TAMIL NADU MEDICAL OFFICERS ASSOCIATION AND ORS. A

v.

UNION OF INDIA AND ORS.

(I. A. No. 33686 of 2018)

in B

(Writ Petition (Civil) No. 196 Of 2018)

APRIL 24, 2018

[DIPAK MISRA, CJI, A. K. SIKRI, A. M. KHANWILKAR, DR. D. Y. CHANDRACHUD AND ASHOK BHUSHAN, JJ.] C

Post Graduate Medical Education Regulations, 2000:

Regulation 9 – Writ petition challenging the Regulation – Provisions of the Regulation was considered in Dinesh Singh Chauhan *case by three Judge Bench – Matter referred to Constitution Bench for reconsideration of* *Dinesh Singh Chauhan *case – Stay of operation of the Regulation sought to the extent the provision is deemed to prohibit the States from providing a separate source of entry to in-service candidates seeking admission to post-graduate courses – Direction sought permitting the State Government to implement its policy of providing for a separate source of entry to in-service candidates for admission to post-graduate courses for academic year 2018-19 – Interim relief also referred to Constitution Bench – Considering the interim relief, the Court held:* Dinesh Singh Chauhan *case had construed the provision in Regulation 9(iv) after taking due note of the decisions of Constitution Bench – The decision in* Dinesh Singh Chauhan *case still holds the field and cannot be brushed aside at the stage of deciding interim relief – Grant of interim relief at this stage would amount to a mandatory final order and hence refused – Interlocutory order.* D E F

State of Uttar Pradesh v Dinesh Singh Chauhan* **(2016) 9 SCC 749 : [2016] 6 SCR 571; *R Chitralekha v. State of Mysore* **[1964] 6 SCR 368**; *Kumari Chitra Ghosh v. Union of India* **(1969) 2 SCC 228 : [1970] 1 SCR 413**; *Modern Dental College and Research Centre v State of Madhya Pradesh* **(2016) 7 SCC 353**; *K Duraisamy v.* G

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A *State of Tamil Nadu* **(2001) 2 SCC 538 : [2001] 1 SCR 490**; *AIIMSStudents' Union v. AIIMS* **(2002) 1 SCC 428 : [2001] 2 Suppl. SCR 79**; *State of M P v. Gopal D Tirthani* **(2003) 7 SCC 83 : [2003] 1 Suppl. SCR 797**; *Sudhir N v. State of Kerala* **(2015) 6 SCC 685 : [2015] 1 SCR 884**; *Dr Preeti Srivastava v. State of M P* **(1999) 7 SCC 120 : [1999] 1 Suppl. SCR 249 – referred to.**

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Case Law Reference

[2016] 6 SCR 571	**referred to**	**Para 1**
[1964] 6 SCR 368	**referred to**	**Para 2**
[1970] 1 SCR 413	**referred to**	**Para 2**
(2016) 7 SCC 353	**referred to**	**Para 2**
[2001] 1 SCR 490	**referred to**	**Para 7**
[2001] 2 Suppl. SCR 79	**referred to**	**Para 7**
[2003] 1 Suppl. SCR 797	**referred to**	**Para 7**
[2015] 1 SCR 884	**referred to**	**Para 7**
[1999] 1 Suppl. SCR 249	**referred to**	**Para 13**

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CIVIL ORIGINAL JURISDICTION: I. A. No. 33686 of 2018 in Writ Petition (Civil) No. 196 of 2018.

Under Article 32 of the Constitution of India.

WITH

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Writ Petition (C) Nos. 252, 295 and 293 of 2018.

Aman Lekhi, ASG, Arvind Datar, K.V. Vishwanathan, A.K. Sinha, Vikas Singh, V. Giri, Sr. Advs., Ajay Bhargava, Ms. Vanita Bhargava, Saman Ahsan, Aayush Jain, M/s. Khaitan & Co., Jose Abraham, Harish Pandey, Dr. Nishesh Sharma, Sarad Kumar Singhania, Rohit Bhat, Gurmeet Singh Makker, Gaurav Sharma, Dhawal Mohan, Prateek Bhatia, Amandeep Kaur Ahuja, Abhishek, Ms. Deepika Kalia, Ms. Shristi Banerjee, K.V. Vijayakumar, Ms. Maitreyee Mishra, Tapesh Kr. Singh, Mohd. Waquas, Aditya Pratap Singh, G. Prakash, Jishnu M.L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, Vijay Shank V.L., Ms. Vijaya Mohan V., Advs. for the appearing parties.

