* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13.07.2022

% **Judgment delivered on: 29.07.2022**

\+ **W.P.(C) 4852/2020 & CM APPL. 5299/2021, CM APPL. 41013/2021**

DR. ABHINAV KUMAR & ORS. ..... Petitioner

Through: Mr. Varun Singh, Advocate

versus

UNION OF INDIA, THROUGH SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE & ANR.

..... Respondent

Through: Mr. Ripu Daman Bhardwaj, Advocate for UOI.
Mr. T. Singhdev with Ms. Michelle Biakthansangi Das and Ms. Sumangla Swami, Advs. for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner before this Court has filed the present petition under Article 226 read with Article 227 of the Constitution of India, for quashment of Regulation 9(3) of the Postgraduate Medical Education (Amendment)

Regulations, 2018 (as amended on 05.04.2018) to the extent that it provides for minimum marks of 50th percentile as a mandatory requirement for admission to postgraduate courses, on the ground that the said requirement is arbitrary, unjustified and contrary to Article 14, Article 19 (1)(g) and Article 21 of the Constitution of India.

2. The facts of the case reveal that the petition has been filed as a Public Interest Litigation by three doctors seeking admission into postgraduate courses. The Petitioner No.1 obtained his MBBS Degree in the year 2018 and appeared in the NEET PG Entrance Test on 05.01.2020. He secured 180 marks in the NEET PG Entrance Test, and is working at GB Pant Hospital. The Petitioner No.2 obtained his MBBS Degree in June 2018 and, thereafter, appeared in the NEET PG Entrance Test, scoring 108 marks. Similarly, the Petitioner No.3 also appeared in the NEET PG Entrance Test and scored 160 marks. He is also working at GB Pant Hospital.

3. The Petitioners' contention is that the Medical Council of India (MCI) introduced an All-India Entrance Examination called as National Eligibility-cum Entrance Test (NEET) for admission to MBBS and postgraduate courses by amending the Post-Graduate Medical Education Regulations on 21.12.2010. The Post-Graduate Medical Education Regulations were again amended on 15.02.2012, and the percentile system was introduced which provided that in order to obtain admission to a postgraduate course in an academic year, a student must obtain minimum marks at 50th Percentile in the NEET.

4. The Petitioners' further contention is that the amending Regulation was challenged before the Hon'ble Supreme Court by some institutions and, in the case of ***Christian Medical College , Vellore and Others v. Union of***

India and Others, (2014) 2 SCC 305, the Regulations were held to be *ultra vires*. It has further been submitted that again in the case of ***Medical Council of India v. Christian Medical College, Vellore and Others,*** (2016) 4 SCC 342, the Hon'ble Supreme Court rendered a decision holding that the judgment delivered in ***Christian Medical College , Vellore*** (supra) needed to be reviewed and that the process of admissions based on All-India Examination for common merit list for admission to medical colleges was in order.

5. The Petitioners further stated that in the year 2016, the Indian Medical Council Act, 1956 was amended by Indian Medical Council (Amendment) Act, 2016, and the amending Act inserted Section 10D and Section 33(mb) into the Indian Medical Council Act, 1956. The statutory provisions brought into force by way of amendment, provided for a uniform entrance examination to all medical educational institutions in respect of under-graduate courses as well as postgraduate courses to be held by the designated authority.

6. The Petitioners have further brought to the notice of this Court that keeping in view the Indian Medical Council (Amendment) Act, 2016, an all-India examination took place for the academic year 2017-18, and on 05.04.2018, the Medical Council of India, with the previous sanction of the Central Government, amended the Post-Graduate Medical Education Regulations, 2000, vide notification No. MCI-18(1)/ 2018-Med./100818. The amended Regulation 9(3), which came into force on 05.04.2018, reads as under:

> *"(3) To be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain*

minimum of marks at 50th percentile in the 'National Eligibility-Cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility-cum-Entrance Test for Postgraduate courses. Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only."

7. The Petitioners' primary grievance is that the percentile system prescribed under Regulation 9(3) of the amended Regulation is a faulty system as on account of percentile system, a large number of seats are lying vacant even though candidates who are efficient and willing are available. The Petitioners have further stated that by way of the amendment in the Regulations, arbitrary percentile systems have been introduced which results in lack of availability of qualified teachers in the disciplines which are already approved by the MCI itself for being filled up in the year. The Petitioners have further stated that the percentile system also results in medical colleges filling up the posts of teachers in biochemistry and

microbiology by appointing M.Sc/ PhD holders in the said subject due to lack of availability of qualified postgraduate medical students in the above subjects.

8. The Petitioners have further stated that the NEET- PG 2020 was held on 05.01.2020, and the result was uploaded on 30.01.2020, with an All-India Quota merit being prepared. As stated earlier, Petitioner No.1 secured 180 marks, Petitioner No.2 secured 108 marks, and the Petitioner No.3 secured 160 marks. However, they were not allotted any seat in the final allotment list which was published on 11.04.2020 on the ground that they fell short of the 50th percentile qualification mandated by the amended Regulations. The Petitioners' contention is that the MCI on 26.06.2020 had informed the Petitioners about the alarming situation regarding the seats which were vacant, with 5500 seats remaining vacant out of 23000 seats in the year 2020.

9. It has further been submitted that on 14.07.2020, based upon the recommendations of Respondent No.2, the percentile for the Post Graduate Course for 2020 (NEET-PG) had been reduced and revised to the extent of 30th Percentile for General Category. The Petitioners' main grievance is that the introduction of percentile system of judging the merit and providing a minimum 50th percentile to obtain admission is illegal, arbitrary, and the object of the statutory provision could have never been to non-suit any candidate who is otherwise eligible for admission to the post-graduate course.

10. The main thrust of the arguments of the Petitioners is that on account of the percentile system, as the candidates have not been securing 50th percentile, a large number of seats are not being filled and it is a national

loss as it obstructs doctors from obtaining postgraduate qualifications. The Petitioners further stated that on account of the faulty system which has been adopted by the Respondents, last minute applications are being filed to fill unfilled seats and, that this process leads to unscrupulous methods being adopted by colleges in granting admission wherever any such relaxation for reducing the percentile exists. It has also been stated that there is a huge shortage of doctors in the subject of pathology, microbiology and anesthesiology who are the specialists, and large number of seats are unfilled on account of a faulty percentile system and, therefore, the amendment in the Regulations deserves to be declared as *ultra vires*.

11. The Petitioners further stated that the Supreme Court, in the case of ***District Registrar and Collector, Hyderabad and Another v. Canara Bank and Others***, (2005) 1 SCC 496, had held that where the provision of a statute was absolutely disproportionate to the purpose to be achieved, the nexus between stringent provisions and the purpose would cease to exist which would result in violation of Article 14 of the Constitution of India.

