Rajdeep Ghosh vs The State Of Assam on 17 August, 2018

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Bench: Arun Mishra, Indira Banerjee

REPO

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION [C] NO. 766 OF 2018

RAJDEEP GHOSH … PETITION

VERSUS

STATE OF ASSAM & ORS. … RESPONDE

WITH
WRIT PETITION [C] NO. 795/2018
WRIT PETITION [C] NO. 831/2018
WRIT PETITION [C] NO. 768/2018
WRIT PETITION [C] NO. 763/2018
S.L.P. [C] No. 16200/2018,
WRIT PETITION [C] NO. 758/2018,
WRIT PETITION [C] NO. 771/2018,
WRIT PETITION [C] NO. 767/2018,
WRIT PETITION [C] NO. 759/2018,
WRIT PETITION [C] NO. 765/2018,
WRIT PETITION [C] NO. 760/2018,
WRIT PETITION [C] NO. 776/2018,
WRIT PETITION [C] NO. 781/2018,
WRIT PETITION [C] NO. 780/2018,
WRIT PETITION [C] NO. 813/2018,
WRIT PETITION [C] NO. 835/2018,
WRIT PETITION [C] NO. 800/2018,
WRIT PETITION [C] NO. 812/2018
AND
WRIT PETITION [C] NO. 821/2018.

J U D G M E N T

ARUN MISHRA, J.

1. The writ petitions have been preferred under Article 32 of the Constitution of India questioning the constitutional validity of Rule 3(1)(c) of the Medical Colleges and Dental Colleges of Assam (Regulations of Admission into 1st year MBBS/BDS Courses) Rules, 2017 (in short referred to as 'the Rules of 2017'). The petitioners have come with the case that though State can provide for preference in the matter of admission, however, such classification must be based upon objective criteria and must have a rational nexus with the objective it seeks to achieve.

2. Rule 3 of the Rules of 2017 provides for eligibility for the State quota seats. Same is extracted hereunder :

> "Rule 3 – Eligibility for State Quota Seats:
>
> The following conditions must be fulfilled:□
>
> 1.(a) The candidate must be a citizen of India.
>
> (b) The candidate must be a permanent citizen of Assam. The father/ mother or the candidate must be residing in the State of Assam continuously for not less than a period of 20 years. (The certificate at Annexure – I in Application Form at Schedule – I of these rules must be submitted if a candidate is called for counseling):
>
> Provided that this shall not be applicable to the sons/ daughters of officers of All India Services allotted to Assam (certificate regarding the service of father/ mother of the candidate from the concerned authority/department of Government of Assam must be submitted if a candidate is called for counseling.
>
> (c) The candidate must study in all the classes from class VII to XII in the State of Assam and must pass the Qualifying Examination or its equivalent examination from any Institute situated in the State of Assam. (Certificate at Annexure□I in Application Form at Schedule – I of these rules must be submitted if a candidate is called for counseling.) Provided that if a candidate studies outside Assam from Class – VII onwards because his/her father/ mother is posted outside Assam as a Assam State Government Employee or as a Central Government employee or as an employee of a Corporation/ Agency/ instrumentality under Government of Assam or Central Government whether on deputation or transfer or regular posting then the period for which the said father/mother is working outside the State shall be relaxable for such candidate. (Certificate of employment of father/mother outside the State indicating the period of service from the

concerned authority must be submitted if a candidate is called for counseling.)

(d) Candidate's age should not be below 17 years and above 25 years of age on the 31 st December of the year in which the admission is sought for:

Provided that the maximum age limit is relaxable by

3 years in case of candidates belonging to SC/ST(P)/ST(H)/ OBC/MOBC category."

3. The petitioners have questioned aforesaid Rule 3(1)(c) which requires that a candidate must study in all the classes from Class VII to XII in the State of Assam and must pass the qualifying examination or its equivalent examination from any Institute situated in the State of Assam. The exception has been carved out in case father or mother is posted outside Assam as an Assam State Government employee or Central Government employee or as an employee of a Corporation/Agency/instrumentality under the Government of Assam or Central Government.

4. The petitioners submit that they have not passed Class XII. Some of the petitioners have not passed both Class XI and Class XII. They are residents of the State of Assam. They claim that they have studied in Assam for sufficient period. However, they are not eligible as per the aforesaid criteria prescribed under Rule 3(1)(c) of the Rules of 2017.

5. The petitioners have urged that classification made is violative of Article 14. No expert study has been done so as to find out the candidates who have studied from Class VII to XII outside the State of Assam are likely not to serve the State after they acquire their MBBS degree. In the absence of such study and collection of material, the action is unsustainable and is not in accordance with the law laid down in Dr. Jagadish Saran & Ors. v. Union of India (1980) 2 SCC 768. As the parents of the petitioner are permanent residents of State of Assam and fulfill other conditions of eligibility, denial of State□quota seats only on the ground that they have completed their class XI and XII from outside the State of Assam, is clearly irrational, unreasonable and arbitrary. The State Government obtains a bond agreement to serve the State for a period of 5 years or render one year of rural service on completion of the MBBS course and in case of breach, to pay a sum of Rs.30 lakhs to the Government as compensation. While a student is admitted in the MBBS course that would ensure the incumbent would serve the State as provided in bond after passing out MBBS. Considering the provisions contained in Rule 15 of the Rules of 2017, the requirement of study in educational institution/s in the State, as provided in Rule 3(1)(c) has to be construed as directory and not mandatory. The classification made is a hostile one and is not based on any intelligible differentia. In case

any parent is in the employment of other State Government and is serving in the other State or in the case of a person, his parent is doing a private job outside, could not have been discriminated and ought to have been kept at par in the excepted category as provided in Rule 3(1)(c) as Central Government or State Government servant.

