

PETITIONER:
DINESH KUMAR & ORS.

Vs.

RESPONDENT:
MOTILAL NEHRU MEDICAL COLLEGE, ALLAHABAD & ORS 13

DATE OF JUDGMENT 21/07/1986

BENCH:
BHAGWATI, P.N. (CJ)
BENCH:
BHAGWATI, P.N. (CJ)
MISRA RANGNATH

CITATION:
1986 AIR 1877 1986 SCR (3) 345
1986 SCC (3) 727 JT 1986 97
1986 SCALE (2) 188
CITATOR INFO :
D 1990 SC 851 (3)
RF 1992 SC 1475 (3)

ACT:
Professional Colleges-Admission to Medical Colleges-
Graduate and Post-Graduate Courses-Reservation of seats-
Holding of All-India Entrance Examinations-No weightage for
rural service in admission to Post-Graduate Courses.

HEADNOTE:

By its main judgment in the case, the Court on 22nd June 1984 fixed the outer limit of reservation of seats in the medical colleges in the State for admission to the MBBS and BDS courses at 70 per cent. In respect of the resultant 30 per cent of the open seats thus available for admission of students on All India basis irrespective of the State or University from which they come, it directed that such admission shall be granted purely on merit on the basis of either an All India Entrance Examination or entrance examination to be held by the State. In regard to admission to post-graduate courses such as MD, MS and the like, taking note of the institutional preference it took the view that such reservation should not in any event exceed 50 per cent of the total number of open seats available for admission.

On the failure of the Government of India and the Indian Medical Council to make necessary arrangements for holding an All-India Entrance Examination, the Court directed the Indian Medical Council to come forward with a scheme of examination for regulating admission to non-reserved seats for the above courses.

Pursuant to a direction of the Court given on September 16, 1985 the Ministry of Health, Government of India convened a meeting of the Deans of Medical Faculties of various Universities, Health Secretaries of various State Governments, the representatives of the Medical Council of India, Dental Council of India, National Board of Examinations, National Academy of Medical Sciences and the Central Board of H

346

Secondary Education to consider the scheme prepared by the Medical Council of India, which was then modified and

redrafted.

When the revised scheme submitted by the Government of India was taken up for consideration counsel for various State Governments made their submissions pleading for certain changes in the scheme.

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Modifying the main judgment, the Court directed:

1. The All-India Entrance Examination should be held in the English language. Since the medium of instruction in the MBBS/BDS course and post-Graduate courses is in English and the entire medical education is being imparted in the English language throughout the country, and it is not practically feasible to hold the All-India Entrance Examination in diverse regional languages. [354A-B]

2.1 To be fair and just and to bring about real equality of opportunity in admission to the MBBS/BDS course without placing the students in one State in an advantageous or disadvantageous position as compared to the students in another State not less than 15 per cent of the total number of seats in each medical college or institution, without taking into account any reservations validly made, shall be filled on the basis of All-India Entrance Examination, in modification of the formula adopted in the main judgment. [355F-G]

2.2 The same formula must apply also in regard to admissions to the post-Graduate courses, and instead of making available for admission on all-India basis 50 per cent of the open seats, after taking into account reservations validly made, not less than 25 per cent of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All-India Entrance Examination.

3. The students from the States of Andhra Pradesh and Jammu and Kashmir should not be entitled to appear in the All-India Entrance Examination, unless these States agree to make not less than 15 per cent of the total number of seats for the MBBS/BDS course and not less than 25 per cent of the total number of seats for the post-graduate courses in their respective medical colleges or institutions available for admission on the basis of All-India Entrance Examination.

4. The syllabus for the All-India Entrance Examination framed

347

by the Medical Council of India and accepted by the Government of A India and all the State Governments. except the State of Maharashtra. is approved. The Education Department of each State as also the Board of Secondary and/or Higher Secondary Education in each State to suitably amend its syllabus or course for the 12th year so as to bring it in line with the syllabus approved, so that the students passing the qualifying examination of 12th year may be properly equipped to face the All-India Entrance Examination. Adoption of a common syllabus at + 12 level throughout the country for the sake of uniformity in the educational pattern is desirable.

5. Until an independent statutory body to conduct All-India Entrance Examinations, both for the MBBS BDS course and the Post-graduate courses is set up, the Central Board of Secondary Education to hold the All-India Entrance Examination for admission to the MBBS/ BDS course. The Government of India to provide the necessary finance for holding such examination. The Government of India also to arrange for the conduct of the All India Entrance Examination for post-graduate courses by the All-India Institute of Medical Sciences and to provide the necessary

facilities and finance. If for any reason, the All India Institute of Medical Sciences is not prepared to undertake the task, the Government of India may entrust this task to the Medical Council of India.

6. The scheme of the All-India Entrance Examinations necessarily to be confined to medical colleges or institutions run by the Union of India or a State Government or a Municipal or other local authority. The medical colleges or institutions excepted from the operation of the judgment dated 22nd June 1984 will continue to remain outside the scope of the scheme.

