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Court : Andhra Pradesh

Decided On : Aug-18-1994

Reported in : AIR1995AP116

Judge : K.M. Agarwal and ;P. Venkatarama Reddi, JJ.

Acts : [Constitution of India](#) - Articles 14 and 226; Code of Civil Procedure (CPC) - Order 47, Rule 1; PGM Regulations - Rules 6 and 7

Appeal No. : W.P. Nos. 1023, 11861, 11020, 12540, 11164, 11563, 12063, 11813, 12404 and 13526 of 1994

Appellant : Dr. R.A. Prasad and Others

Respondent : University of Health and Sciences and Others

Advocate for Def. : Govt. Pleader ;S. Rama Murthy Reddy, S.C.; L. Ravi Chander, Adv. for Medical Council of India and ;N.V. Ranganadham, Adv.

Advocate for Pet/Ap. : S. Rama Chandra Rao, Adv.

Judgement :

ORDER

K.M. Agarwal, J.

1. It has now come to us to discharge a herculean task of finding a remedy for giving life to an otherwise stale and dead issue. Students successful in clearing the Entrance Test held on 13-6-1993 for the Post Graduate Medical Courses for the Academic Session 1992-93 and in securing seats and subjects in various Medical Colleges in the State of Andhra Pradesh have been thrown in the realm of uncertainties and insecurity in reference to their seats or subjects in Medical Colleges of the State in consequence of the defeat encountered by the University of Health Sciences, Andhra Pradesh, (in short, the 'University'), in the legal battle started by the unsuccessful students and fought in the High Court and then in the Supreme Court of India. At the stage of screening and re-evaluation of merit for the purposes of admission to the Post-Graduate Medical Courses and the subject of choice to be given in the light of the Expert Committee report pursuant to the ultimate order of the High Court, some of the students earlier admitted to the said courses and continuing to prosecute their studies on the date of the petition, apprehending likelihood of their admissions being adversely affected or the subjects of choice being disturbed, have ventured to file these petitions, using certain observations of the Supreme Court in S.L.P. Nos. 9104 and 9266 of 1994 dated 23-5-1994, as a life buoy for the following reliefs claimed in the petitions:

'Under the circumstances it is just and necessary that this Hon'ble Court may be pleased to issue an appropriate writ, order or directions, restraining the 1st respondent from interfering with the course of study the petitioners are now doing from July, 1993 in the respective faculties to which they were admitted earlier for any reason and pass such further or other orders as this Hon'ble Court may deem think fit and proper.'

2. Before we proceed further, a brief narration of facts appears necessary. Admission to Post-Graduate Courses in a Medical College in the State is regulated by a process of selection based on academic merit to be determined by a competitive test, also known as an Entrance Test conducted every year by the University in accordance with Rule 6-IV-A of the recommendations on Post-Graduate Medical Education adopted by the Medical Council of India in January 1992 and as revised up to April 1993, also known as Regulations (in short, the 'PGM Regulations')% Similar test for the academic year 1992-93 was held on 13-6-

1993 and on 7-7-1993, the results were declared. Out of approximately 3,000 candidates selected, only 552 were given seats and allocation of subjects in various medical colleges of the State. Not satisfied with the merit list prepared by the University on the basis of the said Entrance Test, a batch of about 390 students, not successful in securing a seat in any of the medical colleges, filed W.p. No. 9491/93 and similar other petitions, challenging the merit list on the basis of the said test on the ground that 51 out of 200 questions were either out of course or the key answers thereof were wrong; and making a prayer for a direction to hold fresh Entrance Test after quashing the one held on 13-6-1993 and the result thereof declared on 7-7-1993. In pursuance of an order made on 17-12-1993 by the Court in the said petitions, an Expert Committee, consisting of 3 persons, was constituted, which gave its report on 7-2-1994. As per the report, out of the various disputed questions, only 28 could be said to be raising serious dispute vis-a-vis the correctness of the key answers supplied by the University. On 18-2-1994 a Division Bench of this Court allowed the said W.P. No. 9491/93 and the batch with the following directions to the University:

'The Health University is, therefore, directed to revise the marks in accordance with the report submitted by the Expert Committee and make selection of candidates for admission into P. G. Medical Course accordingly. After revision of marks, if any of the petitioners are entitled to a seat, he or she may be admitted to the medical course and for all those students who will get admission into P.G. Course, pursuant to the revision of marks as per the report of the University concerned shall start the course afresh. It is also directed that the students who have already commenced their course and whose selection would otherwise have to be regulated shall not be disturbed.'