12. The Petitioners have prayed for the following reliefs:

> *"(a) Direct the Respondents to fill all seats in the PG NEET Examination in the present year based on merit list declared in the NEET Examination beyond the 50 percentile regulation;*
> *(b) Direct the Respondents to stay the effect of 50 percentile system through Regulation 9(3) in the present year and consider the students for selection purely on the merit list.*
> *(c) Pass any other order(s) as this Court may deem fit and proper under the circumstances of the case."*

13. Reliance has been placed by the Petitioners upon the judgments delivered in the case of ***Vinod Pandya v. State of Gujarat & 2 Ors***., (2014) SCC OnLine Guj 4037, ***Index Medical College, Hospital and Research***

Centre v. State of Madhya Pradesh & Ors., (2021) SCC Online SC 318, ***Harshit Agarwal & Ors. V. Union of India & Ors.***, (2021) 2 SCC 710, ***Francisco D. Luis v. State of Maharashtra & Ors***., (2008) SCC OnLine Bom 795, ***Shri Francisco D. Luis v. The Director, Board of Secondary and Higher Secondary Education, Maharashtra & Anr***., PIL No. 94 of 2008, ***Union of India v. Federation of Self-Financed Ayurvedic Colleges, Punjab and Ors***., (2020) 12 SCC 115, ***Association of Managements of Homeopathic Medical Colleges of Maharashtra v. Union of India & Ors***., (2019) 20 SCC 511, ***Ombir Singh & Ors.v. State of U.P. & Anr***., 1993 Supp(2) SCC 64 and ***Saurabh Chaudri (Dr.) & Ors. V. Union of India & Ors.*** (2004) 5 SCC 618.

14. A Reply has been filed by the Respondents in the matter and the contention of the Respondent is that the examination in question, i.e. NEET (PG), 2020 for the academic session 2020-21 was conducted on 05.01.2020 and the information booklet was issued on 01.11.2019. The result was declared on 31.01.2020 and the Petitioners were aware of the marks obtained by them in the NEET (PG) Examination. They were also aware of the percentiles scored by them with reference to the minimum requirement of 50% percentile for qualifying the said test provided under Regulation 9(3) of the Post Graduate Medical Education Regulations, 2000. The petitions came up before this Court on 04.08.2020, which was the last date for admissions and this deadline was extended by the Hon'ble Supreme Court upto 31.08.2020. The Respondents have stated that the petition deserves to be dismissed on the ground of delay and laches alone.

15. The Respondents have stated that the Post Graduate Medical Education Regulations, 2000, provided for selection/ admission in the PG

courses, including Super-Specialty Medicine Courses, on the basis of inter se academic merit, which is determined through a Competitive Entrance Test, wherein a candidate must obtain a minimum percentage of marks for becoming eligible to participate in the counseling process. The original unamended Regulation 9(2) of the Post Graduate Medical Education Regulations, 2000, provides that candidates must obtain a minimum percentage of marks for being eligible for admission, i.e. 50% for General category and 40% for Reserved category candidates. Regulation 9(2) was subsequently amended on 20.10.2008, however, the minimum qualifying criteria has not changed since the inception of the Regulations.

16. The Respondents have further stated that the NEET is a single-window Common Entrance Test for admission to all PG Medical Courses in the country and was introduced by way of amendments notified on 27.12.2010, 27.02.2012 and 23.10.2012, whereby the aforesaid Regulation 9 of the Post Graduate Medical Education Regulations, 2000, was amended. It has further been stated that vide amendment notified on 27.02.2012, the requirement of minimum percentage of marks in NEET has been replaced by minimum percentile. Thus, the stipulation for obtaining minimum percentage/ percentile in the Competitive Entrance Test/ NEET has been in existence since the very beginning for all PG Medical Courses, including Super-Specialty Medicine Courses.

17. The Respondents have further stated that the aforesaid provisions were initially quashed by the Hon'ble Supreme Court vide judgment dated 18.07.2013 passed in ***Christian Medical College, Vellore & Ors.*** (supra) and other connected matters, and thereafter the Central Government as well as the Respondents in the present petition had preferred a review before the

Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 11.04.2016 passed in Review Petition (C) No.2059-2268/2013 – ***Medical Council of India v. Christian Medical College, Vellore & Ors.*** revived the provisions pertaining to NEET, and thereafter, since the academic year 2016-17, all admissions to the MBBS course and, from the academic year 2017-18, all admissions to various PG Medical Courses in the country, are being done on the basis of minimum percentile obtained by a candidate in the respective NEET.

18. The Respondents have further stated that as per the amendment in the Indian Medical Council Act, 1956, which came into force with effect from 24.05.2016, the provisions of Section 10D and Section 33(mb) were incorporated, whereafter NEET became the uniform entrance examination for admission to MBBS and PG Medical Courses in all the medical colleges of the country. The contention of the Respondent is that NEET is a statutory uniform entrance examination for admission to MBBS and PG Medical Courses, and there is a minimum percentile of 50% provided under Regulation 9(3) of the Post Graduate Regulations, 2000, as notified on 05.04.2018 for General Category candidate, and for SC/ST and other Backward Classes, the minimum percentile is fixed at 40% percentile. Regulation 9(3) also provides a minimum percentile for those who are covered under the Rights of Persons with Disabilities Act, 2016, i.e. 45% percentile for General Category and 40% for SC/ST/OBC.

19. The Respondents have placed reliance on a judgment delivered in the case of ***Christian Medical College Vellore Association v. Union of India & Ors.***, 2020 SCC Online 423, wherein the Hon'ble Supreme Court vide judgment dated 29.04.2020 has upheld the notifications issued for grant of

admission to Graduate and Post Graduate courses as well as the provisions as contained in Section 10D of the Indian Medical Council Act, 1956.

20. The Respondents have further contended that the NEET Test which is a common Entrance Examination helps the candidates avoid appearing in multiple entrance tests, entailing payment of fees for such entrance test separately, and also provides for a level-playing field since the standards of education vary from region to region and college to college.

21. It has further been stated that the purpose for conducting NEET is to ensure that the candidates who are admitted to postgraduate medicine courses are suitable and possess the right aptitude so that they can pursue a specialized stream of medicine after the requisite teaching and training.

22. The system of NEET, as incorporated by the Act and statutory regulations, regulates the entry of candidates into postgraduate education so that only eligible and suitable candidates with competence and capability are able to obtain admission in postgraduate medicine courses. It has been further contended that the result of organizing NEET and grant of admission based upon NEET has eliminated all kinds of unfair practices, factors and influences in the process of selection of postgraduate courses.

