

(2014) 14 Supreme Court Cases 745

(BEFORE K.S.P. RADHAKRISHNAN AND DR A.K. SIKRI, JJ.)

a SAMTA AANDOLAN SAMITI AND ANOTHER . . . Petitioners;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (C) No. 677 of 2013[†], decided on December 11, 2013

b **Education and Universities — Professional Colleges/Education — Medical and Dental Colleges — Reservation of seats/Quota/Exemption/ Priority in Medical/Dental Institutions — Generally — Allotment of Seats/ Counselling for reserved category students — MBBS admission in the seven AIIMS — Counselling process/stage — Reservation right of choosing institute/discipline**

c — **Procedure: (a) higher choice being given to MRC (Meritorious Reserved Candidate), that is, one who secured a seat in open general category merit list than a candidate in the reserved category merit list; and (b) seat vacated by MRC in respect of said higher choice not being given to a general category candidate but to a reserved category candidate next in merit list belonging to same reservation category as the MRC who vacated his/her seat for the said higher choice — Whether valid and justifiable and whether violates the principle of 50% ceiling on reservation**

d

— **Said procedure of adjustment of MRC candidates, by giving them higher choice in respect of institutions/discipline, held, is valid and justifiable and does not violate the principle of 50% ceiling on reservation — Clarified that (i) present approval of Supreme Court for said procedure is limited to admission in MBBS course and not postgraduate courses and that too in only the seven AIIMS, (ii) said approval did not apply to appointment in government service, and (iii) such MRC availing the benefit/right of higher choice would be continued to be treated as belonging to general category, which position he attained because of his initial merit — Constitution of India — Arts. 15(4) and 14 — Professional Colleges/ Education — Medical and Dental Colleges — Medical/Dental Institutions Statutes, Rules, Regulations and Norms — AIIMS Prospectus for Admission to MBBS — Para 4.2 and Counselling Letter dt. 10-7-2013**

e

f

g The authorities pleaded that they applied the method laid down in *Ritesh R. Sah*, (1996) 3 SCC 253. And that they first found out the Meritorious Reserved Candidate (MRC), who were candidates among reserved categories who qualified on their own merit on the open general merit list. Thereafter, they asked the MRCs to choose the institute of their choice which is present in their reserved category and not in unreserved category. And that this method gives them the option to opt for a better institution of their choice in reserved category and once that is done such candidates are given those reserved seats but while computing the percentage of reservation they are not counted against reservation pool. And that to achieve that objective, the seat which is vacated by a MRC is offered to the same reserved category as that of the vacating MRC below in

h

[†] Under Article 32 of the Constitution of India

746

SUPREME COURT CASES

(2014) 14 SCC

merit. It is thus pleaded that 50% of the ceiling is never broken in the present counselling and thus MRCs can be put in the list of general/unreserved category, as held by the Supreme Court in *Indra Sawhney*, 1992 Supp (3) SCC 217.

However, the objection of the writ petitioners was to the method of counselling. The objection was that as per Para 4 of the counselling letter, choice was given to MRCs to opt for a better institution of their choice for which he/she would have been eligible as per the rules of reservation. Allegedly, as per the writ petitioners this methodology was impermissible as once a candidate in the reserved category had taken admission under the open competition, he could not have been given a choice for better institution on the premise that he/she will be governed by the rules of reservation. (Para 16)

Dismissing the writ petition, the Supreme Court

Held :

Before deciding the issues, it is clarified that the present case is related to admission in a medical course, and the present judgment is confined to cases of admissions and not appointment into the service under the Government. Further, this applies only to MBBS course and not postgraduate courses. Further, the present matter is confined to the admission process in the seven AIIMS only and the position explained does not relate to those cases where their admissions are in different colleges. The judgment has to be viewed in the light of said clarifications. (Para 18)

It is now a well-entrenched principle of law that those members belonging to the reserved category who get selected in the open competition on the basis of their own merit have a right to be included in the general list/unreserved category and not to be counted against the quota reserved for the Scheduled Castes. This was recognised by the Constitution Bench judgment of the Supreme Court in *Indra Sawhney*, 1992 Supp (3) SCC 217 and has been followed in a series of judgments thereafter. Thus, when certain persons belonging to the reserved category get selected in open competition on the basis of their merit, they are not to be counted in the reserved category against the reserved category quota. It is open to the authorities to fill the posts meant for reserved category candidates from amongst the persons in such categories after excluding those who have found their place in general merit. As a fortiori, while calculating the limit of 50% reservation, those candidates belonging to reserved category who have found their place on the basis of their merit competing with general candidates are not to be taken into consideration. It is also not in dispute that such OBC/SC candidates who have been included in general category have come in that category on their own merit with no relaxation of the eligibility level i.e. percentage of marks. (Para 16)

Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, followed

M.R. Balaji v. State of Mysore, AIR 1963 SC 649; *T. Devadasan v. Union of India*, AIR 1964 SC 179; *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310 : 1976 SCC (L&S) 227; *V. Narayana Rao v. State of A.P.*, AIR 1987 AP 53, cited

Thus, MRCs have a right to be included in the general/unreserved category. Such MRCs are not to be included in the quota reserved for the Scheduled Castes, OBCs, etc. It is an admitted position that if these persons are excluded, the respondent authorities have not exceeded the quota meant for the reserved category. The respondent authorities, at the time of counselling, have only accorded a higher/better choice to these MRCs who got recommended against

SAMTA AANDOLAN SAMITI v. UNION OF INDIA

747

- general/unreserved seats vis-à-vis those reserved category candidates who are accommodated against their quota. It is, therefore, an inter se adjustment between the two kinds of persons belonging to the reserved category. In their inter se merit, these persons who have been able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of candidates belong to the reserved category. Thus, if between these two categories of persons belonging to the same class, higher choice is not given to the persons who are better in merit viz. the MRCs, it would clearly be injustice to them. This was precisely the issue which was referred for decision to the Constitution Bench in *Ramesh Ram*, (2010) 7 SCC 234. (Paras 19 and 17)

- Insofar as admission in educational institutions is concerned, MRCs shall continue to be treated as belonging to the general category, which position he attained because of his initial merit. Thus neither is the upper limit of 50% reservation breached, nor are any rights of the petitioners violated or the action of the respondents have been to their prejudice in any manner. Thus, there is no merit in the present petition, which is accordingly dismissed. No costs. (Paras 21 to 24)

- Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412; *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253, *clarified and relied on*
Yoganand Vishwasrao Patil v. State of Maharashtra, (2005) 12 SCC 311 : 5 SCEC 549, *impliedly relied on*
Anurag Patel v. U.P. Public Service Commission, (2005) 9 SCC 742 : 2005 SCC (L&S) 563, *cited*

SS-D/52679/S

Advocates who appeared in this case :

- A. Mariarputham, Senior Advocate [M.L. Lahoty, Paban K. Sharma, Shobhit Tiwari, Ms Gargi B. Bharali, Lal Pratap Singh, Ram Niwas, Umesh Pratap Singh, Ms Ruchi Kohli, Gopal Sankaranarayanan, Vikramaditya, Dr R.R. Kishore, Shiva Pujan Singh, Ms Niranjana Singh, Kumar Rajan Mishra, Narender S. Yadav, Alok Prasanna Kumar, D.L. Chidananda, B. Krishna Prasad, Yusuf Khan, Mehmood Pracha, Suit Babbar and Naresh Kumar (for AIIMS), Advocates] for the appearing parties.

Chronological list of cases cited

on page(s)

1. (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412, *Union of India v. Ramesh Ram* 752b-c, 758h, 759g-h, 760b, 760e, 760f-g, 761f-g
2. (2005) 12 SCC 311 : 5 SCEC 549, *Yoganand Vishwasrao Patil v. State of Maharashtra* 759b-c
3. (2005) 9 SCC 742 : 2005 SCC (L&S) 563, *Anurag Patel v. U.P. Public Service Commission* 760c-d
4. (1996) 3 SCC 253, *Ritesh R. Sah v. Y.L. Yamul* 753b, 760c-d, 761a, 761a-b, 761c
5. 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, *Indra Sawhney v. Union of India* 751a, 754e, 754e-f, 754f, 758c-d
6. AIR 1987 AP 53, *V. Narayana Rao v. State of A.P.* 757f
7. (1976) 2 SCC 310 : 1976 SCC (L&S) 227, *State of Kerala v. N.M. Thomas* 756a
8. AIR 1964 SC 179, *T. Devadasan v. Union of India* 756a
9. AIR 1963 SC 649, *M.R. Balaji v. State of Mysore* 754g, 755b

The Judgment of the Court was delivered by

DR A.K. SIKRI, J.— The petitioners have approached this Court by way of filing the present writ petition filed under Article 32 of the Constitution of India with the grievance that while making admissions in the MBBS course, the respondent, All India Institute of Medical Sciences (AIIMS) is not strictly adhering to the reservation policy and have questioned the manner in which seats are allotted to the candidates belonging to reserved category. As per them, AIIMS has far exceeded the quota prescribed for the reserved category candidates which has resulted in more than 50% reservations of the seats, which is contrary to the law laid down by this Court. The stand of AIIMS, on the other hand, is that there is no violation of the law laid down by this Court in this behalf and the methodology adopted by AIIMS for admission in MBBS course is perfectly valid and justified.