The University, thereafter, filed W.P.M.P. No. 7263 of 1994 and the batch for reviewing the common order passed by the court in W.P. No. 9491/93 and the batch on 18-2-1994 on the ground that the University was facing difficulties in implementing the directions of the High Court. By the time the review petitions were filed and taken up for hearing, one of the Judges constituting the Division Bench, which had heard and decided M.P. No. 9491/93 and the batch, retired on 22-2-1994. The review petitions were, therefore, heard and allowed on 28-4-1994

by the remaining Judge alone as per rules. The operative part of the order made in the said review petitions runs as follows:--

'..... Since under O.47, R. 1 of the Civil Procedure Code, the power to review a Judgment can be exercised 'for any other sufficient reasons', the difficulties in implementing the judgment referred above being other sufficient reasons, the review petitions are to be allowed.

I, therefore, direct the Health University to re-do the entire selection process of the candidates who have already commenced their courses and whose selection is otherwise to be regulated and the petitioners in the writ petitions and all other candidates who appeared for Entrance Examination held on 13-6-1993. If the candidates already selected and commenced their studies do not obtain the ranking required on the basis of the report of the Expert Committee their selection may be cancelled, subject to the directions in the above paragraph in respect of Diploma Holders.'

This common review order was challenged before the Supreme Court in S.L.P. Nos. 9104 and 9266 of 1994, which were dismissed as withdrawn on 23-5-1994 with the following observation :

'..... It is, however, clarified if any of the successful candidates, as a result of the report of the Expert Committee, have any genuine problem for subjects being changed, they will be free to approach the High Court for suitable directions. The High Court will decide the case in accordance with law.'

Now, without awaiting finalisation of the fresh merit list and ranking as per the report of the Expert Committee, the petitioners have filed these petitions for the said reliefs.

3. In the circumstances aforesaid, the first and foremost question that arises for consideration is about the maintainability of the said petitions. In a sense, these petitions may be said to be premature as the fresh merit list and ranking have not been finalised so far. Even otherwise, the petitions are not maintainable. The argument that some of the petitioners were not parties to the previous litigation

and, therefore, entitled to file these petitions, deserves to be rejected. In the previous petitions, no relief was claimed against any such candidates, who had secured, a seat in the medical college on the basis of the merit list prepared pursuant to the result declared on 7-7-1993. Such students were also not made parties to the said petitions initially. Some of them were, however, subsequently joined as respondents in the said petitions on the basis of their applications for impleading. In the earlier petitions, the grievance was only against the University and the relief claimed was also against the University. According to the petitioners therein, the Entrance Test dated 13-6-1993 was vitiated due to wrong evaluation of about 51 out of 200 questions given at the Test and the prayer was for directing the University to hold a fresh Entrance Test. Thus, the very process of selection was challenged and if the contention was upheld, the petitioners herein were bound to be affected, though they had no say or hand in the process of selection. We are, therefore, of the view that the petitioners herein cannot be allowed to question the correctness or otherwise of the decisions rendered by this Court in the said writ petitions, or in the review petitions on the ground that they were not parties to the earlier litigation. The decision of the Supreme Court in (Shivdeo Singh v. State of Punjab) AIR 1963 SC 1909 relied on by the learned counsel for the petitioners is quite distinguishable on facts and cannot be applied in the present case.

4. Further, we are of the view that the aforesaid observations of the Supreme Court in S.L.P. Nos. 9104/94 and 9266/94 do not create any right in favour of the petitioners, nor do they confer any jurisdiction on us to sit in judgment over a decision of this Court, which has become final and conclusive.

