

- 2.** Rule granted in the Writ Petitions.

- 3.** Writ Petition (Civil) No.53 of 2022 challenges the validity of G.O. (Ms.) No. 462 dated 7th November, 2020, issued by the Health and Family Welfare (MCA-1) Department of the Government of Tamil Nadu (hereinafter referred to as “the said G.O.”). The basic contention of the writ petitioners is that the reservation of 50% Super Specialty seats (DM/M.Ch.) for in-service candidates in Government Medical Colleges in the State of Tamil Nadu is not permissible in law.

- 4.** Civil Appeal arising out of Special Leave Petition (Civil) No. 2514 of 2022 challenges the judgment and order of the learned Single Judge of the High Court of Judicature at Madras dated 12th January, 2022, vide which, the said High Court has issued a direction to the Director of Medical Education, Kilpauk, Chennai to implement the said G.O. for the academic year 2021-2022 itself, if there is no legal impediment to do the same.

5. This Court vide interim order dated 27th November, 2020, passed in Civil Appeal No. 3840 of 2020¹ had directed that the counselling for admission to Super Specialty Medical Courses for the academic year 2020-2021 shall proceed without providing for reservations to in-service doctors.

6. The writ petitioners as well as the appellants in the present case have urged this Court to continue the aforesaid interim order of this Court dated 27th November, 2020 (supra), even for the academic year 2021-2022.

7. Per contra, this request made by the writ petitioners/appellants is vehemently opposed by the learned counsels appearing on behalf of the State as well as the in-service candidates.

8. We have, therefore, heard the learned counsels for the parties on the limited question, as to whether the interim protection, which was granted for the academic year 2020-

¹ [Dr. Prerit Sharma & Ors. Versus Dr. Bilu B.S. & Ors.]

2021, vide order dated 27th November, 2020 (supra), should also be continued for the academic year 2021-2022 or not.

9. We have heard Shri Dushyant Dave, Shri Shyam Divan and Shri Gopal Sankaranarayanan, learned Senior Counsel appearing on behalf of the writ petitioners/appellants as well as Ms. Aishwarya Bhati, learned Additional Solicitor General (“ASG”) appearing for the Union of India.

10. Shri C.S. Vaidyanathan, learned Senior Counsel and Shri Amit Anand Tiwari, learned Additional Advocate General (“AAG”) have made submissions on behalf of the State of Tamil Nadu and Shri P. Wilson, learned Senior Counsel has argued on behalf of the in-service doctors.

11. The learned Senior Counsel appearing on behalf of the writ petitioners/appellants submitted that the nine-judge Constitution Bench of this Court in the case of ***Indra Sawhney & Ors. vs. Union of India & Ors.***² as well as Constitution Bench of this Court in the case of ***Dr. Preeti Srivastava and***

² 1992 Supp. (3) SCC 217

another vs. State of M.P. and others³ have specifically held that there cannot be any reservation for admission in Super Specialty courses. It is submitted that NEET-SS 2021 Information Bulletin (hereinafter referred to as “NEET Bulletin”), in clause 10.10, specifically states that, as per judgment of the Constitution Bench of this Court in Writ Petition (C) No.350 of 1998, there is no reservation of seats for Super Specialty (DM/M.Ch.) courses. It is submitted that the case of ***Dr. Sweety Bhartiya vs. State of M.P. & Ors.***, which is referred to in the NEET Bulletin, is a case which was a part of the batch of cases disposed of by this Court in the case of ***Dr. Preeti Srivastava*** (supra).

12. The learned Senior Counsel further submitted that since the matters regarding co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions are squarely covered by Item 66 in List-I of the Seventh Schedule to the Constitution of India, it is the Regulation issued by the Medical Council of

3 (1999) 7 SCC 120

India, which would prevail over the said G.O. It is submitted that the State will have no power to provide reservation of seats in Super Specialty courses, in view of the stipulation contained in clause 10.10 of the NEET Bulletin.

13. Shri Dave and Shri Divan further submitted that the finding of the Constitution Bench of this Court in the case of ***Tamil Nadu Medical Officers Association and others vs. Union of India and others***⁴ to the effect that the States have legislative competence and authority to provide reservation for in-service candidates does not lay down a correct proposition of law. It is submitted that, in view of the judgments of this Court in the cases of ***Indra Sawhney*** (supra), ***Dr. Preeti Srivastava*** (supra) and other cases, it is not at all permissible to provide reservation for Super Specialty courses. It is submitted that it is only merit and merit alone which shall weigh while giving admissions in the Super Specialty courses.