2. The controversy has arisen in the following backdrop: the All India Institute of Medical Sciences (AIIMS), New Delhi issued a prospectus for admission in the MBBS course starting from August 2013 along with admission in six new AIIMS at Bhopal, Patna, Jodhpur, Rishikesh, Raipur and Bhubaneswar with an intake of 100 students in each new AIIMS. The reservation policy was notified to be 7.5% ST, 15% SC, 27% OBC and for Indian nationals, 3% reservation for orthopaedic physically handicapped to be provided on horizontal basis.

3. Para 4.2 of the prospectus prescribe the procedure for selection into the MBBS course hereunder:

“4.2 *Procedure of selection.*—Based on the result of the competitive entrance examination, merit lists will be prepared as below:

(a) Common merit list: Subject to the Government of India, DoPT OM No. 36011/1 of 1998.Estt.(Res), dated 1-7-1998.

It is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc. the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against the unreserved vacancies. Therefore the reserved candidate will be considered on general seat only if no relaxation of the eligibility level (i.e. percentage of marks) and at cut-off level of marks in MBBS entrance examination is given.

(b) Scheduled Caste candidates list

(c) Scheduled Tribe candidates list

(d) Other Backward Classes candidates list

Thirty seven (37) candidates from the common merit list, eleven (11) candidates from the merit list of Scheduled Caste category and five (5) candidates from the merit list of Scheduled Tribes and nineteen (19)

candidates from the merit list of Other Backward Classes category will be admitted including 3% reservation for orthopaedic physically handicapped on horizontal basis in the seats available.

a

The reservation will be 7½% ST, 15% SC and 27% for OBC category.

In case eleven (11) candidates from the Scheduled Caste or five (5) candidates from the Scheduled Tribe categories and nineteen (19) candidates belonging to OBC are not available, then the number of candidates selected on the basis of merit for general seats shall be correspondingly increased so that the total number of candidates selected for the MBBS course remains seventy-two (72). The remaining candidates will be kept on the waiting list in order of merit.

b

The inter se merit of two or more candidates in the same category obtaining equal marks in the competitive entrance examination will be determined in order of preference as under:

c

(a) Candidates obtaining higher marks in Biology in the entrance examination.

(b) Candidates obtaining higher marks in Chemistry in the entrance examination.

(c) Candidates obtaining higher marks in Physics in the entrance examination.

(d) Candidates older in age to be preferred.

d

A similar procedure for selection will apply for the six new AIIMS where the number will be calculated for a total of 100 admissions for each.”

4. Petitioner 2 being eligible in all respects under unreserved category had submitted his application form and was allotted Application Form No. 1021016668. He was issued the admit card for AIIMS-MBBS 2013 Entrance Examination. Petitioner 2 appeared in the competitive entrance examination held on 1-6-2013 and secured 1066 overall rank. A counselling letter was issued for counselling at Delhi AIIMS on 10-7-2013 to 12-7-2013 and Petitioner 1 was called for counselling scheduled to be held on 10-7-2013. That as per the counselling letter the method of counselling is:

e

“4. *Method of counselling.*—The following process will be adopted for counselling for all 7 AIIMS institutes:

f

(i) In the counselling process, the seats to be filled by open (UR) competition should be filled up first, wherein the candidates should be called for counselling based on merit alone irrespective of whether they belong to SC, ST or OBC.

g

(ii) Next, reservation categories like SC/ST/OBC candidates will be counselled to fill up the seats earmarked for them in their respective categories. During this process, if a candidate belonging to SC/ST/OBC who had taken admission under open competition, opts for a better institution of his/her choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open (UR) competition shall be filled with a candidate from the same reservation category only, in order of merit.

h

Note: All reserved category candidates who qualify in the open (general) merit list (i.e. 4 times of the open category seats) shall

750

SUPREME COURT CASES

(2014) 14 SCC

necessarily attend the counselling for the open category seats and shall exercise his/her option and then if, he/she desires to opt for a different institution in his/her respective reserved category, he/she may attend the counselling meant for that reserved category. a

Provided:

(a) If he/she is not present or if present, fails to or refused to take a seat in the open category, he/she shall not be allowed for attending the counselling for reserved seats.