5. In the light of our conclusions aforesaid, we would have ordinarily dismissed all these petitions, but, some extraordinary features of the case compel us to see, if without violating the directions made in the aforesaid review order and without contravening any of the rules and regulations of the Medical Council of India, or those of the University, any relief can be granted to these unfortunate students, who have by now completed their one year Post-Graduate Course, but likely to be thrown out of the college because of the court orders. Before we do this, the extraordinary features of the case may be lime-lighted.

6. After holding the Entrance Test on 13-6-1993 for P. G. Courses for the year 1992-93, no Entrance Test for the subsequent year 1993-94 has so far been held, although it was notified on 13-10-1993 to hold such a test on 19-12-1993. Candidates who had passed MBBS examination and were completing their Internship on or before 15-2-1994 were eligible to appear for the notified Entrance Test for the year 1993-94. The applications received were kept pending and the applicants for the said test were informed by another notification dated 29-11-1993 that the test scheduled to be held on 19-12-1993 was postponed; a fresh notification and revised date of Entrance Test would be issued later and that all the applications sold and received as per previous notification would be valid. Yet the fact remains that no such fresh notification has been issued so far for conducting the Entrance Test for the year 1993-94. On being questioned during the course of arguments, the learned counsel for the University made a statement after consulting a responsible officer of the University present in Court that:

(i) Within a week or two from the date of order in these petitions, a fresh notification for Entrance Test for 1993-94 is likely to be issued;

(ii) That as per rules, the fresh notification shall have to give, at least, 6 weeks clear time between the date of notification and the date of the Test;

(iii) Fresh candidates, completing Internship after 15-2-1994 shall be given opportunity to appear for the Test to be held for the year 1993-94, if they applied for the Test.

7. Let us pause here for a while and examine the conduct of the University. In the absence of any prohibitory order from any Court or authority, with what justification the University postponed the Entrance Test for the year 1993-94 is beyond imagination. Although more than 7 1/2 months have expired since 19-12-93, the initial date for the Test notified by the University, no step has so far been taken to issue fresh notification after postponing the said Test by subsequent notification dated 29-11-1993. Now the University is likely to face problems from the applicants under the earlier notification dated 13-10-1993 and the fresh applicants coming forward pursuant to the fresh notification contemplated to be issued by the University for the Entrance Test for 1993-94, as the receiving of fresh and

additional applications for the said Test is bound to enlarge the field of competition. Say for instance, only 10,000 applicants were in the field pursuant to the notification dated 13-10-1993. Now this number may increase to 20,000 with the new incumbents pursuant to the subsequent notification yet to be issued. Further, there appears no reason why the University has failed to finalise the fresh merit list in pursuance of the review order dated 28-4-1994 and in accordance with the report of the Expert Committee, though there was no stay from any Court, restraining it to do so. In the light of these facts, we think that the University lost sight of the future career of the students. The delay is bound to result in spoiling one or two years of a meritorious student, who is likely to get a seat in medical college pursuant to the Test or the fresh merit list, as the case may be. Further complications, as may hereafter be noticed, are also likely to arise due to the inaction and delay in the matter by the University.

8. We started hearing the petitions on 27-7-1994, but as it was not concluded on that day, it was adjourned to 28-7-1994 for further hearing. In the meanwhile, it occurred to us that :

(i) As per the PGM Regulations, additional seats for Post-Graduate Medical Courses could not be created, nor the duration of 3 years training for the said Courses could be reduced;

(ii) All the students who were successful in securing seats and subjects on the basis of the initial merit list were not going to be unseated or to lose the subjects allotted. As observed in the review order, only 175 to 186 students out of the total number of 552 were likely to be affected by the course suggested by review order. This is bound to result in starting two classes or courses, one of the students who have already completed one year of training by now and the other of the students who are now to secure seats pursuant to the fresh merit lists to be prepared as per the report of the Expert Committee, because under the rules, they cannot be allowed to complete the three years course within two years;

(iii) The Entrance Test for the year 1993-94 has not so far been held and it cannot be held immediately or within a month or two because of the rules. The declaration of result, preparation of merit list, admission of students and allocation of subjects

may also take some considerable time;

(iv) And in the situation aforesaid, it has now become impossible to start the 1993-94 PGM Courses in time. (The PGM Courses of 1992-93 had started from 1-8-1993).

