

Dr. Ram Kumar and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-24-1993

Reported in : AIR1994All91

Judge : B.C. Saksena, J.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh State Universities Act, 1993 - Sections 28(5); Uttar Pradesh State Universities Act, 1973 - Sections 28; [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 2; Government Order

Appeal No. : Writ Petition No. 1040 of 1993

Appellant : Dr. Ram Kumar and Others

Respondent : State of U.P. and Others

Judgement :

ORDER

1. All the four writ petitions are directed against the allotment of Colleges and specialties to candidates selected for admission to post Graduates Medical Courses in the State of U. P. They involve interpretation of common documents and thus with the consent of the learned counsel for the parties they were clubbed together and have been heard for final disposal. This common judgment will govern all the four petitions.

2. The first two writ petitions are by general candidates while writ petitions at serial Nos. 3 and 4 above have been filed by students belonging to Scheduled Castes and Scheduled Tribes. In the first two writ petitions which were filed earlier by an interim order admissions to Post-Graduate Courses in M.S. and M. D. and diploma in all the Medical Colleges of the State were stayed. Hearing in the said writ petitions had commenced. Thereafter the last two writ petitions were filed. The opposite parties were granted time to file counter-affidavit but no counter-affidavit could be filed. Sri P. K. Sinha, the learned Standing Counsel on the basis of the written instructions received by him in respect of the first two writ petitions and oral instructions with regard to other writ petitions indicated his willingness to argue the matter for final disposal. Counsel for the petitioners in all the petitions also agreed that it would be appropriate if the writ petitions are finally heard and decided and no further pleadings would be necessary.

3. It is admitted between the parties that the State of U. P. in exercise of power under Section 28(5) of the U. P. State Universities Act, 1993 had introduced in the year 1991 a Post-Graduate Medical Entrance Examination Scheme called 'PGMEE'. A Notification dated 9th October, 1990 was issued by the Governor of U. P. in exercise of power under sub-section (5) of Section 28 of the U. P. State Universities Act, 1973 with a view to regulating the admissions in all the Government Allopathic Medical Colleges and Associated Hospitals and K. G. Medical Colleges including Dental College and Hospitals associated therewith and Junior Residency Senior Residency and Dental Residency Scheme.

4. Under the said scheme admission to Post-Graduate Course in various State Medical Colleges in State of U. P. are to be made on the basis of a competitive examination. For the year 1993 PGMEE was conducted by the Lucknow University. The petitioners who had passed their M.B.B.S. Examination and also completed their internship, with all others who were similarly eligible, had appeared at the said P.G.M.E.E., 1993. The result of the said competitive examination 1993 was declared in the first week of March, 1993. A combined merit list of the candidates who had qualified for admission to Post-Graduate Courses in the various Medical Colleges of the State was notified in the 4th Week of April, 1993 by the Lucknow University. The said list also indicated the allotment of the

Colleges and courses to candidates selected for admission to P. G. Medical Course through PGMEE-- 93.

5. Under the scheme for qualifying at the competitive examination 50% marks had been provided for the general category candidates while for the Scheduled Castes and Scheduled Tribes Candidates the minimum percentage of marks for being selected was provided as 40%. The total number of seats for which the examination was held was 536. P. G. Medical Course included the three years Degree Course and two years diploma course.

6. An Information Brochure for PGMEE 1993 was issued. Clause (ii) of Para 'A' of the said Brochure provided as under:

'A list of post-graduate courses available in each medical college is given in table on page 8. The number of seats in each course and college shall be determined as per Govt. of U. P. G. O. No. 8390 Sec/ 14/V 250/82 dated 9-10-90 and G.O. No. 2109 Sec. 14/V-91 dated 8-4-91.'

By Government Order dated 8-4-91 reservation has been provided in favour of Scheduled Caste Candidates to 18% of the total number of seats and for the Scheduled Tribe candidates 2% of the total number of seats.

These writ petitions, therefore, involve interpretation of the provisions of the Information Brochure. Government Order dated 8-4-91 and the notification dated 9th October, 1990.