(b) He/she cannot opt for institution under reservation, if he/she had already opted the same institution in the open category. b

Methods of counselling: In the counselling process, the seats to be filled by open (UR) competition should be filled up first, wherein the candidates should be called for counselling strictly by merit alone till the last unreserved seat is filled, irrespective of whether they belong to SC, ST or OBC. The counselling for reserved category seat (which will also be strictly by merit) should commence only after filling up of all the unreserved seats (i.e. open category seats). The meritorious reserved candidate belonging to SC/ST/OBC category, who has taken unreserved seat in any institution after attending the open merit counselling, if exercises his/her option to take a different institute in the reserved category counselling, the seat so vacated by this candidate should be available to the next meritorious candidate belonging to that particular reserved category only. In other words if SC/ST/OBC candidate got any institution under unreserved category and if he/she opts a different institution under reserved category of his/her choice the resultant vacated unreserved seat shall be allotted to same category candidate in order of merit i.e. the vacated seat of meritorious reserved category candidate should be immediately added to the seats available under the reserved category in the institute he/she had opted during counselling for UR seat. c
d
e

Note: For example—if a SC meritorious candidate who has initially opted a X institution from open category, vacates a seat in open category because he wants to take Y institution from reserved category during the counselling in reserved category, the same seat (i.e. UR seat of X institute) which is vacated by him/her shall be made available to the next SC candidate in order of merit.” f

5. Petitioner 2 appeared in the counselling (first counselling) conducted by the respondents. The petitioners aver that the respondents had conducted the counselling in strict adherence to the procedure quoted hereinabove. However, the respondents forced the reserved candidates to obtain the unreserved (UR) seats by note (4.2.a) in the counselling call letter. In this way the respondents deliberately tried to convert UR seats to reserved category seats because of Note 4.2. Otherwise, the candidates would have been provided freedom to opt seats under UR seats or category seats of their choice in different AIIMS. It is averred that the common practice in the counselling of NEET (National Eligibility-cum-Entrance Test), AIPMT (All India Pre-Medical Test) and States counselling for admission in Government Medical Colleges, is parallel counselling for all categories on their g
h

merit-cum-choice basis in which unreserved seats are filled first as per rule framed by this Court in *Indra Sawhney case*¹.

a 6. It is stated that Petitioner 2 has secured Rank 1066 in the competitive entrance examination and counselling for unreserved seats on the first day of counselling could reach up to 663 ranks only. In the counselling done for unreserved seats approximately around 140 reserved category candidates found place on general seats.

b 7. On the second day of counselling, which is for Other Backward Classes (OBCs) category, the counselling started from rank first for OBC and approximately around 120 OBC candidates, who secured their merit position in the unreserved category opted for better colleges from their counterparts in unreserved category by enjoying their reserved status on OBC seats. In other words, the seats/position occupied by meritorious reserved category candidates was vacated. All vacated seats and 181 reserved seats were filled on 11 July by comparative low rank OBC candidates. By adding this around 45% of candidates from OBC took the benefit of quota instead of 27%. The case sought to be set up is that by this procedure it exceeds the limit given by the Constitution.

d 8. This position is sought to be highlighted by the following MBBS seat position in each AIIMS:

<i>Name of Institution</i>	<i>Total seats</i>	<i>UR</i>	<i>OBC</i>	<i>SC</i>	<i>ST</i>
AIIMS, New Delhi	72	37	19	11	5
AIIMS, Bhopal	100	50	27	15	8
AIIMS, Bhubaneswar	100	50	27	15	8
e AIIMS, Jodhpur	100	50	27	15	8
AIIMS, Patna	100	50	27	15	8
AIIMS, Raipur	100	50	27	15	8
AIIMS, Rishikesh	100	50	27	15	8
<i>Total</i>	<i>672</i>	<i>337</i>	<i>181</i>	<i>101</i>	<i>53</i>

f 9. It is stated that as against 181 seats meant for OBC category, 270 seats have been filled from amongst the candidates belonging to this category which is evidentially impermissible. By the time this matter was argued, as the third and final counselling had taken place, the allotment of the seats was done on the basis of that counselling. The final picture which emerged, is that the last unreserved candidates who secured admission in the reserved category had a rank of 1476. There were 79 candidates in OBC category who had higher rank than 1476 and were, thus, adjusted as meritorious reserved category candidates (MRC) in unreserved category. Likewise, this SC candidate with rank above 1476 could make their way to unreserved list.

h

¹ *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

10. On the aforesaid basis, the following prayers are made in the writ petition:

“(a) Pass a writ, order or direction whereby the respondents be directed to give admission to Petitioner 1 in unreserved category in MBBS course 2013,

(b) Pass a writ, order or direction whereby Direction 4 (reproduced at Para 8 of the writ petition) in the counselling letter prescribing the procedure for counselling be quashed and set aside.

