

# Quota in specialty and super-specialty courses: What does the judiciary say?

MUKUL CHANDRA KAPOOR, SHUBHENDU ANAND

## ABSTRACT

Reservations in super-specialty courses have been controversial for decades. A number of practising doctors, medical students and others in society have wanted to do away with reservations in specialty and super-specialty courses, while there are others in favour of persisting with reservations. Article 15(4) of the Constitution of India states that nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes/Tribes. However, Article 14 of the Indian Constitution should also be considered. The judiciary, particularly, the Supreme Court of India, in its judgments has strived to strike a balance between the two constitutional provisions. The Supreme Court, on various occasions, has observed that reservations in super-specialty courses should be done away with, as such reservations would be detrimental to the advancement of medical science and research and will also not serve national interest. We present the observations of the Supreme Court of India through its various judgments, with a focus on the recent case of *Dr Sandeep versus Union of India*, where the honourable court stated that the government should do away with reservations in super-specialty courses.

Natl Med J India 2017;30:159–60

## INTRODUCTION

Our health infrastructure is woefully inadequate for our large population. We have failed to meet the requirement of adequate and appropriate healthcare facilities for the citizens of India. There is a shortage of trained medical personnel, especially specialist and super-specialist doctors, in India. Successive governments have tried to overcome this deficit by modifying the rules governing specialist training so that more avenues are available to doctors to train as specialists. The Medical Council of India (MCI) has permitted almost doubling of specialty seats in healthcare training institutions.

Medical specialty training requires a sound basic medical education and skill as a prerequisite. A specialist is required to treat humans with complex disease. A specialist should be competent, meritorious and have in-depth knowledge of the subject. Only if an individual attains a high level of competence, will further specialization training yield the desired result. Thus, only doctors who qualify on merit should be elevated to the specialist/super-specialist stage. Reservations based on caste/region are aimed at offering help to uplift the under-privileged and the deprived. The incentive of reservation should be limited to basic professional education.

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Max Smart Super Specialty Hospital, Saket, New Delhi, India  
MUKUL CHANDRA KAPOOR Department of Anaesthesia

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University of Edinburgh, Edinburgh, UK  
SHUBHENDU ANAND Enrolled for Master of Public Health

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Correspondence to MUKUL CHANDRA KAPOOR, 6, Dayanand Vihar,  
Delhi 110092; mukulanjali@gmail.com

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## SUPREME COURT JUDGMENTS ON RESERVATION IN MEDICAL SPECIALTY AND SUPER-SPECIALTY COURSES

The provision for reservations for the under-privileged was enshrined in the Constitution of India. Reservations based on caste/domicile for admission to courses of higher education have always been controversial. The constitutional provision for such reservations has been subject to different interpretations. The Supreme Court Division Bench comprising Justice Deepak Mishra and Justice Prafulla C. Pant, on 27 October 2015, said that the Government of India and state governments should seriously consider doing away with reservation of seats in medical super-specialty courses. This came in the wake of a petition filed by Dr Sandeep s/o Sadashivrao Kansurkar and Others versus Union of India and Others,<sup>1</sup> in the Supreme Court of India against the decisions of Andhra Pradesh, Telangana and Tamil Nadu, to confine the eligibility for admissions to certain courses such as Doctor of Medicine (DM) and Magister Chirurgiae (MCh) only to domicile candidates of their respective states. Such a restriction imposed by some states deprives students of other states the opportunity to participate in the entrance examination and this is not in tune with Articles 14 and 16 of the Constitution of India. Many states in India, such as Madhya Pradesh, Chhattisgarh, Jharkhand, Punjab and most of the northeastern states do not have medical institutions which offer super-specialty courses and students from these states have to depend upon seats offered by medical institutions of other states.

In the writ petition, the petitioners urged that the restraint imposed, by the aforesaid three states, amounted to reservation at the postgraduate level; and that as far as super-specialty courses are concerned, the question of reservation based on residence or institutional preference is not permissible. Merit cannot be compromised by making reservation on considerations such as residential requirement, as that would be against national interest and also against the equality clause in the Constitution.<sup>1</sup>

The states of India are not just diverse in their population and geography but also in infrastructure development. Many states do not have advanced medical establishments nor do they have facilities for super-specialization. Many meritorious students of these states study in other states for want of facilities in their domicile states. In case such students are deprived further education, due to non-availability of specialty/super-specialty teaching medical institutions in their own state, the country could lose potentially valuable resources. States with facilities to train specialists/super-specialists cannot discriminate against students from such states by restricting their entry on the basis of domicile reservations.