Accordingly on 28-7-1994 we suggested the learned counsel for the parties to find out whether it was possible to treat the Entrance Test held on 13-6-1993 as a test for two academic years i.e., for 1992-93 and 1993-94 and accordingly without disturbing the students, who have already secured seats and subjects for the year 1992-93 and have completed their one year course selection of candidates as per the fresh merit list to be prepared on the basis of the report of the Expert Committee, be made for the year 1993-94. So far as the Entrance Test for the year 1993-94 is concerned, it may be treated as the Test for the year 1994-95. In this fashion, we thought, all the students may be satisfied and adjusted without infringing the rules and regulations of the Medical Council of India, or the various orders passed from time to time by the High Court, or the Supreme Court. The learned counsel for the petitioners readily agreed to the proposal, but the learned counsel for the University showed his reluctance to accept it by placing before us some hypothetical problems. However, when we insisted that he should take time, consult the University authorities and then make a statement; he took time till 3-8-1994, but the case could not be taken up on 3-8-1994 due to some unavoidable circumstances. When it was taken up on 4-8-1994, a categorical statement was made by the learned counsel for the University that the proposal was not acceptable to the University. In reply to the question, why it was not acceptable, a letter received from the Registrar of the University was produced. We did not show this letter to the learned counsel for the petitioners, as it was claimed to be a confidential and privileged document. However, as we consider it necessary to deal with the objections against our aforesaid proposal before we come to any conclusion and further because we feel that there is nothing in the letter, requiring the contents thereof to be kept a secret, we reproduce hereinbefore the entire contents of the said letter :

'I am to state that the letter reference was considered and discussed at length by the Executive Council of the University of Health Sciences at the Emergency Meeting held on 1st August, 1994 and I am by direction request you to kindly inform the Hon'ble High Court to the effect that the suggestions made are not acceptable to the University,

The reasons in great detail for expressing our inability to accept the suggestions of the Hon'ble High Court are furnished here-under:--

1. The Rules for admission to Post Graduate Courses in Medical Colleges were specifically made for the year 1992-93 as per the prospectus and the number of P. G. Seats shown in the Annexure are only for the year 1992-93.
2. One Entrance Test (1992-93) cannot give rise to two merit lists leading to selection of two batches of candidates who have written one examination. The Hon'ble High Court of Andhra Pradesh has ordered the preparation of revised list since the first list was found to be defective. Accordingly, the UHS followed the directions of the Hon'ble High Court and published the revised list. The revision of the first list and the publication of revised merit list amounts to cancellation of the first list and there can be only one valid list i.e. revised list for doing the selection for the year 1992-93. Such of those candidates who were selected on the basis of the defective first merit list have to forfeit their seats and come-up for selection on the basis of the revised list. Further making two selections from one Entrance examination is likely to be a bad precedent for the future.
3. There are already 2 batches of students waiting for admission into P. G. Courses through the Entrance Test 1993-94 i.e., the students who have completed their Internship in December, 1993 and June, 1994. The UHS cannot deprive those students from having a chance to appear for the 1993-94 Entrance Test and at the same time giving undue benefit to the students who have appeared for 1992-93 Entrance Test, by considering their single performance at the 1992-93 Entrance Test held in June 1993 for admission into two years i.e., 1992-93 and 1993-94. This may lead to once again fresh legal problems and students' unrest from the batches of students who are waiting for the 1993-94 Entrance Test to be conducted as soon as the 1992-93 case is settled.

4. The UHS has already notified the Entrance Test for 1994 to be held on 19-12-1993 and the applications from the eligible candidates have also been received. However the Entrance Test process had to be postponed and the Entrance Test could not be conducted as per the schedule in view of the representations from the students, stating that the E.T. 1994 should be held only after settlement of the case of 1992-93 E.T. Hence the said examination had been postponed and it was also announced that the applications already received will be valid for the postponed examination to be held at a later date.