23. The Respondents have stated that the candidates are required to appear in only one examination as they come from different streams. There is also no issue with regard to equalizing the marks in respect of the degrees obtained from various universities and, therefore, one single window examination system has been introduced by the Respondents. The Respondents, vide letter dated 14.07.2020, have admitted lowering the percentile in respect of academic year 2020-21, and it has been stated that any exercise of powers conferred upon the Respondents has been done

keeping in view the proviso to Regulation 9(3) of the Post Graduate Medical Education Regulations. In the said academic year, minimum qualifying percentile had been reduced from 50 percentile to 30 percentile in case of General category candidates, and from 40 percentile to 20 percentile in respect of unreserved category candidates.

24. The Respondents have contended that in a similar case, the Hon'ble Supreme Court vide order dated 30.05.2019 passed in W.P.(C) No. 716/2019 in the case of ***Kaushal Singh & Ors. V. Union of India & Ors***, held that no mandamus could be issued to the Central Government/ Medical Council of India to lower the minimum percentile required in postgraduate medicine courses in an academic year. It has been further held that the Regulation permits the Central Government, in consultation with National Medical Council, to lower the percentile. The Courts cannot issue a mandamus directing Central/ National Medical Council of India to lower down the percentile.

25. It has further been stated that in another matter, the Hon'ble Supreme Court, vide order dated 30.07.2020, passed in W.P.(C) No. 764/2020 in the case of ***Telangana Private Medical and Dental Colleges Management Association & Anr. V. Union of India & Ors***, the Union of India had refused to issue any direction to waive the minimum qualifying percentile required for admission to postgraduate courses in the present academic year.

26. The Petitioners in the aforesaid case had raised the same ground as raised in the present writ petition, however, the Hon'ble Supreme Court refused to issue any direction to waive minimum qualifying percentile required for admission to postgraduate courses for the present academic year

2020-21. The Respondents have stated that the statement made by the petitioner in respect of vacant seats is misleading and incorrect.

27. The respondents have further contended that the National Board of Examination vide notice dated 30.01.2020 had, in accordance with the minimum eligibility criteria for admission to Postgraduate Medicine Courses, declared the cut off scores for various categories as follows:

Category	**Minimum Eligibility Criteria**	**Cut-off Score (out of 1200)**
General Category (UR/ EWS)	50th Percentile	366
ST/SC/OBC (including PWD of SC/ST/OBC)	40th Percentile	319
UR-PWD	45th Percentile	342

28. The respondents have further stated that the National Board of Examination, after the lowering of the percentile by the Central Govt. on 14.07.2020, vide notice dated 14.07.2020, had, in accordance with the minimum eligibility criteria for admission to Postgraduate Medicine Courses, declared the cut off scores for various categories as follows:

Category	Minimum Qualifying Criteria as per Information Bulletin	Cut-off Score as per qualifying criteria as mentioned in Information Bulletin	Revised Minimum Qualifying Criteria (as per MoHFW letter F.No. V.11012/1/2020 – MEP dated 14th July 2020)	Revised Cut off Score
General Category (UR/ EWS)	50th Percentile	366	30th Percentile	275

ST/SC/OBC (including PWD of SC/ST/OBC)	40th Percentile	319	20th Percentile	230
UR-PWD	45th Percentile	342	25th Percentile	252

29. The respondents have further stated that with reference to the aforesaid minimum eligibility marks for admission to Postgraduate Medicine Courses as declared by the National Board of Examination, the Petitioners have admittedly obtained 180, 108 & 160 marks, respectively, and hence, are far below in merit to even be considered for admission. The Petitioners have deliberately chosen not to disclose the percentiles obtained by them in the NEET Examination.

30. It is further stated that as per record of the answering Respondent, as well as information received from the National Board of Examination, the total number of seats in Postgraduate Medicine Courses in the Country are 38,107 for the academic year 2020-21, and other relevant information for the last 3 academic years is as under:-

S. No.	Academic Year	Total No. of Candidates	No. of Candidates above 50th Percentile	No. of Candidates above 40th Percentile	Reduction in Percentile	No. of additional candidate available after reduction of percentile in general category	No. of additional candidates available after reduction of percentile in Reserved Category
1	NEET-PG 2018	128917	64612	71761	15	9142	10584
2	NEET-PG 2019	143148	71600	86277	6	3897	4852

3	NEET-PG 2020	160876	80627	96622	20	13968	18557

31. The respondents have further submitted that the number of eligible students far exceeds the number of seats in the Postgraduate Medicine Courses in the country and that the National Eligibility-Cum-Entrance Test ensures that only meritorious students are selected for admission to Postgraduate Medicine Courses in the country.

32. The Respondents have further stated that the vacant seats are mostly in the Pre & Para Clinical subjects, i.e. Microbiology, Biochemistry, Pathology, Pharmacology, Physiology, Anatomy, etc. and the candidates who are appearing in the NEET are registered medical practitioners who have already obtained the MBBS Degree. They want to enhance their academic qualifications in order to become a specialist in a particular discipline/ subject of medicine, and the postgraduate qualifications in the subjects like Microbiology, Biochemistry, Pathology, Pharmacology, Physiology, Anatomy, etc do not enable the candidates to function as a specialist in a particular discipline/ subject of medicine, and most of them only become eligible to be appointed as teachers. Therefore, the candidates do not opt for such subjects which are non-clinical subjects. The Respondents have further stated that in respect of other central institutes/ universities which are established by various acts of Parliament, such as All India Institute of Medical Sciences, Post Graduate Institute of Medical Education and Research, Chandigarh, and Jawaharlal Institute of Postgraduate of Medical Education and Research, Pudducherry, the admission is conducted through a Common Entrance Test. The aforesaid institutes already provide for obtaining minimum 50 per cent and above

marks/ percentile and, therefore, it cannot be said that the criterion adopted by the answering Respondents is arbitrary, unreasonable and undesirable when other institutes follow the same methodology.