7. The All-India Entrance Examination for the MBBS BDS course shall be held once in a year which may commence at any time between 15th July and 1st of August every year. One more date added to para 14 of the scheme, namely the result of the All-India Entrance Examination shall be declared sometime between 15th and 20th June. A list of successful candidates shall be prepared in order of merit and it shall comprise the names of as many students as the number of vacant seats available for admission, plus 10 per cent more, and there shall also be a waiting list. The students shall be entitled to appear at the All-India Entrance Examination even if the result of the qualifying examination has not yet been declared. H

348

8.1 There should be only one All-India Entrance Examination for the post-graduate courses in a year, for which general announcement to be made in the last week of November, application forms to be made available by post till 10th January, from cash counter till 20th January. Last date for receiving application forms 31st January, competitive test in middle of March, and result to be declared in the first week of May. Every student who has passed his MBBS Examination shall be eligible for appearing at this examination even though he has not completed his compulsory rotating internship practical training, but he shall not be entitled to be admitted until he has completed such internship or practical training and obtained registration either from the Medical Council of India or a State Medical Council.

8.2 Admissions to post-graduate courses for the academic year commencing in 1987 may be given on the basis that the judgment dated 22nd June, 1984 does not govern such admissions, but an All-India Entrance Examination would have to be held in 1987 for the students who would be passing MBBS Examination in the end of 1986 and who would be completing their compulsory rotating internship/practical training in the end of 1987 and seeking admission to post-graduate courses for the academic year commencing in 1988. However, it would be open to a student to appear at the All India Entrance Examination even after he has completed his compulsory rotating internship/practical training and he would be entitled to compete for admission to postgraduate courses for the academic year immediately following the completion of his internship or practical training.

9. No weightage should be given to a candidate for rural service rendered by him. So far as admissions to post-graduate courses are concerned, when selection of candidates is being made for admission on an All-India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate.

10. Directions not to be construed in a manner prejudicing or affecting or detracting from any rule, regulation or other provision entitling students from other States, including the States of Andhra Pradesh and Jammu and

Kashmir, to be considered for admission to the remaining 85 per cent and 75 per cent seats for the MBBS/BDS course and post-graduate courses respectively.

11. The (Government of India to consider setting up Regional Institutes of Medical Sciences where admission would be open to stu-

349

dents from all over the country. If such institutes are set up providing A opportunity to students from all over the country to compete for admission on the basis of merit, it may become unnecessary to reserve IS per cent of the total number of seats for admission to the MBBS/BDS course and 25 per cent of the total number of seats for admission to postgraduate courses in each medical college or institution on the basis of All India Entrance Examination.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 348-352 of 1985

Under Article 32 of the Constitution of India.

P.P. Singh, M. Veerappa, P.H. Parekh, B.D. Sharma, N.M.Ghatate, R.N. Poddar, M.N. Shroff, Madan Lokur, Mrs. S. Dixit, Surya Kant, R.C. Verma, L.K. Pandey, D.N. Mukherjee, A.S.Bhasme, S.K. Nandy and A.V. Rangan for the appearing parties.

The Judgment of the Court was delivered by

BHAGWATI, CJ: The main judgment in this case was delivered by us on 22nd June 1984 and we held in that judgment that "wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the University or the State, excluding all students not satisfying this requirement, regardless of merit" was unconstitutional and void as offending the equality clause of the Constitution. But after condemning such wholesale reservation, we proceeded to observe that the very mandate of the equality clause viewed in the perspective of social justice, would justify some extent of reservation based on residence requirement within the State or on institutional preference for students passing the qualifying examination held by the University or the State and addressing ourselves to the question to what extent such reservation might be regarded as constitutionally permissible, we said: G

"It is not possible to provide a categorical answer to this question, for as pointed out by the policy statement of the Government of India, the extent of such reservation would depend on several factors including opportunities for professional education in that particular area, the extent of

350

competition, level of education development of the area and other relevant factors. It may be that in a State where the level of educational development is woefully low, there are comparatively inadequate opportunities for training in the medical speciality and there is large scale social and economic backwardness, there may be justification for reservation of a higher percentage of seats in the medical colleges in the State and such higher percentage of seats in the medical colleges in the State may not militate

against "the equality mandate viewed in the perspective of social justice". So many variables depending on social and economic facts in the context of educational opportunities would enter into the determination of the question as to what in the case of any particular State, should be the limit of reservation based on residence requirement within the State or on institutional preference. But, in our opinion, such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee had suggested that the outer limit should not exceed 75 per cent but we are of the view that it would be fair and just to fix the outer limit at 70 per cent. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence."