(c) Pass a writ, order or direction whereby the respondents be directed to make strict compliance of the Hon’ble Supreme Court’s judgment passed in *Union of India v. Ramesh Ram*².

(d) Pass a writ, order or direction whereby the respondents be restrained to permit the reserved category candidates to occupy the seats in unreserved category vacated by meritorious category candidates, who have opted/chosen their reserved category for seeking admission in MBBS course 2013.

(e) Pass a writ, order or direction whereby the respondents be directed to undertake the admission exercise for MBBS course 2013 strictly in terms of prayer sought in para (c).

(f) Pass such other or further order(s) as this Hon’ble Court may deem fit in the facts and circumstances of the case.”

11. After issuance of the show-cause notice, the respondents appeared. Since the main contesting party is AIIMS, the counter-affidavit on its behalf was filed by Dr A.B. Dey, Dean (Research) who had acted as the Convener of the counselling in the aforesaid admission process. It is stated by him in his affidavit that the process of counselling was discussed and finalised in the meeting held on 26-5-2013 with all Directors, AIIMS, senior officials and senior faculties. The minutes of the meeting, inter alia, mentioned that:

“... it was mandatory for all candidates to be present in person for counselling on the days as given in the call letter. No request for authorised representative to be present on behalf of candidate would be entertained. If a candidate failed to come for counselling in person, she/he would be marked absent and her/his candidature would stand cancelled...”

12. It is also stated in the counter-affidavit that in this meeting it was decided to constitute a Counselling Committee to undertake three rounds of counselling for MBBS and two rounds of counselling for BSc (Hons.) Nursing for the seven AIIMS. For this reason, in the counselling letter, attention of the candidates was drawn to the provision in the prospectus whereby candidates were asked to give choice about different AIIMS where they would like to be admitted. They were also informed that allocation of seats will be done on merit-cum-choice. In the counselling letter, therefore, the candidates were informed that they would exercise their choice of the

particular institute when called during the counselling as per the rank in the respective category. Notwithstanding whatsoever choices he/she had made while filling the form, the choice thus made was to be final and no claim whatsoever on the basis of the choices made in the admission form was to be entertained. This was widely circulated through newspaper advertisement and posted on AIIMS website as well, well in advance.

a

13. It is pleaded that this method of counselling adopted by AIIMS was in tune with the judgment of this Court in *Ritesh R. Sah v. Y.L. Yamul*³. The exact nature of the counselling method which was adopted is stated below:

b

“(1) In the counselling process, the seats to be filled by open (UR) competition should be filled up first, wherein the candidates should be called for counselling based on merit alone irrespective of whether they belong to SC, ST or OBC.

c

(2) Next, reservation categories like SC/ST/OBC candidates will be counselled to fill up the seats earmarked for them in their respective categories. During this process, if a candidate belonging to SC/ST/OBC who had taken admission under open competition, opts for a better institution of his/her choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open (UR) competition shall be filled with a candidate from the same reservation category only, in order of merit.

d

Note: All reserved category candidates who qualify in the open (general) merit list (i.e. 4 times of the open category seats) shall necessarily attend the counselling for open category seats and shall exercise his/her option and then if, he/she desires to opt for a different institution in his/her respective reserved category, he/she may attend the counselling meant for that reserved category.

e

Provided

(a) If he/she is not present or if present, fails to or refuses to take a seat in open category, he/she shall not be allowed for attending the counselling for reserved seats.

(b) He/she cannot opt for institution under reservation, if he/she had already opted the same institution in open category.

f

Methods of counselling

In the counselling process, the seats to be filled by open (UR) competition should be filled up first, wherein the candidates should be called for counselling strictly by merit alone till the last unreserved seat is filled, irrespective of whether they belong to SC, ST or OBC.

g

The counselling for reserved category seat (which will also be strictly by merit) should commence only after filling up of all the unreserved seats (i.e. open category seats). Meritorious reserved candidate belonging to SC/ST/OBC category, who has taken unreserved seat in any institution after attending the open merit counselling, if exercises his/her option to take a different institute in the reserved category counselling, the seat so vacated by this candidate should be available to next meritorious candidate belonging to

h

754

SUPREME COURT CASES

(2014) 14 SCC

that particular reserved category only. In other words if SC/ST/OBC candidate got any institution under unreserved category and if he/she opts different institution under reserved category of his/her choice the resulting vacated unreserved seat shall be allotted to same category candidate in order of merit i.e. the vacated seat of meritorious reserved category candidate should be immediately added to the seats available under that reserved category in the institute he/she had opted during counselling for UR seat.

