

State of Assam and ors. Vs. Rajeev Dey and ors., Etc. Etc.

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Court : Guwahati

Decided On : Jun-28-1995

Judge : V.K. Khanna, C.J. and A.K. Patnaik, J.

Acts : [Constitution of India](#) - Articles 15(4), 46, 162, 166 and 226; Regional Dental College, Assam Rules, 1922 - Rules 4(2), 4(4), 7(1), 8(1) and 10; Code of Civil Procedure (CPC) - Order 1, Rule 8

Appeal No. : Writ Appeal Nos. 97 and 274 to 299 of 1995 (in Civil Rule Nos. 2919, 2904 and 2987 etc. etc. of 1994

Appellant : State of Assam and ors.

Respondent : Rajeev Dey and ors., Etc. Etc.

Advocate for Def. : N.M. Lahiri, A.K. Bhattacharyya, P. Prasad, S.N. Medhi, K. Agarwal, M. Das, A.K. Purkayastha, N. Choudhury, B. Talukdar, M. Buzarbaruah and S. Chakraborty, Advs.

Advocate for Pet/Ap. : S.N. Bhuyan, Adv. General, B.C. Das, B. Banerjee, A.C. Sarma, Addl. Sr. Govt. Advs.

Disposition : Appeals allowed

Judgement :

Patnaik, J.

1. In this batch of 27 writ appeals, the common judgment dated 28-9-1994 of the learned single Judge in 27 Civil Rules directing admission of 27 candidates for the session 1993-94 in order of merit in seats likely to be available in Medical Colleges in the State of Assam for the session 1994-95 is under challenge.

2. The brief facts leading to the filing of these appeals are that the aforesaid 27 candidates applied for admission to the 1st Year M.B.B.S. Course in the Medical Colleges of the State of Assam for the session 1993-94 but were denied admission. Aggrieved, some of them approached this Court under Article 226 of the Constitution contending that admissions had been granted to candidates who had marks less than them in the qualifying examination and were thus less meritorious than them. When these Writ Petitions came up for hearing, the learned single Judge passed orders on 12-8-1994 on Civil Rules No. 2919/94 directing publication of notice in the local Daily 'The Assam Tribune' to all interested candidates seeking admission which was to be of the nature of a notice under Order I, Rule 8, C.P.C. Pursuant to the order dated 12-8-1994, a notice was published in 'The Assam Tribune' dated 17th August, 1994 under Order I, Rule 8 of the C.P.C. stating therein that in some Civil Rules the petitioners had challenged that candidates have been admitted into different Medical Colleges of Assam for the academic session 1993-94 depriving the petitioners who had better claim for admission and that the Court had fixed the final hearing of the petitioners on 22-8-1994 and all persons similarly interested may join as parties in the said Civil Rules on or before 19-8-1994. In response to the said notice under Order f, Rule 8, C.P.C., some more Writ Petitions were filed and registered as Civil Rules. Thereafter the Civil Rules were heard on different dates and were disposed of by the impugned common judgment dated 28-9-1994 with the direction that seats likely to be available due to failure of the candidates to take admission into the 1st Year M.B.B.S. Course for the session 1994-95 within the time fixed shall be offered to the 27 candidates in order of merit. Aggrieved by the impugned common judgment dated 28-9-1994 of the learned single Judge, the appellants initially moved the Supreme Court by Special Leave Petition (Civil) Nos. 19300-19326 of 1994 in which an interim order was passed by the Supreme Court staying the impugned judgment. But thereafter by order dated 10-3-1995, the aforesaid Special Leave Petitions were disposed of with the direction that in case an appeal

is filed before the Division Bench of this Court within 15 days, the Division Bench may entertain and deal with the same on merits and not dismiss it on the ground of limitation. By the said order dated 10-3-1995, the Supreme Court further directed that the interim order passed by the Supreme Court will continue for three weeks. Pursuant to the said order dated 10-3-1995 of the Supreme Court, the appellants filed the present appeals before the Division Bench of this Court and by order dated 31-3-1995 passed in Writ Appeal No. (T) 228 of 1995, the Division Bench stayed the impugned common judgment of the learned single Judge. Thereafter, the twentyseven Writ Appeals were heard by us analogously on merits.

3. At the hearing of the appeals, it was contended on behalf of the appellants by the learned Advocate General. State of Assam, Mr. S. N. Bhuyan and Mr. B. C. Das, learned Sr. Govt. Advocate that the 27 candidates in whose favour directions have been issued in the impugned common judgment for admission into the unfilled seats for the session 1994-95 were not selected for the session 1993-94 as they secured less marks than the last candidate in the Select list for the respective category prepared in accordance with the Rules for Admission to the 1st Year M.B.B.S./B.D.S. Courses in the Medical Colleges of Assam and the Regional Dental College, Assam, 1992 (for short, the 1992 Rules) made by the State Government in exercise of its executive power under Article 162 of the Constitution and notified by notification dated 10th August, 1992 which in the absence of legislation on the subject had the force of law. The learned counsel appearing for the respondents, out the other hand, submitted that the records of the selection would show that many candidates securing less marks than the candidates who had approached the Court in the Civil Rules have been admitted into the 1st Year M.B.B.S. Course in the Medical Colleges in the State of Assam for the session, 1993-94 contrary to the 1992 Rules. All the parties in this appeal are, therefore, agreed on the principle that admission into the 1st Year M.B.B.S. Course in different Medical Colleges in Assam for the academic session 1993-94 were to be on merit as provided in Sub-rule (4) of Rule 4 of the 1992 Rules quoted hereinbelow:

'The selection of candidates for admission shall be strictly on merit or the basis of aggregate marks in the subject mentioned in Rule 3(c) excluding English provided

that the Selection Board may standardize the marks obtained by candidates under different Boards at the qualifying examination.'

4. There is, however, some controversy between the parties as to how selection for admission was to be made as between the candidates who had applied for the reserved seats and those who had applied for the general seats. The different categories of reserved seats have been mentioned in Rule 7(1) of the 1992 Rules. Sub-rule (2) of Rule 4 of the 1992 Rules, which provides for preparation of a separate list of candidates belonging to each category mentioned in Rule 7 is extracted hereinbelow:

'The Selection Board shall scrutinise all applications received from the candidates for admission to 1st Year M.B.B.S./B.D.S. Course on or before the prescribed date and prepare separate lists of candidates belonging to each of the different categories mentioned in Rule 7 in order of merit based on the aggregate marks obtained in the subjects mentioned in Rule 3(c) other than English.'

According to Mr. Bhuyan, learned Advocate General, Assam a reading to the aforesaid Sub-rule (2) of Rule 4 makes it clear that all the candidates applying for admission including those belonging to the reserved categories as mentioned in Rule 7 of the 1992 Rules had to be first considered for admission to the general seats in order of merit and all those candidates who obtained marks more than cut-off marks for admission into the general seats were to be selected for admission and thereafter the remaining candidates belonging to the reserved categories mentioned in Rule 7 who were not selected for admission to the general seats had to be arranged in order of merit in separate lists for each of the categories mentioned in Rule 7 and selected for admission to the reserved seats in order of merit. According to learned Advocate General, this method of selection will apply not only to the candidates belonging to SC, ST (P), ST(H) and other socially and educationally backward classes but also to the candidates belonging to the other reserved categories such as sons and daughters of all categories of employees serving under the Health Department of Assam. According to Mr. A. K. Bhattacharjee, learned counsel for the respondents, the method of selection suggested by Mr. Bhuyan cannot possibly be applied to sons and daughters of all

categories of employees under the Health Department of Assam, inasmuch as, they would not constitute a class on the basis of any reasonable classification for special treatment in matters of admission into the first Year M.B.B.S. Course in different Medical Colleges of Assam. Mr. Bhuyan, however, strenuously argued that since the three Medical Colleges in the State of Assam are under the Health Department of Assam and the employees of the Health Department of Assam make substantial contribution to the study of M.B.B.S. Course in the State of Assam, the State Government had provided for reservation of at least three seats in the M.B.B.S. Course in the three Medical Colleges for the sons, daughters of all categories of employees serving in the Health Department of Assam. He sought to fortify this argument by referring to the provisions of Article 46 of the Constitution and submitted that some of the employees of the Health Department of Govt. of Assam such as Sweepers in fact belong to weaker sections of the people and their interest have to be promoted as per the mandate contained in Article 46 of the Constitution.