4 (2021) 6 SCC 568

14. It is also submitted by Shri Dave and Shri Divan that the judgment of this Court in the case of **Tamil Nadu Medical Officers Association** (supra) is restricted only to postgraduate degree/diploma courses and cannot be made applicable to Super Specialty courses. It is, therefore, urged that the interim order dated 27th November, 2020 (supra), which was passed by this Court for the academic year 2020-2021, should also be continued for the academic year 2021-2022.

15. Ms. Aishwarya Bhati, learned ASG appearing for the Union of India supported the request made by the writ petitioners/appellants and submitted that the stand of the Union of India was also to continue the interim protection, which was granted by this Court, vide order dated 27th November, 2020 (supra), for the academic year 2020-2021.

16. Shri C.S. Vaidyanathan, learned Senior Counsel appearing on behalf of the State of Tamil Nadu, submitted that this Bench, consisting of two Judges, is bound by the law laid down by the Constitution Bench in the case of **Tamil Nadu**

Medical Officers Association (supra). It is submitted that the Constitution Bench in the case of **Tamil Nadu Medical Officers Association** (supra) has specifically held that the State is within its competence to provide reservation for in-service candidates. It is submitted that the Constitution Bench has specifically held that the State is empowered to provide for a separate source of entry or reservation for in-service candidates seeking admission to postgraduate degree/diploma courses, in view of Schedule VII List III Entry 25 of the Constitution of India. It is submitted that, it has been held by this Court that the policy for such a reservation must provide that, subsequent to obtaining the postgraduate degree by the in-service doctors concerned through such separate channel, they must serve the State in the rural, tribal and hilly areas for a certain amount of years and execute bonds for such sum as the respective State may consider fit and proper.

17. Shri Vaidyanathan further submitted that on account of non-availability of the candidates having degree in super

specialization, as many as 49 vacancies for the posts of Professors/Associate Professors and 58 vacancies for the posts of Assistant Professors could not be filled. It is submitted that the channel for admission for in-service candidates/categories is provided so that in-service candidates would serve the State Government and that they could be appointed on the vacant posts of Assistant/Associate Professors and Professors. It is submitted that if this is not done, there is a danger of a large number of Super Specialty seats being reduced on account of non-availability of the requisite number of faculty.

18. It is further submitted that all the candidates selected through in-service channels for the Super Specialty courses at the time of joining are required to execute a bond that they will serve the Government till their superannuation. It is, therefore, submitted that, in-service reservation is provided with an avowed object of getting services of such candidates till their superannuation. It is submitted that, per contra, if all the seats are filled in through open channel, prior experience would

show that all such candidates would leave after a bond period of two years or even prior to that by paying the bond money. It is, therefore, submitted that this will lead to a very dangerous situation wherein the faculty members would not be available for Super Specialty seats and the number of such seats would drastically reduce.

19. Shri Amit Anand Tiwari, learned AAG, submitted that the stand taken by the Union of India is inconsistent, inasmuch as the Government of India was already providing separate entrance examination for postgraduate and Super Specialty seats and was providing for separate entry for in-service candidates in the name of 'sponsored candidates' (service candidates of various Government Institutions). He, therefore, submitted that the Union of India cannot be permitted to take a contrary view and oppose the separate channel provided for in-service candidates by the State of Tamil Nadu.

20. We clarify that we are passing the present order for the limited purpose of considering, as to whether the interim order

dated 27th November, 2020 (supra), which was granted for the academic year 2020-2021, should also be continued for the academic year 2021-2022 or not. We further clarify that the present order is being passed only on *prima facie* considerations.