Note: For example—if a SC meritorious candidate who has initially opted a X institution from open category, vacates a seat in open category because he wants to take Y institution from reserved category during his counselling in reserved category, the same seat (i.e. UR seat of X institute) which is vacated by him/her shall be made available to the next SC candidate in order of merit.”

14. It is pleaded that with the adoption of the aforesaid method, the authorities found out the candidates among reserved candidates who qualified on their own merit and are on the open merit list and then asking their option if they want to choose other institute of their choice which is present in their reserved category and not in unreserved category. This method gives them the option to change the institute in their better choice in reserved category and once that is done such candidates are given those reserved seats but while computing the percentage of reservation they are not counted against reservation pool. To achieve that objective, the seat which they vacated is offered to the same reserved category below in merit. It is thus pleaded that 50% of the ceiling is never broken in the present counselling and thus persons belonging to reserved category, who are able to come on their own merit while competing with the general candidates category can be put in the list of general/unreserved category, as held by this Court in *Indra Sawhney v. Union of India*¹.

15. We have already quoted the general proposition of law, insofar as the extent of reservation is concerned, as laid down in *Indra Sawhney*¹. Mr Lahoti has placed reliance on paras 803, 804, 807 and 809 of this judgment whereas the learned counsel for the respondent led emphasis on paras 811 and 813. In *Indra Sawhney*¹ the principle was stated in the following terms: we quote hereunder all these paragraphs: (SCC pp. 731-36)

“PART V

(Questions 6, 7 and 8)

Question 6:

To what extent can the reservation be made?

(a) *Whether the 50% rule enunciated in Balaji*⁴ *a binding rule or only a rule of caution or rule of prudence?*

1 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

4 *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649

SAMTA AANDOLAN SAMITI v. UNION OF INDIA (*Dr Sikri, J.*) 755

(b) Whether the 50% rule, if any, is confined to reservations made under clause (4) of Article 16 or whether it takes in all types of reservations that can be provided under Article 16?

a

(c) Further, while applying 50% rule, if any, whether a year should be taken as a unit or whether the total strength of the cadre should be looked to?

* * *

804. In *Balaji*⁴, a Constitution Bench of this Court rejected the argument that in the absence of a limitation contained in Article 15(4), no limitation can be prescribed by the Court on the extent of reservation. It observed that a provision under Article 15(4) being a 'special provision' must be within reasonable limits. It may be appropriate to quote the relevant holding from the judgment: (AIR pp. 662-63, paras 31 & 34)

b

'31. When Article 15(4) refers to the special provision for the advancement of certain classes or Scheduled Castes or Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interest of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). ... the Constitution intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored.

c

d

e

* * *

34. ... A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case.'

f

g

h

⁴ *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649

756

SUPREME COURT CASES

(2014) 14 SCC

In *Devadasan*⁵ this rule of 50% was applied to a case arising under Article 16(4) and on that basis the carry-forward rule was struck down. In *Thomas*⁶, however, the correctness of this principle was seriously questioned. Fazal Ali, J. observed: (SCC p. 387, para 191) a

‘191. This means that the reservation should be within the permissible limits and should not be a cloak to fill all the posts belonging to a particular class of citizens and thus violate Article 16(1) of the Constitution indirectly. At the same time clause (4) of Article 16 does not fix any limit on the power of the Government to make reservation. Since clause (4) is a part of Article 16 of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no hard-and-fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50%. As I read the authorities, this is, however, a rule of caution and does not exhaust all categories. Suppose for instance a State has a large number of backward classes of citizens which constitute 80% of the population and the Government, in order to give them proper representation, reserves 80% of the jobs for them, can it be said that the percentage of reservation is bad and violates the permissible limits of clause (4) of Article 16? The answer must necessarily be in the negative. The dominant object to this provision is to take steps to make inadequate representation adequate.’ b
c
d
e

Krishna Iyer, J. agreed with the view taken by Fazal Ali, J. in the following words: (SCC p. 371, para 143)

‘143. ... I agree with my learned Brother Fazal Ali, J., in the view that the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far. Overall representation in a department does not depend on recruitment in a particular year, but the total strength of a cadre. I agree with his construction of Article 16(4) and his view about the ‘carry-forward’ rule.’ f