5. We do not find anything in Sub-rule (2) of Rule 4 quoted above to suggest that candidates belonging to all the reserved categories will have to be first considered along with the general candidates, and the said sub-rule only states that candidates belonging to the reserved categories named in Rule 7 will have to be listed separately in order of merit. It is also difficult to accept the submission of Mr. Bhuyan, learned Advocate General, that all categories of employees serving under the Health Department of Assam starting from the Secretary, Health Department to the Peon belong to weaker sections of the people within the meaning of Article 46 of the Constitution. Some of the employees working in the Health Department such as Sweepers may belong to weaker sections of people, but the reservation of seats under Rule 7(1)(i) of the 1992 Rules is not just for sons and daughters of Sweepers serving under the Health Department but for sons and daughters of all categories of employees serving under the Health Department of Assam including the Secretary, the Director, the Joint Directors, the Deputy Directors and such similar employees who do not belong to the weaker sections of the people within the meaning of Article 46 of the Constitution. In our opinion, sons and daughters of all categories of employees serving under the Health Department of Assam cannot on any rational basis constitute a special class for the purpose of special treatment

in the matter of admission into the 1st Year M.B.B.S. Course in different Medical Colleges of Assam. Accordingly, such sons and daughters of all categories of employees serving under the Health Department of Assam will have to compete with the general candidates for admission into the 1st Year M.B.B.S. Course on the basis of their merit as provided in Sub-rule (4) of Rule 4 of the 1992 Rules consistent with the equality clause in Article 14 of the Constitution. Since the purpose of the reservation, according to Mr. Bhuyan, is that at least three seats out of the total available seats should be reserved for sons and daughters of all categories of employees serving under the Health Department of Assam, we are of the considered opinion that the said purpose would be served if candidates belonging to the aforesaid category were first considered for admission into the three reserved seats in order of their merit and after the said three seats were filled up, the remaining candidates from this reserved category were considered along with the general candidates for admission into the general seats and only such candidates belonging to this reserved category who obtained marks more than the cut-off mark for admission to general seats are selected for admission. But so far as the candidates belonging to the SC, ST (P), ST(H) and other socially and educationally backward classes are concerned, we are of the view that reservation of seats for the candidates belonging to the aforesaid categories made in Rule 7(1) of the 1992 Rules is with a view to effectuate the purport behind Article 15(4) of the Constitution namely advancement of socially and educationally backward classes of citizens and SC, ST (P), ST(H) and if this purpose was to be achieved then the candidates belonging to the aforesaid reserved categories had to be first considered along with the general candidates and such candidates belonging to the aforesaid reserved categories who had marks above the cut-off mark for admission for general seats had to be given admission into the general seats and the remaining candidates of these reserved categories who are unable to compete with the general candidates had to be considered for admission in order of merit separately to the reserved seats in accordance with Sub-rule (2) of Rule 4 of the 1992 Rules. The same method of selection would equally apply to other reserved categories in Rule 7(1)(d) and (e) of the 1992 Rules such as sons and daughters and dependent brothers/sisters of ex-servicemen and serving Defence Personnel of Assam and sons and daughters, dependent brothers/sisters

and grandsons and granddaughters of freedom fighters of the State who may constitute special classes for special treatment in matters of admission into educational institutions on account of the contribution made by their family members to the defence or to the freedom movement of the country.

6. Mr. Bhuyan, learned Advocate General, Assam submitted that the merit list prepared in accordance with Sub-rules (2) and (4) of Rule 4 of the 1992 Rules was strictly followed while giving admission to the candidates for M.B.B.S. Course in the Medical Colleges of Assam for the session 1993-94 and the only departures that were made were where orders were passed either by the Government or by the Court directing admission to a particular candidate. Some of these orders were passed by the Government under Rule 10 of the 1992 Rules under which the Government had the power to relax any provision of the Rules. Mr. A. K. Bhattacharjee, learned counsel for the respondents, on the other hand, vehemently contended that the Government misuse its power of relaxation under Rule 10 of the 1992 Rules and grant admission to candidates who are neither meritorious nor eligible for admission into the reserved seats. According to Mr. A.K. Bhattacharjee, the rule itself indicates that reasons have to be recorded by the Government while relaxing any provisions of the rules. But it would appear that in number of cases no such reasons have been recorded by the Government while exercising the power of relaxation and in fact, in the guise of relaxation, the provisions of the rules have been amended with a view to accommodate the favourite candidates of the authorities. He submitted that the orders of relaxation passed by the Government are always subject to judicial review and in case the Court comes to the conclusion that the power of relaxation had been exercised arbitrarily causing prejudice to the other candidates seeking admission, the Court can always hold that the orders of relaxation and the admission granted pursuant to such orders of relaxation were illegal. Regarding the submission of Mr. Bhuyan that admissions have been given to candidates pursuant to orders of this Court, Mr. A.K. Bhattacharyya submitted that in several cases although no order was passed by this Court directing the authorities to admit the candidates, the authorities have gone ahead and granted admission to such candidates irrespective of their merit.

7. Rule 10 of the 1992 Rules which provides relaxation is quoted hereinbelow :

'10. Power to relax : Where the Government is of opinion that it is necessary or expedient so to do, it may by order and for reasons to be recorded in writing relax any of the provisions of these rules.'

According to Mr. Bhuyan, the language of the aforesaid rule is such that the Government can relax the rule not only for a class of cases but also in any particular case and thus the Government was within its powers under the aforesaid rule to relax the provisions of the rules and direct admission to any particular candidate. While we agree with the aforesaid submission of Mr. Bhuyan, we are of the view that the orders passed by the Government under the aforesaid Rule 10 of the 1992 Rules relaxing any provision of the rules must record the reasons in writing as to why such provision of the rules has been relaxed. Moreover, such an order of relaxation cannot be arbitrary and cannot violate the rights to equality in Article 14 of the Constitution and, therefore, cannot be unfair and discriminatory towards the other candidates seeking admission into the M.B.B.S. Course in the Medical Colleges of Assam. Accordingly, where relaxation is sought to be made after the advertisement inviting applications in a manner which will have the effect of depriving other candidates similarly situated as the candidates in whose favour relaxation is made to apply for admission, such relaxation would be hit by Article 14 of the Constitution. Further, Mr. Bhuyan conceded that the 1992 Rules have been made and notified under Articles 162 and 166 of the [Constitution of India](#) and thus any amendment to the 1992 Rules can only be made and notified in the same manner. This being the position of law, in our opinion, in the guise of relaxation under Rule 10 of the 1992 Rules, the Government cannot amend any provision of the 1992 Rules so as to cause prejudice to the candidates seeking admission. Regarding admissions given to the candidates pursuant to the orders passed by this Court, in our opinion, each such order passed by the Court will have to be perused to find out whether there was any clear direction of this Court to admit a candidate.

8. Mr. Bhuyan, learned Advocate General appearing for the State of Assam, vehemently argued that there are many candidates who have secured more marks

in the qualifying Examination than the 27 candidates in whose favour the impugned common judgment has been passed in the 27 Civil Rules, but these candidates have not approached this Court for relief. It will, therefore, be inequitable if by virtue of the directions in the impugned common judgment, the 27 candidates are given admission. In support of this submission, Mr. Bhuyan relied on the judgment of the Supreme Court in the case of Thaper Institute of Engineering and Technology, Patiala v. Abhinav Taneja, AIR 1990 SC 1222, wherein it was held that where there were more meritorious students than those who had approached the Court under Article 226 of the [Constitution of India](#), the High Court ought not to have directed that the two students who were less meritorious be admitted as such a course would result in injustice both to the Institute as well as to the students who stood higher in merit than the students who approached the Court. In reply to this submission of the appellants, Mr. A. K. Bhattacharya, learned counsel for some of the respondents, submitted that it is for this reason that the learned single Judge passed orders on 12-8-1994 directing publication of a notice under Order 1, Rule 8 of the Code of Civil Procedure to all interested candidates seeking admission to appear before the Court, and pursuant to the said order, a notice was in fact published in the local daily, 'The Assam Tribune', dated 17th August, 1994, but in response to the said notice while some candidates came forward claiming that they were entitled to admission on merit other did not. Accordingly, the impugned common judgment of the learned single Judge cannot be faulted on the ground that it causes injustice to candidates who though more meritorious than the 27 candidates in whose favour directions were issued for admission did not apply to the Court for relief.

9. We are unable to accept the aforesaid submissions of either Mr. Bhuyan or Mr. Bhattacharyya. Order 1, Rule 8, of the Code of Civil Procedure, is quoted hereinbelow:

'One person may sue or defend on behalf of all in same interest.

(1) Where there are numerous persons having the same interest in one suit--

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so

interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under Sub-rule (1), at the plaintiffs expenses, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under Sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under Sub-rule (1), and no such suit shall be withdrawn under Sub-rule (3) of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of the Order, unless the Court has given, at the plaintiffs expenses, notice to all persons so interested in the manner specified in Sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with the diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.'

A bare reading of the provisions of Sub-rules (1),

(2) and

(3) of Rule 8 of Order 1 would show that where there are numerous persons having the same interest in one suit, the Court may direct that one or more such persons may sue on behalf of or for the benefit of all persons so interested and where such direction is given the Court shall give notice of the institution of the suit

to all persons interested by a public advertisement and any person on whose behalf or for whose benefit a suit is instituted may apply to the Court to be made a party to such suit. There is, however, nothing in the aforesaid provisions in Order 1, Rule 8, Code of Civil Procedure which would show that if any such person on whose behalf or for whose benefit the suit is instituted does not apply to the Court to be a party under Sub-rule

(3) of Rule 8, in response to the notice, a judgment or decree can be passed ignoring his claim. On the contrary, the provision in Sub-rule

(4) of Rule 8 of Order 1 Code of Civil Procedure would make it clear that no part of the claim in any such suit shall be abandoned or compromised under Order 23 of the Code of Civil Procedure unless the Court has given notice to all persons so interested. Although the aforesaid provision of Order 1, Rule 8 of the Code of Civil Procedure was not directly applicable to proceedings under Article 226 of the Constitution, it is not disputed by the parties that the principles contained therein may apply in certain cases even to proceedings under Article 226 of the Constitution. This being the position, once the learned single Judge passed orders on 12-8-1994 directing publication of notice under Order 1, Rule 8 of the Code of Civil Procedure to all interested candidates seeking admission to appear before the Court, the proceedings under Article 226 of the Constitution in the Civil Rules became proceedings on behalf of and for the benefit of all candidates seeking admission to the MBBS Course in the Medical College of State of Assam for the session 1993-94 and the claims of such candidates could not possibly be abandoned or compromised merely because such candidates did not, pursuant to notice under Order 1, Rule 8 of the Code of Civil Procedure, apply to the Court to be made a party in the Civil Rules-or make their claim. Further, for the very same reasons, we are of the view that once orders were passed by the Court and notices were issued under Order I, Rule 8 of the Code of Civil Procedure, converting the writ proceedings into proceedings on behalf of and for the benefit of all candidates interested in admission into the 1st year MBBS Course in the Medical College of Assam for the session 1993-94, relief in such writ proceedings can be granted not only in favour of the candidates who have actually approached the Court in the 27 Civil Rules but also in favour of all other candidates who on the

basis of their merit were entitled to admission into the MBBS Course in the Medical College of Assam for the 1993-94 under the 1992 Rules. The judgment of the Apex Court in the case of Thaper Institute of Engineering and Technology (AIR 1990 SC 1222) (supra) relied on by Mr. Bhuyan was, therefore, not applicable to the facts of the present case.