7. As noted hereinabove the first two writ petitions have been filed by the General candidates. The said petitioners are not questioning the provision for reservation of quota in Post-Graduate Course in favour of the Scheduled Castes and Scheduled Tribe candidates. They have stated in their petitions that Scheduled Caste and Scheduled Tribe candidates are entitled to 20% (18% + 2%) of the total number of seats viz. 536. Their quota therefore works out to 107 seats. Grievance of the petitioners in the first two writ petitions is confined only to the allocation of the specialties to the qualified candidates including general category and reserve category. The main stand in the writ petitions is that a combined merit list was

required to be prepared, and has been prepared but allocation of the Post-Graduate specialty has not been made on the basis of merit-cum-preference as was envisaged in the scheme. The grievance of the petitioners in the aforesaid two writ petitions is that the opposite parties have misconstrued the relevant provisions in the aforesaid three documents on the erroneous assumption that reservation in the allotment of the specialties has been provided for by the Government by Order dated 8-4-91. On the said erroneous assumption reservation has been made applicable in the specialties also with the consequence that particular specialties for which the petitioners had indicated their preference has been allotted to the reserve category candidates though the latter has secured very much lower merit position than the petitioners.

8. The facts in brief, in each of the four writ petitions may be set out:--

In Writ Petition No. 1040 of 1993 (M/S) there are three petitioners: Dr. Ram Kumar, Dr. Shishir Kumar Rastogi and Dr. Vijay Kumar. The said three petitioners have secured position at serial Nos. 246, 313 and 238 respectively in the combined merit list and they have been offered admission in M. D. Anaesthesiology K. G. M. C. Lucknow, Diploma in Orthopaedics M.D.N. Medical College, Allahabad and M. S. Ophthalmology in S.N.M. College Agra respectively.

9. Petitioner No. 1 had given following three choices:

General Surgery in K.G.M.C. Lucknow, Kanpur and Meerut Medical Colleges respectively.

Petitioner No. 2 indicated three choices;

(i) M. S. Orthopaedics in all the four Medical Colleges;

(ii) M. S. General Surgery in 4 Medical Colleges;

(iii) M. S. Ophthalmology in 4 Medical Colleges at Lucknow, Kanpur, Agra and Meerut.

Petitioner No. 3 had given three preferences for general surgery in different colleges.

10. The grievance of the petitioners is that candidates belonging to Scheduled Castes and Scheduled Tribes have been allotted the subject of General Surgery, M. S. Ophthalmology though they were very low in the merit list viz. at serial number 1190 and 1214. The petitioner No. 1 had not been given admission in M. S. General Surgery while candidate belonging to Scheduled Castes has been given admission in M. S. General Surgery who was placed at serial No. 448 in the merit list.

11. Similarly petitioner No. 2's case is that he had opted M. S. Orthopaedics as his first choice in K.G.M.C. Lucknow. He had also given second preference for M. S. Surgery in S. N. M. Medical College Agra. Though he was at serial No. 313 he was not given admission in the said course and instead one Dr. Anil Chandra who is at serial No. 756 has been given admission in the said course and college. Petitioner No. 3's case is that he is at serial No. 238 and had opted for M. S. General Surgery in S.N.M. Medical College Agra. The said course and College has been allocated to a candidate lower in merit viz. Dr. Anil Chandra aforesaid.

12. In Writ Petition No. 1041 (M/S) of 1993 there are seven petitioners. Their grievance is that they have not been given specialty of their choice as also the College and Scheduled Caste candidates lower in merit to them have been given the said specialties. The merit position of petitioners Nos. 1 to 7 of the said writ petition is 249, 273, 239, 222, 338, 285 and 233 respectively. It has been stated that all the Scheduled Caste candidates except one Puspe Pal have secured far below position in the merit list than the petitioners. The details of the particulars given by the petitioners of this petition is not relevant to be detailed for the purpose of deciding the issue involved in the writ petition.