Mathew, J. did not specifically deal with this aspect but from the principles of ‘proportional equality’ and ‘equality of results’ espoused by the learned Judge, it is argued that he did not accept the 50% rule. Beg, J. also did not refer to this rule but the following sentence occurs in his judgment at pp. 962 and 963: (SCC p. 354, para 99) g

‘99. ... If a reservation of posts under Article 16(4) for employees of backward classes could include complete reservation of h

⁵ *T. Devadasan v. Union of India*, AIR 1964 SC 179

⁶ *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310 : 1976 SCC (L&S) 227

SAMTA AANDOLAN SAMITI v. UNION OF INDIA (*Dr Sikri, J.*)

757

a *higher posts to which they could be promoted, about which there could be no doubt now, I fail to see why it cannot be partial or for a part of the duration of service and hedged round with the condition that a temporary promotion would operate as a complete and confirmed promotion only if the temporary promotee satisfies some tests within a given time.'*

b Ray, C.J. did not dispute the correctness of the 50% rule but at the same time he pointed out that this percentage should be applied to the entire service as a whole.

* * *

c 807. We must, however, point out that clause (4) speaks of adequate representation and not proportionate representation. *Adequate representation** cannot be read as *proportionate representation**. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State Legislatures in favour of the Scheduled Tribes and the Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits—and what is more reasonable than to say that reservation under clause (4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of the Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in *V. Narayana Rao v. State of A.P.*⁷, striking down the enhancement of reservation from 25% to 44% for OBCs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.

* * *

g 809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

* * *

h 811. ... it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen

* **Ed.:** These words are emphasised in the original.

7 AIR 1987 AP 53

758

SUPREME COURT CASES

(2014) 14 SCC

that some members belonging to, say, the Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for the Scheduled Castes; they will be treated as open competition candidates. a

* * *

813. It is, however, made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be—indeed cannot be—applicable to exemptions, concessions or relaxations, if any, provided to ‘backward class of citizens’ under Article 16(4).” b
(emphasis supplied)

16. There is no quarrel up to this stage. It is now a well-entrenched principle of law that those members belonging to the reserved category who get selected in the open competition on the basis of their own merit have a right to be included in the general list/unreserved category and not to be counted against the quota reserved for Scheduled Castes. This was recognised by the Constitution Bench judgment of this Court in *Indra Sawhney*¹ and has been followed in a series of judgments thereafter. Thus, when certain persons belonging to the reserved category get selected in open competition on the basis of their merit, they are not to be counted in the reserved category against the reserved category quota. It is open to the authorities to fill the posts meant for reserved category candidates from amongst the persons in such categories after excluding those who have found their place in general merit. As a fortiori, while calculating the limit of 50% reservation, those candidates belonging to reserved category who have found their place on the basis of their merit competing with general candidates are not to be taken into consideration. It is also not in dispute that such OBC/SC candidates who have been included in general category have come in that category on their own merit with no relaxation of the eligibility level i.e. percentage of marks. However, the objection of Mr Lahoti, learned counsel for the petitioner, was to the method of counselling which was adopted in the present case as that has come, no doubt, above to the persons in reserved categories. He submitted that as per Para 4 of the counselling letter choice was given to SC/ST/OBC candidates who had taken admission in the open competition, to opt for a better institution of their choice for which he/she would have been eligible as per the rules of reservation. This, according to him, was impermissible as once a candidate in the reserved category had taken admission under the open competition, he could not have been given a choice for better institution on the premise that he/she will be governed by the rules of reservation. For this reason, he took strong objection to the note appended to Para 4 of the counselling letter as well which facilitated this process. He, thus, submitted that the counselling letter/circular was opposed to the provision made in the prospectus and was also contrary to the judgment of this Court in *Union of India v. Ramesh Ram*². c d e f g

1 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 h

2 (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412

17. The learned counsel for the respondent, on the other hand, maintained that 50% quota had not been breached and what was done in fact
- a was inter se adjustment among those who belong to the reserved class i.e. those who were selected on their own merit and found their way into general category vis-à-vis those who were admitted on the basis of reservation provided in the respective reserved categories. He argued that this was necessary as otherwise those persons from reserved category who were more meritorious would be in a disadvantageous position vis-à-vis those who
 - b secured admission on the basis of relaxed standard under the reserved quota meant for them. His submission was that this was approved by this Court in *Yoganand Vishwasrao Patil v. State of Maharashtra*⁸.