10. Mr. S.N. Medhi, learned counsel for one of the respondents, vehemently argued that the impugned common judgment was really a consent order inasmuch as in paragraph-8 of the impugned judgment, it is stated that the Director of Medical Education shall offer seats whenever seats are available to those candidates for whom the State Government has given undertaking before the Court. There is no mention whatsoever in the common impugned judgment that the 27 Civil Rules were being disposed of on the consent of Mr. K.C. Mahanta, learned Government Advocate who appeared on behalf of the respondents in the said Civil Rules. On the contrary a reading of paragraphs 4, 5 and 6 would show that the learned single Judge considered the submission of the learned counsel for the petitioners in the Civil Rules that there was likelihood of seats being available out of the 51 seats allotted for candidates who had appeared in the All India Examination, 13 seats allotted for the North Eastern States other than Assam and Manipur and 15 seats allotted in the Central Pool for the session 1994-95 as it happened for the session 1993-94 and as the last date of admission to these allotted seats was fixed as 30th Sept. 1994, the learned single Judge directed that the seats which would be available due to the failure of the candidates to take admission within the time fixed shall be offered to the 27 candidates in order of merit who had approached the court in the 27 Civil Rules and in accordance with this direction, in paragraph 8 of the impugned common judgment, the undertaking of the State Government and the director of Medical Education to offer seats which may become available has been recorded. On a reading of the impugned common judgment as a whole, it is not possible to hold that it was a consent order as suggested by Mr. Medhi.

11. Mr. Bhuyan, learned Advocate General, Assam, forcefully argued that the learned single Judge ought not to have directed that the seats for the session 1994-95 be offered to the 27 candidates for the session 1993-94. According to Mr.

Bhuyan under the new Rules applicable to the session 1994-95 candidates are admitted into the 1st year MBBS course in the Medical Colleges of the State of Assam on the basis of their results in the admission test and not on the basis of aggregate marks in Physics, Chemistry and Biology secured by the candidates in the qualifying examination, namely HSSLC examination or any examination equivalent to Higher Secondary Examination as provided in the 1992 Rules which were applicable to the 27 candidates for the session 1993-94. According to Mr. Bhuvan, the direction of the learned single Judge affected the chance of admission of the candidates for the session 1994-95 who on the basis of their results in the admission test were in the merit list of candidates waiting for their turn to be admitted into the seats for the session 1994-95 which may remain unfilled on account of candidates of the allotted seats not turning up for admission within the stipulated time. Mr. Bhuyan further submitted that as a matter of fact under the 1992 Rules, the seats of each year have to be filled up from amongst the candidates applying for admission for that year and there is no provision whatsoever in the 1992 Rules for carrying over of the unfilled seats of the previous year to the following year or for admitting candidates of the previous year into the seats for the subsequent year. While Mr. Bhattacharyya, learned counsel for the respondents does not dispute this interpretation of the 1992 Rules, he vehemently argues that as a matter of fact seats of the year 1991-92 and 1992-93 remaining unfilled have been carried over by the Government to the session 1993-94 and candidates for the session 1993-94 have been given admission by the Government to such carried over unutilised seats. He also argued that in fact in many of the seats of the year 1993-94, candidates of the year 1992-93 had been admitted by the authorities on the pretext that directions had been issued by the Court for admission of candidates belonging to the year 1992-93 in the seats for the academic session 1993-94.

12. We are of the considered opinion that there is no provision in the 1992 Rules for carrying over of the seats of the previous years remaining unfilled to subsequent years. There is, however, a provision in Explanation to Rule 7(1) of the 1992 Rules that the seats in the allotted or reserved categories remaining unfilled shall be filled up by the candidates of general category in order of merit. Considering the rush for admission in recent years, there will always be a large

number of candidates seeking admission into the general seats of 1st year MBBS Course and considering the aforesaid Explanation to Rule 7(1) of 1992 Rules, we cannot visualise a situation where seats of any particular year will remain unfilled and will have to be carried over to the next year. We are further of the opinion that since some candidates selected for admission into the 1st Year MBBS Course for the session 1994-95 on the basis of the results in the admission test were waiting for admission into seats which were not filled up on account of the candidates of the allotted or reserved categories not turning up for admission within the stipulated time, the direction in the common impugned judgment to fill up the said unfilled seats of the session 1994-95 by candidates of the session 1993-94, if carried out, would result in injustice to such candidates for the session 1994-95.

13. That is not to say that if the court comes to a conclusion that some candidates for the session 1993-94 have been denied admission contrary to the 1992 Rules, the Court will not be in a position to grant any relief to such candidates. In all such cases where the Court comes to conclusion that the candidates of the session 1993-94 have been deprived of admission in violation of the 1992 Rules, suitable directions can be issued to the authorities to admit such candidates, if necessary by creating additional seats and it will be no defence for the authorities who in such cases are guilty of breach of the 1992 Rules to say that they do not have the resources for the such additional seats or that the Medical Council of India will not sanction such additional seats. In the language of the Supreme Court in the case of Punjab Engineering College, Chandigarh v. Sanjay Gulati reported in AIR 1983 SC 580:--

'It is strange that in all such cases the authorities who made admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the

circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made.'

'The only question which survives is whether the sixteen writ petitioners should be admitted to those seats should be made strictly in accordance with merit. We are unable to accept the submission made by the petitioners that they should be preferred for admission irrespective of merit. The circumstance that they filed writ petitions in the High Court but others similarly aggrieved did not, will not justify the granting of admission to them by ignoring those others who were higher up in the merit list.'

'Following these decisions, we direct that admission to the 16 additional vacancies for the academic year 1983-84 shall be made in accordance with merit on the basis of the lists which were prepared for the academic year 1982-83 for the Chandigarh group of students and the general group of students.'

Mr. Bhuyan, learned Advocate General, cited the judgment of the Apex Court in the case reported in AIR 1994 SC 595 wherein it has been held that the High Court should not disturb the balance in Colleges by directing admission of students on compassionate grounds. There can be no doubt about the proposition that the Court cannot on the mere ground of compassion direct admissions of students into Colleges, but where admissions had been denied to the candidates contrary to the rules for admission, the Supreme Court has repeatedly held as in the case of Punjab Engineering College, Chandigarh v. Sanjay Gulati (AIR 1983 SC 580) that directions can always be issued to admit not only candidates who have approached the Court but all such candidates who were higher up than them in the Merit list and have also been illegally deprived of such admission into a course in any academic year into additional seats to be created for the purpose in a subsequent academic year.

14. Besides the authorities discussed above, a large number of decisions of the Apex Court as well as High Courts were cited at the Bar, but we have not felt it necessary to deal with the same for the purpose of deciding these appeals. Having laid down the legal principles on the basis of which we propose to decide these appeals, we now proceed to examine the facts on the basis of the records

produced before us by the Director of Medical Education, Assam, who is also the Chairman of the Selection Board, with a view to find out as to which of the 27 candidates and those above them in the Merit List were entitled to admission under the 1992 Rules but were denied such admission and were entitled to relief from this Court in accordance with the aforesaid legal principles.

15. Pursuant to the 1992 Rules, an advertisement was issued on 14-8-1993 by the Director of Medical Education, Assam, inviting applications for admission into the 1st Year MBBS Course in the Medical Colleges in Assam for the session 1993-94, and in the said advertisement although the total available seats and the number of general seats to be filled up by admission were not notified, the number or percentage of reservation of seats for different categories of candidates were mentioned. In response to the said advertisement, candidates seeking admission into the 1st Year MBBS Course submitted their applications and the said applications were thereafter scrutinised by the Selection Board and separate lists of candidates belonging to the general category and different reserved categories in order of merit based on aggregate marks obtained by the candidates in Physics, Chemistry and Biology after standardisation by a process of normalisation in accordance with the directions of this Court in Civil Rule No. 2249/93 and Writ Appeal No. 158/93 were prepared. A Merit list of the candidates for admission into the MBBS Course in the Medical Colleges of Assam for the session 1993-94 was also published by notification dated 24-11-993.