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The Order of the Court was delivered by

DR. D. Y. CHANDRACHUD, J. 1. The judgment rendered by a three judge Bench in **State of Uttar Pradesh** v **Dinesh Singh Chauhan**[1], construed the provisions of Regulations 9(IV) and 9(VII) of the Medical Council of India Post-Graduate Medical Education Regulations 2000, as amended on 15 February 2012. In the present batch of cases, a Bench of three Judges opined, by an order dated 13 April 2018, that these petitions require consideration by a larger Bench.

2. In making this reference, the referring order primarily indicated the following reasons :

(i) The decision in **Dinesh Singh Chauhan** has not considered the entries in the legislative lists of the Seventh Schedule, more particularly Entry 66 of the Union List and Entry 25 of the Concurrent List;

(ii) The main contention of the petitioners is that while coordination and determination of standards in institutions for higher education falls within the exclusive domain of the Union (Entry 66 List I), medical education is a subject in the Concurrent List (Entry 25 List III). Though, Entry 25 of List III is subject to Entry 66 of List I, the State is not denuded of its power to legislate on the manner and method of making admissions to post-graduate medical courses;

(iii) The contentions which have been raised in the present batch of petitions were not addressed before this Court in **Dinesh Singh Chauhan**;

(iv) The judgment in **Dinesh Singh Chauhan** does not consider three decisions of the Constitution Bench in **R Chitralekha** v **State of Mysore**[2], **Kumari Chitra Ghosh** v **Union of India**[3] and **Modern Dental College and Research Centre** v **State of Madhya Pradesh**[4]; and

(v) There are decisions rendered by Benches of an equal strength as in **Dinesh Singh Chauhan**.

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[1] (2016) 9 SCC 749
[2] ((1964) 6 SCR 368
[3] (1969) 2 SCC 228
[4] (2016) 7 SCC 353

A 3. While making a reference to a larger Bench, the referring order observed that it would be "appropriate that even the interim relief should be considered by the larger Bench". Accordingly, on the directions of the learned Chief Justice, the proceedings have been placed before the Constitution Bench to consider the question of interim relief.

B 4. We have heard Mr Arvind Datar and Mr K V Vishwanathan, learned Senior Counsel for the petitioners, Mr Aman Lekhi, learned Additional Solicitor General and Mr A K Sinha, learned Senior Counsel for the Respondents - Union of India, Mr Vikas Singh learned Senior Counsel for the MCI and Mr V Giri, learned Senior Counsel for the State of Tamil Nadu.

C 5. In **Tamil Nadu Medical Officers Association** v **Union of India**[5], the following reliefs have been sought :

> "(a) Declare by issuance of a writ of mandamus or any other suitable writ/order/direction that Regulation 9 of the Post-Graduate
> D Medical Education Regulations, 2000 (more particularly, Regulation 9(iv) and 9(vii), does not take away the power of the States under Entry 25, List III to provide for a separate source of entry for in-service candidates seeking admission to Degree Courses;
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> E (b) Alternatively, if Regulation 9 of the Post Graduate Medical Regulations, 2000 is understood to not allow for States to provide for a separate source of entry for in-service candidates seeking admission to Degree Courses, declare by issuance of a writ of mandamus or any other suitable writ/order/direction, Regulation 9 (more particularly, Regulations 9(iv) and 9 (vii) as being arbitrary,
> F discriminatory and violative of Article 14 and Article 19(1)(g) of the Constitution and also ultra vires the provisions of the Indian Medical Council Act, 1956;"

6. The interim prayer is that this Court should stay the operation of Regulation 9 of the Post-Graduate Medical Education Regulations
G 2000, to the extent that it is deemed to prohibit the states from providing a separate source of entry to in-service candidates seeking admission to post-graduate degree courses. A direction has been sought permitting the State of Tamil Nadu to implement its policy of providing for a separate

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[5] WP (C) No. 196 of 2018

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source of entry to in-service candidates for admissions to post-graduate degree courses for academic year 2018-2019.