We pointed out that in the result at least 30 per cent of the open seats shall be available for admission of students on All India basis irrespective of the State or University from which they come" and directed that "such admissions shall be granted purely on merit on the basis of either All India Entrance Examination or entrance examination to be held by the State". This was the decision given by us in regard to admissions to the MBBS and BDS courses. We then proceeded to discuss the question of admissions to post-graduate courses such as MD, MS and the like and taking into account broader considerations of equality of opportunity and institutional continuity in education which has its own value and relevance, we took the view that though residence requirement within the State should not be a ground for reservation in admissions to Post-Graduate courses, a certain percentage of seats may be reserved on the basis of institutional preference in the sense that a student who has passed MBBS-course from a Medical College may be given preference for admission to Post

351

Graduate course in the same Medical college or University, but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admissions to the Post-graduate course.

We thought that pursuant to this judgment delivered by us, the Government of India and the Indian Medical Council would make the necessary arrangements for holding an All-India Entrance Examination for selection of students so far as the minimum 30 per cent nonreserved seats for the MBBS course and the minimum 50% nonreserved seats for the Post graduate course were concerned. But, no steps were taken by the Government of India or the Indian Medical Council for holding such an All-India Entrance examination and we had, therefore, to give a direction to the Indian Medical Council to come forward with a positive scheme for holding All-India Entrance Examination for regulating admissions to the minimum 30 per cent non-reserved seats for the MBBS course and the minimum 50% nonreserved seats for Post graduate course, so that admissions to these minimum non-reserved seats may be made on the basis of comparative evaluation of merit of the students through such All-India Entrance Examination. We also pointed out in a subsequent judgment delivered by us on 1st May 1985 that the all-India Entrance Examination should be conducted in at least one centre in

each State and that "having regard to the size of the population, the number of students seeking admission and the extent of the geographical area of the State, it might be desirable to have more than one centre in some State or States both in regard to admissions to the Post graduate courses as also in regard to admissions to the MBBS course." It seems that pursuant to the directions given by us, a scheme for holding All-India Entrance Examination for admission to the minimum 30% non-reserved seats for the MBBS/BDS course as well as for admission to the minimum 50% non-reserved seats for the Post graduate course was formulated by the Medical Council of India and it was circulated amongst the various State Governments. Some of the State Governments including the University of Bombay put forward certain difficulties in the implementation of the scheme as suggested by the Medical Council of India. We felt that it was necessary to iron out these difficulties at a representative meeting and hence by an Order made on 16th September 1985, we directed the Government of India, Ministry of Health to immediately proceed to convene a meeting of the Deans of the Faculties of Medicine of various Universities in the country and the representatives of the State Governments and of the Medical Council of India and the

352

Dental Council of India for the purpose of considering the scheme put forward by the Medical Council of India and carrying out such modifications in the scheme as may be expedient and also, if necessary, evolving a new scheme, so that the All-India Entrance Examination both for the MBBS and BDS courses as also for the Post graduate courses is held in a manner which will cause the least amount of hardship and inconvenience to the students and at the same time, implement the directions in our Judgment dated 22nd June 1984 as modified by the subsequent judgment dated 1st May 1985. We also directed that this meeting shall be convened by the Ministry of Health, Government of India within one month and a detailed scheme for the All-India Entrance Examination for the MBBS/BDS and Post Graduate courses shall be submitted before the next date of hearing of the writ petitions. We also gave a direction that "the meeting will.....consider whether the All-India Entrance Examination should be held by the Medical Council of India or by any other appropriate authority or body to be set up for that purpose" and "the meeting will evolve a common syllabus for the All-India Entrance Examination and will also work out the financial aspects of holding an All-India Entrance Examination". The Government of India was directed to provide the necessary finances for the purpose of holding the All-India Entrance Examination.

Pursuant to this direction given by us in our Order dated 16th September 1985, a meeting was convened by the Ministry of Health, Government of India for considering the scheme prepared by the Medical Council of India for holding All-India Entrance Examination for the MBBS/BDS and Post Graduate courses and this meeting was attended by the Deans of Medical Faculties of various Universities, Health Secretaries of various State Governments, the representatives of the Medical Council of India, Dental Council of India, National Board of Examinations, National Academy of Medical Sciences and Central Board of Secondary Education and at this meeting the representatives of the Ministry of Education and the Ministry of Law were also invited to express their opinion. The scheme submitted by the Medical Council of India and circulated amongst various

State Governments and Deans of Medical Faculties and others was considered at length at this meeting and in the light of the discussions held at the meeting the scheme was modified and redrafted and the scheme so modified and redrafted was submitted by the Government of India to the Court for acceptance along with a Memorandum setting out the revised scheme as Annexure III and pointing out certain difficulties set forth by some of

353

the participants. The learned counsel for various State Governments appeared before the Court when the revised scheme was taken up for consideration and they made their submissions pleading for certain changes in the scheme. We shall proceed to consider these submissions and deal with them.