16. Out of the twentyseven candidates before us in the twentyseven Appeals (Writ Appeals), 14 had applied for admission into the MBBS Course for the session 1993-94 for seats reserved for OBC including MOBC category. In the merit list of OBC/ MOBC, we find that a total of sixtythree candidates have been listed with aggregate marks in Physics, Chemistry and Biology both before and after normalisation. And the last of the such candidates belonging to the OBC/MOBC category who has been admitted is Vivek Singh Elangbam placed at serial No. 59 of the merit list of OBC with aggregate marks of 220 in Physics, Chemistry and Biology after normalisation. Thus, the cut off marks for admission for the candidates belonging to OBC/MOBC category were 220 and admission of any candidates belonging to OBC/MOBC category less than 220 marks would be

contrary to Sub-rules (3) and (4) of Rule 4 of the 1992 Rules. But from the statement in Annexure VI to the supplementary affidavit of Dr. Konwar, Chairman of the Selection Board, filed on 10-4-1995, we find that Usha Rani Devi with aggregate marks of 217 in Physics, Chemistry and Biology after normalisation belonging to the OBC category has been admitted into the 1st Year MBBS Course for the session 1993-94 and the stand taken in the said supplementary affidavit is that she has been admitted pursuant to a direction of this Court in Writ Appeal No. 30/93. A copy of the order dated 2-3-1994 in Writ Appeal No. 30/93 has been produced before us and on perusal of the said order it appears that since she made a grievance before this Court that her case for admission into the 1st Year MBBS Course in the Medical Colleges of Assam had not been considered on the ground that she was not a permanent resident of the State of Assam despite the fact that Permanent Residence Certificate had been issued by the competent authority, this Court directed that after normalisation if it is found that she had obtained the cut off marks she be given a seat in any one of the Medical Colleges within the State of Assam. But on perusal of records produced before us we find that no such normalisation was done as directed by this Court and yet Usha Rani Devi was given admission into the 1st Year MBBS Course even though in the statement in Annexure VI to the supplementary affidavit of Dr. Konwar filed on behalf of the appellant her aggregate marks in Physics, Chemistry and Biology after normalisation is shown to be 217 which was less than the cut-off marks of 220 for admission of candidates belonging to OBC/MOBC category. The admission of Usha Rani Devi in the seats reserved for OBC/MOBC category was, therefore, contrary to Sub-rules (2) and (4) of Rule 4 of the 1992 Rules and Rajeeb Dey, who had been placed in the merit list for OBC/MOBC category at serial No. 60 with aggregate marks of 219.86 in Physics, Chemistry and Biology after normalisation and who is the candidate before us in Civil Rule No. 2919/94 and Writ Appeal No. 97/95 would have been entitled to admission in to the 1st year MBBS course for the session 1993-94 as per the 1992 Rules. We find from the statement dated 12-5-1995 filed by Dr. Konwar, Director of Medical Education and Chairman of the Selection Board that except Usha Rani Devi, no other candidate having marks less than the cut off marks for admission into seats reserved for OBC/ MOBC candidates has been admitted and the quota of seats of this

reserved category is exhausted. Thus the other twelve candidates for the session 1993-94 belonging to the OBC category before us who are not in the merit list for the OBC/MOBC category and whose aggregate marks in Physics, Chemistry and Biology after normalisation were less than the cut off marks for admission as per details hereinbelow were not entitled to admission under the 1992 Rules:

Sl. No.

Name of the candidates

Civil Rule No.

Corresponding Writ Appeal (T) No.

Marks obtained after normali-sation

1.

Shri Dhurba Guniam

3015/94

240/95

213

2.

Shri Anand Mohan

2987/94

235/95

201

3.

Shri Dipankar Medhi

3151/94

241/95

195

4.

Shri Prem Prakash Singh

3004/94

238/95

195

5.

Shri Altaf Hussain

4026/94

256/95

189.50

6.

Smti Indu Bala Devi

2904/94

232/95

139

7.

Shri Kuldip Stagh

3006/94

239/95

182

8.

Smti Nili Choudhary

3204/94

247/95

195

9.

L. Suraj Kumar

2850/94

251/95

181

10.

W. S. Devi

2905/94

233/95

177

11.

Smti Mayuri Das

3459/94

246/95

187.50

12.

Rupam Paul

3689/94

251/95

203.57

Regarding L. Ratan Kumar Singh, the candidate before us in Civil Rule No. 2926/94 and WA(T) 234/95, it appears that he was a candidate for the session 1992-93 and not for the session 1993-94 and was thus not entitled to admission into the session 1993-94 under the 1992 Rules.

17. Only one out of the twentyseven candidates before us, Arup Kumar Das, had applied for admission into the seats reserved for the Scheduled Caste. In the merit list of candidates belonging to Scheduled Caste, we find that a total thirtyfive candidates have been listed. According to the statement dated 12-5-1995 of Dr. Konwar, Chairman of the Selection Board, filed on 5-4-1995, out of the twentytwo seats reserved for Scheduled Caste candidates for 1993-94 session, two candidates, Arun Kumar and Samir Baishya with aggregate normalised marks of 218 and 216,61 at Serial Nos. 17 and 18 respectively of the merit list of Scheduled Caste candidates for the session 1993-94, have been admitted pursuant to the directions of this Court in Civil Rule No. 23/94 and Civil Rule No. 33/94. The rest twenty candidates have also been admitted from the merit list of (contd. on col. 2)

Scheduled Caste candidates for 1993-94 and the last of the candidates from the merit list of Scheduled Caste admitted is Ravi Roy with aggregate marks of 214'29 in Physics, Chemistry and Biology after normalisation. The cut-off marks for admission of candidates belonging to Scheduled Caste category was, therefore, 214.29. Hence, the admissions of Arun Kumar and Samir Baishya who had more than the aforesaid cut-off marks was not contrary to the 1992 Rules. Arun Kumar Das, the candidate before us in Civil Rule No. 3241/94 and the respondent in W.A. (T) 248/95 has aggregate marks of only 185 in Physics, Chemistry and Biology after normalisation and his name does not find place in the merit list of thirtyfive Scheduled Caste candidates. He was, thus, not entitled to admission into the 1st Year MBBS Course for the session 1993-94 under the 1992 Rules.

18. Only one candidate amongst the twentyseven candidates before us, Tapan Saikia, had applied for seats reserved for candidates belonging to S.T.(P). According to the statement dated 12-5-1995 of Dr. Konwar, the last candidate in the merit list of S.T.(P) who was admitted is Gunaram Doley at Serial No: 34 of the merit list with aggregate normalised marks of 195 in Physics, Chemistry and Biology and the quota of seats reserved for this category is exhausted, Tapan Saikia, the candidate before us in Civil Rule No. 3981/94 and in WA(T) 255/95 has aggregate normalised marks of 193.93 in Physics, Chemistry and Biology and has been placed against Serial No. 36 of the merit list and was thus not entitled to admission under the 1992 Rules.

19. Only one of the twentyseven candidates before us, Himadri Sankar Acharya, applied for admission into seats reserved for sons, daughters, dependent brothers and sisters and sons and daughters of freedom fighters of the State. Under Rule 7(1)(e) of the 1992 Rules and as per the advertisement, only two seats have been reserved for this category but as many as five candidates, namely, Santanu Dutta at Serial No. 1 of the merit list with aggregate normalised marks of 229.29, Payalee Bodoloi at Serial No. 2 of the merit list with aggregate normalised marks of 228.21, Mousumi Saikia at Serial No. 3 of the merit list with aggregate normalised marks of 227.24 and Manoj Choudhary who has aggregate normalised marks of 201'1 in Physics, Chemistry and Biology and whose name does not find place in the merit list of 1993-94, have been admitted into the 1st Year MBBS

Course for the session 1993-94. On a query being put by us to Dr. Konwar, Chairman of the Selection Board, as to how when the reservation as per the 1992 Rules and the advertisement for this category of candidates was limited to two seats, five candidates from this category have been admitted, he stated by reference to the statement filed by him before us on 5-5-1995 that by letter dated 2-5-1994 which was produced before us, some seats belonging to the sessions 1991-92 and 1992-93 were reserved by the Government for the candidates of the aforesaid category and accordingly Mousumi Saikia, Vikram Sarma and Manoj Choudhury were admitted in these three additional seats out of the unutilised seats of the session 1991-92. On our further query as to how Manoj Choudhury was admitted when his name did not find place in the merit list for the session 1993-94, it was stated by the appellants that Manoj Choudhury was admitted pursuant to the direction of this Court in Civil Rule No. 3980/93 as a candidate for the session 1992-93. We called for the records of Civil Rule No. 3980/93 and we find that the case of Shri Manoj Choudhury in the said Civil Rule was that he was a candidate for admission into the 1st Year MBBS Course for the session 1992-93 but he had been denied admission and he had again applied for admission for the session 1993-94 and made a representation for admission into the MBBS Course for the session 1993-94 and the said Civil Rule was disposed of by order dated 19-1-1994 with a direction that the representation filed by the petitioner relating to admission to the MBBS Course shall be disposed of by the Special Commissioner and Secretary to the Govt. of Assam, Health and Family Welfare, within a period of fifteen days from 19-1-1994 and until disposal of the representation, the authority shall keep one seat vacant in the freedom fighters' quota in any of the Medical Colleges of Assam. It appears from the records produced by Dr. Konwar that after the aforesaid directions were issued by the Court and after the Government letter dated 2-5-1994 was issued reserving some unutilised seats of the 1991-92 and 1992-93 to be filled up from amongst candidates belonging to this category, a discussion took place on 9-5-1994 with the Secretary, Health and Family Welfare, pursuant to which the Chairman, Selection Board allowed admission of Mousmi Saikia, Vikram Sarma and Manoj Choudhury into the MBBS Course for the session 1993-94 and intimations were sent to all the aforesaid three candidates to the effect that they have been allowed provisional admission into the 1st Year