6. The petitioners have submitted that the admission rules framed by the State Government have undergone changes from time to time. In the Rules of 2007, Rule 3(2)(c) provided for 4 years schooling in Assam either in (i) HSLC or (ii) HSLC and HSSLC stages combined as an eligibility condition for appearing in the qualifying examination. The proviso to the said rule, however, relaxed the above condition in case the father or the mother of the candidate have completed their schooling in the State for a minimum of 4 years in HSLC level.

7. Rule 3(1) of the 2015 Rules provided the following eligibility conditions:

> (a) The candidate must be a citizen of India.
>
> (b)
>
> (c) The candidate must be a permanent resident of Assam. The candidate or his/ her father/ mother must be residing in the State of Assam continuously for not less than a period of 20 years. (The original PRC certificate at Annexure – I in Application form B at Schedule – I of these rules must be submitted if a candidate is called for counseling):
>
> Provided that this shall not be applicable to the sons/ daughters of officers of All India Services allotted to Assam (certificate regarding the service of father/ mother of the candidate from the concerned authority/ department of Government of Assam must be submitted if a candidate is called for counseling.)
>
> (d) The candidate including sons/ daughters of officers of All India Services must study in all classes from class VII to XII in the State of Assam and must pass the Qualifying Examination from the Institutes situated in the State of Assam. (Certificate at Annexure□ II in Application Form B at Schedule□I of these rules must be submitted if a candidate is called for counseling.) Provided that if a candidate studies outside Assam from Class – VII onwards because his/ her father/ mother is posted outside Assam as a State Government employee on deputation or transfer or regular posting then the period for which father/ mother is working outside the State shall be relaxable for such candidate. (Certificate of employment of father/ mother outside the State

indicating the period of service must be submitted if a candidate is called for counseling.)" In 2016 "Rule 3(1)(c) was amended as follows:

(c) The candidate, including sons/ daughters of Officers of All India Services, must study in all classes from class VI to X in the State of Assam and must pass the HSLC or its equivalent examination conducted by the Government recognized Board/ Council from any institute situated in the State of Assam (Certificate at Annexure□I in Application Form B at Schedule – I of these rules must be submitted if a candidate is called for counselling)."

8. The petitioners have further submitted that Rule 3(1)(c) as amended in 2016, was questioned before the Guwahati High Court and it was struck down. It was declared to be irrational and violative of Article 14 of the Constitution of India. The review petition was also filed and the same was dismissed. Thereafter, Rules of 2017 have been enacted prescribing the aforesaid criteria of study in Rule 3(1)(c). In February 2018, NEET examination was conducted on all India basis for admission in any medical college including dental colleges and Ayurvedic colleges and the result of NEET has been declared. Notice for counseling was issued on 22.6.2018. Pursuant thereto counseling was held on 29.6.2018. As per the NEET position, the petitioners claimed that they were entitled to admission. However, it was not given to them owing to not fulfilling the irrational criteria under Rule 3(1)(c).

9. In the counter affidavit filed by the State of Assam in W.P. [C] No.758/2018, it was contended that in the Rules of 2007 requirement of 4 years of school education between 6 th to 12th standard was necessary in the State of Assam. Having regard to the level of backwardness, inadequate development, lack of adequate number of doctors to provide services all over the State of Assam including in the remote areas, it was considered to be quintessential to ensure that admissions in medical MBBS courses in the Government medical colleges do become available to bona fide candidates of Assam belonging to the State. The rules were amended in the year 2015 and the requirement of 6 years of schooling was introduced between 7 th to 12th standard in the State of Assam. The other two requirements were that the candidate must be a permanent resident of State of Assam and the candidate or his/her father/mother must be residing in the State of Assam continuously for a minimum period of 20 years. This amendment was notified. It was known to all concerned that there is a requirement of undertaking the study in the schools of State of Assam. Thus, after having taken a conscious decision to exercise their choice to study class XI and XII, in schools outside the State of Assam, they cannot stake the claim that they should be considered eligible for admission in the MBBS course in Government colleges in the State of

Assam as against State quota seats. The petitioners do not fulfill the criteria.

10. The amendment of 2016 made in Rule 3(1)(c) was challenged before the High Court of Guwahati. The provisions of 2016 were different and in the review application, the High Court had observed that the State can lay down any reasonable eligibility criteria of domicile for admission under the State quota seats for medical courses in the State of Assam. It is contended that the State can lay down the criteria of institutional preference or number of years of study in the State. Thereafter, the amendment in rules has been made.

11. Rules of 2017 prescribe 6 years of schooling from Class VII to Class XII in the State of Assam. Other requirements being that the candidate must be a permanent resident and father/mother must be residing in the State continuously for 20 years. Rule 15 provides for a bond to be filed containing the aforesaid stipulation. The High Court has upheld the validity of the rule by judgment dated 2.8.2017. Special leave petition was preferred against the same judgment. Special leave petition was disposed of and was not decided on merits as admissions already made were not to be disturbed after the lapse of time frame. The petitioners were fully aware while they were taking instructions outside the State that they could not be eligible to stake their claim in the State quota seats in the State of Assam. They have not questioned the rule before appearing for NEET examination. The stipulation of pursuing the study from Class VII to Class XII in the State of Assam has been provided with the object that the candidates stay back in the State of Assam after completion of their studies to serve the State and its requirement. The stipulation made is constitutionally valid and is in the best interest of the State. Having regard to the limited resources available at the State's disposal, the provision is constitutional and legal. It is necessary for the State of Assam to have the doctors to take care of its inhabitants in the far□flung northeast area.

12. Education is a State subject and one of the Directive Principles enshrined in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. Concession given to the residents of the State in the matter of admission is obviously calculated to serve their interest as presumably some of them may after passing out of the college, settle down as doctors and serve the needs of the locality. The classification is reasonable and has a correlation with the object to be achieved by the legislation and is not amenable to challenge. A similar stipulation in the case of other States has been upheld by this Court. Law has been settled by this Court as to the MBBS/BDS courses.