13. Dr. Brham Prakash gave his first choice for M. D. Course in medicine at Meerut/Agra Medical College. His second choice was D.C.H. and third choice M. S. General Surgery, 4th M. S. Ophthalmology and 5th M. S. Orthopaedics. His case is that after the examination and before allocation of the specialties and declaration of result he indicated his choice by submitting an application dated 17-2-93. By this application he indicated that his choice in the same order or subject may be considered in all Medical Colleges U. P. The said petitioner has been

allotted Diploma in child health which was his second choice of subject. He secured 972 position in the merit list. Grievance of this petitioner is that candidates lower in merit position have been allocated M. D. Medicine, M. S. Surgery, M. D. Paediatrics and M. S. Orthopaedics. The details of the merit position of the candidates lower in merit, who have been allotted four aforesaid specialties have been given in para 9.

14. The learned Standing Counsel on the basis of his instructions submitted that the application dated 17-2-93 submitted by Dr. Brhrna Prakash was not liable to be entertained since it was not open to any candidate to change his option and preference after having appeared in the examination. It has been urged that Dr. Brhma Prakash has been allotted D.C.H. which was his second preference in view of the merit position obtained by him. He did not qualify in M/S course in medicine which was his first choice.

15. In the 4th writ petition there were three petitioners Dr. Sanjay Lohat, Dr. Parmatama Nand Ahirwar and Dr. Uttam Kumar. Grievance of the petitioners is that petitioners Nos. 1 and 3 of the said petition had indicated their following choice of Post-Graduate Course in M. S. General Surgery/M.S. Orthopaedics/M.D. Medicine at K.G.M.C. Lucknow/ S. N. Medical College Agra. Petitioner No. 2 had opted for M/S. Medicine K.G.M.C./M.D. Medicine, Allahabad, M.D. Medicine S.N.M. College, Agra. Their grievance is that they have not been allotted specialties for which they gave their first preference. The said three petitioners had obtained merit position at serial Nos. 761, 1055 and 601 respectively. Petitioner No. 1 has been allotted M.D. Medicine in S. N. Medical College, Agra. Petitioner No. 2 has been allotted M. S. Orthopaedics Medical College, Kanpur, petitioner No. 3 has been allotted M. D. Medidine S. N. Medical College, Agra. The grievance of the petitioners in this petition is that though they have been allotted specialties for which they had opted but at Medical College other than the Medical College for which they had opted.

16. The case of the petitioner in this writ petition is that not only there is a reservation in the specialties but there should also be reservation according to the availability of the seats in a given course in each of the Medical Colleges. It is

urged that there are 9 seats available at K.G.M.C. Lucknow for Post-Graduate Course in General Surgery and at least two seats should have been provided to candidates of the reserve categories. It may be noted that petitioner No. 1 had indicated his first and second choice as M/S. General Surgery in K.G.M.C. Lucknow and S. N. Medical College, Agra. Similarly the petitioners claim that at Kanpur Medical College there are about five seats of M. S. Orthopaedics and keeping in view the percentage of the reservation at least one seat should have been allotted to the reserve category in the said speciality and in the said College. Thus in effect the main grievance of the petitioner is that they have not been given admission in the Medical College of their first choice.

17. The petitioners of this petition have prayed that a writ of mandamus be issued commanding opposite parties 1 and 2 to prepare two separate lists of candidates for allotment of subjects to the successful candidates at P.G.M.E.E. 1993 given one for the general candidates and other for reserve candidates for every Medical College and thereafter to issue letters of admission to the successful candidates on the basis of merit-cum-choice principle.

18. When the first two writ petitions were taken up for hearing on 17th of May, 1993 by this Court it was pointed out to the learned counsel for the petitioners that candidates belonging to the Scheduled Caste and Scheduled Tribes are likely to be affected in the event of the writ petitions being allowed and it would be proper if the candidates belonging to the Scheduled Caste and Scheduled Tribes are impleaded as opposite parties. In writ petition No. 1040 of 93 (M/S) an application for general notice to the parties likely to be affected was sought to be issued under the provision of Order 1, Rule 2, C.P.C. The application was filed on 6th of May, 1993 and it was provided that the said application will come up for consideration on the next date.