33. The Respondents have placed reliance upon the following judgments: ***Neelu Arora (Ms.) and Another v. Union of India and Others.***, (2003) 3 SCC 366, ***Supreet Batra & Others. v. Union of India & Ors***., (2003) 3 SCC 370, ***Christian Medical College Vellore Association v. Medical Council of India and Others***., (2017) 8 SCC 627, ***U.P. State Electricity Board v. Abdul Sakoor Hashmi & Ors***, (1980) 3 SCC 278, ***Sant Singh Nalwa & Anr. V. Financial Commissioner, Haryana and Ors.*** (1981) 2 SCC 557, ***Government of India v. Citedal Fine Pharmaceuticals, Madras & Ors***., (1989) 3 SCC 483, ***Union of India & Ors. V. Rajendra Singh***, (1993) Supp(2) SCC 176, ***Veterinary Council of India v. Indian Council of Agricultural Research***, (2000) 1 SCC 750, ***Kunj Behari Lal Butail & Ors. V. State of H.P. & Ors***., (2000) 3 SCC 40, ***Kerala Samsthana Chethu Thozilali Union v. State of Kerala & Ors***., (2006) 4 SCC 327, ***State of T.N. & Anr. V. P. Krishnamurthy & Ors***., (2006) 4 SCC 517, ***State of Kerala v. Kumari T.P. Roshana and Anr.***, (1979) 1 SCC 572, ***Medical Council of India V. State of Karnataka and Ors.***, (1998) 6 SCC 131, ***Dr. Preeti Srivastava and Anr. v. State of M.P. & Ors***., (1999) 7 SCC 120, ***Dr. Narayan Sharma & Anr. V. Dr. Pankaj Kr.Lehkar & Ors***., (2000) 1 SCC 44, ***State of Punjab v. Dayanand Medical College and Hospital and Others***, (2001) 8 SCC 664, ***State of MP & Ors. V. Gopal D. Tirthani & Ors***., (2003) 7 SCC 83, ***Harish Verma & Ors. V. Ajay Srivastava & Anr***., (2003) 8 SCC 69, ***Sudhir N and Ors.. V. State of Kerala and Ors.***, (2015) 6 SCC 685, ***Modern Dental College & Research Centre and Ors. v. State of***

Madhya Prades and Ors.. (2016) 7 SCC 353, ***BharatiVidyapeeth (deemed university) and Ors. v. State of Maharashtra and Anr.***, (2004) 11 SCC 755. ***Prof. Yashpal and Anr. v. State of Chattisgarh and Ors.***, (2005) 5 SCC 420, ***Medical Council of India v. Rama Medical College Hospital & Research Centre, Kanpur and Anr.*** (2012) 8 SCC 80, ***Ashish Ranjan & Ors. V. Union of India & Ors***., (2016) 11 SCC 225, ***State of Uttar Pradesh & Ors. V. Dinesh Singh Chauhan***, (2016) 9 SCC 749, ***Ambesh Kumar(Dr.) V. Principal, LLRM Medical College, Meerut & Ors***., (1986) Supp. SCC 543, ***Krishna Priya Ganguly & Ors. v. University of Lucknow & Ors***., (1984) 1 SCC 307, ***A.P. Christians Medical Educational Society v. Government of Andhra Pradesh & Anr.***, (1986) 2 SCC 667, ***CBSE and Anr. v. P Sunil Kumar & Ors***., (1998) 5 SCC 377.

34. Heard learned Counsel for the parties, and perused the record.

35. The Petitioners before this Court have filed the present writ petition for quashing of Regulation 9(3) of the Post-Graduate Medical Education Regulations, 2000, as amended on 05.04.2018, which prescribes for minimum of 50% of percentile as a mandatory requirement for admission to postgraduate courses in respect of General category candidates, and 40% percentile for reserved category candidates. The amended Regulation 9(3) which came into force on 05.04.2018 reads as follows:

> *"(3) To be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility-Cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th*

percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility-cum-Entrance Test for Postgraduate courses. Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only."

36. The Medical Council of India, in exercise of powers conferred under Section 33 read with Section 20 of the Indian Medical Council Act, 1956, with the previous sanction of the Central Government, has framed the Regulations for the purposes of regulating the admissions to postgraduate courses and these Regulations are called Post Graduate Medical Education Regulation, 2000, and they came into force w.e.f 20.08.2000. The Regulations, as stated earlier, provide for selection in postgraduate medical courses, including super specialty medicine courses, on the basis of inter se academic merit which is determined through a competitive entrance test wherein the candidates are required to obtain minimum percentile of marks for becoming eligible for participating in the counseling process. It is pertinent to note that the earlier unamended Regulation 9(2) of the Postgraduate Medical Education Regulation, 2000, mandated for a candidate to obtain minimum percentage of marks for being eligible for admission, i.e.

50% for general category and 40% for reserved category candidates. The Regulation, as stated earlier, was subsequently amended on 20.10.2008, and it is quite clear that the stipulation for obtaining minimum percentage of marks/ percentile of marks in the competitive entrance test has been in existence since the inception of the Regulations.

37. The NEET as a single window Common Entrance Test was introduced by way of amendments notified on 27.12.2010, 27.02.2012 & 23.10.2012 whereby Regulation 9 of the Regulations of 2000 was amended and, by virtue of amendment notified on 27.02.2012, the requirement of minimum percentage of marks in the NEET was replaced by minimum percentile.

38. The Petitioners' main grievance is that the introduction of the percentile system of judging the merit and providing a minimum 50th percentile to obtain admission in respect of General category candidates is illegal and arbitrary as the object of the statute can never be to non-suit any candidate who is otherwise eligible for admission to postgraduate courses. The Petitioners have, thus, prayed for quashing of the Regulations.

39. The facts of the case reveal that the examination in question relates to academic session 2020-21, and the information booklet in respect of the examination was issued on 01.11.2019. The last date for submission of the online application was 21.11.2019 and the examination was conducted on 05.01.2020. The results were declared on 31.01.2020, and the Petitioners, who were aware about their marks and the percentile secured by them, did not achieve the minimum percentile and thereafter, approached this Court only on 04.08.2020. It is evident that the petitioners did not achieve the minimum percentile after participating in the examination process and are

now aggrieved by Regulation 9(3) of the Regulations. The Petitioners have prayed for quashing of Regulation 9(3) on various grounds and their contention is that the provision of the statute is absolutely disproportionate to the purpose sought to be achieved. '

40. The scope of judicial review to strike down a statutory provision/ to declare it as ultra vires, has been looked into by the Hon'ble Supreme Court from time to time, with the Supreme Court consistently observing that there exists a presumption in favour of the constitutionality of a legislation, and the burden solely lies on the entity who claims unconstitutionality of the said legislation to demonstrate the same unequivocally.