13. It was submitted by learned senior and other counsel appearing on behalf of the petitioners that classification made in Rule 3(1)(c) of

the Rules of 2017 is violative of Article 14, arbitrary and unreasonable. The condition of obtaining education from Class VII to XII in the State of Assam is wholly uncalled for, for obtaining a better education and the students usually go out of the State. The state could not have deprived them of staking their claims against the State quota seats in the medical colleges in Assam. It was also urged that the coaching facilities are not available in the State of Assam, as such some of the students have obtained admission outside, due to coaching facilities available in other States. Thus, it could not be said to be reasonable to impose a rider of obtaining an education of Class XI and XII in State of Assam only. It was further urged that the parents of certain candidates/petitioners are in the Government service of other adjoining States such as Arunachal Pradesh. Their wards have also been deprived of admission as they have obtained the education from the place where their parents are staying in other States. Thus, the classification made is unreasonable and arbitrary. It was also submitted that distinction could not have been made between the Government employment and private employment and in case parents are also in private employment outside the State and the students are obtaining education in other States where their parents are residing, they ought not to have been ousted from the eligibility criteria prescribed in Rules 3(1)(c). Thus, the same deserves to be struck down.

14. Mr. Maninder Singh, learned ASG and Mr. Nalin Kohli, learned AAG and other learned counsel appearing on behalf of the respondents supported the rule. It was submitted that it was open to the State Government to make such a provision. The same has been enacted in order to enable the students to obtain an education in the State of Assam who are otherwise also residents of Assam and in order to ensure that after obtaining the education, they cater to the needs of the State of Assam. There is a dearth of doctors. Thus, the provision could have been made providing reservation on the ground of residence and education in the State, otherwise, the classification made is reasonable. Provision has been made for the employees of the State of Assam or the Central Government employees or the employees of the Corporation/agency/instrumentalities or who are posted outside on deputation etc. The relaxation has been given to them. The classification of obtaining the education that has been made is reasonable. Besides that, its aim has a rational nexus with the objective sought to be achieved by serving the populace of the State of Assam. The students who have obtained education outside the State are not likely to stay in Assam. The provision of Rule 15 regarding furnishing of bond requiring the MBBS students to serve the State for 5 years or to pay Rs.30 lakhs in case of default cannot be said to be an adequate safeguard, as such provision for such reservation is permissible to be made with respect to the seats of State quota. They are required to be fulfilled as per the eligibility criteria prescribed by the Government.

15. The main question for consideration is whether the classification that has been made in Rule 3(1)(c) to the Rules of 2017 is unreasonable and violative of the provisions contained in Article 14 of the Constitution of India and students passing out or obtaining education in other States in the aforesaid exigencies have been illegally ousted from the eligibility criteria prescribed for seats of State quota.

16. A bare reading of Rule 3(1)(c) makes it clear that the requirement is multi-fold. Firstly, the candidate must be a citizen of India, secondly, he/she must be a permanent citizen of Assam and for that father/mother or the candidate must be residing in the State of Assam continuously for not less than a period of 20 years. The exception has been carved out with respect towards of the employees of all-India services allotted to Assam. The third requirement is that the candidate must study in all the classes from class VII to XII in the State of Assam and must pass a qualifying examination equivalent from an institution situated in Assam. Exception has been carved out in favour of such candidates whose parents are posted, his/her father or mother is posted outside the State of Assam as Assam State Government employee or as Central Government employee or as the employee of Corporation/Agency/instrumentality under the Government of Assam or Central Government, on deputation, transfer or regular posting. The exception has been given for the period father or mother is working outside the State, besides the eligibility criteria prescribing the age of the candidate to be between 17 and 25 years. Three years' relaxation has been given to SC/ST(P)/ST(H)/OBC category in the maximum age limit.

17. Before dwelling upon the rival submissions, it is appropriate to take note of the various decisions referred to at Bar. In D.P. Joshi v. State of Madhya Bharat & Anr., AIR 1955 SC 334, the student who was a resident of Madhya Bharat was obtaining an education in Indore in Malwa region in a medical college. There was discrimination with respect to the fees. This Court had observed that the classification to help the students who are residents of Madhya Bharat was made with the legitimate and laudable objective to encourage education within its borders. The Court has observed:

> "15. The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. (Vide article

41). The State has to contribute for the upkeep and the running of its educational institutions.

We are in this petition concerned with a Medical College, and it is well-known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settle down as doctors and serve the needs of the locality. The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation and is in consequence not open to attack. It has been held in The State of Punjab v. Ajaib Singh and another, AIR 1953 SC 10 (G), that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of article 14 must be rejected."

18. In Kumari N. Vasundara v. State of Mysore & Anr. 1971 (2) SCC 22, this Court considered the Government rules for admission to the pre-professional course in medical college. Rule 3 of the selection rules prescribed the condition of residence for 10 years. It was held that the object of the Rules was to ensure imparting medical education to the best talent available out of the class of persons who were likely to serve as doctors, the inhabitants of the State of Mysore and the same does not suffer from the vice of unreasonableness. The Court had observed:

"7. In D.P. Joshi v. The State of Madhya Bharat and Anr., AIR 1955 SC 334, this Court had while upholding by majority the rules, made by the State of Madhya Bharat, for admission to the Mahatma Gandhi Memorial Medical College, Indore, charging capitation fee from non-Madhya Bharat students laid down that in those rules the word "domicile" was used in its popular sense conveying the idea of residence. Venkatarama Ayyar. J., speaking for the majority said:

"It was also urged on behalf of the respondent that the word "domicile" in the rule might be construed not in its technical legal sense, but in a popular sense as meaning "residence", and the following passage in Wharton's Law Lexicon, 14th Edition, page 344 was quoted as supporting such a construction:

"By the term 'domicile', in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense, the place where a person has his

actual residence, inhabitancy, or commorancy, is sometimes called his domicile".