The first objection raised on behalf of some of the State Governments was in regard to the language in which the All-India Entrance Examination should be held for admission to minimum 30% nonreserved seats for the MBBS/BDS course and minimum 50% nonreserved seats for the post-graduate courses. The Medical Council of India in the revised scheme suggested that the All-India Entrance Examination should be held in the English language but it was contended on behalf of some of the State Governments that it should be held in the regional languages and some of the State Governments in the Hindi belt submitted that an option should be given to the students to answer the question papers either in English or in Hindi. We are afraid we cannot accede to this suggestion made on behalf of some of the State Governments. We do not think that at the present stage it would at all be practicable to hold the All-India Entrance Examination in any language other than English. The medium of instruction in the MBBS/BDS course as also in the post-graduate courses in all Medical colleges and institutions in the country is English. The statutory regulations of the Medical Council of India in regard to under-graduate medical education also prescribe that the medium of instruction for the MBBS course shall be English. Moreover, there would be immense practical and logistic difficulties in holding the All-India Entrance Examination in different regional languages which are many and varied and if only Hindi is allowed as an alternative language in which the All-India Entrance Examination may be held, there would be vehement opposition from some of the States whose regional language is other than Hindi and they would insist that the All-India Entrance Examination should also be held in their respective regional languages. Of course, we do recognise that in order to strengthen the unity and integrity of the country and promote mobility from one State to another and to avoid creating a situation where an Indian from one State will be a stranger in another State it is necessary that there should be one common language which should operate as a link language and particularly men in public life, professionals, intellectuals, academics and the like should know such link language and some day, hopefully, with the consensus of the people, Hindi might become such link language, but as the matter stands today since the medium of

354

instruction in the MBBS/BDS course and post-graduate courses is in English and the entire medical education is being imparted in the English language throughout the country and it is not practically feasible to hold the All-India Entrance Examination in diverse regional languages, we are of the view that for the present at least, the All-India Entrance Examination should be held in the English language.

We do not think that even for students who have passed the qualifying examination with regional language as their medium of instruction there would be any difficulty in facing the examination because they are bound to have some knowledge of English as a language of comprehension for otherwise they would not be able to pursue the medical course in English language and moreover the All-India Entrance Examination being an objective test, it would not require close familiarity with the English language.

Another objection raised on behalf of some of the State Governments and particularly the State of Tamil Nadu related to the following suggestion made in the Scheme submitted by the Government of India:

"It was felt that the judgment of the Supreme Court by which 30% of the open seats for admission to MBBS/BDS courses were to be arrived at after taking into account the reservations validly made (which term has not been defined) provides enough scope to the State Governments to increase the number of reserved categories, thereby contributing lesser number of seats for being filled on All India basis."

The objection raised by these State Governments was two-fold. Firstly, it was contended that the suggestion that 15% of the total seats available for admission to MBBS/BDS course without taking into account any reservations which may be made by the State Government, would tend to produce inequality of opportunity for admission to students in different States since the percentage of reservations varied from State to State and secondly, it was urged that the proposal of the Government of India that valid reservations should not exceed 50% of the total number of seats available for admission, will reduce the opportunities which were at present available to Scheduled Castes, Scheduled Tribes and backward classes as a result of reservations exceeding 50% of the total seats made in some of the States and particularly in the State of Tamil Nadu where the reservations exceed

355

60%. We agree with the second objection raised on behalf of some of the State Governments but so far as the first objection is concerned, we do not think it is well-founded. There can be no doubt that if in each State, 30% of the seats were to be made available for admission on the basis of All-India Entrance Examination after taking into account reservations validly made, the number of seats which would be available for admission on the basis of All-India Entrance Examination would vary inversely with the percentage of reservations validly made in that State. If the percentage of reservations is high as in the State of Tamil Nadu or the State of Karnataka, the number of seats available for admission on the basis of All-India Entrance Examination would be relatively less than what would be in a State where the percentage of reservations is low. There would thus be total inequality in the matter of making available seats for admission on the basis of All-India Entrance Examination. It would be open to a State Government to reduce the number of seats available for admission on the basis of All-India Entrance Examination by increasing the number of reserved categories or by increasing the percentage of reservations. We therefore agree with the Government of India that the formula adopted by us in our main Judgment dated 22nd June 1984 for determining the number of seats which should be made available for admission on the basis of All-India Entrance Examination should be

changed. We would direct, in accordance with the suggestion made in the Scheme by the Government of India, that not less than 15% of the total number of seats in each medical college or institution, without taking into account any reservations validly made, shall be filled on the basis of All-India Entrance Examination. This new formula is in our opinion fair and just and brings about real equality of opportunity in admissions to the MBBS/BDS course without placing the students in one State in an advantageous or disadvantageous position as compared to the students in another State. The same formula must apply also in regard to admissions to the post-graduate courses and instead of making available for admission on all-India basis 50% of the open seats after taking into account reservations validly made, we would direct that not less than 25% of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All-India Entrance Examination. This suggestion of the Government of India deserves to be accepted and the objection to it must be overruled.