19. In view of the fact that third and fourth writ petitions filed by Scheduled Caste and Scheduled Tribe candidates have also been taken up for consideration along with the first two writ petitions and keeping the urgency of the matter in view, the counsel for the parties agreed that all the writ petitions may finally be disposed of and there would be no need to issue a general notice under Order 1, Rule 2, C. P.

C. The Scheduled Caste and Scheduled Tribes candidates have been given opportunity to meet and place their view point. Counsel had agreed to exchange copies of the writ petitions and to make their submissions. The same was done and the hearing had taken place.

20. The following questions fall for consideration in these writ petitions;

(i) Whether the Government Order dated 8-4-91 provides for reservation in the total number of seats or provides for reservation in different specialties of the Post-Graduates Course in the various Medical Colleges of the State?

(ii) Whether by the said Government Order reservation is also provided Institutionwise and in each speciality?

(iii) What is scope and ambit of the criteria for admission to the Post-Graduate Course when it has been provided that it would be on merit-cum-preference basis?

As noted hereinabove the answers to the three questions would depend on the interpretation of the relevant provisions of (i) Information Brochure issued for the Competitive Entrance Examination (ii) provision of the Government Order dated 8-4-91 and (iii) the notification dated 9th October, 1990.

Diverse view point as to the interpretation of the said aforesaid three documents has already been noted hereinabove. They may be reiterated.

21. The stand of the petitioners in the first two Writ Petitions is that the reservation to the extent of 20% in favour of Scheduled Castes and Scheduled Tribes candidates has been made only against the total number of seats in the post Post-graduate course of all Medical Colleges in the State of U. P. while 50% has been prescribed as the qualifying percentage of marks in respect of the general candidates, 40% marks have been provided in respect of Scheduled Castes and Scheduled Tribes candidates. Out of the total number of seats in all the Medical Colleges in the State of U. P. viz. 536 and 107 fall within the quota for Scheduled Castes and Scheduled Tribes candidates. Their case further is that the criteria is merit-cum-preference. Merit means merit position as obtained in the combined merit list. They dispute the plea on behalf of the Scheduled Castes and Scheduled

Tribe candidates that there is reservation not only specialitywise but also Institutionwise.

On the other hand, according to the written instructions submitted by the learned Standing Counsel the stand of the opposite parties is that the reservation is specialitywise and not in the total number of seats of all the Medical Colleges of the State of U. P.

22. It has been urged by the learned Standing Counsel that if this interpretation is not placed on the provisions contained in the aforesaid three documents it will result in denial of reservation to the Scheduled Castes and Scheduled Tribe candidates inasmuch as according to their merit position in the combined merit list they would be deprived of admission in prime specialites and the purpose of providing reservation would be defeated.

23. As noted hereinabove the stand of the Scheduled Caste and Scheduled Tribes candidates is that the three documents should be interpreted as providing not only for reservation in each of the specialties but also in each of the Institutions keeping in view the number of seats available in a given Medical College in each and every specialty.

24. The relevant provision in each of the aforesaid three documents may be noted. In clause A(ii) of the Information Brochure it has been provided, 'A list of Post-Graduate Course available in each Medical College is given in table on page 8. The number of seats in each course and college shall be determined as per Government of U. P. G.O. dated 9-10-90 and G.O. dated 8-4-91'. The other relevant provision is in clause (iii) of para A of the said Information Brochure. It reads :

'The eligible candidates who got selected through PGMEE-93 will be given admission to Post-graduate courses on merit-cum-preference basis and shall be appointed Junior Residents.'

G(iii) of the Information Brochure provides:

'A combined merit list of candidates who qualify for admission to the Post-graduate medical courses indicating their course-cum-college preference shall be submitted by the Registrar (PGMEE) to the Director of Medical Education and Training, U. P.'