In Mcmullen v. Wadsworth (1880) 14 A.C. 631, it was observed by the Judicial Committee that "the word 'domicil' in Article 63 (of the Civil Code of Lower Canada) was used in the sense of residence, and did not refer to international domicile". What has to be considered is whether in the present context "domicile" was used in the sense of residence. The rule requiring the payment of a capitation fee and providing for exemption therefrom refers only to bona fide residents within the State. There is no reference to domicile in the rule itself, but in the Explanation which follows, Clauses (a) and (b) refers to domicile, and they occur as part of the definition of "bona fide resident". In Corpus Juris Secundum, Volume 28, page 5, it is stated:

"The term 'bona fide residence' means the residence with domiciliary intent."

There is, therefore, considerable force in the contention of the respondent that when the rulemaking authorities referred to domicile in Clauses (a) and (b) they were thinking really of residence. In this view also, the contention that the rule is repugnant to Article 15(1) must fail."

Under the impugned rule, in that case, no capitation fee was to be charged from the students who were bona fide residents of Madhya Bharat, and the expression "bona fide resident" for the purpose of the rule was defined as (to quote the relevant portion):

"one who is□

(a) a citizen of India whose original domicile is in Madhya Bharat provided he has not acquired a domicile elsewhere, or

(b) a citizen of India, whose original domicile is not in Madhya Bharat but who has acquired a domicile in Madhya Bharat and has resided there for not less than 5 years at the date, on which he applies for admission, or

(c) a person who migrated from Pakistan before September 30, 1948, and intends to reside in Madhya Bharat permanently, or

(d) x x x x." In our view, the word "domicile" as used in Rule 3 in the present case is also used to convey the idea of an intention to reside or remain in the State of Mysore. If classification based on residence does not impinge upon the principle of equality enshrined in Article 14

as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule seems to be to attempt to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of the State of Mysore. It is true that it is not possible to say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State after qualifying as doctors: they have indeed a fundamental right as citizens to settle anywhere in India and they are also free, if they so desire and can manage, to go out of India for further studies or even otherwise. But these possibilities are permissible and inherent in our Constitutional set□ up and these considerations cannot adversely affect the Constitutionality of the otherwise valid rule. The problem as noticed in Minor P. Rajendran's case, (1968) 2 SCR 786 and as revealed by a large number of cases which have recently come to this Court Is that the number of candidates desirous of having a medical education is very much larger than the number of seats available in medical colleges. The need and demand for doctors in our country is so great that young boys and girls feel that in medical profession they can both get gainful employment and serve the people. The State has, therefore, to formulate with reasonable foresight a just scheme of classification for imparting medical education to the available candidates which would serve the object and purpose of providing broad□based medical aid to the people of the State and provide medical education to those who are best suited for such education. Proper classification inspired by this consideration and selection on merit from such classified groups, therefore, cannot be challenged on the ground of inequality violating Article 14. The impugned rule has not been shown by the petitioner to suffer from the vice of unreasonableness. The counter□affidavit filed by the State, on the other hand, discloses the purpose to be that of serving the interests of the residents of the State by providing medical aid for them.

8. The petitioner's argument that candidates whose parents have of necessity to remain out of Mysore State and who have also by compelling reasons to shift their residence frequently from one State to another without completing ten years in any one State, would suffer because their parents cannot afford to arrange for their children's residence in

Mysore State for ten years during the first 17 years of their age, merely suggests that there is a likelihood of some cases of hardship under the impugned rule. But cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional. For relief against hardship in the working of a valid rule, the petitioner has to approach elsewhere because it relates to the policy underlying the rule. Redress for the grievance against the wide gap between the number of seats in the medical colleges and the number of candidates aspiring to become doctors for earning their own livelihood and for serving the needs of the country, is also to be sought elsewhere and not in this Court, which is only concerned with the constitutionality of the rule."

19. In Dr. Pradeep Jain & Ors. v. Union of India & Ors., (1984) 3 SCC 654, the Court has observed that for the MBBS course residence requirement in a particular State in the matter of admission cannot be said to be irrational or irrelevant and neither in violation of Article 14. The Court observed:

> "19. It will be noticed from the above discussion that though intra-state discrimination between persons resident in different districts or regions of a State has by and large been frowned upon by the court and struck down as invalid as in Minor P. Rajendran's case (supra) and Perukaruppan's case (supra), the Court has in D.N. Chanchalas case and other similar cases upheld institutional reservation effected through university wise distribution of seats for admission to medical colleges. The Court has also by its decisions in D.P. Joshi's case and N. Vasundhara's case (supra) sustained the constitutional validity of reservation based on residence within a State for the purpose of admission to medical college. These decisions which all relate to admission to MBBS course are binding upon us and it is therefore not possible for us to hold, in the face of these decisions, that residence requirement in at State for admission to MBBS course is irrational and irrelevant and cannot be introduced as a condition for admission without violating the mandate of equality of opportunity contained in Article 14 We must proceed on the basis that at least so far as admission to MBBS course is concerned, residence requirement in a State can be introduced as a condition for admission to the MBBS course. It is of course true that the Medical Education Review Committee established by the Government of India has in its report recommended after taking into account all relevant considerations, that the "final objective should be to ensure that all admissions to the MBBS course should be open to candidates on an All India basis without the imposition

> of existing domiciliary condition", but having regard to the practical difficulties of transition to the stage where admissions to MBBS course in all medical colleges would be on All India Basis, the Medical Education Review Committee has suggested "that to begin with not less than 25 per cent seats in each institution may be open to candidates on all India basis." We are not all sure whether at the present stage it would be consistent with the mandate of equality in its broader dynamic sense to provide that admissions to the MBBS course in all medical colleges in the country should be on all India basis. Theoretically, of course, if admissions are given on the basis of all India national entrance examination, each individual would have equal opportunity of securing admission, but that would not take into account diverse consideration, such as, differing level of social, economic and educational development of different regions, disparity in the number of seats available for. admission to the MBBS course in different States, difficulties which may be experienced by students from one region who might in the competition on all India basis get admission to the MBBS course in another region far remote from their own and other allied factors. There can be no doubt that the policy of ensuring admissions to the MBBS course on all India basis is a highly desirable policy, based as it is on the postulate that India is one national and every citizen of India is entitled to have equal opportunity for education and advancement, but it is an ideal to be aimed at and it may not be realistically possible, in the present circumstances, to adopt it, for it cannot produce real equality of opportunity unless there is complete absent of disparities and inequalities a situation which simply does not exist in the country today. There are massive social and economic disparities and inequalities not only between State and State but also between region and region within a state and even between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them.