41. The Hon'ble Supreme Court in the case of ***State of T.N. and Another v. P. Krishnamurthy and Others***, (2006) 4 SCC 517, in paragraphs 15 and 16 has held as under:

> ***"Whether the rule is valid in its entirety?***
>
> ***15.*** *There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:*
>
> *(a) Lack of legislative competence to make the subordinate legislation.*
>
> *(b) Violation of fundamental rights guaranteed under the Constitution of India.*
>
> *(c) Violation of any provision of the Constitution of India.*
>
> *(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
>
> *(e) Repugnancy to the laws of the land, that is, any enactment.*

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. *The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."*

42. In the aforesaid case, the Hon'ble Supreme Court, while dealing with the Constitutional validity and scope of Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, had summarized the parameters for challenge to judicial review of subordinate legislation. What is culled out from the aforesaid judgment is that there is a presumption in favour of constitutional validity of subordinate legislation, and that it can be challenged only on the following grounds:

I. Lack of legislative competence to make subordinate legislation.
II. Violation of fundamental rights under the Constitution of India.
III. Violation of any provision of the Constitution of India.
IV. Failure to conform to statue under which it is made or exceeding limits of authority conferred by enabling Act.
V. Repugnancy of laws of the land.
VI. Manifest arbitrariness/ unreasonableness.

43. The Court, while considering the validity of subordinate legislation, will have to consider the nature, object and scheme of the enabling Act and, the field over which power has been delegated. When the rule is directly inconsistent with mandatory provisions of the statute, it is an easy task for the Court. However, when inconsistency is not with reference to a specific provision, but rather object and scheme of parent Act, then the Court is required to proceed with caution while discerning if the said provision is unconstitutional.

44. In the case of ***Cellular Operators Association of India and Others v. Telecom Regulatory Authority of India and Others,*** (2016) 7 SCC 703, the Hon'ble Supreme Court relying upon ***State of T.N. v. P. Krishnamurthy*** (supra), once again, looked into the parameters of judicial review of subordinate legislation. Paragraphs 11, 34 and 41 of the aforesaid judgment read as under:

> *"**11.** A writ petition, being Writ Petition (Civil) No. 11596 of 2015, was filed before the Delhi High Court, together with various other petitions, in which the Ninth Amendment, being the impugned amendment to the Regulation pointed out hereinabove, was challenged. By the impugned judgment dated 29-2-2016 [Cellular Operators Assn. of India v. Telecom Regulatory Authority of India, 2016 SCC OnLine Del 1388 : (2016) 228 DLT 491] , the Delhi High Court noticed the various arguments addressed on behalf of the various appellants, together with the reply given by Shri P.S. Narasimha, learned Additional Solicitor General of India appearing on behalf of TRAI. The High Court then went on to discuss the validity of the impugned Regulation under two grounds — the ground of being ultra vires the parent Act, and the ground that the Regulation was otherwise unreasonable and manifestly arbitrary. The High Court repelled the challenge of the appellants on both the aforesaid grounds.*

34. In State of T.N. v. P. Krishnamurthy [State of T.N. v. P. Krishnamurthy, (2006) 4 SCC 517] , this Court after adverting to the relevant case law on the subject, laid down the parameters of judicial review of subordinate legislation generally thus : (SCC pp. 528-29, paras 15-16)

"15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

41. We find that the impugned Regulation is not referable to Sections 11(1)(b)(i) and (v) of the Act inasmuch as it has not been made to ensure compliance with the terms and conditions of the licence nor has it been made to lay down any standard of quality of service that needs compliance. This being the case, the impugned Regulation is dehors Section 11 but cannot be said to be inconsistent with Section 11 of the Act. This Court has categorically held in BSNL [BSNL v. Telecom Regulatory Authority of India, (2014) 3 SCC 222] judgment that the power under Section 36 is not trammelled by Section 11. This being so, the impugned Regulation cannot be said to be inconsistent with Section 11 of the Act. However, what has also to be seen is whether the said Regulation carries out the purpose of the Act which, as has been pointed out hereinabove, under the amended Preamble to the Act, is to protect the interests of service providers as well as consumers of the telecom sector so as to promote and ensure orderly growth of the telecom sector. Under Section 36, not only does the Authority have to make regulations consistent with the Act and the Rules made thereunder, but it also has to carry out the purposes of the Act, as can be discerned from the Preamble to the Act. If, far from carrying out the purposes of the Act, a regulation is made contrary to such purposes, such regulation cannot be said to be consistent with the Act, for it must be consistent with both the letter of the Act and the purposes for which the Act has been enacted. In attempting to protect the interest of the consumer of the telecom sector at the cost of the interest of a service provider who complies with the leeway of an average of 2% of call drops per month given to it by another Regulation, framed under Section 11(1)(b)(v), the balance that is sought to be achieved by the Act for the orderly growth of the telecom sector has been violated. Therefore, we hold that the impugned Regulation does not carry out the purpose of the Act and must be held to be ultra vires the Act on this score."

45. The Hon'ble Supreme Court in the case of ***Indian Express Newspapers (Bombay) Private Limited and Others v. Union of India and Others***, (1985) 1 SCC 641, while dealing with a challenge to the

Constitutional validity of the subordinate legislation, held that subordinate legislation may be questioned on any ground on which plenary legislation is questioned. It may further be questioned on the ground that it is contrary to some other statute. It may also be questioned on the ground of unreasonableness/ manifestly arbitrariness. The relevant portion of the judgment reads as under:

> ***"77.*** *In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.*
>
> ***76.*** *Prof. Alan Wharam in his article entitled "Judicial Control of Delegated Legislation: The Test of Reasonableness" in 36 Modem Law Review 611 at pp. 622-23 has summarised the present position in England as follows:*
>
> *(i) It is possible that the courts might invalidate a statutory instrument on the grounds of unreasonableness or uncertainty, vagueness or arbitrariness; but the writer's view is that for all practical purposes such instruments must be read as forming part of the parent statute, subject only to the ultra vires test.*
>
> *(ii) The courts are prepared to invalidate bye laws, or any other form of legislation, emanating from an elected, representative authority, on the grounds of unreasonableness. uncertainty or repugnance to the ordinary law: but they are reluctant to do so and will exercise their power only in clear cases.*
>
> *(iii) The courts may be readier to invalidate bye-laws passed by commercial undertakings under statutory power, although cases reported during the present century suggest that the distinction between elected authorities and commercial*

undertakings, as explained in Kruse v. Johnson [(1898) 2 QB 91 : 67 LJQB 782 : 78 LT 647 : 46 WR 630] might not now be applied so stringently.

(iv) As far as subordinate legislation of non-statutory origin is concerned, this is virtually obsolete, but it is clear from In re French Protestant Hospital [1951 Ch 567 : (1951) 1 All ER 938 (Ch D)] that it would be subject to strict control. [See also H.W.R. Wade: Administrative Law (5th Edn.) pp. 747-748.]

