopted
 in the present case as that has come, no doubt, above to the
 C persons in reserved categories. He submitted that as per para
 4 of the counseling letter choice was given to SC/ST/OBC
 candidates who had taken admission in the open competition,
 to opt for a better Institution of their choice for which he/she
 would have been eligible as per the rules of reservation. This,
 D according to him, was impermissible as once a candidate in
 reserved category had taken admission under the open
 competition, he could not have been given a choice for better
 Institution on the premise that he/she will be governed by Rules
 of reservation. For this reason, he took strong objection to the
 E note appended to para 4 of the counseling letter as well which
 facilitated this process. He, thus, submitted that the counseling
 letter/circular was opposed to the provision made in the
 prospectus and was also contrary to the judgment of this Court
 in *Union of India vs. Ramesh Ram & Ors.* (2010) 7 SCC 234.

F 16. Learned counsel for the respondent, on the other hand,
 maintained that 50% quota had not been breached and what
 was done in fact was inter se adjustment among those who
 belong to reserved class i.e. those who were selected on their
 own merit and found their way into general category vis-a-vis
 G those who were admitted on the basis of reservation provided
 in the respective reserved categories. He argued that this was
 necessary as otherwise those persons from reserved category
 who was more meritorious would be in a disadvantageous
 position vis-à-vis those who secured admission on the basis
 H of relaxed standard under the reserved quota meant for them.

His submission was that this was approved by this Court in the case of *Yoganand Vishwasrao Patil vs. State of Maharashtra* (2005) 12 SCC 311.

17. We have considered the submissions of counsel of both the parties. At the outset, we would like to point out that in the present case, we are dealing with the case of admission with medical course, and the position which we are going to explain in the subsequent paragraphs is confined to cases of admissions and not appointment into the service under the Government. Further, this applies only to MBBS Course and not Post Graduate Courses. Further, we are concerned herein admission process in Seven AIIMS only and the position explained does not relate to those cases where their admissions are in different colleges.

18. With this clarification, we proceed to deal with the issue.

19. It is stated at the cost of the repetition that those members who belong to reserved category but get selected in the open competition on the basis of their own merit have a right to be included in the general/unreserved category. Such MRC not to be included in the quota reserved for Scheduled Caste etc. It is an admitted position that if these persons are excluded, the respondents have not exceeded the quota meant for reserved category. The respondents, at the time of counseling, have only accorded a higher/better choice to these meritorious reserved candidates (MRC) who got recommended against general/unreserved seats vis-à-vis those reserved category candidates who are accommodated against their quota. It is, therefore, an inter-se adjustment between the two kinds of persons belonging to reserved category. In their inter-se merit, these persons who have been able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of candidates belong to reserved category. Thus, if between these two categories of persons

A belonging to same class, higher choice is not given to the persons who are better in merit viz. the MRCs, it would clearly be injustice to them. This was precisely the issue which was referred for decision to the Constitution Bench in the case of Ramesh Ram (supra). In paragraph 3 of the judgment, the
 B Constitution Bench stated the question which was referred for its decision and, the same reads as follows:

C “Whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category.”

D 20. In the light of the submissions made by the counsel for the parties, the Court framed three questions which had arisen for consideration and the same are as under:

E I. Whether the reserved category candidates who were selected on merit (i.e. MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of “service allocation”?

F II. Whether Rules 16(2),(3),(4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14,16(4) and 335 of the Constitution of India?

G III. Whether the order of the Central Administrative Tribunal was valid to the extent that it relied on Anurag Patel vs. U.P.Public Service Commission (which in turn had referred to the judgment in Ritesh R.Sah v. Dr.Y.L.Yamul, which dealt with reservations for the purpose of admission to postgraduate medical course); and whether the principles followed for reservations in admissions to educational institutions can be applied to examine the constitutionality of a policy that deals with
 H reservation in civil services.”

21. Dealing with the first question which directly arises in the present case, the Court clarified that a distinction is to be maintained between the cases dealing with the admission to educational institutions and appointment to a service. The Court accepted the general proposition that such a course of action affords a meritorious reserved candidates (MRC), the benefit of reservation in so far as service allocation is concerned, if this is not done, lesser meritorious reserved candidates would be able to secure better discipline. Therefore, this course of action preserves and protects inter-se merit amongst the reserved candidates.

22. No doubt, while doing so, the Court was of the opinion that such meritorious reserved candidates (MRC) who avail the benefit of Rule 16(2) of the Civil Services Examination Rules (which permitted such inter-se transfer) and are eventually adjustment in the reserved category, they should be counted part of reserved category for the purpose of computing aggregate reservation quota. However, it was categorically stated that this proposition applies when there is an appointment to a service under the State and categorically excluded the cases of admission in educational institutions. In so far as admission in educational institutions is concerned, such a MRC was to continue to be treated as belonging to general category, which position he attained because of his initial merit. The Court noted that this was so held in *Ritesh R.Sah v. Dr. Y.L.Yamul* (1996) 3 SCC 253.

23. The question in that case was whether a reserved category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the reserved category or should he be treated as a general candidate. The Court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved for Schedule Castes or any other reserved category. It was so held in the following words:

A “.....In view of the legal position enunciated by this Court
in the aforesaid cases the conclusion is irresistible that a
student who is entitled to be admitted on the basis of merit
though belonging to a reserved category cannot be
B considered to be admitted against sets reserved for
reserved category. But at the same time the provisions
should be so made that it will not work out to the
disadvantage of such candidate and he may not be placed
at a more disadvantageous position than the other less
C meritorious reserved category candidates. The aforesaid
objective can be achieved if after finding out the
candidates from amongst the reserved category who
would otherwise come in the open merit list and then
asking their option for admission into the different colleges
which have been kept reserved for reserved category and
D thereafter the cases of less meritorious reserved category
candidates should be considered and they be allotted
seats in whichever colleges the seats should be available.
In other words, while a reserved category candidate
entitled to admission on the basis of his merit will have
E the option of taking admission in the colleges where a
specified number of seats have been kept reserved for
reserved category but while computing the percentage of
reservation he will be deemed to have been admitted as
an open category candidate and not as a reserved
category candidate.”

F 24. Since, we are concerned with the admission to
medical course, aforesaid judgment squarely applies to the
present case. Thus we find that neither upper limit of 50%
reservation is breached, nor any rights of the petitioners are
G violative or the action of the respondents have been to their
prejudice in any manner. Thus, we do not find any merit in the
present petition, which is accordingly dismissed. No costs.

B.B.B.

Writ Petition dismissed.

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