Hence the examination of 1992-93 and the merit list of 1992-93 cannot be operated by the UHS for selection of students for the year 1993-94.

5. The UHS could not conduct the Entrance Test for 1993-94 though it has announced for the aforesaid reasons in para (4). Since the Entrance Test has not been conducted for the year 1993-94 and admissions not made, the question of seats lapsing for the year 1993-94 does not arise.

6. The UHS has conducted the 1992-93 Entrance Test which comprises two Tests i.e., Test-I for admission to Clinical Courses and Test-II for admission to Pre and Para Clinical Courses. The Test-I results were only questioned and is in dispute, whereas the Test-II did not have any problem. Hence admission to Pre and Para Clinical Courses were completed satisfactorily. If the revised list of Test-I has to operate for the second time i.e., for 1993-94 as per the suggestion of the Hon'ble High Court, the candidates who could not obtain seats in the Test-II courses may also ask the same merit list of 1992-93 to be operated for 1993-94.

7. The students of 1992-93 Entrance Test who are not going to get seats as per their choice depending upon their merit are also eligible to appear for 1993-94 Entrance Test to be held; thereby they are not being deprived of their chance to compete with the fresh batch of students who are eligible to appear for 1993-94 Entrance Test. As such selection to two batches of students from one Entrance Test is not justifiable.

8. Further, if such a procedure as suggested by the Hon'ble High Court is followed, the UHS may have to face many more difficulties in implementation and

monitoring the allotment of seats between the two sets of selected candidates with reference to the subjects and colleges of their choice/preference, since both the merit lists will be in operation. The candidates who are already admitted into the courses on the basis of the defective merit list are also eligible to appear for the fresh , selection to be made on the basis of the revised merit list. They can choose their subjects and college of choice leaving their present seats, resulting in vacancies. The less meritorious candidates as per that list can claim these seats that are likely to fall vacant by operating the original list. Similar situation may arise even for the operation of the second list enabling the students to move from one list to the other, as long as the two lists are considered as valid and are in operation. Hence there should be only one batch of students for admission into 1992-93 and there cannot be two merit lists arising out of one Entrance Test.

I therefore by direction request you to kindly bring this to the notice of the Hon'ble High Court for kind consideration and speedy disposal of the said writ petitions.'

9. We have been entertaining public interest litigation on the basis of post cards and letters. On the same principle, we see no reason why we should not consider the objections against our said proposal which we received by post from one of the students likely to be affected by our order in these petitions. We, therefore, propose to reproduce the letter in the same sequence :

'I am a student belonging to one of the medical colleges of University of HealthSciences.

I am writing this letter to you so that I can

(1) try to put the case (controversy regarding PG Entrance) before your highness in the proper perspective,

(2) put forward my humble suggestions to solve the crisis.

Sir, on 28-7-1994 I heard your proposal to solve the problem in a way so that 'everybody could be pleased.'

I feel you developed this proposal with sympathy to the students already admitted, on the ground that they have completed one year of their course.

Kindly allow me to register my disagreement due to the following reasons:

Eg. (i) Consider that person 'A' joined surgery according to first list person 'B' could not join as he was ranked behind 'A' in the first list. After Revaluation (Third List) :

The new list shows person 'B' ahead of person 'A'. So person 'B' actually deserved the seat but due to obvious reasons he was sitting idle for the past 1 year while undeserving candidate reaped the benefits of PG seats.

- Education and experience

-- Monthly stipend nearly Rs. 2,300/-($11 \times 2,300 = \text{Rs.}25,300/-$).

In a situation like this, I hope you agree that your kind sympathy should be with person 'B' rather than person 'A' for losing one year of valuable time.

Sir I do agree that it is not the mistake of person 'A' but neither it is of person 'B'.

Eg. (2) Consider, if the exam was conducted properly and was evaluation correctly than these students would not have had the chance to join the course. They would be forced to sit tight and study for the past 1 year and appear for the next PG Entrance. So, in fact they should consider themselves lucky for getting a chance to be PG's even though it is for a short period (or is it long!)