7. Learned Senior Counsel appearing on behalf of the petitioners submit that since 1989, the State of Tamil Nadu has had a policy of providing a separate source of entry to in-service candidates to the extent of 50 per cent of the state's seats in degree courses. Further, since 2007 the State of Tamil Nadu has, by a government order, provided a preferential weightage to those in-service candidates who have served in rural, hilly and difficult areas. This policy has been adopted to ensure the provision of adequate healthcare facilities in government hospitals particularly in rural, hilly and difficult locations. In this backdrop, the following submissions have been urged :

(i) Though, Entry 25 of List III of the Seventh Schedule to the Constitution ("education, including..medical education..") is subject to the provisions of Entry 66 of State List I ("coordination and determination of standards in institutions for higher education"), the state is not denuded of its power to determine the manner or method for making admissions to post-graduate medical courses;

(ii) The relationship between Entry 66 of List I and Entry 25 of List III has been considered by three Constitution Bench decisions of this Court in **R Chitralekha**, **Kumari Chitra Ghosh** and **Modern Dental College** (supra);

(iii) In its decisions in **K Duraisamy** v **State of Tamil Nadu**[6], **AIIMS Students' Union** v **AIIMS**[7] and **State of M P** v **Gopal D Tirthani**[8], this Court has upheld the right of the State Governments to set apart a definite percentage of seats at the post-graduate level in degree and diploma courses with a separate source of entry for a defined classes of persons. The exercise of such a power has been held to be valid so long as it is based on a legitimate classification;

(iv) The classification between in-service doctors in government and others is reasonable and has a nexus with the object of ensuring adequate and affordable healthcare facilities in the public sector; and

[6] (2001) 2 SCC 538
[7] (2002) 1 SCC 428
[8] (2003) 7 SCC 83

A (v) The interpretation placed on Regulation 9 in **Dinesh Singh Chauhan** that reservation for in-service candidates in post-graduate degree courses is not permissible since it has been provided only for diploma courses under Regulation 9(VII) requires reconsideration for the following reasons :

B (a) There is no express or implied bar in Regulation 9, prohibiting the State under Entry 25 of List III from providing a separate channel of entry to in-service candidates. On the contrary, the grant of preference to in-service candidates is perceived to be a laudable object by virtue of the proviso to Regulations 9(IV) and 9(VII);

C (b) An implied inclusion cannot be inferred in regard to the states providing reservations for in-service candidates in degree courses merely on the basis that Regulation 9(VII) provides a reservation for diploma courses;

D (c) While holding that Regulation 9 is a complete code in itself, the decision in **Dinesh Singh Chauhan** has not appropriately dealt with the decisions in **Sudhir N** v **State of Kerala**[9] and **Gopal D Tirthani** (supra);

E (d) Providing a separate source of entry for in-service candidates would not result in a lowering of standards prescribed by the Medical Council of India[10] since all eligible candidates would have met the minimum qualifying marks in the NEET examination and admissions would take place on the *inter se* merit of in-service candidates; and

F (e) In its decision in **Modern Dental College and Research Centre**, the Constitution Bench has observed that a State being responsible for the welfare and development of its residents, it is the prerogative of the State to adopt appropriate steps;

G (f) Merely providing a weightage for in-service candidates in degree courses will not ensure that an adequate number of in-service candidates qualify, having regard to the difficulties faced by such candidates while working in difficult conditions.

[9] (2015) 6 SCC 685

H [10] The MCI

Since counselling in the first round has already taken place, it has been submitted that interim orders are necessary to ensure that States are not precluded from providing a separate source of entry to in-service candidates in post-graduate degree courses.

8. On the other hand, it has been submitted on behalf of the Union of India and MCI that Entry 25 of List III is expressly subject to Entry 66 of List I. Hence, the authority of the States under Article 246 to legislate on medical education is subject to the overriding authority of the Union in matters relating to the coordination and determination of standards in higher education. Regulation 9 is a complete code in itself. Regulation 9(iv) provides an incentive to in-service candidates at the rate of 10 per cent of the marks obtained, for each year of service in remote and/or difficult areas upto a maximum 30 per cent of the marks obtained in the NEET examination. MCI, as an expert policy making authority constituted under central legislation, has formulated statutory regulations under which only incentive marks can be granted for in-service candidates in post-graduate degree admissions to medical courses. In the considered view of the Union government and MCI, the grant of reservations or a separate source of entry for in-service candidates would directly impinge on the authority of MCI to coordinate and determine standards of medical education. The decision in **Dinesh Singh Chauhan** specifically construes the provisions of the Regulation 9 as amended in 2012. The grant of any interim relief at this stage cannot be contemplated so long as the three judge Bench decision holds the field. Prescribing a separate source of entry for in-service degree candidates would, in the submission of the MCI, directly result in a lowering of standards in medical education. Merit would be compromised and the prescription of criteria under Entry 66 of List I would be a casualty.