75. *A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires". The present position of law bearing on the above point is stated by Diplock, L.J. in Mixnam's Properties Ltd. v. Chertsey Urban District Council [(1964) 1 QB 214 : (1963) 2 All ER 787 : (1963) 3 WLR 38 (CA)] thus:*

"The various special grounds on which subordinate legislation has sometimes been said to be void … can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus, the kind of unreasonableness which invalidates a bye-law is not the antonym of 'reasonableness' in the sense in which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires'...if the courts can

declare subordinate legislation to be invalid for 'uncertainty' as distinct from unenforceable...this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain."

78. *That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur [AIR 1980 SC 882 : (1980) 2 SCR 1111 : (1980) 2 SCC 295] , Rameshchandra Kachardas Porwal v. State of Maharashtra [(1981) 2 SCC 722 : AIR 1981 SC 1127 : (1981) 2 SCR 866] and in Bates v. Lord Hailsham of St. Marylebone [(1972) 1 WLR 1373 : (1972) 1 A11 ER 1019 (Ch D)] . A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc, etc. On the facts and circumstances of a case, a subordinate legislation may be struck down a arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."*

46. Recently, the Hon'ble Supreme Court in the case of ***Dental Council of India v. Biyani Shikshan Samiti and Another***, (2022) 6 SCC 65, in paragraphs 1, 26 to 28, 30, 38 and 44, has held as under:

> ***"26.*** *It will be relevant to refer to the following observations of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] : (SCC p. 689, para 75)*
>
> *"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."*
>
> ***27.*** *It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.*
>
> ***28.*** *It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done*

merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

30. *In State of T.N. v. P. Krishnamurthy [State of T.N. v. P. Krishnamurthy, (2006) 4 SCC 517] after considering the law laid down by this Court earlier in Indian Express Newspapers (Bombay) [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , Supreme Court Employees' Welfare Assn. v. Union of India [Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] , Shri Sitaram Sugar Co. Ltd. v. Union of India [Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223] , St. Johns Teachers Training Institute v. NCTE [St. Johns Teachers Training Institute v. NCTE, (2003) 3 SCC 321 : 5 SCEC 391] , Ramesh Chandra Kachardas Porwal v. State of Maharashtra [Ramesh Chandra Kachardas Porwal v. State of Maharashtra, (1981) 2 SCC 722] , Union of India v. Cynamide India Ltd. [Union of India v. Cynamide India Ltd., (1987) 2 SCC 720] and State of Haryana v. Ram Kishan [State of Haryana v. Ram Kishan, (1988) 3 SCC 416] , this Court has laid down certain grounds, on which the subordinate legislation can be challenged, which are as under : (Krishnamurthy case [State of T.N. v. P. Krishnamurthy, (2006) 4 SCC 517] , SCC p. 528, para 15)*

"Whether the rule is valid in its entirety?

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

***38.** We are, therefore, of the considered view that the amended Regulation cannot be said to be one, which is manifestly arbitrary, so as to permit the Court to interfere with it. On the contrary, we find that the amended Regulation 6(2)(h) has a direct nexus with the object to be achieved i.e. providing adequate teaching and training facilities to the students.*

***44.** We are, therefore, of the considered view that it was not permissible for the Division Bench of the High Court to enter into an area of experts and hold that the unamended provisions ought to have been preferred over the amended provisions."*

47. The aforesaid case arose out of a judgment passed by the Rajasthan High Court striking down the notification dated 21.05.2012, by way of which the Dental Council amended the Dental Council of India (Establishment of New Dental Colleges, Opening of New or High Course of Studies or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006, on the ground of being inconsistent with the Dentists Act, 1948, and being violative of Articles 14 and 19(1)(g) of the Constitution of India. The Supreme Court, relying upon ***Indian Express Newspapers (Bombay) Private Limited and Others*** (supra) and ***State of T.N. and Another*** (supra), held that the amended Regulations could not be said to be manifestly arbitrary and that it had a direct nexus with the object sought to be achieved. The Court also held that it was impermissible for the

High Court to enter into an area of experts and hold that the unamended provisions ought to be preferred over the amended provisions.

48. Flowing from the aforesaid judgments, the Petitioners have not been able to establish any legislative incompetence, violation of Fundamental Rights, violation of any provision of the Constitution of India, arbitrariness or unreasonableness. This Court is, therefore, of the opinion that as the Petitioners have failed to discharge the burden upon them to successfully attack the validity of the impugned Regulations, the interference of the Court is not warranted in the instant case.

49. The Petitioners herein are aggrieved by the percentile fixed by the amending Regulation 9(3) of the Regulations, however, the present case is not an isolated case of an examination where minimum percentile is required for admission to a course. The Common Entrance Test which is held in respect of various Indian Institutes of Managements also provides for scoring based upon percentile system. In all medical colleges, admission is being done based upon percentile system of marking, and minimum percentile certainly finds place under the Regulations which are subject matter of the challenge.

50. The Central Government Institutes (Medical) which have been established by various acts of Parliament, namely All India Institute of Medical Sciences, Post Graduate Institute of Medical Education and Research, Chandigarh and Jawaharlal Institute of Postgraduate of Medical Education and Research, Pudducherry, also provide for Common Entrance Test, and for General Category candidates, the requirement is of 55th Percentile and for reserved category candidates, the requirement is of 50th Percentile. In case of Jawaharlal Institute of Postgraduate of Medical

Education and Research, Pudducherry, for instance, the requirement is 55 and 50 percentile, respectively, for the aforesaid two categories.

51. The National Board of Examination also conducts various examinations for admission into postgraduate courses and the requirement again is to obtain minimum percentile. For General Category, the requirement is of 50th Percentile, and for reserved category, the requirement is of 40th Percentile in the NEET-PG Examination. Thus, in short, the concept of obtaining minimum percentile is not an alien concept in respect of admissions to various courses; it is a time-tested process and has been upheld by various judgments delivered on the subject.

52. The main thrust of the arguments of the Petitioner is that a large number of seats on account of fixation of minimum percentile goes to waste and, therefore, the system of obtaining minimum percentile be done away with. In this regard, it would be pertinent to refer to the observation of the Hon'ble Supreme Court in the case of ***Neelu Arora (Ms.) and Another v. Union of India and Others.***, (2003) 3 SCC 366 wherein the Apex Court declined to pass any order for holding more rounds of counseling as seats were lying vacant. The Supreme Court had held that in case a detailed scheme had been framed through the orders of the Court providing a mechanism and time frame, the same had to be adhered to.