So, Sir, I think I proved beyond doubt once again that the students who are already admitted lost nothing, but in fact gained something which they truly don't deserve. Note, that whatever time they lost, truly deserving students also lost.

NOTE : So there is. no reason to show any sympathy to them!

Suggestion to solve the problem :

With the idea of showing sympathy to wrong persons shelved, the proper way out is to cancel admissions made according to first list and pave way for fresh selections based on list revised with the Expert Key.

Thus allow the meritorious students to realise whatever they deserve -- and I hope you agree with me that to do justice does not mean to 'please both the contending parties' but rather it is to 'allow the truth to prevail'.

Merits of the suggestion :

1. -- Avoids the legal tangles th'at need to be overcome to create fresh seats. (This needs to be done to allow undeserving candidates to continue).

2.--Kindly note that many students have improved their ranks in the new list. So they prefer to exercise their option to be selected once again. All the seats they were holding till now will go waste. So the whole idea to create fresh seats so that one academic year of these students be saved will be lost. I believe sincerely that at least half the number of students will exercise their option once again.

3.-- Cancelling one Entrance exam, creates hardships for students of two succeeding academic years and they need to compete each other for just half the number of seats for no fault of theirs. (Why should they suffer just to accommodate few undeserving candidates!)

Note: If you allow selections according to new list now, fresh batch starts on Aug. 1st 1994. So entrance for academic year 93-94 will be held in Dec. 94 and 94-95 somewhere in June 95. So the succeeding batches will be saved.

(Kindly note that students of succeeding batches on hearing the proposal were very concerned and plan to launch an agitation).

Thank Q !'

10. On being questioned during the course of arguments, the learned counsel for the University informed us orally and also gave in writing on a piece of paper that:

'1. Reflections as per the Court judgment will be done in two weeks time.

2. E.T. 1993-94 : Six weeks time after the above selections.

3. Those, who opt the same subject, one year exemption will be considered after putting the matter to the Executive Council.

4. Those who opt separate subjects have to under go full course i.e. 3 years in case of Degree and 2 years in case of Diploma Course.'

11. To take up the objections received by post first, one has to remember that the eligibility requirements for PG Course were only two : one, the minimum educational qualification, i.e., MBBS degree and completion of Internship within the specified time; and second, clearing the Entrance Test. So all the students who satisfied these two conditions were eligible for admission to PG Course. First condition was fulfilled by all the candidate who were allowed to appear at the Entrance Test. We are informed that out of several thousand candidates who appeared at the Test, about 3,000 were declared successful and, therefore, it may be taken that all of them were entitled to admission for PG Course. However, as the seats were limited, a merit list was prepared and according to availability of seats, which were 552 in the present case, candidates were selected and given admission. Now for one reason or the other, if the merit list is prepared afresh, the candidates who were earlier selected as per the initial merit list do not, ipso facto, become ineligible for admission to the said course. They are thrown out of consideration, because in the fresh merit list, they got a position at a place where the limit of the available seats exceeded. Accordingly the objection based on the alleged superiority of inter se merits is ill-founded. In the same way, because of the mistake committed by the University, students who have already secured a seat in the medical college cannot be unseated: So also they cannot be made to suffer, because the candidates now entitled to a seat for PG Course as per the fresh merit list were forced to suffer loss of a year of their training as a result of the mistake of the University. For all these reasons, we find no merit in any of the objections raised by post before us. They are accordingly overruled.