But so far as the second objection is concerned, we think there is merit in it. We do not think that it would be right for us to limit the

356

reservations which can be validly made by a State Government in the matter of admission to the MBBS/BDS course and the post-graduate courses to 50% of the total number of seats. There are some States like Tamil Nadu and Karnataka which have reservations far exceeding 50% in admissions to MBBS/BDS course and we do not propose to restrict such reservations to 50%. When we say that we do not propose to limit the percentage of reservation to 50 as suggested by the Government of India we should not be understood as laying down that the State Government may make reservations to any extent it likes or that the percentage of reservations can validly exceed 50 without violating any constitutional guarantees. We are not going into this question because it does not directly arise for determination in this case. We may however point out that there is a considerable body of opinion in favour of the view that too large a percentage of reservations has the effect of not only stifling the opportunities of really brilliant students who do not belong to the reserved categories and creating a certain amount of frustration leading to class antagonism but also prejudicially affecting the quality and efficiency of the medical services available to people, particularly in the field of higher medical education such as the post graduate courses. There is on the other hand an equally powerful lobby which holds that reservations must be made in proportion to the population of Scheduled Castes, Scheduled Tribes and backward classes, because these classes of people have been subjected to oppression and exploitation and have been deprived of all opportunities of education and advancement since a long time and unless reservations are made in their favour and they are given proper opportunities by a process of reverse discrimination, they will never be able to take their place in society on an equal footing with others and it is only by wiping out injustice which has been done to them for long long years, by making reservations in their favour that we shall be able to build a truly egalitarian society. It is the firm belief of those who propound this view that the theory that reservations carried beyond a certain limit affect the quality and efficiency of the medical services is nothing but an elitist myth which is put forward in order to

perpetuate the vested interests. These rival arguments raise an interesting question of social policy which may have to be decided by this Court at some future point of time but we do not think that in the context of the present case it would be right for us to enter upon a consideration of this question.

The next question raised on behalf of some of the State Governments was that since the States of Andhra Pradesh and Jammu &

357

Kashmir have been exempted from the operation of the main Judgment dated 22nd June 1984 and these two States would not be liable to set apart seats for admission on the basis of All India Entrance Examination and students from other States would not be entitled to compete for admission to the MBBS/BDS and post graduate courses in the medical colleges and institutions in these two States, the students from these two States should likewise not be entitled to appear in the All India Entrance Examination held for admission to the MBBS/BDS course and post graduate courses in the other States. Otherwise the result would be that the students from these two States would have an advantage over the students from other States, because they would have all the seats in the medical colleges and institutions in their own State available to them for admission without sharing even a few seats with students from other States and in addition, they would be entitled, on the basis of All India Entrance Examination, to secure admission to seats in the medical colleges and institutions in the other States whereas the students from the other States would not be entitled to the opportunity to secure admission in the medical colleges and institutions in the State of Andhra Pradesh and Jammu & Kashmir and this would clearly amount to denial of equality of opportunity. There is in our opinion great force in this contention. If the students from the other States are not entitled to compete for admission to the medical colleges and institutions in the States of Andhra Pradesh and Jammu & Kashmir, it would clearly be inequitable to allow the students from the States of Andhra Pradesh and Jammu & Kashmir to compete for admission in the medical colleges and institutions of the other States. The lack of reciprocity would plainly and inevitably result in inequity and giving of undue advantage to students from the States of Andhra Pradesh and Jammu & Kashmir as against the students from the States of Andhra Pradesh and Jammu & Kashmir should not be entitled to appear in the All India Entrance Examination, unless the States of Andhra Pradesh and Jammu & Kashmir agree to make not less than 15% of the total number of seats for the MBBS/BDS course and not less than 25% of the total number of seats for the post graduate courses in their respective medical colleges or institutions available for admission on the basis of All India Entrance Examination.

The question then raised was in regard to the syllabus for the All India Entrance Examination. The syllabus as framed by the Medical Council of India was circulated amongst the various authorities and ultimately it was finalised at the meeting convened by the Ministry of

358

Health, Government of India as directed by our Order dated 16th September 1985. Though the participants in the meeting were requested to send their comments in regard to the syllabus within 10 days for the consideration of the Government of India, no State except Maharashtra sent its comments. The comments offered by the State of Maharashtra were duly considered but since the alterations in the

syllabus suggested by the State of Maharashtra were too many, it was decided to retain the syllabus as formulated. We approve of this syllabus since it has been accepted by the Medical Council of India, the Government of India and all the State Government except the State of Maharashtra which also did not make any submissions to the Court at the hearing of this case. Since as a result of the direction given by us on 2nd May 1986 our judgment dated 22nd June 1984 is going to be operative only with effect from the academic year commencing in 1987 and the first All India Entrance Examination for admission to the MBBS/BDS course would be held only in June 1987, we would request the Education Department of each State as also the Board of Secondary and/or Higher Secondary Education in each State to take note of this syllabus which we have approved for the All India Entrance Examination and to suitably amend its syllabus or course for the 12th year so as to bring it in line with the syllabus approved by us so that the students passing the qualifying examination of the 12th year may be properly equipped to face the All-India Entrance Examination. It would be desirable if a common syllabus is adopted at +2 level throughout the country so that there may be uniformity in the educational pattern and the students in various States may be able to appear in the All-India Entrance Examination on a footing of equality without any undue advantage to one as against the other.