21. No doubt that this Court has passed the interim order dated 27th November, 2020 (supra), thereby directing that counselling for admission to Super Specialty medical courses for the academic year 2020-2021 shall proceed without providing for reservation to in-service candidates/doctors. It is relevant to note that this Court in the interim order dated 27th November, 2020 (supra), has specifically observed that the process for admissions to Super Specialty medical courses started on 3rd August, 2020, and it was made clear to all the competing candidates that there shall be no reservation to Super Specialty medical courses. This Court further notes that the said G.O. was issued on 7th November, 2020, i.e., after the admission process had begun. It could thus be seen that what

weighed with this Court while passing the interim order dated 27th November, 2020 (supra) was that the rules of the game were changed after the admission process had begun. However, in the penultimate para, this Court has specifically clarified that it had not expressed any opinion on the validity of said G.O. This Court also reiterated that the said direction would be operative only for the academic year 2020-2021.

22. Insofar as academic year 2021-2022 is concerned, undisputedly, the said G.O. was notified prior to the commencement of the admission process for the said academic year.

23. The Constitution Bench in the case of ***Tamil Nadu Medical Officers Association*** (supra) has specifically held that the State is empowered to provide a separate channel/source of entry or reservation for admission to postgraduate degree/diploma medical courses insofar as in-service candidates are concerned.

24. It will not be out of place to mention that this Bench is sitting in a combination of two Judges. Strong reliance has been placed on behalf of the writ petitioners/appellants on the Constitution Bench judgment in the case of **Dr. Preeti Srivastava** (supra). With equal vehemence, reliance is placed by the State of Tamil Nadu and the in-service candidates/doctors on the Constitution Bench judgment in the case of **Tamil Nadu Medical Officers Association** (supra). As such, we are faced with a challenge as to which of these two Constitution Bench judgments should guide us while considering the question, as to whether the interim protection as was granted for the academic year 2020-2021 also needs to be continued or not for the academic year 2021-2022.

25. In the case of **Dr. Preeti Srivastava** (supra), the question that fell for consideration before the Constitution Bench was, as to whether any type of relaxation would be permissible at the Super Specialty level. In the said case, the minimum qualifying marks for the general category candidates were 45%. However,

the minimum qualifying marks for the reserved category candidates were lowered down to 20%. In this situation, this Court found that this would make it difficult for the reserved category candidates to bring their performance on par with the general category candidates in the course of postgraduate studies. This Court, therefore, found that lowering the qualifying criteria for reserved category candidates, thereby resulting in great disparity of qualifying marks between a general category candidate on one hand and a reserved category candidate on the other hand, was not permissible.

26. However, in the case of ***Tamil Nadu Medical Officers Association*** (supra), the question, as to whether the States have legislative competence to provide for a separate source of entry or reservation for in-service candidates seeking admission to postgraduate degree/diploma medical courses, directly fell for consideration before the Constitution Bench. The conclusions in the judgment of M.R. Shah, J. in the said case are as under:

“Conclusions

23. The sum and substance of the above discussion and conjoint reading of the decisions referred to and discussed hereinabove, our conclusions are as under:

23.1. That List I Entry 66 is a specific entry having a very limited scope.

23.2. It deals with “coordination and determination of standards” in higher education.

23.3. The words “coordination and determination of standards would mean laying down the said standards.

23.4. The Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of powers under List I Entry 66 and has no power to make any provision for reservation, more particularly, for in-service candidates by the States concerned, in exercise of powers under List III Entry 25.

23.5. That Regulation 9 of the MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the States concerned to make reservation and/or make special provision

like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the States concerned to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under List III Entry 25.

23.6. If it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under List I Entry 66.

23.7. Regulation 9 of the MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India.

23.8. That the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under List III Entry 25. However, it is observed that the policy must

provide that subsequent to obtaining the postgraduate degree by the in-service doctors concerned obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper.

23.9. It is specifically observed and clarified that the present decision shall operate prospectively and any admissions given earlier taking a contrary view shall not be affected by this judgment.”

27. The conclusions in the judgment of Aniruddha Bose, J. in the said case read thus:

“95. Because of these reasons, we hold that there is no bar in Regulation 9 of the MCI Postgraduate Medical Education Regulations, 2000 as it prevailed on 15-2-2012 and subsequently amended on 5-4-2018 on individual States in providing for reservation of in-service doctors for admission into postgraduate medical degree courses. But to take benefit of such separate entry channel, the aspiring in-service doctors must clear NEET examination with the minimum prescribed

marks as stipulated in the 2000 Regulations.