12. Now coming to the objections raised by the University, one has to remember certain naked truths, viz. :

(i) As stated in paragraph 8(ii) hereinbefore, out of 552 students, only about 186 students are likely to be unseated/disturbed as per the fresh merit list. Accordingly

186 fresh candidates as per the fresh merit list are likely to get admission to the PG Course. Now for those 366 students who are entitled to continue the PG Course even as per the fresh merit list, there shall have to be separate classes, as by now they have already completed one year out of the three years PG Course; and for those who are admitted to the said course for the first time as per the fresh merit list, there also shall have to be separate classes, as they have to complete 3 years course from the very beginning. Rule IV-B-I of PGM Regulations specifically provides, 'the minimum period of training for obtaining these (MD/MS) degrees shall be three calendar years' and further says, 'no exemption shall be given from this period of training of 3 years'. Accordingly no exemption either can be claimed or given to the fresh entrants pursuant to the fresh merit list and they cannot be allowed to complete the three years training within a period of 2 years. In other words, it may be said that for the first category of students, the academic year shall continue to be 1992-93; but, for the second category of students, the academic session shall have to be treated as 1993-94. Now if the statement made on behalf of the University is accepted that it is going to hold the Entrance Test for 1993-94, a third category of students would be coming forward and for them also, separate classes shall have to be started. In other words, during the year 1993-94, there will be two separate first year trainings; one, for the students selected as per the fresh merit list; and the other, for the students who get seats on the basis of merit list to be prepared on the basis of the result of Entrance Test for the year 1993-94. This is not permissible as it would amount to creation of additional seats for first year PG Course by an indirect method. This is bound to infringe Rules 6 and 7 of the PGM Regulations framed by the Medical Council of India. This is how we were also given to understand by the learned counsel for the Medical Council of India.

(ii) The rules and regulations framed by the Medical Council of India do not prohibit selection of candidates for two academic years on the basis of one Entrance Test. Rule IV-A of the PGM Regulations only says that the students 'for post-graduate training shall be selected strictly on the basis of their academic merit' and that for 'determining the academic merit, the University' may proceed on 'the basis of merit as determined by a competitive test conducted by the University/ Group of Universities.' Of course, this method of selecting students for two academic years

by means of one Entrance Test cannot ordinarily be permitted to prevail for obvious reasons. If this system is allowed to prevail, the students who become eligible to appear at the Entrance Test for the subsequent year may be deprived of an opportunity to compete with others, who are similarly situated. This would have the effect of violating Article 14 of the Constitution. However, in the present case, the University has already deprived the students of that opportunity by not conducting the Entrance Test so far, though it was notified on 13-10-1993.

(iii) The directions we are now thinking to make could be averted by the University by acting in time and discharging its duties as per orders of the Court and/or the PGM Regulations.

13. From what has been stated herein-above, the objection of the University against the aforesaid suggestion of the Court made on 28-7-1994 appears to be misconceived. For their improper conduct, the University authorities deserve no sympathies. They do not appear to have made any sincere efforts to undo the wrong by taking appropriate and timely steps. Firstly, they ought not have given questions with wrong key answers to the students, who appeared at the Entrance Test held during the year 1992-93. After the judgment in the writ petitions, they ought to have finalised the fresh merit list as per the report of Expert Committee and, thereafter, approached the Medical Council of India with a request for creation of additional seats. Without doing so, they approached the Court with review petitions. After the review petitions were decided on 28-4-1994, they ought to have declared the fresh merit list as per the report of the Expert Committee and ought to have accordingly distributed seats subjects to the students on the basis of such fresh list within a period of two weeks from the date of the order in accordance with the directions made in the review order. The University did not hold the Entrance Test for 1993-94, though there was no stay from any Court. The stand of the University, as manifested in paragraph 4 of its letter aforesaid, that 'the Entrance Test could not be conducted as per the schedule in view of the representations from the students; stating that the E.T. 1994 should be held only after settlement of the case of 1992-93 E.T.', cannot be believed, because how the Test of 1994 was going to be affected by any decision rendered in the dispute pertaining to the Entrance Test of the year 1992-93, is beyond imagination.