53. The Hon'ble Supreme Court reiterated the law laid down in the aforesaid case in ***Supreet Batra & Others. v. Union of India & Ors***., (2003) 3 SCC 370, holding that the detailed scheme for appointment to medical colleges framed through the orders of the Supreme Court should not be altered, if a certain number of seats had not been filled up in a particular year. The Hon'ble Supreme Court in the case of ***Christian Medical College***

Vellore Association v. Medical Council of India and Others., (2017) 8 SCC 627, again held that the time schedule as approved by the Supreme Court for admission in medical courses must be followed in order to ensure that medical education standards were not lowered.

54. This brings to the fore the observation that the Apex Court has not interfered in the matter of grant of admissions to various undergraduate and postgraduate courses in medical colleges only because seats could not be filled up in a particular academic year. Therefore, the contention of the Petitioners that the amended Regulation should be interfered with on the ground that seats in medical colleges are lying vacant cannot be countenanced. Furthermore, as has been stated by the Respondents, many of these seats belong to non-clinical courses and are merely lying vacant because there are not many candidates willing to opt for these courses. The vacancies cannot be attributed solely to the amended Regulations.

55. The Medical Council of India/ The National Medical Commission is the statutory authority created and constituted under an Act of Parliament, namely Indian Medical Council Act, 1956, and has been given the responsibility of discharging the duty of maintaining the highest standards of medical education.

56. The Hon'ble Supreme Court in the case of ***State of Kerala v. Kumari T.P. Roshana and Another***, (1979) 1 SCC 572, in paragraph 16 has held as under:

> *"**16.** The Indian Medical Council Act; 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has*

implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses."

57. The Medical Council of India, which is an expert body on the subject discharges its statutory obligations towards maintenance of highest standards in medical education in the country and, by virtue of the statutory provisions contained under Section 33 of the Act, is empowered, with the prior approval of the Central Government, to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of medicine courses, including providing the criteria for admissions to various medicine courses.

58. In the case of ***Medical Council of India v. State of Karnataka and Others***, (1998) 6 SCC 131, the Hon'ble Supreme Court has held that the Regulations framed by MCI with the prior approval of the Central Government are binding and mandatory in nature. A similar view has been taken by the Hon'ble Supreme Court in the case of ***Dr. Preeti Srivastava v. State of M.P. & Ors***, (1999) 7 SCC 120 wherein in paragraph 57, it was held as under:

> ***"57.*** *In the case of Medical Council of India v. State of Karnataka [(1998) 6 SCC 131] a Bench of three Judges of this Court has distinguished the observations made in Nivedita Jain [(1981) 4 SCC 296] . It has also disagreed with Ajay Kumar Singh v. State of Bihar [(1994) 4 SCC 401] and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana [(1979) 1 SCC*

572, 580] (SCC at p. 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning."

59. The Hon'ble Supreme Court has consistently held that the Medical Council of India exercises an overall vigilance over all medical institutions and it does have the power to supervise the qualifications or eligibility standards for admission into medical institutions. Furthermore, the Hon'ble Supreme Court has time and again held that the regulations promulgated by the Medical Council of India are mandatory in nature.(See ***Dr. Narayan Sharma & Anr. V. Dr. Pankaj Kr. Lehkar & Ors***., (2000) 1 SCC 44, ***State of Punjab v. Dayanand Medical College and Hospital and Others***, (2001) 8 SCC 664, ***State of MP & Ors. V. Gopal D. Tirthani & Ors.***, (2003) 7 SCC 83, ***Harish Verma & Ors. V. Ajay Srivastava & Anr***., (2003) 8 SCC 69).

60. In the case of ***Modern Dental College & Research Centre and Others v. State of Madhya Pradesh and Others***., (2016) 7 SCC 353, the Hon'ble Supreme Court held that the objective in prescribing minimum standards is to provide a benchmark of the caliber and quality of education being imparted by various educational institutions in the entire country. The standards of education are directly linked to the norms of admissions/ selection process, and Respondent No.2 is certainly competent to determine

such standards and to regulate the admission process as well as the admission criteria.

61. It is also pertinent to note that the earlier selection of post graduate students was done in various disciplines of medicine based upon a Common Entrance Test held by a State Government or a university, and the minimum percentage of marks for eligibility for admission to postgraduate medical course was 50% for general category students, and 40% for candidates belonging to the SC/ST and other backward classes.

62. The amended regulation was also subjected to scrutiny in the case of ***State of Punjab v. Dayanand Medical College and Hospital and Others,***, (2001) 8 SCC 664, and therein, the Hon'ble Supreme Court came to the conclusion that the candidate who has not obtained minimum marks prescribed for admission to Postgraduate Courses would not be entitled to relief, and admission granted, if any, to a student who has secured less than 50% marks must be cancelled.

63. In the case of ***Kaushal Singh & Ors. V. Uoi & Ors***, W.P.(C.) No. 716/2019, decided on 30.05.2019, the Hon'ble Supreme Court held that no mandamus could be issued to the Central Government/ Medical Council of India to lower the minimum percentile required for admission in postgraduate courses in an academic year. It was also held that the rules permit the Central Government in consultation with Medical Council of India to lower down the percentile, however, the Courts cannot issue a mandamus directing the Central Government/ Medical Council of India to lower down the percentile. In the case of ***Telangana Private Medical and Dental Colleges Management Association & Anr. V. Union of India & Ors,*** W.P.(C.) No. 764/2020 as well, the Hon'ble Supreme Court vide order

dated 30.07.2020 refused to issue any direction to waive off the minimum qualifying percentile required for admission in postgraduate courses.

64. A similar petition was preferred under Article 32 of the Constitution of India, titled as ***Sushil Badgaiya & Ors. v. Union of India & Ors***. W.P.(C.) No. 190/2022. The Petitioners therein were also seeking admission to postgraduate courses even though they had not obtained the minimum percentile fixed under the Regulations. The Hon'ble Supreme Court dismissed the said writ petition, and the order passed by Hon'ble Supreme Court reads as under:

> *"We are not inclined to entertain this writ petition filed under Article 32 of the Constitution of India. The Writ Petition is accordingly, dismissed. Pending application(s), if any, shall stand disposed of."*

84. Though the Petitioners have challenged the amended Regulation 9(3), however, at the same time, they have made a prayer to permit all candidates to participate in the counseling process irrespective of their merit even though they have scored less percentile than the minimum percentile fixed under the Regulation. The Petitioners have placed reliance on ***Vinod Pandya Vs. State of Gujarat & 2 Others***, 2014 SCC ONLINE Guj 403 to buttress their case. The said case pertains to Class -XII students from different Boards seeking admission in a B-Tech Course. The issue was regarding the method of normalization of marks from different Boards for preparing the merit list. In para 27, the Hon'ble Court therein held that the computation of percentile marks by making 60% of percentile score obtained by the candidate with reference to his Board Examination marks and adding to it 40 percentile score of JEE Exam was erroneous. Thus, the

specific manner/mode of computing percentile in the said case was found to be patently wrong. However, in NEET-PG, no such adding of different marks of different exams for computing percentile is taking place. The percentile in NEET-PG is purely based upon marks obtained in the said exam and, therefore, the judgment relied upon is of no help to the Petitioners.