MBBS/BDS Course for the sessions 1991-92 and the aforesaid three candidates were admitted. For reasons which we have indicated above, we do not think that under the 1992 Rules the unutilised seats of 1991-92 and 1992-93 could be carried over to the session 1993-94, but in case such seats were in fact carried over to the session 1993-94, we are of the opinion that the said unutilised seats for the sessions 1991-92 and 1992-93 could only be dealt with by the appellants in accordance with the 1992 Rules which had come into force with effect from 10-8-92. Under Rule 2(b) of the 1992 Rules, the Government of Assam had the power to reserve seats for any category of candidates from time to time and such reservation of additional seats for this category of candidates appears to have been done by the Government under letter dated 2-5-94 and by the decision of the secretary, Health & Family Welfare Department communicated to the Chairman of the Selection Board in the discussion which took place on 9-5-95, but under the said Rule 2(b) of the 1992 Rules reservation could be made by the Government for any category of candidates and not for any specific candidate and once such reservation is made, the candidates belonging to the said category are to be considered for admission into such additional reserved seats in accordance with merit as provided in Sub-rules (2) and (4) of Rule 4 of the 1992 Rules. This being the position, while the admissions of Mousumi Saikia and Vikram Sarma placed at serial Nos. 3 and 4 of the merit list of this reserved category were in accordance with the 1992 Rules, the admission of Monoj Choudhury whose name did not find place in the merit list at all and whose aggregate normalised marks were 201.1 in Physics, Chemistry and Biology was contrary to the 1992 Rules. The appellants cannot wriggle out of this illegality by contending that Monoj Choudhury was a candidate of the session 1992-93, because he had already been denied admission for the session 1992-93 and his representation that was pending before the authorities was for admission for the session 1993-94 and while considering his representation for admission to the session 1993-94, the claim of the other candidates in this category above him in the merit list for the session 1993-94 could not have been ignored contrary to the 1992 Rules. Thus in place of Monoj Choudhury, Himdari Sankar Acharya, the candidate before us in Civil Rule No. 3203/94 and the respondent in W. A. (T) No. 249/95 who has been placed at Serial No. 5 of the merit list of this reserved category with aggregate normalised

marks of 225 in Physics, Chemistry and Biology was entitled to admission under the 1992 Rules.

20. Again out of the twentyseven candidates before us, only one candidate, Smita Singh, belongs to the category of sons, daughters, dependent brothers/sisters of ex-servicemen and defence personnel from Assam. Only 3 seats have been reserved under Rule 7(1)(d) of the 1992 Rules as well as the advertisement for this category of candidates and a merit list of 9 candidates has been prepared for this category of candidates. From the statement of Dr. Konwar filed on 12-5-95 as modified by his statement on 22-5-95, the said three reserved seats have been filled up by Satya Deb Sarma at Serial No. 1 of the merit list with aggregate normalised marks of 229.60 in Physics, Chemistry and Biology, Mina Rajbongshi placed at Serial No. 2 of the merit list with aggregate normalised marks of 226 in Physics, Chemistry and Biology and Rekha Barua placed at Sl. No. 3 of the merit list with aggregate normalised marks of 209 in Physics, Chemistry and Biology. We also find from the records that an additional seat was reserved for this category out of the utilised seats of 1991-92 and 1992-93 by Government letter dated 2-5-94 and a candidate who had applied for the session 1992-93, Raktim Chetia Patra, but who was not a candidate for the session 1993-94 was admitted into the said additional seat pursuant to letter dated 7-5-94 of the Director of Medical Education, Assam. For reasons which we have indicated earlier, we are of the view that while the candidates for 1992-93 may be considered for admission for the seats of 1992-93 the candidates for 1993-94 cannot have any claim to such seats unless the authorities decide to fill up the seat by candidates of 1993-94 session. There was thus no illegality in admitting Raktim Chetia Patra who was a candidate for the session 1991-92 and not a candidate for the session 1993-94 into the said seat of the session 1992-93. Smita Singh the candidate before us in Civil Rule No. 3842/94 and W. A. (T) 254/95 being a candidate for the session 1993-94 and having been placed at Sl. No. 9 of the merit list for this reserved category with aggregate normalised marks of 203 in Physics, Chemistry and Biology was not entitled to admission either to the 3 reserved seats for the session 1993-94 or to the additional reserved seat of the year 1992-93.

21. Rest of the 9 candidates out of the 27 candidates before us had applied for admission into the general seats. In the merit list of candidates who had applied for general seats, a total of 232 candidates have been listed with their aggregate marks in Physics, Chemistry and Biology both before and after normalisation and the last candidate who has been admitted is Bhaskar Sarmah who is placed against Sl. No. 211 with aggregate marks of 233.57 in Physics, Chemistry and Biology for normalisation. But from the statement dated 12-5-95 filed by Dr. Puranakanta Konwar, the Director of Medical Education, Government of Assam and the Chairman of the Selection Board for admission into the MBBS Course in the Medical Colleges of Assam for the session 1993-94, we find that the following candidates belonging to the general category whose names do not find place in the merit list and who have aggregate marks in Physics, Chemistry and Biology after normalisation less than 233.57 have been admitted to the MBBS Course from amongst the candidates for the session 1993-94.

Name of candidates

Marks after normalisation

1.

Altaf Ali

163'5

2.

Wasima Sultana

226'95

3.

Sudipta Dhar Choudhury

220'5

4.

Suparna Lata

215'5

In the supplementary affidavit, however, the appellants have taken a stand that the aforesaid four candidates were admitted into the MBBS Course for the session 1993-94 pursuant to the directions of this Court in different cases. On perusal of the copy of the order dated 20-7-94 passed in Civil Rule No. 2690/94 filed by Md. Bahar Ali, the father of Altaf Ali, we find that since the Government Advocate submitted on instruction that two seats were lying vacant, the learned single Judge directed admission of Altaf Ali in one of the two seats lying vacant for the session 1993-94. Unfortunately, the Government Advocate did not submit before the Court that Altaf Ali had secured only 163.5 marks in aggregate after normalisation in Physics, Chemistry and Biology, while the cut-off marks for admission to the general seats was 233.57. Nor did the appellants file any appeal against the said order dated 20-7-94 of the learned single Judge in Civil Rule No. 2690/94. As a result, the said order of this Court directing admission of Altaf Ali into the MBBS Course for the session 1993-94 has become final and cannot be re-opened in these appeals. In the case of Wasima Sultana, the appellants have indicated in Annexure-VI to the supplementary affidavit dated 10-4-95 and the statement dated 12-5-95 of Dr. Konwar that she was admitted pursuant to the order passed by this Court in Civil Rule No. 516/94, but a copy of the order of this Court in the said Civil Rule has not been produced before us. On a perusal of the original record of the said Civil Rule, we find that by order dated 25-3-94, the Court merely directed the Director of Medical Education, Assam to consider the case of the petitioner and no direction as such was given by the Court to admit her straightway irrespective of her merit contrary to the 1992 Rules. We fail to understand as to how Wasima Sultana was given admission and that too for the session 1994-95, when she did not have the cut-off marks for admission into the general seat for the session 1993-94 for which she had applied. Regarding Sudipta Dhar Choudhury and Suparna Lata, on perusal of the copies of the orders dated 22-2-94 passed in Writ Appeal Nos. 29/94 and 27/94 respectively, we find that no direction as such had

been given by this Court for admitting them into the MBBS Course, but since a grievance was made on their behalf that their cases were not considered at all despite the fact that they had furnished Permanent Residence Certificate issued by the competent authority, the appellants were directed that their cases shall be reconsidered on the basis of normalisation and in case it was found that they were entitled to be selected, they were to be allotted a seat each. According to Annexure-VII to the supplementary affidavit of Dr. Konwar, Chairman of the Selection Board, the aggregate of the marks of Sudipta Dhar Choudhury in Physics, Chemistry and Biology was 220.5 and that of Suparna Lata was 215.5, which were less than the Cut-off marks of 233.57 for admission of candidates for general seats. They were, therefore, not entitled to be selected for admission to the general seats either under the orders dated 22-2-94 of this Court in Writ Appeal Nos. 29/94 and 27/94 or under Sub-rule (4) of Rule 4 of the 1992 Rules. Wasima Sultana, Sudipta Dhar Choudhary and Suparna Lata have thus been illegally admitted into the general seats by the authorities and instead of them, the candidates in the merit list at Sl. Nos. 212, 213 and 214 including Ranjita Devi the candidate before us in Civil Rule No. 3328/94 and Writ Appeal No. (T) 252/95 with aggregate marks of 233.57 in Physics, Chemistry and Biology after normalisation would have been entitled to admission into the session 1993-94 as per the 1992 Rules. During the hearing of Writ Appeal No. 209/95, we have noticed that one more candidate Sujay Saikia who was a candidate for the session 1993-94 has been admitted to a general seat for the session 1994-95 contrary to the 1992 Rules and the new Rules. We are of the view that we should deal with the case of Sujay Saikia not in this Judgment but in our judgment in Writ Appeal No. 209/95.

22. We further find that some candidates who truly belong to the general category have been given admission into the MBBS Course for the session 1993-94 in reserved seats by invoking the provisions of relaxation in Rule 10 of the 1992 Rules and these candidates would not have been entitled to admission under the 1992 Rules into the general seats on account of the lower marks secured by them in the qualifying examination. These candidates are:--

Sl. No.

Name of the candidates

Marks after normalisation

1.

Polash Borah

205.71

2.

Miss Lakhimi Borah

183.21

3.