The learned Standing Counsel on the basis of the instructions received by him conceded that the combined merit list annexed as Annexure-2 to the first writ petitions is the list confirmed by the DMEE, U. P. This statement was made since Annexure No. 2 indicated 'FIRST ROUND OF ALLOTMENT OF COLLEGES & COURSES TO CANDIDATES SELECTED FOR ADMISSION IN PG MEDICAL COURSES THROUGH PGMEE-93 (SUBJECT TO CONFIRMATION BY DME, U. P.) (MERITWISE).'

We have therefore to proceed on the assumption that the said meritwise list has been confirmed by the DME, U. P. The allotment of the College and course has been made on the basis of the stand taken by the opposite parties viz. that reservation specialitywise has been provided by the three documents aforesaid.

25. Next to be noted is the provisions, contained in Government Order dated 8th April, 1991, a copy of which is Annexure-4 to the writ petition. The decision providing for reservation as taken by the Governor of the Uttar Pradesh is indicated in paragraph 3 of the said Government Order. Transliterated it would read as under:

'For admissions to Graduate and Post-Graduate classes the Governor is pleased to order that 18% of the total seats determined and 2% of the total seats determined shall be filled up by candidates belonging to Scheduled Castes and Scheduled Tribes respectively.'

26. Controversy with regard to the interpretation of this para 3 of the Government order arises since on behalf of the opposite parties and the Scheduled Caste and Scheduled Tribe candidates it has been urged that this para 3 has to be read in conjunction with the contents of paras 1 and 2 of the said Government Order dated 8th April, 1991. In the first paragraph it has been indicated that, in the State Medical College for admission to Graduate course reservation for Scheduled Castes and Scheduled Tribe candidates has been provided for but there is no

provision for reservation in the graduate course for Backward Class candidates and there is also no provision for reservation in Post-graduate course for admission for them. It has further been indicated that the People's Representative and various Departments have demanded that the State Government may provide for reservation to Scheduled Caste and Scheduled Tribes candidates in Post-Graduate Courses and for Backward candidates in Graduate and Post-Graduate Course.

27. In paragraph 2 it has been indicated that after giving due consideration to all the aspects it was found that in view of the educational, social and economic disparities and keeping in view their backwardness there is full justification for providing reservation in the matter of admission to graduation and post-graduation courses.

However, the decision taken by the Governor on the question of providing reservation in the matter of admission to Graduate and Post-Graduate 'Classes' in favour of Scheduled Caste and Scheduled Tribes candidates has been indicated in para 3.

Different terminology has been used in paragraphs 1 and 2 in comparison to that has been used in paragraph 3 while in paras 1 and 2 'Pathykarin' word has been used after Graduate and Post-Graduate. In paragraph 3 the word 'Kaksha', meaning thereby class has been used.

28. The decision of the Governor provides subjects. At the Post-Graduate level various subjects are called specialties. Paragraph D(iii) of the Information Brochure gives details of the various subjects covered by I paper and those covered by II paper.

29-30. Para G(iii) of the Information Brochure as noted hereinabove provides for a combined merit list of candidates who qualify for admission to the Post-Graduate Medical Course indicating their course-cum-College-preference shall be submitted by the Registrar to the Director of Medical Education. These provisions clearly go to show that no separate merit list was to be prepared for the General Category and reserve category candidates. Merit list is also not required to be drawn up

specialitywise. The preference with regard to the College and the subject/specialty is required to be indicated. The criteria for admission being merit-cum-preference basis, it must be held that the merit position in the combined merit list would be the guiding factor and if according to the merit position amongst the qualifying candidates the subject for which the preference has been given is available to be allotted to a candidate according to his merit position then alone he would be entitled to be allotted the said subject, otherwise he would be allotted the subjects other than his preference which remained to be allotted according to his merit position.

31. Clause (f) of para 8 of the notification dated 9th October, 1990 is also material it provides:

'The departmentwise selection and registration of Residents in the Colleges under the said Scheme shall be made on the basis of merit-cum-option. The said merit shall be determined on the basis of marks obtained in the competitive examinations.'