9. Rule 9, as amended on 15 February 2012, reads as follows :

"9. Procedure for selection of candidate for postgraduate courses shall be as follows.—

(I) There shall be a single eligibility-cum-entrance examination, namely, "National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses" in each academic year. The superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with

A National Board of Examinations under overall supervision of the Ministry of Health & Family Welfare, Government of India.

(II) 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%:

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Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% before they are included in the annual sanctioned seats for general category candidates:

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Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions.

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(III) In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test for Postgraduate courses" held for the said academic year. However, in respect of candidates belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates as provided in clause (II) above with locomotory disability of lower limbs, the minimum marks shall be at 45th percentile. 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:

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G 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 the

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Medical Council of India may at its discretion lower the minimum marks required for admission to postgraduate course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

(IV) The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. *An all-India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to postgraduate courses from the said merit lists only*:

Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/competent authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult areas shall be as defined by the State Government/ competent authority from time to time.

(V) No candidate who has failed to obtain the minimum eligibility marks as prescribed in clause (II) above shall be admitted to any postgraduate courses in the said academic year.

(VI) In non-governmental medical colleges/institutions, 50% (fifty per cent) of the total seats shall be filled by the State Government or the Authority appointed by them, and the remaining 50% (fifty per cent) of the seats shall be filled by the medical colleges/institutions concerned on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

(VII) 50% of the seats in postgraduate *diploma* courses shall be *reserved for medical officers in the government service*, who have served for at least three years in remote

A and/or difficult areas. After acquiring the PG diploma, the medical officers shall serve for two more years in remote and/or difficult areas as defined by State Government/ competent authority from time to time.

(VIII) The Universities and other authorities concerned shall organise admission process in such a way that teaching in postgraduate courses starts by 2nd May and by 1st August for super specialty courses each year. For this purpose, they shall follow the time schedule indicated in Appendix III.

(IX) There shall be no admission of students in respect of any academic session beyond 31st May for postgraduate courses and 30th September for super specialty courses under any circumstances. The Universities shall not register any student admitted beyond the said date.

(X) The Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956. The institution which grants admission to any student after the last date specified for the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year." (Id at pages 764-766)

Entry 66 of List I provides thus :

"66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Entry 25 of List III provides thus :

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

10. In **Modern Dental College and Research Centre** (supra), a Constitution Bench of this Court held that the expression "coordination and determination of standards" means laying down standards. Hence, when it comes to prescribing the standards for institutions of higher learning, the exclusive domain is given to the Union. Dr Justice A K Sikri speaking for the Constitution Bench held thus :

> "102**.** Most educational activities, including admissions, have two aspects: the first deals with the adoption and setting up the minimum standards of education. The objective in prescribing minimum standards is to provide a benchmark of the calibre and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education determined nationwide is ancillary to the very determination of standards. Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was thought desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the Constitution-makers provided for List I Entry 66 with the objective of maintaining uniform standards of education in fields of research, higher education and technical education." (id at page 430)

Implementing the standards of education determined by Parliament and regulating the complete activity of education entails the application of the standards so determined. The balance between Entry 66 of List I and Entry 25 of List III has been drawn succinctly, on a review of the earlier Constitution Bench decisions, thus :

> "104…In Gujarat University [Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703 : 1963 Supp (1) SCR 112] , a Bench of five Judges examined the scope of List II Entry 11 (which is now List III Entry 25) with reference to List I Entry 66. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to Parliament, is deemed

A to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by List I Entry 66 must prevail over power of the State. Validity of a State legislation depends upon whether it prejudicially affects "coordination or determination of standards", even in absence of a Union legislation. In R. Chitralekha v. State of Mysore [R. Chitralekha v. State of Mysore, AIR 1964 SC 1823 : (1964) 6 SCR 368] , the same issue was again considered. It was observed that if the impact of the State law is heavy or devastating as to wipe out or abridge the Central field, it may be struck down. In State of T.N. v. Adhiyaman Educational & Research Institute [State of T.N. v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104 : 1 SCEC 682] , it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya [State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1 : 5 SCEC 637] . Though the view taken in State of M.P. v. Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] and Ajay Kumar Singh v. State of Bihar[Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401] to the effect that admission standards covered by List I Entry 66 could apply only post admissions was overruled in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] , it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] . (Id at page 431)

G The Constitution Bench held that while Entry 25 of List III is subject to Entry 66 of List I, the entire gamut of admissions is not excluded from the purview of the statutes. However, the "exercise of any power under List III Entry 25 has to be subject to a Central law referable to Entry 25".