Then there were a few other questions raised in regard to the holding of the All-India Entrance Examination. The first question was as to which should be the agency for holding the All-India Entrance Examination. The Government of India pointed out in its Memorandum that the consensus at the meeting was that the holding of the All-India Entrance Examination for admission to the MBBS/BDS course should be entrusted to the Medical Council of India but so far as its own view was concerned, it clearly and categorically expressed its opinion that "considering the fact that the Medical Council of India has not conducted examination of this nature in the past and that the number of candidates appearing in this examination would be quite large, the Government feel that the Central Board of Secondary Education which is already holding a national level examination at + 2

359

stage would be the most suitable Organisation". The Medical Council of India, on the other hand, strongly pleaded that it was the most appropriate agency to which the holding of the All-India Entrance Examination should be entrusted. We agree with the Government of India that the All-India Entrance Examination for MBBS/BDS course should not be allowed to be held by the Medical Council of India. The Medical Council of India has a supervising and auditing function and it is charged with the duty of ensuring that proper standards of medical education are maintained. The Indian Medical Council Act, 1956 under which the Medical Council of India is constituted does not contemplate holding of any such entrance Examination by the Medical Council of India at the under-graduate level. Moreover, the Medical Council of India has no experience of holding an entrance examination of such large magnitude and we are not at all sure whether it has the necessary infrastructure for doing so. It may also be noted that the number of students appearing in the All-India Entrance Examination would be enormously large and it is doubtful whether the Medical Council of India would be able to handle such an entrance Examination. It is undoubtedly true that it was not the

Medical Council of India which took the initiative in suggesting that it should be allowed to hold the All-India Entrance Examination. It was the Court which requested the Medical Council of India to come forward with a scheme for holding an All-India Entrance Examination. We are indeed grateful to the Medical Council of India for having extended its fullest cooperation to the Court but we do feel that so far as the All-India Entrance Examination for admission to the MBBS/BDS course is concerned, it would not be appropriate to entrust the holding of such entrance Examination to the Medical Council of India. The question then is to which body should the holding of this Examination be entrusted. We are of the view that the Central Board of Secondary Education which has not only the infrastructure but also the experience of holding an All-India Examination for the 12th year would be the most appropriate agency to hold the All-India Entrance Examination for admission to MBBS/BDS course. The argument of the Medical Council of India against entrusting the holding of this Examination to the Central Board of Secondary Education was that "there is great variation in the standard of examination conducted by the Central Board of Secondary Education". But his argument is without force since the examination is going to be an objective test where the subjective element which might lead to variations in the standard of examination would be eliminated. We would therefore direct the Central Board of Secondary Education to hold the All India Entrance Examination for admission to the MBBS/

360

BDS course. The Government of India will provide the necessary finances for holding such examination.

So far as the All India Entrance Examination for post graduate courses is concerned, the holding of such examination may appropriately be entrusted to the All India Institute of Medical Sciences. Though it was the general consensus at the meeting convened by the Ministry of Health, Government of India, pursuant to our Order dated 16th September 1985 that the Medical Council of India should be entrusted with the task of holding such examination, there was some opposition to this proposal from a few of the participants. We agree with these participants that the holding of this examination should not be entrusted to the Medical Council of India. When we say this, we do not for a moment wish to cast any reflection on the Medical Council of India. In fact, the Medical Council of India has been extremely helpful in taking the initiative to work out the modalities of the All India Entrance Examination and we reiterate that we are extremely grateful to the Medical Council of India for the great assistance which they have given to the Court. But, we do not think that the Medical Council of India would be the appropriate agency for holding such examination. It has neither the infra-structure nor the experience for conducting such examination and, moreover, it is a supervisory or auditing body and we would not like it to be saddled with the onerous responsibility of holding such examination. Besides, if the two functions are in the hands of the same body supervision and auditing may not be effective. The All India Institute of Medical Sciences, on the other hand, has been holding Entrance Examination every year where students from all over the country compete for admission and it has the necessary infrastructure as well as expertise for holding such examination. We are informed that the All India Institute of Medical Sciences is quite willing to undertake this task if the Government of India makes available the necessary facilities including proper funding.