They do not have the social and material resources to take advantage of these opportunities which remain merely on paper recognised by law but non□existent in fact. Students from backward States or regions will hardly be able to compete with those from advanced States or regions because, though possessing an intelligent mind, they would have had no adequate opportunities for development so as to be in a position to compete with others. So also students belonging to the weaker sections who have not, by reason of their socially or economically disadvantaged

position, been able to secure education in good schools would be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had the best of school education and in open All India Competition, they would be likely to be worsted. There would also be a number of students who, if they do not get admission in a medical college near their residence and are assigned admission in a far of college in another State as a result of open All India competition, may not be able to go to such other college on account of lack of resources and facilities and in the result, they would be effectively deprived of a real opportunity for pursuing the medical course even though on paper they would have got admission in medical college. It would be tantamount to telling these students that they are given an opportunity of taking up the medical course, but if they cannot afford it by reason of the medical college to which they are admitted being far away in another State, it is their, bad luck: the State cannot help it, because the State has done all that it could, namely, provide equal opportunity to all for medical education. But the question is whether the opportunity provided is real or illusory? We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in Order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State and for this purpose, there should be no distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education, It would be constitutionally permissible to provide, as an interim measure until we reach the stage when we can consistently with the broad mandate of the rule of equality in the larger sense ; ensure admissions to the M.B.B.S, course on the basis of national entrance examination an ideal which we must increasingly strive to reach for reservation of a certain percentage of seats in the medical colleges for students satisfying a prescribed residence requirement as also for students who have passed P.U.C. or pre-medical examination or any other qualifying examination held by the university or the State and for this purpose it should make no difference whether the qualifying examination is conducted by the State Board or by the Central Board of Secondary Education, because no discrimination can be made between schools alleviated can be made between schools affiliated to the Central Board of Secondary Education. We may point out that at the close of the arguments we asked the learned Attorney General to inform the court as to what was the stand of the Government of India in the matter of such reservation and the learned Attorney General in response to the inquiry made by the Court filed a policy statement which contained the following formulation of the policy of the Government of India:

Central Government is generally opposed to the principle of reservation based on domicile or residence for admission to an institution of higher education, whether professional or otherwise. In view of the territorially articulated nature of the system of institutions of higher learning including institutions of professional education, there is no objection, however, to stipulating reservation or preference for a reasonable quantum in undergraduate courses for students hailing from the school system of educational hinterland of the institutions. For this purpose, there should be no distinction between school affiliated to State Board and schools affiliated to CBSE.

We are glad to find that the policy of the Government of India in the matter of reservation based on residence requirement and institutional preference accords with the view taken by us in that behalf. We may point out that even if at some stage it is decided to regulate admissions to the M.B.B.S, course on the basis of All India Entrance Examination, some provision would have to be made for allocation of seats amongst the selected candidates on the basis of residence or institutional affiliation so as to take into account the aforementioned factors."

20. In Anant Madaan v. State of Haryana and Ors., (1995) 2 SCC 135, the Court considered the validity of the provision providing reservation of 85% seats on the basis of candidate's education for preceding 3 years in the State along with the requirement of domicile. The condition was held not to be violative of Article 14. The Court has observed:

"4. The petitioners before the Punjab and Haryana High Court had challenged the eligibility conditions of 1994 insofar as they require that candidates should have studied for the 10th, 11th and 12th standards as regular candidates in recognised institutions in Haryana. They had also challenged the Corrigendum. The two learned Judges of the Punjab and Haryana High Court who heard these writ petitions differed. Hence the petitions were referred to a third Judge who concurred with one of the Judges and held that the condition requiring a candidate to have studied in the 10th, 10+1 and 10+2 classes in recognised institutions in Haryana was valid. The condition in the Corrigendum which required an affidavit from the parent or guardian of the candidate that the candidate was not appearing or had not appeared in the entrance test of any State or Union Territory was, however, struck down as arbitrary and unreasonable. In the present appeals, however, we are not concerned with the Corrigendum.

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8. In view of the above facts, we have to consider whether the condition requiring a candidate to have studied in 10th, 10+1 and 10+2 classes in a recognised institution in the State of Haryana, can be considered as arbitrary or unreasonable. It is by now well settled that preference in admissions on the basis of residence, as well as institutional preference, is permissible so long as there is no total reservation on the basis of residential or institutional preference. As far back as in 1955, in the case of D.P. Joshi v. The State of Madhya Bharat and Anr., AIR 1955 SC 334, this Court, making a distinction between the place of birth and residence, upheld a preference on the basis of residence, in educational institutions.

9. In the case of Jagadish Saran (Dr) v. Union of India, (1980) 2 SCR 831, this Court reiterated that regional preference or preference on the ground of residence in granting admission to medical colleges was not arbitrary or unreasonable so long as it was not a wholesale reservation on this basis. This Court referred to various reasons why such preference may be required. For example, the residents of a particular region may have very limited opportunities for technical education while the region may require such technically qualified persons. Candidates who were residents of that region were more likely to remain in the region and serve their region if they were preferred for admission to technical institutions in the State, particularly medical colleges. A State which was short of medical personnel would be justified in giving preference to its own residents in medical colleges as these residents, after qualifying as doctors, were more likely to remain in the State and give their services to their State. The Court also observed that in the case of women students, regional or residential preference may be justified as their parents may not be willing to send them outside the State for medical education. We, however, need not examine the various reasons which have impelled this Court to uphold residential or institutional preference for admission to medical colleges. The question is settled by the decision of this Court in Pradeep Jain (Dr) v. Union of India, (1984) 3 SCR 942. This Court has observed, in that judgment:

(SCR p.981: SCC p.687, para 19) “We are, therefore, of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made to equalize opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or

> pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State...." This Court held in that case that reservation to the extent of 70% on this basis would be permissible. This percentage of reservation was subsequently increased to 85% by this Court in the case of Dinesh Kumar (Dr) v. Motilal Nehru Medical College, (1986) 3 SCR 345. This Court, in that case, directed an entrance examination on an All India basis for the remaining 15% of seats.
>
> 10. In the present case, the reservation which has been made on the basis of candidates having studied for the preceding three years in recognised schools/colleges in Haryana is in respect of these 85% of seats. It excludes 15% seats which have to be filled in on an. All India basis. This eligibility criterion, therefore, is in conformity with the decisions of this Court referred to above. It cannot, therefore, be considered as arbitrary or unreasonable or violative of Article 14 of the Constitution."

21. In Dr. Jagadish Saran and Ors. v. Union of India, (1980) 2 SCC 768, the question arose of the constitutionality of reservation of seats or quota for local candidates in professional courses. Whether it was in denial of equal opportunity in higher education. The Court observed that the region where the institution is situated is a relevant consideration for degree courses, but considerations are different, if the course is on a higher level of specialty, and in case the concession is apparently discriminatory, the burden of proof is on the respondent-State. Where the data, facts, and figures are insufficient the court would be reluctant to rule unconstitutionality and pass consequential orders if its effect is to be wide-ranging involving policy matters. The Court has observed that 'equal protection of the laws' for full growth is guaranteed, apart from 'equality before the law'. Even so in our imperfect society, some objective standards like common admission tests are prescribed to measure merit, without subjective manipulation or university-wise invidiousness. The Court has observed that preference can be given to the students of the University. That strategy ensures the probability of their serving the backward people for whom medical courses were opened. The Court held:

> "20. Again, if the State finds that only students from the backward regions, when given medical graduation, will care to serve in that area, drawn towards it by a sense of belonging, and those from outside will, on graduation, leave for the cities or their own regions, it may evolve a policy of preference or reservation for students of that University. That strategy ensures the probability of their serving

the backward people for whose benefit the medical courses were opened. Such measures which make for equality of opportunity for medical education and medical service for backward human sectors may be constitutionalised even by Articles 14 and 15. But it must be remembered that exceptions cannot over□rule the rule itself by running riot or by making reservations as a matter of course, in every university and every course. For instance, you cannot wholly exclude meritorious candidates as that will promote sub□standard candidates and bring about a fall in medical competence, injurious, in the long run, to the very region. It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation. So, within these limitations, without going into excesses, there is room for play of the State's policy choices.

*** *** ***

27. The conclusion that we reach from this ruling which adverts to earlier precedents on the point is that university□wise preferential treatment may still be consistent with the rule of equality of opportunity where it is calculated to correct an imbalance or handicap and permit equality in the larger sense.

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32. If university□wise classification for post□graduate medical education is shown to be relevant and reasonable and the differential has a nexus to the larger goal of equalisation of educational opportunities the vice of discrimination may not invalidate the rule.

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40. Coming to brass tacks, deviation from equal marks will meet with approval only if the essential conditions set out above are fulfilled. The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or hike disadvantage. The quantum of reservation should not be excessive or societally injurious, measured by the overall competency of the end□product, viz. degree□holders. A host of variables influence the quantification of the reservation. But one factor deserves great emphasis. The higher the level of the specialty the lesser the

role of reservation. Such being the pragmatics and dynamics of social justice and equal rights, let us apply the tests to the case on hand.

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44. Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or post-doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by 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 over-ruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral."

22. The Court also observed that law is no absolute logic but the handmaid of current social facts of life. This Court has held that considerations are different for the MBBS Course which is the basic course and the selection for postgraduate or post-doctoral courses in specialised subject. It also observed that it was permissible to provide reservation in basic courses like MBBS course, but it would be different if such reservation is made for super-skill specialities. The Court has laid down such reservation is permissible in the basic MBBS degree course, not postgraduate or post-doctoral courses.

23. A Constitution Bench of this Court in Saurabh Chaudri & Ors. v. Union of India & Ors. (2003) 11 SCC 146 considered the question of reservation for postgraduate courses in medical colleges by providing an institutional preference. With a majority, the Court observed that the expression 'place of birth' is not synonymous with the expression 'domicile' and they reflect two different concepts. The term 'place of birth' appears in Article 15(1) but not domicile. The question of whether a reservation on the basis of domicile is impermissible in terms of Article 15(1), was answered in the negative. The strict scrutiny test or the intermediate scrutiny test applicable in the United States of America cannot be applied. Such a test is not applied in Indian courts. Such a test may be applied in a case where by reason of a statute the life and liberty of a citizen is in jeopardy. The constitutionality of a statute is to be presumed and the burden to prove contra is on him who asserts the thing. The courts always lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim

ut res magis valeat quam pereat i.e., it is better for a thing to have an effect than to be made void . Even applying the said test, it was observed that it could not be held that the institutional reservation should be done away with, having regard to the present□ day scenario. The lawmakers cannot shut their eyes to the local needs also. The local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47. The reservation by institutional preference is not ultra vires Article 14. The hardship of a few cannot be the valid basis for determining the validity of any statute. The Court observed:

> "65. Hence, we may also notice the argument, whether institutional reservation fulfills the aforementioned criteria or not must be judged on the following: □
>
> 1. There is a presumption of constitutionality;
>
> 2. The burden of proof is upon the writ petitioners as they have questioned the constitutionality of the provisions;
>
> 3. There is a presumption as regard the State's power on extent of its legislative competence;
>
> 4. Hardship of few cannot be the basis for determining the validity of any statute.
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> *** *** ***
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> 67. This Court may, therefore, notice the following:
>
> (i) The State runs the Universities.
>
> (ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in Post Graduate Courses are also required to be paid stipends.

Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for last about two decades.

(v) Even those States which defied the decision of this Court in Dr. Pradeep Jain's case (supra) had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criteria.

(vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in all India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation.

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70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India."

24. Reliance has also been placed on certain observations made in Dr. Pradeep Jain (supra) thus :

> "13. We may now proceed to consider what are the circumstances in which departure may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making admissions to medical colleges, it must satisfy the test of equality.
>
> Now the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground

the every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make that equality clause sterile and perpetuate existing inequalities. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet Willian Blanks said graphically is very true, namely, "One law for the Lion and the Ox is oppression," Those who are unequal, in fact, cannot treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in Order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality an a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful section, so that each member of the community, whatever is his births occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence.

We may in this connection usefully quote what Mathew, J. said in Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat [1975]1 SCR

173.

"... It is obvious that "equality in law precludes discrimination of any kind; whereas equality, in fact, may involve the necessity of differential treatment in Order to attain a result which establishes an equilibrium between different situations" We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large masses of people suffer in the country. Equality in law must produce real equality; de jure equality must ultimately find its raison d'etre in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The State must, to use again the words of Krishna Iyer. J. in Jagdish Saran's case (supra) weave those special facilities into the web of equality which, in an equitable setting provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity equality is not negated or neglected where special provisions are geared to the large goal of the disabled

getting over their disablement consistently with the general good and individual merit." The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequal's.

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21. But, then to what extent can reservation based on residence requirement within the State or on institutional preference for students passing the qualifying examination held by the university or the state be regarded as constitutionally permissible? it is not possible to provide a categorical answer to this question for, as pointed out by the policy statement of Government of India, the extent of such reservation would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development of the area and other relevant factors. It may be that in a State were the level of educational development is woefully low, there are comparatively inadequate opportunities for training in the medical speciality and there is large□ scale social and economic backwardness, there may be justification for reservation of a higher percentage of seats in the medical colleges in the State and such higher percentage may not militate against "the equality mandate viewed in the perspective of social justice". So many variables depending on social and economic facts in the context of educational opportunities would enter into the determination of the question as to what in the case of any particular State, should be the limit of reservation based on residence requirement within the State or on institutional preference. But, in our opinion, each reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 percent but we are the view that it would be fair and just to fix the outer limit at 70 percent. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence. We may make it clear that this outer limit fixed by us will be subject to any reduction or attenuation which may be made by the Indian Medical Council which is the statutory body of medical practitioner whose functional obligations include setting standards for medical education and providing for its regulation and coordination. We are of the opinion that this outer limit fixed by us must gradually over the years be progressively reduced but that is a task which would have to be performed by the Indian Medical Council. We would direct the Indian. Medical Council to consider within a period of nine months from today whether the outer limit of 70 percent fixed by us needs to be reduced and if the Indian Medical Council determines a shorter outer limit, it will be binding on the States and the Union Territories. We would also direct the Indian Medical

Council to subject the outer limit so fixed to reconsideration at the end of every three years but in no event should the outer limit exceed 70 percent fixed by us. The result is that in any event at least 30 per cent of the open seats shall be available for admission of students on all India basis irrespective of the State or university from which they come and such admissions shall be granted purely on merit on the basis of either all India Entrance Exam. or entrance examination to be held by the State. Of course, we need not add that even where reservation on the basis of residence requirement or institutional preference is made in accordance with the directions given in this judgment, admissions from the source or sources indicated by such reservation shall be based only on merit, because the object must be to select the best and most meritorious student from within such source or sources." (emphasis supplied)

25. In Nikhil Himthani v. State of Uttarakhand & Ors. (2013) 10 SCC 237, the question arose with respect to admission into professional colleges pertaining to medical and dental colleges in postgraduate and super specialty courses. It was observed that merit cannot be compromised by making a reservation on the basis of other considerations like residential requirement etc. The decisions in Jagadish Saran (supra) and Pradeep Jain (supra) had been referred to and it was observed:

> "19. Thus, it will be clear from what has been held by the three-Judge Bench of this Court in Magan Mehrotra and Ors. v. Union of India and Ors. (supra) that no preference can be given to candidates on the basis of domicile to compete for the institutional quota of the State if such candidates have done their MBBS course in colleges outside the State in view of the decisions of this Court in Dr. Pradeep Jain and Ors. v. Union of India and Ors. (supra). Hence, clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin are also violative of Article 14 of the Constitution."

26. The aforesaid observations have been made with respect to the postgraduate course in respect of which the different yardstick of merit has to be applied. Thus, the decision in Nikhil Himthani (supra) no way espouses the cause of the petitioners.

27. In Vishal Goyal & Ors. v. State of Karnataka & Ors. (2014) 11 SCC 456, the question again came up for consideration with respect to reservation of seats with State quota in postgraduate courses. It was held at the postgraduate level even partial reservation based on residence requirement is impermissible. The observation has been made the criteria for the postgraduate course does not hold good for basic MBBS course. Decisions in Magan Mehrotra v. Union of India (2003) 11 SCC 186, Dr. Pradeep Jain (supra), Saurabh Chaudri (supra), Nikhil Himthani (supra) and other decisions have been considered and this Court has observed with respect to postgraduate courses thus:

> "11. Mr. Mariarputham is right that in Saurabh Chaudri v. Union of India (supra), this Court has held that institutional preference can be given by a State, but in the aforesaid decision of Saurabh Chaudri, it has also been held that decision of the State to give institutional preference can be invalidated by the Court in the event it is shown that the decision of the State is ultra vires the right to equality Under Article 14 of the Constitution. When we examine Sub-clause (a) of Clause 2.1 of the two Information Bulletins, we find that the expression "A candidate of Karnataka Origin" who only is eligible to appear for Entrance Test has been so defined as to exclude a candidate who has studied MBBS or BDS in an institution in the State of Karnataka but who does not satisfy the other requirements of Sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014. Thus, the institutional preference sought to be given by Sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014 is clearly contrary to the judgment of this Court in Dr. Pradeep Jain's case (supra).
>
> 13. Sub-clause (a) of Clause 2.1 of the two Information Bulletins does not actually give institutional preference to students who have passed MBBS or BDS from Colleges or Universities in the State of Karnataka, but makes some of them ineligible to take the Entrance Test for admission to Post Graduate Medical or Dental courses in the State of Karnataka to which the Information Bulletins apply."