In the light of the various provisions noted hereinabove contained in the Information Brochure, the Government Order dated 9th October, 1990, I hold that reservation has been provided for in favour of the Scheduled Castes and Scheduled Tribes candidates for admission to the Post-Graduate Medical

28. The decision of the Governor provides for reservation. Paragraph 3 of the Government Order clearly provides that reservation in favour of the Scheduled Castes candidates would be against 18% of the total seat and 2% of the total seat in favour of the Scheduled Tribes candidates for admission to Graduate and Post-Graduate Classes. Paragraph A(ii) of the Information Brochure has to be construed strictly in accordance with the provisions in para 3 of G.O. dated 8-4-91. In other words since para 3 of the Government Orders prescribes reservation against the total number of seats in Post-Graduate Classes, it follows that there is no reservation in respect of each of the Specialty/Subject in the Medical Courses and the Dental Courses.

29. The scheme envisages a competitive entrance examination for admission to the Post-Graduate Medical Courses. Para A(iii) of the Information Brochure clearly provides that:

'The eligible candidates who get selected through PGMEE-93 will be given admission to post-graduate courses on merit-cum-preference basis and shall be appointed Junior Residents.'

For getting selected 50% mark is prescribed for General category candidate and 40% for reserve category candidate. A common Competitive Entrance Examination for M.D.M.S. Diploma and M.D.S. courses consisting of two written papers has been prescribed. For M.D., M.S. Diploma with which we are concerned provides for two papers in different subject. At the Post-Graduate level various subjects are called specialties. Para D(iii) of the Information Brochure gives details of the various subjects covered by I paper and those covered by II paper.

30. Para G (iii) of the Information Brochure as noted hereinabove provides for a combined merit list of candidates who qualify for admission to the post-graduate medical course indicating their course-cum-College preference shall be submitted by the Registrar to the Director of Medical Education. These provisions clearly go to show that no separate merit list was to be prepared for the General category and reserve category candidates. Merit list is also not required to be drawn up specialitywise. The preference with regard to the College and the subject/specialty is required to be indicated. The criteria for admission being merit-cum-preference basis, it must be held that the merit position in the combined merit list would be the guiding factor and if according to the merit position amongst the qualifying candidates the subject for which the preference has been given is available to be allotted to a candidate according to his merit position then alone he would be entitled to be allotted the said subject, otherwise he would be allotted the subjects other than his preference which remained to be allotted according to his merit position.

31. Clause (0 of para 8 of the notification dated 9th October, 1990 is also material it provides:

'The departmentwise selection and registration of Residents in the Colleges under the said Scheme shall be made on the basis of merit-cum-option. The said merit shall be determined on the basis of marks obtained in the competitive examinations.'

In the light of the various provisions noted hereinabove contained in the Information Brochure, the Government Order dated 9th October, 1990, I hold that reservation has been provided for in favour of the Scheduled Castes and Scheduled Tribes candidates for admission to the Post-Graduate Medical Courses against the total number of seats. There is no reservation in different specialties of the Post-Graduate Courses nor there is reservation Institutionwise in each of the specialties. The stand of the opposite parties that the said Government order provides for reservation specialitywise is untenable. Eligible candidates appearing for the competitive examination have been required to indicate their preference with regard to subject and college also. Since the criteria is merit-cum-preference the allotment of subject would be governed primarily by merit position obtained by the candidates.

32. By the Government Order dated 9th October, 1990 the reservation is clearly provided against the total number of seats. It has not been provided against the number of seats in any specialty. It would be doing violence to the specific language used in paragraph 3 of the Government Order to hold that the reservation is specialty wise. Thus there is no merit in the stand of the opposite parties that reservation has been provided specialitywise. The consequences that are likely to flow from the finding that the reservation is in the total number of seats cannot in any manner lead the Court to hold otherwise. The language used in para 3 of the Government Order has to be strictly construed. The construction cannot depend on the supposed intention of providing for reservation, as is now sought to be made out by the opposite parties viz. that such an interpretation will deprive the Scheduled Castes and Scheduled Tribe candidates from getting admission against prime specialties. The intention for which the reservation has been provided by the Government Order is only that the reserve category candidates may not be excluded from admission in the Post-Graduate Courses. The first step in facilitating same is by providing lower percentage of minimum pass mark for them.