65. The Petitioners have further placed reliance on ***Index Medical College, Hospital and Research Centre Vs. State of Madhya Pradesh & Ors*,**(2021) SCC Online SC 318. The case pertains to the challenge to a Rule of the State Act which prevented filling up of seats that had been vacated in the mop- up round of counseling, resulting in wastage of seats. Such a rule was formulated by the State to prevent blocking of seats in collusion with less meritorious candidates as well as, to promote transparency in counseling. The Hon'ble Court concluded that the Rule was excessive and unreasonable, in the light of the Article 19(1)g) providing the right to admit students to the college with reference to financial loss to the college. Thus, preventing the filling up of seats through the Rule was rejected. However, NEET-PG or the percentile system does not create a bar to fill up seats after the mop-up round of counseling. In fact, after the mop-up round of counseling, there is a stray vacancy round of counseling, for filling up of seats and, therefore, the judgment is again distinguishable on facts.

66. The Petitioners have further placed reliance on ***Harshit Agarwal & Ors Vs. Union of India and Others,*** (2021) 2 SCC 710. The case pertains to admission to a BDS Course, and the Petitioners therein were praying for lowering of percentile and the DCI had recommended lowering of the

percentile, while the Central Govt. had rejected the proposal. The Central Govt. had rejected the same on account of dearth of dentists as well as eligible candidates. The Hon'ble Court had concluded that once DCI had recommended for lowering of minimum marks and the Regulations provided for the same, the Central Govt. could not decline the same on the anvil of sufficient number of dentists in the Country. Thus, the Hon'ble Court had allowed lowering of marks by 10 percentile as the DCI had approved the same. In the present case, the Central Govt. in consultation with the NMC has, vide letter dated 12.03.2022 already lowered marks by 15 percentile for admission to PG Courses in the ongoing counseling for the academic year 2021-22. The same has been implemented from the mop-up round of counseling and the stray vacancy round of counseling and, therefore, the judgment is again distinguishable on facts.

67. The Petitioners place further reliance on ***Francisco D. Luis Vs. State of Maharashtra & Ors,*** 2008 SCC Online Bom 795 & ***Shri Francisco D. Luis V. The Director, Board of Secondary and Higher Secondary Education, Maharashtra & Anr,*** PIL No. 94 of 2008. The case pertains to the validity of the percentile method for admission of students to Class-XI. The issue was regarding method of normalization of marks obtained in Class X from different Boards for preparing a merit list. The Hon'ble Court had held that normalization of marks obtained by students from different Boards was impermissible since applicability of the same gave incongruous results, as it would be unfair to apply a method for altering the position of merit between students from different boards and also between students from the same board. Thus, the specific manner/mode of computing percentile in the said case was found to be bad, however, in NEET-PG, no such

normalization of marks for computing percentile is taking place. The percentile in NEET-PG is purely based upon marks obtained in the said exam. The judgment relied upon is again distinguishable on facts.

68. The Respondents have placed reliance on ***Union of India V. Federation of Self-Financed Ayurvedic College, Punjab & Others***, (2020) 12 SCC 115. The case pertains to the applicability of NEET for admission to BAMS, BUMS, BSMS & BHMS Courses, and the minimum qualifying marks for the same. The Central Govt. had defended the notification stating that minimum qualifying percentile for admission is required to be maintained to ensure minimum standard of education and general standards for admission to professional courses are fixed after detailed study, thus, correctness of such decisions is beyond the ambit of the Hon'ble Court. Identical arguments regarding a large number of seats remaining vacant on account of the insistence of minimum qualifying marks in NEET were made. The Hon'ble Court agreed that lack of minimum standards would result in half-baked doctors and non-availability of eligible candidates could not be a reason to lower the standard. The judgment favours minimum qualifying marks to be obtained in NEET for admission in PG Courses and also that lack of minimum standards would result in half-baked doctors, thus, non-availability of eligible candidates could not be a reason to lower the standard and, therefore, the judgment relied upon does not help the Petitioners.

69. The Respondents have further placed reliance on ***Saurabh Chaudri (Dr.) & Ors Vs. Union of India & Ors,*** (2004) 5 SCC 618. The case pertains to admission in PG Courses on the basis of the method of institutional preference. Institutional preference means the reservation of

50% of the total seats in an institution/college for candidates who have obtained MBBS qualification from the same university/ institution/college as the case may be. The Hon'ble Court had, while upholding the principle of institutional preference, also held that the right of a meritorious student cannot be permitted to be whittled down at the instance of a less meritorious student. In the present case, the Petitioner no.1 has obtained 136 marks out of a total of 800 marks (17%), the Petitioner no.2 has obtained 115 marks (14.37%) and Petitioner no.3 has obtained 45 marks (5.62%). Thus, even after lowering marks by 15 percentile for admission to PG Courses in the ongoing counseling for the academic year 2021-22, the Petitioners are clearly ineligible for admission and, therefore, no relief can be granted to the Petitioners based upon the aforesaid judgment.

70. This Court, keeping in view the various judgments delivered by the Hon'ble Supreme Court, is of the considered opinion that the Petitioners have not been able to make out a case of unreasonableness, manifestly arbitrariness, lack of legislative competence, violation of fundamental rights, violation of any provision of the Constitution of India, repugnancy of the laws, warranting interference by this Court in respect of the statutory provision which is the subject matter of challenge in the instant petition. Therefore, the question of quashing the statutory provision in the peculiar circumstances of the case does not arise merely because a large number of seats are lying vacant.

71. In the light of the above observations, this Court emphasizes that the lowering of the standards of medical education has the potential of wreaking havoc on society at large due to the risk that practice of medicine entails; it involves in its ambit the matter of life and death, and therefore, it would be

unconscionable for this Court to interfere in the standards duly and diligently set by the governing authority. This Court, therefore, cannot issue a mandamus directing the Respondents to fill up the seats, especially when the persons concerned have not obtained the minimum percentile as this Court is dealing with admissions to postgraduate courses in various medical colleges, and there cannot be any compromise on the issue of quality of doctors/ specialists as it involves a risk to human lives. Resultantly, no case for interference is made out in the matter.

72. The writ petition is accordingly dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JULY 29, 2022
N.Khanna