Dimpy Barthakur

161.79

Along with supplementary affidavit filed by Dr. Konwar, the Chairman of the Selection Board, on 10-4-95, copies of the two notifications dated 21st Feb. 94 have been filed which indicate that Rule 10 of the 1992 Rules have been invoked by the Government and the existing rules have been relaxed ordering the admission of Polash Borah and Dimpy Barthakur. The appellants also produced before us the records in which the aforesaid orders were passed for admission of Polash Borah and Dimpy Borthakur and on perusal of the same we find that by letter dated 23rd December, 1993, Dr. Konwar, Director of Medical Education, Assam wrote to the Government that Polash Borah, Lakhimi Borah and Dimpy Borthakur had secured 1st, 2nd and 3rd position in the merit list for the seats reserved for sons/daughters/brothers and sisters of the martyrs of Assam movement and were called for interview held on 10-12-93 but the Selection Board rejected their claim to the reserved seats since they were not sons, daughters, brothers or sisters of such martyrs of the Assam Movement, but were first cousins of the martyrs Anil Borah and Sahid Anjan Borthakur and that no candidate had

been selected by the Selection Board for admission into this reserved category. In the said letter dated 23-12-93, the Director of Medical Education requested the Government to invoke Rule 10 of the 1992 Rules as a special case and the Government was pleased to pass orders invoking Rule 10 of the 1992 Rules and directing admission in the case of Polash Borah and Dimpy Barthakur. Since no orders were passed by the Government in the case of Lakhimi Borah, Civil Rule No. 2198/94 was filed by Lakhimi Borah before this Court which was disposed of by order dated 16-6-94 by the learned single Judge with the direction that the appellants shall consider the case of Lakhimi Borah if necessary by relaxing Rule 10. Pursuant to the foresaid orders of the Government as well as this Court, Polash Borah, Lakhimi Borah and Dimpy Barthakur were admitted into the MBBS Course for the session 1993-94 in the seats reserved for sons, daughters, brothers and sisters of the martyrs of the Assam Movement. As we have already held, under Rule 10 of the 1992 Rules the Government had the power to pass an order relaxing any provision of the Rules for reasons to be recorded in writing, but the records produced before us do not indicate as to which particular provision of the 1992 Rules was relaxed, The records also do not show the reasons which were recorded for relaxing the 1992 Rules. All that is stated is that the aforesaid 3 candidates are first cousins of martyrs of the Assam Movement and that no candidate was available who was a son/ daughter/sister or brother of the martyrs of the Assam Movement. If this fact was correct then Explanation to Rule 7(1) clearly provided that if any such reserved seat remained unfilled for want of eligible candidate, such seat shall be filled up by candidates of the general category in order of merit. Under the guise of relaxation under Rule 10 of the 1992 Rules; the Government cannot amend Explanation to Rule 7 to the prejudice of the candidates belonging to the general category. Similarly, under the guise of relaxation under Rule 10, the Government cannot amend Rule 8(1)(f) so as to include cousins of martyrs of the Assam Movement in the reserved category which would have the effect of the depriving other cousins of martyrs of Assam Movement the opportunity to apply for such admission to such reserved seats inasmuch as in the advertisement such cousins were not included in the aforesaid reserved category. For the reasons stated above, we are of the opinion that the orders of relaxation passed in favour of these three candidates were not passed in

accordance with Rule 10 of the 1992 Rules and were arbitrary and violative of Article 14 of the Constitution. As no candidate was available in this reserved category, under Explanation to Rule 7(1) of the 1992 Rules, the two seats reserved for this category were required to be filled up by candidates of the general category in order of merit. This being the position, two more candidates belonging to the general category, namely, Farhanan Rahman and Ashraful Alam with aggregate, their normalised marks being 233 and 232.85 at serial Nos. 215 and 216 respectively of the merit list of general category of candidates, were entitled to admission under the 1992 Rules.

23. There are, however, other cases in which similar orders have been passed by the Government invoking Rule 10 of the 1992 Rules allowing admission of candidates. Along with the supplementary affidavit of Dr. Konwar filed on 10-4-95, a copy of the notification dated 16th February, 1994 has been filed which shows that Mayurpankhi Saikia, daughter of Sri Tankeshwar Saikia who was a close relation of late Rohiteshwar Saikia, a victim of extremist violence, has been admitted into the first year MBBS Course by orders of the State Government under Rule 10. From the records produced before us by the appellants we find that Mayurpankhi Saikia had aggregate normalised marks of 210 in Physics, Chemistry and Biology, but her claim to a seat reserved for sons, daughters, brothers and sisters of persons killed by the extremist violence in Assam was however rejected and she filed an appeal before the appellate authority which was also rejected. Similarly, another candidate Madhurjya Saikia whose brother had been killed in army operation and who had aggregate normalised marks of 187.50 in Physics, Chemistry and Biology applied for admission into the seats reserved for sons, daughters, brothers and sisters of persons killed in the extremist violence in Assam, but her claim to the said reserved seat was rejected. The cases of both these candidates were considered by the Government and Rule 10 was invoked by the Government allowing admission to both these candidates in the quota of seats reserved for sons, daughters, brothers and sisters of persons killed in the extremist violence in the State of Assam. In our opinion, both Mayurpankhi Saikia and Madhurjya Saikia were not eligible for admission into the seats reserved for the sons, daughters, brothers and sisters of the persons killed in extremist violence in Assam Movement as they did not belong to any of the aforesaid

classes of persons and when there were other candidates who had applied for admission into the seats reserved for this category, the Government could not deprive such candidates who truly belonged to this category of admission and accommodate these two candidates who did not belong to the reserved category by passing orders of relaxation. Hence, the orders of relaxation in their favour passed by the State Government were arbitrary and violative of Article 14 of the Constitution. Since their aggregate marks in Physics, Chemistry and Biology after normalisation were much below the cut-off marks for admission into the general seats, they were not entitled to admission into the first year MBBS Course for the session 1993-94 under the 1992 Rules. The total number of seats reserved under Rule 7(i)(1) of the 1992 Rules for sons, daughters, brothers and sisters of persons killed in the extremist violence in Assam Movement was only 2. Anil Kumar Agarwal with normalised aggregate marks of 212 in Physics, Chemistry and Biology placed at serial No. 1 of the merit list of this category has been admitted into the first year MBBS Course for the session 1993-94. Mayurpankhi Saikia and Madhurjya Saikia were placed at serial Nos. 2 and 3 in this merit list. Thus in their place, one more candidate placed at serial No. 4 in the merit list of the aforesaid reserved category was entitled to admission into the 1st year MBBS Course for the session 1993-94 if he truly belonged to the said reserved category. But no candidate belonging to the general category was entitled to admission into the said reserved seat.

24. There is one more case in which the Government appears to have passed orders under the Rule 10 of the 1992 Rules allowing admission to the MBBS Course for the 1993-94 session. The candidate Sobnam Singh with aggregate marks of 244 in Physics, Chemistry and Biology in C.B.S.E. applied for admission to the First Year MBBS Course for the academic session 1993-94 in a seat reserved for sons and daughters and dependent brothers/sisters of defence personnel from Assam only. Certificates of the employer were enclosed with the application for admission which stated that her father, colonel Bhupendra Singh, was an employee of the Central Government and had served in the State of Assam from 1962 to 1969 and from 1992 till date but being an Army Officer he was required to serve at other places in the Country and, therefore, could not remain for many years in the State. This application of Sobnam Singh was,

however, rejected on scrutiny as the Permanent Residence Certificate appended to the application form had not been filled up in respect of her parents. Thereafter, a representation was made to the Chief Minister of Assam which was forwarded to the Director of Medical Education, Assam, and the said Director in his letter dated 26th March, 1994, requested the Secretary to the Government of Assam, Health and Family Welfare Department to consider the case of Sobnam Singh under the general quota as a special case. After consideration of the case of Sobnam Singh, on 11-7-94, the Minister, Health passed the following reasoned order in the file :--

'This is another case regarding admission of Miss Sobnam Singh daughter of Colonel Bhupendra Singh who is serving in Assam for approximately 10 years, This case was also put up to me in File No. HLB. 151/94 by the Addl. Chief Secretary on 31-3-94 (file enclosed). This case was not considered for want of PRC which is required under admission rule. In the proposal it was contended that a defence personnel cannot be expected to reside in a particular place for too long and defence personnel are transferred from place to place particularly in forward areas at a periodic interval. Hon'ble Chief Minister also asked me to consider the case of Miss Sobnam Singh for admission in the 1st year MBBS Course. In this connection C.M's letter at Sl. 2 in file No. HLB. 151/94 may be referred to. The percentage of the marks obtained by Miss Sobnam Singh is 81.3% in P.C.B. and falls within the cut-off marks under general category. Considering the above circumstances please admit Miss Sobnam Singh in 1st year MBBS Course as a special case by relaxation of the rules as proposed by D.M.E. in his letter No. DME/78/93/Pt/2705 dt. 26-3-94.'