As noted in respect of them 40% has been provided while for general candidates 50% has been provided. If despite the same the reserve category candidates are unable to obtain sufficiently higher merit position then their candidature for admission to the prime specialty cannot be propped by providing a further crutch to them to oust general candidates from getting admission to specialty which according to the merit position obtained by them they are lawfully entitled.

33. This interpretation is further bolstered from the further circumstance that two written papers have been provided as part of the competitive examination. Various subject of study in the M.B.B.S. Courses which also have been indicated as specialties in the Post-Graduate Courses have been allotted different marks in the aforesaid two papers. If the intention of providing reservation specialitywise had been there then obtaining a given percentage of marks in the subject for which choice of specialties for the Post-Graduate Course is given would have been provided for. No such provision is there. The merit position is primary criteria obtained in the combined merit list. The use of the word. 'combined' is also significant. It means it has to be common in respect of the general candidates as also reservation quota candidates. Secondly it would be on the basis of the total marks obtained in all the subjects forming part of papers 1 and 2.

34. The interpretation indicated herein-above also rules out tenability of the plea taken by the petitioners in the 3rd and 4th writ petition. There is no institutionwise reservation much less specialitywise. The criterion is only merit-cum-preference.

35. Sri R. C. Gupta, learned counsel appearing for petitioners in writ petitions at serial Nos. 3 and 4 invited attention to a decision rendered by the Apex Court in Anand S. Biji v. The State of Kerala, reported in 1993 (2) SCALE (sic), the system of 'counselling' was provided for by the Supreme Court for admission in 25% of seats in Post-Graduate Medical Courses. The said system as laid down is to be made admissible only for and from the admission for the year 1994. The learned counsel urged that such a system of counselling should also be provided for to eliminate unequal result and delay in finalising the list of allotment. The unequal result that was noted was as a consequence of a candidate allotted particular seats in a specialty not joined and then a second list is prepared and those who

could not obtain admission because of the merit position are considered resulting in a candidate already allotted specialty in the first list but who may because of his merit position would be eligible for allotment of the seat which has remained unfilled is not given any consideration. No such situation has been pointed out in the PGMEEE 1993 Examination and therefore the question of providing a system of counselling while considering these writ petitions is not necessary. It may be considered in some other appropriate case.

36. In view of the discussion hereinabove writ petitions Nos. 1040(M/S) of 1993 and 1041(M/S) of 1993 are hereby allowed and Annexure-2 of writ petition No. 1040(M/S) of 1993 and similar list in other writ petitions is hereby quashed in so far as it allocates the various subjects and Colleges to the candidates who have been selected for admission to P.G. Medical Course. It is clarified that the meritwise position of the said candidates shown in Annexure-2 is not interfered with. The combined merit list remains valid. Only the allotment of the Colleges and courses as shown in the said Annexure-2 is quashed.

Writ Petitions at serial Nos. 3 and 4 are dismissed and the opposite party viz. Director Medical Education U. P. Lucknow shall allot the subject to the candidates selected for admission to the P.G. Medical Courses through PGMEEE-93 strictly on the principle of the merit-cum-preference. The allotment will not be made specialitywise and no reservation in favour of Scheduled Castes and Scheduled Tribes candidates will be considered to have been provided by Government Order dated 8th April, 1991 specialitywise. The opposite party will act in accordance with the observations and directions contained hereinabove and shall issue a fresh list of allotment of subjects and colleges of the candidates selected for admission to the Post Graduate Medical Courses through PGMEEE-93 at the earliest, say, within a week from the date a certified copy of this judgment is produced before opposite party No. 2 by any of the petitioners.

In the circumstances there would be no orders as to costs.

37. Order accordingly.