We would, therefore, direct the Government of India to arrange for the conduct of the All India Entrance Examination for post-graduate courses by the All India Institute of Medical Sciences and to provide the necessary facilities and finance which may be required by the All India Institute of Medical Sciences for the purpose of holding such examination. If, for any reason, the All India Institute of Medical Sciences is not prepared to undertake the task of conducting such examination, then and in that event only, the Government of India may entrust this task to the Medical Council of India.

361

We may point out that in our opinion it would be ideal to set up a in due course an independent statutory body which will conduct the All India Entrance Examinations both for the MBBS/BDS course and the post-graduate courses. That would be eminently desirable but until such a statutory body is set up, the All-India Entrance Examination for MBBS/BDS course shall be held by the Central Board of Secondary Education and the All India Entrance Examination for the post graduate courses shall be held by the All India Institute of Medical Sciences or the Medical Council of India, as the case may be.

There are a few other matters in regard to the scheme of the All India Entrance Examinations which we should like to clarify and the scheme submitted by the Government of India along with its Memorandum will have to be read subject to the modifications which we have already discussed in the preceding paragraphs of this Judgment as also the modifications which we are now proceeding to discuss.

(1) In the first place, the scheme has necessarily to be confined to medical colleges or institutions run by the Union of India or a State Government or a Municipal or other local Authority. It cannot apply to private medical colleges or institutions unless they are instrumentality or agency of the State or opt to join the scheme by making 15% of the total number of seats for the MBBS/BDS course and 25% of the total number of seats for the post-graduate courses, available for admission on the basis of All India Entrance Examination. Those medical colleges or institutions which we have already excepted from the operation of the judgment dated 22nd June 1984 will continue to remain outside the scope of the scheme.

(2) Secondly, the All India Entrance Examination for the MBBS/BDS course shall be held once in a year for the MBBS/BDS course which may commence at any time between 15th July and 1st August each year. The dates indicated in paragraph 14 of the scheme of All India Entrance Examination for MBBS/BDS course are quite in order but we would add one more date, namely, that the result of the All India Entrance Examination shall be declared some time between 15th and 20th June. A list of successful candidates shall be prepared in order of merit and it shall comprise the names of as many students as the number of vac-

362

ant seats available for admission plus 10% more and there shall also be a waiting list as indicated in paragraph 8 of the scheme. There shall also be an interval of time of at least three weeks between the date of publication of the list and the date of admission to the medical

colleges or institutions covered by the scheme. We would like to make it clear that students shall be entitled to appear at the All India Entrance Examination even if the result of the qualifying examination has not yet been declared, provided they have appeared at the qualifying examination but they cannot be admitted to the MBBS/BDS course unless they have passed the qualifying examination. While accommodating the students according to the preference given by them, utmost care shall be taken to see that in priority over male students, female students are accommodated near their place of residence, because it is difficult for female students to go to a medical college or institution outside the place of their residence, particularly since there is lack of proper hostel facilities for female students at most of the places. The Bulletin of Information referred to in paragraph 14 of the Scheme shall be made available to the students by 1st February of each year commencing from 1987.

(3) Thirdly, so far as the All India Entrance Examination for the post graduate courses is concerned we are of the view that there should be only one examination in a year as suggested by the Government of India in the Scheme submitted by it. But we are of the view that it would not be right to insist that a student should not be eligible for appearing at this examination unless he has completed compulsory rotating internship/practical training programme and obtained registration from the Medical Council of India or any of the State Medical Councils. That would greatly inconvenience the students. The final MBBS Examination is normally held in October/November each year and thereafter every student has to undergo compulsory rotating internship/practical training for a period of one year and then only he can be awarded MBBS Degree and he can obtain registration from the Medical Council of India or a State Medical Council. If therefore it is provided that a student shall be eligible to appear at the All India Entrance Examination only after he has acquired MBBS

363

Degree and obtained registration, it would mean that he would be able to appear at such examination only after a lapse of about one year from the date of his passing MBBS Examination. He would have to start preparing again for appearing at the All India Entrance Examination after a break of one year which is bound to cause a certain amount of hardship and inconvenience. It would be better in our view if a student is allowed to appear at the All India Entrance Examination after the result of the MBBS Examination is announced and he is declared to have passed MBBS Examination, because at that date the theoretical part of the syllabus would be fresh in his mind and it would save him the trouble of reading the entire course over again after a period of one year. We would, therefore, direct that the tentative programme for the All India Entrance Examination set out in clause 13 of the Scheme of examination for admission to

postgraduate courses should be modified and the modified programme should be as follows:

(i) By post -10th January

(ii) From cash counter -20th January

Last date for receiving -31st January

application forms

Competitive test -Middle of March

Result to be declared -First week of May

Every student who has passed his MBBS Examination shall be eligible for appearing at this examination even though he has not completed his compulsory rotating internship/practical training, but he shall not be entitled to be admitted to the post-graduate course until he has completed such internship or practical training and obtained registration either from the Medical Council of India or a State Medical Council. On this view, so far as admissions to post-graduate courses are concerned, it may not be possible to give effect to our Judgment dated 22nd June 1984, until the academic year commencing in 1988. The students seeking admission to post-graduate courses for the academic year commencing in 1987 would be those who have completed their compulsory rotating internship/practical training in