The aforesaid facts would clearly show that although Sobnam Singh applied for the reserved quota for sons, daughters, dependent brothers/sisters of defence personnel from Assam, the Director of Medical Education, Assam requested the Government to consider her case for a general seat and the Government found that she had not been considered for want of Permanent Residence Certificate in respect of her parents required under the rules and considering the fact that the father of Sobnam Singh, Colonel Bhupendra Singh, had been serving in Assam for approximately 10 years and could not be expected to stay permanently in Assam being a defence personnel and that she had secured 81.3% from Physics,

Chemistry and Biology which was equivalent to an aggregate of 244 marks after normalisation which were above the cut-off marks for admission under the general category, the Government relaxed the provision of the rules which required Permanent Residence Certificate of the parents of the candidate to be appended with the application form and allowed admission of Sobnam Singh to one general seat as proposed by the Director of Medical Education in his letter dated 26-3-94 and not to the quota reserved for sons, daughters, dependent brothers and sisters of Ex-Servicemen and Defence personnel from Assam only. This would also be evident from the copy of the order dated 12th July, 1994 which has been annexed to the supplementary affidavit dated 10-4-95 of Dr. Konwar in which there is no mention whatsoever that her admission was allowed by the Government in the aforesaid reserved category. Considering the reasons for relaxation given by the Minister, Health, quoted above, it is difficult for us to hold that the power of relaxation exercised by the Government under Rule 10 of the 1992 Rules in the case of Sobnam Singh was either contrary to the said rule or in any way arbitrary and violative of Article 14 of the Constitution.

25. We further find that under Rule 2(b) of the 1992 Rules, 'general seats' mean, available seats not reserved for candidates belonging to ST(H/P), SC and other categories of candidates as may be decided by the Government from time to time. Hence any admission of candidates belonging to the reserved category in excess of the quota reserved by the Government either under the Rules or under orders of the Government from time to time would be encroachment into the general seats. We find from the records produced before us that the following candidates have been admitted into the MBBS Course for the session 1993-94 from amongst the sons and daughters of all categories of employees serving under the Health Department of Assam:

Sl. No.

Name of the candidates

Aggregate marks in Physics, Chemistry and Biology after normalisation

1.

Md. Asman Ali

255

2.

Sarajit Barman

251.79

3.

Sidhartha Sarma

243.21

4.

Mitumoni Sarma

236.79

5.

Jyotika Havildar

236.79

6.

AD Goswami

232.50

7.

Priyakshi Barua

229.29

8.

Pronosmita Kalita

227.14

When we delved into the question as to how against the reservation of only 3 seats for this category of candidates under Rule 7(i)(b), 8 candidates from this category have been admitted, we found from the list of provisionally selected candidates for admission into the first year MBBS Course for the session 1993-94 dated 23-11-94 signed by the Chairman of the Selection Board that out of the aforesaid 8 candidates, 5 candidates, namely, Md. Asman Ali, Surajit Barman, Sidhartha Sarma, Mitumoni Sarma and Jyotika Havildar have been transferred to the merit list of general candidates and given admission in the general seats while the remaining 3 candidates have been given admission in the reserved category. As we have held above, sons and daughters of employees serving under the Health Department of Assam do not enjoy any special protection under the Constitution as is enjoyed by the candidates belonging to ST(H/P), SC and other socially and economically backward classes such as the OBC and MOBC under Clause (4) of Article 15 of the Constitution, nor can they constitute a special class for special treatment on any rational basis in the matter of admission into the 1st year MBBS Course in Medical Colleges in violation of rights to equality under Article 14 of the Constitution and the purpose of the provision in Rule 7(b)(i) of Rule 7 of the 1992 Rules for reserving 3 seats for sons and daughters of employees serving under the Health Department was only to ensure that at least 3 seats should be filled up from amongst such candidates and not that some provision has to be made because they are backward. This being the position, in our opinion, the candidate applying for admission into the three seats reserved for sons and daughters of all categories of employees serving under the Health Department of Assam would have to be first considered for admission on the basis

of their merit in the aforesaid reserved category and once the said three reserved seats were filled up, the remaining candidates could be considered along with the general candidates and given admission only if they secured marks above the cut-off marks for admission into the general seats. On this interpretation of the 1992 Rules, the first three candidates in this reserved category, namely, Md. Asman Ali, Surajit Barman and Sidhartha Sarma were entitled to admission into the three seats reserved for sons and daughters of employees serving under the Health Department of Assam, and Mitumoni Sarma, Jyotika Havildar and AD Goswami having marks more than cut-off marks for admission into the general seats were entitled to admission into the general seats along with other general candidates in the open competition. But Priyakshi Barman and Pronosmita Kalita who have marks less than the marks of last of the candidates in the merit list of general category who was entitled to admission were not entitled for admission and in their place the candidates at Sl. Nos. 217 and 218 of the list of the general candidates with normalised aggregate marks of 232.50 in Physics, Chemistry and Biology were entitled to admission under the 1992 Rules.

26, A few more candidates belonging to the general category were entitled to admission under the 1992 Rules but have been denied the same. From the supplementary affidavit dated 10-4-95 and the statement dated 12-5-95 filed by Dr. Konwar, the Director of Medical Education and the Chairman of the Selection Board, we find that the total seats for admission into the first year MBBS Course for the session 1993-94 in the three Medical Colleges in the State of Assam were 396 out of which 79 seats had been distributed in the manner indicated herein-below:

- (i) Seats to be filled up by All India Competitive Examination (CBSE) ... 51
- (ii) Seats allotted to Government of India (Central Pool) ... 15
- (iii) Seats allotted to other States (North Eastern States) ... 13
- Total allotted seats ... 79

Under Rule 6 of the 1992 Rules, the candidates who were to fill up these 79 seats were examined from applying for admission. Rule 2(a) of the 1992 Rules which defines 'available seats' is quoted hereinbelow:

'(a) 'Available seats means the seats available for admission after deducting the seats allotted to the Government of India, other States and Union Territories, as the case may be, and the fifteen percent of seats to be filled up through the All India Competitive Examination'.

Thus the total available seats would be 396 minus 79 is equal to 317. Rule 2(b) of the 1992 Rules defines 'General Seats'.

'(b) 'General Seats' means available seats not reserved for candidates belonging to Scheduled Tribes (Hills/Plains), Scheduled Castes and other categories of candidates as may be decided by the Government from time to time.'

Accordingly, the aforesaid available seats of 317 minus 135 seats reserved for candidates belonging to different categories under Rule 7(1) of the 1992 Rules which equalled to 182 was the total number of 'General Seats' to be Tilled up by candidates applying for admission into the 1st year MBBS Course for the Session 1993-94. It appears from the statement of Dr. Konwar the Director of Medical Education and Chairman of the Selection Board filed on 12-5-95 that 15 seats out of the 56 seats allotted to All India Competitive Examination (CBSE) were surrendered, 7 seats out of 13 seats allotted to North Eastern States and 3 seats reserved for the children of Tea Garden and Ex-Tea Garden Communities/Tribes for the Session 1993-94 have not been filled up. Thus 15 + 7 + 3, total -- 25 seats remained unfilled for want of eligible candidates. Explanation in Rule 7 which provides for filling up of seats remaining unfilled for want of eligible candidates is quoted herein below:--

'Explanation-- If any of the seats mentioned above remains unfilled for want of eligible candidates such seats shall be filled up by the candidates of the general category in order of merit.'

Thus as per the aforesaid explanation, all the aforesaid 25 seats allotted or reserved or to be filled up through All India Competitive Examination or by North Eastern States or by children of Tea Garden and Ex-Tea Garden Communities/Tribes were required to be filled up by candidates of general category in order of merit. Though the learned Advocate General submitted before us that this was the correct interpretation of the 1992 Rules, instead of following the aforesaid Explanation in Rule 7(1) of the 1992 Rules and filling up the unfilled seats from amongst the candidates of the general category in order of merit, the appellants have diverted some of the 15 seats which could not be filled up through All India Competitive Examination to the OBC/MOBC, SC, ST(H/P) and have justified the said diversion of seats on the ground that the aforesaid 15 seats had to be added to the total available seats and since the reservation for the OBC and MOBC, SC, ST(H/P) were based on percentage of the total available seats, the quota for each of these reserved category had to be increased proportionately with the increase of the total available seats. In our opinion, a plain reading of the definition of available seats in Rule 2(a) of the 1992 Rules quoted above excludes from available seats, seats to be filled up through All India Competitive Examination and the aforesaid definition of 'available seats' in Rule 2(a) does not permit adding back the said seats to the total available seats in case they are not filled up by All India Examination. The only provision which provides for such a contingency when the reserved seats are not filled up for want of eligible candidates is the aforesaid Explanation in Rule 7(1) according to which such seats have to be filled up by candidates of the general category in order of merit. A similar view has been taken by the Apex Court in *State of Orissa v. Asim Kumar Mohanty*, AIR 1989 SC 1801 on the basis of interpretation of the prospectus for admission to Post Graduate Courses of Medical Colleges which was issued by the State Government. Accordingly, 25 seats which were to be filled up through All India Competitive Examination or allotted to North Eastern States or reserved for children of the Tea Garden or Ex-Tea Garden Communities or Tribes could only be filled up by the candidates of general category. Thus, a total number of 207 seats (182+25) ought to have been filled up by the candidates belonging to the general category in order of merit under the 1992 Rules, but we find from the statement filed by Dr. Konwar on 12-5-95 that excluding 3 candidates for the

session 1992-93 and including 3 candidates for the session 1993-94 admitted into the session 1994-95 a total number of 198 candidates (including Sobnam Singh) who had applied for the admission into the first year MBBS Course for the session 1993-94 have been admitted into the general seats. This figure of 198 includes the admissions of Wasima Sultana, Sudipta Dhar Choudhary and Suparna Lata found by us to be contrary to the Rules. Thus 9 more seats were to be filled up under the 1992 Rules from amongst the candidates of general category in order of merit. Consequently, the nine candidates placed at Sl. Nos. 219, 220, 221, 222, 223, 224, 225, 226 and 227 of the merit list of general candidates including Partha Pratim Das of Sl. 227 with aggregate normalised marks of 231.43 and the candidate before us in Civil Rule No. 3207/94 and WA (T) 244/95 were entitled to admission into first year MBBS Course for the session 1993-94 under the 1992 Rules.