The decision by Andhra Pradesh and Telangana, to have region-linked reservations, was based on a Presidential order, namely, the Andhra Pradesh Educational Institutions (Regulations and Admissions) order 1974 issued under Article 371-D of the Constitution and G.O.P. No. 646 dated 10 July 1979 issued by the State of Andhra Pradesh.<sup>2</sup> Under Article 371-D, special provisions have been made in respect of Andhra Pradesh which provide equal opportunities in different parts of the state in the matter of public employment and education.

Though Article 371-D of the Constitution of India makes special provisions for the state, a Constitution Bench in *Dr Preeti Srivastava and Another versus State of M.P. and Others*<sup>3</sup> has held that it would not extend to cover reservations as regards super-specialty courses, where merit alone counts. While the constitutionality and interpretation of Article 371-D is a separate issue and has been extensively dealt with by the courts, it is important to understand that equality before law and equal protection of the law serve the purpose of excellence and if merit is compromised owing to geographical boundary, the basic principle of equality would be impaired.

In the present case, although the bench said it cannot interfere with the admission process in Andhra Pradesh and Telangana since a Presidential Order has created an exception and the constitutionality of this Order had not been challenged, it noted that 'privilege remains unchanged'<sup>1</sup> even after 68 years of independence and said that national interest requires doing away with all forms of reservation in institutions of higher education, and urged the Centre to take effective steps objectively.

In the context of extending the benefit of reservation in medical specialty and super-specialty courses, it is important to look at the observation of the Supreme Court in *Dr Preeti Srivastava and Another versus State of M.P. and Others*,<sup>3</sup> where the Constitution Bench observed that '*the object of Article 15(4) is to advance the equality principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and be able to compete equally with others more fortunate, one cannot also ignore the wider interests of society while devising such special provisions. At the same time, there may be other national interests, such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to society, which have also to be borne in mind. Special provisions must strike a reasonable balance between these diverse national interests.*'

In the case of *Dr Jagadish Saran versus Union of India*,<sup>4</sup> the Supreme Court observed that at the highest scales of speciality, the best skill or talent must be hand-picked by selection according to capability. Losing a potentially great scientist or technologist would be a national loss. The Court observed that the 'higher the level of education the lesser should be the reservation'. Similar observations were recorded in the case of *Dr Pradeep Jain versus Union of India*,<sup>5</sup> which dealt with reservation in favour of residents and students of the same university and did not deal with reservation in favour of the Scheduled Castes and the Scheduled Tribes.<sup>5</sup> Nevertheless, it also correctly extended the principle laid down in *Dr Jagadish Saran versus Union of India* to these kinds of reservation, holding that '*selecting sub-standard candidates is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral.*'<sup>4</sup>

In the *Preeti Srivastava* case, the Constitution Bench considered Regulation 27 of the Post Graduate Institute of Medical Education and Research Chandigarh Regulations, 1967,<sup>6</sup> whereby 20% of seats in every course of study in the institute was to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes

or other categories of persons, in accordance with the general rules of the Central government promulgated from time to time. The Constitution Bench concluded that Regulation 27 could not apply to the highest level of super-specialty, as this would defeat the very objective of imparting the best possible training to selected meritorious candidates, who could contribute to the advancement of knowledge in the field of medical research and its applications.<sup>1</sup> The Court held that there could not be any relaxation at the super-specialty level.

In a landmark judgment, in the case of *Indira Sawhney versus Union of India*<sup>7</sup> the Court upheld implementation of separate reservation for other backward classes. Although such an observation was not binding, being obiter in nature, the nine-judge Bench observed, '*... that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit alone counts. In such situations, it may not be advisable to provide for reservations.*' The Supreme Court, in this case, also held that once a person gets selected to a cadre by direct recruitment on the basis of reservation, he belongs to the same class as others directly recruited in open competition and a second level reservation thereafter, for promotion, is not valid. The principle holds good for reservation in postgraduate courses too. Although the Constitution of India under Article 15(4) states that nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes, one cannot overlook the equality clause given under Article 14 of the Indian Constitution. If a candidate secures admission to a degree course by reservation, he belongs to the same class as other students admitted for that degree course. The purpose of reservation is to provide a level playing field. Hence, once a person gets reservation in his first degree course and graduates, his selection to higher courses should be according to merit obtained in the degree course.

## CONCLUSION

The Supreme Court has opined that the best students should be selected for specialty/super-specialty courses so that the society benefits from their expertise. Reservation beyond the MBBS level is not advisable as per observations of the Court. Social and economic well-being of the backward people should be ensured by providing them basic education and not reservation at the highest levels of education. Reservations have created a creamy layer among the backward sections, thus restricting benefits to a few.

## REFERENCES

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