364

November/December 1986 and now to require them, after a break of one year, to prepare again for appearing at the All India Entrance Examination would cause considerable hardship and inconvenience. Admissions to post-graduate courses for the academic year commencing in 1987 may therefore be given on the basis that our Judgment dated 22nd June 1984 does not govern such admissions. But an All India Entrance Examination would have to be held in 1987 for the students who would be passing MBBS Examination in the end of 1986 and who would be completing their compulsory rotating internship/practical training in the end of 1987 and seeking admission to post graduate courses for the academic year commencing in 1988. We must of course make it clear that it would be open to a student to appear at the All India Entrance Examination even after he has completed his compulsory rotating internship/practical training and he would be entitled to compete for admission to post-graduate courses for the academic year immediately following the completion of his internship or practical training. We would also like to add that though we have prescribed this programme for holding the All India Entrance Examination for admission to post graduate courses, if any difficulty is found in following this programme, it would be open to the Government of India to alter it in such manner as it thinks fit after consultation with the All India Institute of Medical Sciences and Medical Council of India. We are leaving a certain measure of latitude to the Government of India because it is possible that some difficulties may be encountered in implementation of this programme which we have not been able to anticipate and foresee.

(4) The Government of India has suggested in the Scheme of examination for admission to post-graduate courses that a weightage equivalent to

15% of the total marks obtained by a student at the All India Entrance Examination should be given if he has put in a minimum of three years of rural service. It is, of course, eminently desirable that some incentive should be given to our doctors to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected. But we do not think that such incentive should go to the length of

365

giving a weightage of 15% of the total marks obtained by a A candidate. There are several reasons why our doctors are persuaded to go to the rural areas in order to serve the rural masses who are badly in need of medical assistance. Some of the reasons are attraction of urban life, the prospect of building up a lucrative practice which may be possible only in urban cities, lack of proper facilities and inadequate supply of necessary medicines and above all absence of social commitment and lack of desire to serve the poor and the disadvantaged. These are some of the difficulties which have to be overcome if we want doctors to move to the rural areas. We do not think that by merely offering a weightage of 15% to a doctor for three years rural service we shall be able to bring about a migration of doctors from the urban to the rural areas. We are of the view that when selection of candidates is being made for admission on an All-India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. We must remember that what we are regulating are admissions to post-graduate courses and if we want to produce doctors who are M.D. Or M.S., particularly Surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merit. Moreover, we are extremely doubtful if a candidate who has rendered three years rural service for the purpose of getting a weightage of 15% would go back to the rural area after he has got M.D. Or M.S. Degree. We are, therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-graduate courses are concerned. Even if an undertaking is taken from such a candidate that after obtaining M.D. Or M.S. Degree he will settle-down in a rural area and serve the rural masses, it would in all probability serve no useful purpose because in the absence of the requisite facilities such as hospital, medical and surgical equipment, nursing etc. It would not be possible for him to give the advantage of his higher medical education to the rural masses and the higher medical education received by him would not be of service to the community.

The schemes of examination for admission to MBBS/BDS course and post-graduate courses submitted by the Government of India as

366

Annexure III to its memorandum are therefore approved by us, subject to the various modifications discussed and formulated in this Judgment. We would direct the Government

of India to revise these schemes in accordance with the modifications directed in this Judgment and to submit such revised schemes to this Court within two weeks from today. The Government of India will supply copies of the revised schemes to the learned advocates appearing on behalf of the State Governments, the Medical Council of India and the Bombay University so that, if the revised schemes are not in accordance with the directions given by us in this Judgment in any respect, they may be able to point out such discrepancies in the revised schemes.

Before we part with this Judgment we would like to make it clear that this Judgment given by us should not be construed as in any manner prejudicing or affecting or detracting from any rule, regulation or other provision entitling students from other States including the States of Andhra Pradesh and Jammu & Kashmir to be considered for admission to the remaining 85% and 75% seats for the MBBS/BDS course and post-graduate courses respectively. We would also like the Government of India to consider whether it would not be desirable to set up Regional Institutes of Medical Sciences where admission would be open to students from all over the country and where a high standard of excellence would be maintained. If such Regional Institutes of Medical Sciences are set up providing opportunity to students from all over the country to compete for admission on the basis of merit, it may become unnecessary to reserve 15% of the total number of seats for admission to the MBBS/BDS course and 25% of the total number of seats for admission to post graduate courses in each medical college or institution on the basis of All India Entrance Examination.

The writ petitions will now come up for hearing on 4th August 1986 for confirmation of the revised schemes prepared by the Government of India in accordance with the directions given in this Judgment.

P.S.S.

367