96. We respectfully differ from the views expressed by the Bench of three Hon'ble Judges of this Court in *State of U.P. v. Dinesh Singh Chauhan* [*State of U.P. v. Dinesh Singh Chauhan*, (2016) 9 SCC 749 : 8 SCEC 219] to the extent it has been held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of the 2000 Regulations. In our opinion, that is not the correct view under the Constitution. The reference is answered accordingly.

97. We also expect that the statutory instruments of the respective State Governments providing for such separate channel of entry should make a minimum service in rural or remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree. On completion of the course, to ensure the successful candidates serve in such areas, the State shall formulate a policy of making the in-service doctors who obtain entry in postgraduate medical degree courses through independent in-service channel execute bonds for such sum the respective States may consider fit and proper.”

28. The question that is required to be decided in the present batch of cases is, as to whether the said G.O. which provided for 50% reservation for admission in Super Specialty courses/seats is permissible in law or not.

29. The Constitution Bench in the case of **Tamil Nadu Medical Officers Association** (supra) clearly holds that it is within the competence of the State Legislature to provide separate channel/source of entry or reservation for in-service candidates seeking admission to postgraduate degree/diploma medical courses. Though, it is sought to be urged on behalf of the writ petitioners/appellants that the judgment of the Constitution Bench in the case of **Tamil Nadu Medical Officers Association** (supra) deals only with the postgraduate degree/diploma medical courses and cannot be made applicable to Super Specialty courses, and that the present cases would be governed by the Constitution Bench judgment in the case of **Dr. Preeti Srivastava** (supra); we find it, at least

prima facie, difficult to accept the said proposition made on behalf of the writ petitioners/appellants.

30. As to what is *ratio decidendi* has been succinctly explained by this Court in the case of ***Regional Manager and Another vs. Pawan Kumar Dubey***⁵ as under:

“7.....Indeed, we do not think that the principles of law declared and applied so often have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.”

5 (1976) 3 SCC 334

31. It would also be relevant to refer to the following observations of this Court in the case of ***Union of India and Others vs. Dhanwanti Devi and Others***⁶:

“9..... It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the wellsettled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since

6 (1996) 6 SCC 44

the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi*.”

32. At the cost of repetition, we may state that the issue involved in the case of **Dr. Preeti Srivastava** (supra) was, as to whether a relaxation can be provided insofar as minimum qualifying marks are concerned to the reserved category candidates, resulting in a huge disparity of qualifying marks for the reserved category candidates as against the general category candidates. The question, as to whether a reservation or a separate channel for admission can be provided to the in-service candidates did not fall for consideration in the case of **Dr. Preeti Srivastava** (supra).

33. As against this, in the case of **Tamil Nadu Medical Officers Association** (supra), a direct question, as to whether the State was competent to provide reservation by a separate channel for in-service candidates seeking admission to postgraduate degree/diploma medical courses was permissible or not, fell for consideration before the Constitution Bench. The Constitution Bench in the case of **Tamil Nadu Medical Officers Association** (supra) has held that insofar as

admission to postgraduate courses are concerned, it is within the competence of the State Legislature to do so.

34. As such, we find that the facts in the present case are much nearer to the facts that fell for consideration in the case of **Tamil Nadu Medical Officers Association** (supra). We are also of the *prima facie* view that the facts that fell for consideration in the case of **Dr. Preeti Srivastava** (supra) were distinct from the facts that fall for consideration in the present case. We are, therefore, of the considered view that taking into consideration the principles of judicial discipline and judicial propriety, we should be guided by the judgment of the Constitution Bench in the case of **Tamil Nadu Medical Officers Association** (supra) rather than the judgment of the Constitution Bench in the case of **Dr. Preeti Srivastava** (supra).

35. We are, therefore, of the view that no case is made out for continuing the interim protection which was granted for the academic year 2020-2021 vide interim order dated 27th

November, 2020 (supra) and thus, we reject the prayer in that regard. Needless to say that the State of Tamil Nadu would be at liberty to continue the counselling for academic year 2021-2022 by taking into consideration the reservation provided by it as per the said G.O.

36. List the matters for hearing after vacations.

.....**J.**
[L. NAGESWARA RAO]

.....**J.**
[B.R. GAVAI]

NEW DELHI;
MARCH 16, 2022