18. We have considered the submissions of the counsel of both the parties. At the outset, we would like to point out that in the present case, we are dealing with the case of admission in a medical course, and the position
- c which we are going to explain in the subsequent paragraphs is confined to cases of admissions and not appointment into the service under the Government. Further, this applies only to MBBS course and not postgraduate courses. Further, we are concerned herein with the admission process in the seven AIIMS only and the position explained does not relate to those cases where their admissions are in different colleges. With this clarification, we
 - d proceed to deal with the issue.

19. It is stated at the cost of repetition that those members who belong to reserved category but get selected in the open competition on the basis of their own merit have a right to be included in the general/unreserved category. Such MRC are not to be included in the quota reserved for the Scheduled Castes, etc. It is an admitted position that if these persons are
- e excluded, the respondents have not exceeded the quota meant for the reserved category. The respondents, at the time of counselling, have only accorded a higher/better choice to these meritorious reserved candidates (MRC) who got recommended against general/unreserved seats vis-à-vis those reserved category candidates who are accommodated against their quota. It is, therefore, an inter se adjustment between the two kinds of persons belonging
 - f to the reserved category. In their inter se merit, these persons who have been able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of candidates belong to the reserved category. Thus, if between these two categories of persons belonging to the same class, higher choice is not given to the persons who are better in merit viz. the MRCs, it
 - g would clearly be injustice to them. This was precisely the issue which was referred for decision to the Constitution Bench in *Ramesh Ram*². In para 3 of the judgment, the Constitution Bench stated the question which was referred for its decision and, the same reads as follows: (SCC p. 238)

h

8 (2005) 12 SCC 311 : 5 SCEC 549

2 *Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412

760

SUPREME COURT CASES

(2014) 14 SCC

“3. ... whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category?” a

20. In the light of the submissions made by the counsel for the parties, the Court framed three questions which had arisen for consideration and the same are as under: (*Ramesh Ram case*², SCC p. 243, para 20)

“I. Whether the reserved category candidates who were selected on merit (i.e. MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of ‘service allocation’? b

II. Whether Rules 16(2), (3), (4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14, 16(4) and 335 of the Constitution of India? c

III. Whether the order of the Central Administrative Tribunal was valid to the extent that it relied on *Anurag Patel v. U.P. Public Service Commission*⁹ (which in turn had referred to the judgment in *Ritesh R. Sah v. Y.L. Yamul*³, which dealt with reservations for the purpose of admission to postgraduate medical course); and whether the principles followed for reservations in admissions to educational institutions can be applied to examine the constitutionality of a policy that deals with reservation in civil services.” d

21. Dealing with the first question which directly arises in the present case, the Court in *Ramesh Ram case*² clarified that a distinction is to be maintained between the cases dealing with the admission to educational institutions and appointment to a service. The Court accepted the general proposition that such a course of action affords meritorious reserved candidates (MRC), the benefit of reservation insofar as service allocation is concerned, if this is not done, lesser meritorious reserved candidates would be able to secure a better discipline. Therefore, this course of action preserves and protects inter se merit amongst the reserved candidates. e

22. No doubt, while doing so, the Court in *Ramesh Ram case*² was of the opinion that such meritorious reserved candidates (MRC) who avail the benefit of Rule 16(2) of the Civil Services Examination Rules (which permitted such inter se transfer) and are eventually adjusted in the reserved category, they should be counted as part of the reserved category for the purpose of computing the aggregate reservation quota. However, it was categorically stated that this proposition applies when there is an appointment to a service under the State and categorically excluded the cases of admission in educational institutions. Insofar as admission in educational g

² *Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412

⁹ (2005) 9 SCC 742 : 2005 SCC (L&S) 563

³ (1996) 3 SCC 253

h

institutions is concerned, such a MRC was to continue to be treated as belonging to the general category, which position he attained because of his initial merit. The Court noted that this was so held in *Ritesh R. Sah v. Y.L. Yamul*³.

a

23. The question in *Y.L. Yamul case*³ was whether a reserved category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the reserved category or should he be treated as a general candidate? The Court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved for Schedule Castes or any other reserved category. It was so held in the following words: (*Y.L. Yamul case*³, SCC pp. 261-62, para 17)

b

c

d

e

f

“17. ... In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.”

24. Since we are concerned with the admission to a medical course, the aforesaid judgment in *Ramesh Ram case*² squarely applies to the present case. Thus we find that neither is the upper limit of 50% reservation breached, nor are any rights of the petitioners violated or the action of the respondents have been to their prejudice in any manner. Thus, we do not find any merit in the present petition, which is accordingly dismissed. No costs.

g

h

³ (1996) 3 SCC 253

² *Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412