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11. The provisions of Regulation 9 have been construed by the three judge Bench decision in **Dinesh Singh Chauhan** (supra). The decision, it must be emphasised, has construed the amended provisions of Regulation 9. Regulation 9 is held it to be a self-contained code regarding the procedure to be followed for admissions to medical courses. In that context, it has been held :

> "24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see Preeti Srivastava v. State of M.P. [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742]). The procedure for selection of candidates for the postgraduate degree courses is one such area on which the Central legislation and regulations must prevail." (Id at page 766)

The above statement of the law in **Dinesh Singh Chauhan** is consistent with the principles which have been reaffirmed by the Constitution Bench in **Modern Dental College and Research Centre**. The referring order notes that the decision in **Modern Dental College and Research Centre** was published in the reports after the decision in **Dinesh Singh Chauhan**. In our view, the fundamental basis of the three judge Bench decision is in accord with the principles which have been laid down by the Constitution Bench.

12. While interpreting Regulation 9(IV), **Dinesh Singh Chauhan** holds that the reservations referred to in the opening sentence are obviously constitutional reservations for the Scheduled Castes and Scheduled Tribes and the socially and educationally backward classes of citizens and not those for in-service candidates. Explaining the proviso to Rule 9 (IV) it has been held :

> "25.4…This provision, however, contains a proviso. It predicates that in determining the merit of candidates who are in service of the Government or a public authority, weightage in the marks may

A be given by the Government/competent authority as an incentive @ 10% of the marks obtained for each year of service in specified remote or difficult areas of the State up to the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified remote and difficult areas in the State)." (Id at page 767)

This interpretation of the proviso plainly follows the natural and ordinary meaning of the words used. The proviso to Rule 9(IV) does not contemplate a reservation for in-service candidates in post-graduate courses but the grant of incentive marks. **Dinesh Singh Chauhan** has categorically rejected the submission that there is no express prohibition on reservations for in-service candidates and hence it would be permissible for the State Governments to provide them :

"27…As there is no express provision prohibiting reservation to in-service candidates in respect of admission to postgraduate "degree" courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates. This argument does not commend to us. In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the regulations in force at the relevant time. The admission process in the present case is governed by the regulations which have come into force from the academic year 2013-2014. This Regulation is a self-contained code. There is nothing in this Regulation to even remotely indicate that a separate channel for admission to in-service candidates must be provided, at least in respect of postgraduate "degree" courses. In contradistinction, however, 50% seats are earmarked for the postgraduate "diploma" courses for in-service candidates, as is discernible from clause (VII). If the regulation intended a similar separate channel for in-service candidates even in respect of postgraduate "degree" courses, that position would have been made clear in Regulation 9 itself." (Id at pages 767-768)

13. The judgment has noticed that in framing Regulation 9, reservations have been provided for in-service candidates of the government in diploma seats. Where the delegate of the legislature intended to provide reservations, a specific provision has been made, as in Regulation 9(VII). On the other hand, for post-graduate degree seats, there is only a prescription of incentive marks in Regulation 9(IV). Noticing that these regulations have been framed by an expert body, it has been held thus :

> "35**.** As aforesaid, the Regulations have been framed by an expert body based on past experience and including the necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks @ 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate." (Id at page 772)

It may be noted that in arriving at this conclusion, the court has taken due note of the decision of the Constitution Bench in **Dr Preeti Srivastava v State of M P**[11] as well as of the decisions in **Tirthani**, **AIIMS Students' Union** and **Sudhir N** (supra) among other decisions.

14. The decision in **Dinesh Singh Chauhan** holds the field. It is based on a construction of Regulation 9(IV) which, at least at the present stage, cannot be brushed aside. The principle which has been adopted in that decision is consistent with the primacy which is attributed by the Constitution to Entry 66 of List I. This is the clear intendment of the words "subject to" in Entry 25 of List III. The grant of any interim relief at the present stage would amount to a mandatory final order which cannot be countenanced. MCI has, as an expert body, proceeded on a principled basis. Any attempt at this stage to read into Regulation 9(IV), a separate source of entry or a reservation for in-service candidates in

[11] (1999) 7 SCC 120

A degree courses would impinge upon Entry 66 of List I and the exercise of regulatory powers under the central statute.

15. For these reasons, we are unable to accede to the prayer for interim relief which has been urged on behalf of the petitioners. Interim relief is accordingly refused. We, however, clarify that the counselling
B which takes place shall ultimately abide by the result of the reference. I.A. No 33686 of 2018 is disposed of accordingly.

Kalpana K. Tripathy I.A. disposed of.