Accordingly we are of the view that the said attitude of the University authorities and their fanciful apprehensions against the suggestions made by us to solve the problem in the peculiar facts and circumstances of the case cannot be made a ground to deny justice to the students on some technical ground like the one we have discussed in paragraphs 3 and 4 hereinbefore. We are convinced that for the reasons hereinbefore given we can dispose of these petitions with certain fresh directions without peril to anybody's interest and without violating any of the rules and regulations framed by the Medical Council of India, or the orders passed by the Court. While saying so, we are conscious of the objection raised on behalf of the University that the dispute in the earlier litigation was restricted to Test-1 for admission to clinical courses and that there was no dispute as to Test-II for admission to pre and para clinical courses held during 1992-93 and accordingly the directions we are going to make in these petitions shall be restricted to Test-I only, which was and is the subject-matter of dispute between the parties. Similarly we are also keeping in view the interests of those students who were successful in securing seats in the medical colleges of the State, but were not satisfied with the subjects allotted to them and are now in a position to have the subjects of their choice pursuant to the fresh merit list as per the report of the Expert Committee.

14. In the light of what we have stated above, we are of the view that all these petitions made be disposed of, without prejudice to the interests of any of thecontesting parties or students, by issuing directions as follows:

(1) These directions shall be restricted to the students, who gave Test-I for admission to clinical courses during the year 1992-93; and only to such students who are adversely or beneficially affected by the fresh merit list prepared on the basis of the report of Expert Committee pursuant to the orders made in the earlier writ petitions and/or in the review petitions.

(2) Students who have already secured seats and have undergone one year PG training and are also satisfied with the subjects allotted to them for post-graduation, shall not be disturbed and shall be allowed to continue their further studies.

(3) Students now entitled to seats and subjects as per the fresh list on the basis of the report of the Expert Committee shall be allotted seats and subjects for the three years' course, which is to commence from the current year 1994.

(4) Students having completed one year course, if desirous of changing their subjects for post-graduation on the basis of the fresh merit list, shall have the option to do so; provided that they shall have to begin afresh and to undergo fresh training for a complete period of three years to be reckoned from the current year 1994 along with the students of the description given in the preceding subparagraph (3); and without any claim for adjustment of one year training they have undergone by now.

(5) The students to be selected on the basis of the Entrance Test now to be held may be treated as students for the next year, i.e., for the calendar year 1995, because it does not appear feasible to conduct the Test immediately and to start the classes during the current year for various reasons; viz., the University may take, at least, one month time to make preparation for the Test; the notification to be issued would require to give at least, 6 weeks clear time between the date of notification and the date of the Test as per rules; and a further period of one month may be required for declaration of result, preparation of merit list, allotment of seats and allocation of subjects on the basis of inter semerits of the successful candidates. (This conclusion is based on the Test held for the year 1992-93; the notification dated 13-10-1993; and the procedure required to be followed for the Test and after the Test).

15. We accordingly dispose of these petitions with the aforesaid directions in paragraph 14 to the University but without any order as to costs. We further direct the University to finalise the fresh merit list as per the report of the Expert Committee immediately and to give seats and subjects to the students accordingly within a period of 2 weeks from today: The University authorities must also see that the fresh first year PGM Course starts immediately within next two weeks from the date of completion of the said formalities about admission to the said Courses.

16. While parting, we wish to make it clear once again that we are making these extraordinary directions in a very extra-ordinary situation and in the light of peculiar

facts and circumstances of the case. While doing so, we were guided by the sole object of doing justice to all concerned. This may not, therefore, be treated as a precedent. By way of abundant caution, it also appears necessary for us to explain that by directing, 'If the candidates already selected and commenced their studies do not obtain the ranking required on the basis of the report of the Expert Committee their selection may be cancelled', it was not intended by the Court deciding the review petitions to unseat such students unmindful of availability or nonavailability of seats. The direction was on the basis of non-availability of seats for accommodating the students who were entitled to seats as per the new merit list. Now in the situation that was subsequently created, we found it possible to accommodate the students entitled to admission as per the fresh merit list without disturbing the candidates already selected and commenced their studies, but failed to obtain the ranking required on the basis of the report of the Expert Committee. Accordingly we feel that our directions aforesaid are workable without abrogating the directions made in the review order dated 28-4-1994. Similarly it may be clarified that anything said in this order shall not come in the way of the students, who are going to face the next Entrance Test to be, declared in pursuance of the notification dated 29-11-1993 referred to in paragraph 6 of this order, in claiming usual benefits pursuant to the result of such Entrance Test.

17. Order accordingly.