27. Amongst the 9 general candidates belonging to the general category before us, therefore, only 2 candidates Ranjita Devi in Civil Rule No. 328/94 and W. A. (T) No. 252/ 95 were entitled to admission under the 1992 Rules and none of the other 7 candidates belonging to general category before us whose names do not find place in the merit list and who have aggregate normalised marks as per details hereinbelow were entitled to admission under the 1992 Rules:

Sl. No.

Name of the candidates

Aggregate

CR Nos

WA(T) Nos.

1.

Sampa Choudhury

224

2846/94

236/95

2.

Shruti Harlalka

228.72

3005/94

237/95

3.

Vishal Kashyap

228.21

3937/94

257/95

4.

Sidhartha Duwara

208

3191/94

242/95

5.

Himshree Dutta

189

3216/94

251/95

6.

Amrita Kar

210.11

3197/94

243/95

7.

Pranab Choudhary

194.64

3204/94

245/95

28. From the statement dated 12-5-95 of the Dr. Konwar the Director of Medical Education, Assam and the Chairman of Selection Board, we further find that 5 seats for the session 1991-92 and 12 seats for the session 1992-93 have remained unutilised. We have already held that there is no provision in the 1992 Rules for carry forward of such unutilised seats of the previous session to the successive session. We are, therefore, of the opinion that while the candidates who had applied for the sessions 1991-92 and 1992-93 may have a claim to the unutilized seats for 1992-92 and 1992-93, the candidates who had applied for 1993-94 session can have no such claim to the unutilized seats of the sessions (contd. on col. 2) 1991-92 and 1992-93. In fact, we find from the statement dated 12-5-95 filed by Dr. Konwar that the following candidates of the session 1992-93 have approached this Court through various Civil Rules and obtained orders either

for admission or for reserving a seat in their favour:

Sl. No.

Name of the candidates

Civil Rule Nos.

1.

Sangita Borkataki

1052/93

2.

Sakil Nigam

2598/93

3.

Sujit Kumar Jha

1959/93

4.

Abhijit Phukan

113/94

5.

Debraj Dey

2386/94

6.

Dhrubajyoti Sarkar

2975/93

7.

Sanjay Paul

123/93

To our surprise, we find that even in those cases in which the direction of the Court was only to keep a seat vacant, candidates have been admitted into the seats. Such admission of candidates into the seats ordered to be kept vacant, however, will be dealt with by this Court in the respective Civil Rules and we do not intend to express any opinion regarding the same.

29. At the end of the hearing of the Writ Appeals, Dr. Konwar, the Director of Medical Education and Chairman of the Selection Board, stated before us on 22-5-95 that three candidates from general category and three candidates from the reserved categories had discontinued their studies. In our opinion, for the purpose of deciding as to which of the candidates were entitled for admission under the 1922 Rules into the 1st year MBBS Course for the session 1993-94, the fact that the six candidates have discontinued their studies after the admissions were granted are not relevant at all. Moreover, since the total number of candidates who had applied for admission for the session 1993-94 and have in fact been rightly or wrongly admitted into the seats for the session 1993-94 exceed the total seats for the session 1993-94, this fact will have no bearing whatsoever on the adjudica-
(contd. on col. 2)

tion of these appeals.

30. In the result, we hold that only the following 18 (eighteen) candidates including 4 (four) respondents in these writ appeals, namely Rajeev Dey, Himadri Shankar Acharyya, Ranjita Devi and Partha Pratim Das, who had applied for admission into

the 1st year MBBS course in the Medical Colleges of Assam, for the session 1993-94 were entitled to admission under the 1992 Rules, but were illegally denied such admission:--

Sl. No.

Name of the candidates

Category

Sl. No. in the merit list for the category

Aggregate marks in Physics, Chemistry and Biology after normalisation.

1.

Rajeev Dey

OBC/ MOBC

60

219.86

2.

Himadri Shankar Acharyya

Freedom Fighter

5

225

3.

Ranjita Devi

General

212

233.57

4.

Jhanjit Sarma

-do-

213

233.57

5.

Anindita Bhattacharyya

-do-

214

233

6.

Farhana Rahman

-do-

215

233

7.

Ashraful Alam

-do-

216

232.85

8.

Chiranjit Medhi

-do-

217

232.50

9.

Pranabjyoti Deka

-do-

218

232.50

10.

Rupjyoti Kalita

-do-

219

232.50

11.

Dip Kumar Baishya

-do-

220

232.50

12.

Mousumi Das Gupta

-do-

221

232

13.

Debabrata Deka

-do-

222

232

14.

Simanta Choudhury

-do-

223

232

15.

Jnanda Pd Sarma

-do-

224

231.91

16.

Abdul Rashid Bhuyan

-do-

225

231.91

17.

Manjusha Goswami

-do-

226

231.77

18.

Partha Pratim Das

-do-

227

31. Almost two years have elapsed since the commencement of the session 1993-94 and, therefore, all of the aforesaid candidates may not be interested in admission now. We direct that the Director of Medical Education and Chairman of the Selection Board shall give notice to the aforesaid candidates, through local English and Assamese Dailies as well as by Registered Post with Acknowledgment Due to their addresses as given in the application forms, to appear before him on any day in July, 1995 with the required certificates and after verifying the same, grant admission to those who appear before him on the date fixed into the 1st year MBBS course in any of the Medical Colleges of Assam before the 31st July, 1995. We clarify that if any of the aforesaid candidates turn up for admission on the date fixed, he or she will not be admitted into the seats for the academic session 1995-96 meant for candidates who are to be selected on the basis of admission test as per the new Rules, but will be admitted into the additional seats to be created for the purpose pursuant to these directions in consultation with the Medical Council of India and such candidates will start their academic session for the 1st year MBBS course along with the candidates for the academic session 1995-96 so that they can go through a full academic session.

32. Regarding admissions which we have held to be contrary to the 1992 Rules, though initially we were inclined to direct cancellation of all such illegal admissions, after hearing Mr. Bhuyan, learned Advocate General, Assam, who vehemently pleaded against such cancellation on various grounds, we are of the opinion that we should not direct cancellation of admission of such candidates who are not before us as parties in the Civil Rules or the Writ Appeals. In the case of *Gurdeep Singh v. State of J. & K.*, AIR 1993 SC 2638, the candidate who had been illegally admitted under the sports quota was a respondent before the Supreme Court and the Supreme Court thus had no hesitation in quashing his admission having found the same illegal. In the case of *U.P. Junior Doctors' Action Committee v. Dr. B. Sheetal Nardwani*, AIR 1991 SC 909, some candidates obtained admission in Post Graduate Medical Courses on the basis of some fake orders of the Allahabad High Court (Lucknow Bench) which were never passed, and the Supreme Court after considering the circumstances in which the benefit of admissions had been taken

by the candidates held that they were not entitled to an opportunity of hearing and vacated the admissions of such candidates even though they were not before the Court. But in the present case, the candidates whose admissions have been found by us to be illegal are not before us in these appeals and we are not in a position to determine their complicity in the illegal admissions. That apart, in the case of some of the candidates, we find that the Civil Rules and Writ Appeals are pending before this Court which would have to be heard independently and appropriate orders passed therein. We also find that these candidates have by now pursued their studies in the MBBS course for more than a year and a half and substantial resources of the State have already been spent by the concerned Medical Colleges for their studies. Moreover, as we are directing the authorities to grant admissions to the aggrieved candidates to additional seats for the academic session 1995-96, it is not necessary for us to direct cancellation of admissions of the candidates into the academic session 1993-94 made contrary to the 1992 rules for the purpose of giving relief in these Civil Rules or Writ Appeals. For these reasons, we have not directed cancellation of the admission of any candidate.

33. Before parting with the case, we must express our deep anguish over the fact that several students in the prime of their career should have been driven to this Court for admission into the 1st year MBBS course in the medical Colleges of the State of Assam and spent their time, energy and resources in Courts rather than in class rooms. A bulk of this litigation could perhaps have been avoided if the authorities entrusted with the responsibility of admissions had displayed a greater amount of transparency without which public confidence in the process of admission is not possible. To infuse such public confidence in the process of admission into MBBS/BDS courses in the Colleges of the State of Assam, we direct that henceforth:

(a) the authorities shall publish in the news papers the names and marks of all candidates who are initially selected for admission, (b) the authorities shall also publish in the news papers the names and marks of all candidates who are subsequently selected for admission, (c) whenever orders of relaxation are passed, the authorities shall notify in the newspapers the names and marks of the candidates in whose favour the orders of relaxation have been passed along with

the provision of the Rules which has been relaxed and the ground for such relaxation, (d) the authorities shall intimate the candidates who are not selected their marks by post to their addresses as given in their application forms and in case of all those candidates who are found ineligible for admission on grounds other than their marks the authorities shall also intimate them the ground of their ineligibility and (e) a public information centre will be opened up by the authorities at a central place to be notified in the newspapers where all relevant information shall be given to the candidates and their parents on enquiry till the admissions to the MBBS/BDS courses in the Colleges of Assam for any particular academic session are closed.

34. The impugned common judgment dated 28-9-94 of the learned single Judge passed in the 27 Civil Rules is set aside and the Writ Appeals are allowed and disposed of in the light of the aforesaid judgment.

V.K. Khanna, C.J.

35. I agree.

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