28. The ratio of the aforesaid decision in Vishal Goyal (supra) for the postgraduate course is not attracted to the basic course that is MBBS course as laid down in the dictum itself. The eligibility criteria for basic MBBS course may be different and can be based on domicile but not for the postgraduate and post-doctoral courses.

29. Dr. Kriti Lakhina & Ors. v. State of Karnataka & Ors. WP [C] No. 204/2018 decided on 4.4.2018, relied on by petitioners. The Court dealt with the case of admissions to postgraduate medical not that of MBBS/BDS course. Thus, the provision made as to institutional preference was held to be ultra vires Article 14. The decision is of no applicability with respect to basic MBBS/BDS/Ayurvedic Courses.

30. In E.V. Chinnaiah v. State of A.P. & Ors. (2005) 1 SCC 394, the Court dealt with respect to extent of reservation for a class based on the micro distinction. Further sub-classification of the Scheduled Castes for providing reservation came up for consideration. The Court has held that the classification whether permissible or not, must be judged on the touchstone of the object sought to be achieved. It was observed:

> "39. Legal constitutional policy adumbrated in a statute must answer the test of Article 14 of the Constitution of India. Classification whether permissible or not must be judged on the touchstone of the object sought to be achieved. If the object of reservation is to take affirmative action in favour of a class which is social, educationally and economically backward, the State's jurisdiction while exercising its executive or legislative function is to decide as to what extent reservation should be made for them either in Public Service or for obtaining admission in educational institutions. In our opinion, such a class cannot be sub□ divided so as to give more preference to a minuscule proportion of the Scheduled Castes in preference to other members of the same class."

31. The decision in Deepak Sibal v. Punjab University & Anr. (1989) 2 SCC 145 has also been pressed into service with respect to intelligible differentia test applied to the facts with respect to private employees. The said question arose with respect to admission to LL.B. classes. There was the exclusion of private employees. Admissions were restricted only to Government, semi□Government and employees of other institutions on two grounds. Firstly, regarding production of bogus certificates of employment from the private employers and secondly, imparting legal education to the employees of Government, semi□ Government and other institutions. The Court observed that it was not appropriate to exclude the employees of private establishments. The classification was not based on intelligible differentia. The Court further observed that a classification need not be made with mathematical precision but if there be little or no difference between the persons or things which have been grouped together and those left out of the group, in that case, the classification cannot be said to be a reasonable one. There is no dispute with the aforesaid proposition with respect to intelligible differentia test laid down in E.V. Chinnaiah (supra) and Deepak Sibal (supra). However, the test to be applied in the instant case is whether the classification made is violative or irrational or lacks intelligible differentia criteria.

32. As held in the aforesaid decisions, it is permissible to lay down the essential educational requirements, residential/domicile in a particular State in respect of basic courses of MBBS/BDS/Ayurvedic. The object sought to be achieved is that the incumbent must serve the State concerned and for the emancipation of the educational standards of the people who are residing in a particular State, such reservation has been upheld by this Court for the inhabitants of the State and prescription of the condition of obtaining an education in a State. The only distinction has been made with respect to postgraduate and post□doctoral super specialty course.

33. Rule 3(1)(c) of the Rules of 2017 lays down the requirement of obtaining education in the State and relaxation has been given to the wards of the State

Government employees or Central Government employees or to an employee of Corporation/Agency/instrumentality under the Government of Assam or the Central Government, whether on deputation or transfer on regular posting from obtaining education from class VII to XII for the period his/her father or mother is working outside the State. As urged on behalf of the petitioners the employees of other State Government but residents of Assam, similar relaxation ought to have been made cannot be accepted. Thus, their exclusion cannot be said to be irrational and arbitrary. The wards of the employees in the service of other States like Government employees of Arunachal Pradesh, in our opinion, form a totally different class. When the wards are obtaining education outside and the parents are working in Arunachal Pradesh as Government employee or elsewhere, they are not likely to come back to the State of Assam. As such Government of Assam holds that they should provide preference to State residents/institutional preference cannot be said to unintelligible criteria suffering from vice of arbitrariness in any manner whatsoever, thus, Rule 3(1)(c) framed by the Government of Assam is based on an intelligible differentia and cannot be said to be discriminatory and in violation of Article 14.

34. With respect to the private employees also, the submission was raised that wards of private employees working outside the State ought to have been placed at the similar footing as that of the wards of the State Government/Central Government employees etc. In our opinion, when once parents have moved outside in a private employment and wards obtaining education outside, they are not likely to come back, thus, their exclusion as afore□stated footing cannot be said to be irrational or illegal.

35. It was urged that some of the students may obtain admission in other States for the purpose of better coaching. Relevant data has not been placed on record by the petitioners that in Assam coaching is not available. Apart from that, when they can afford to obtain coaching in other States, they stand on a different footing, they are the one who belongs to an affluent class who can afford expensive education in other States and it is not necessary that they should be adjusted in State quota seat, they can stake claim for All India Quota Seats for the State of Assam. They can stake their claim with respect to open seats within the State of Assam. The exclusion is not total for them. However, with respect to the State□ quota seats, since it is open to the State Government to lay down the educational as well as domicile requirement, incumbents must fulfill the criteria. The criteria so laid down in Rule 3(1)(c) of Rules of 2017, cannot be said to be ultra vires of Article 14 of the Constitution of India.

36. In view of the aforesaid discussion, we find that the writ petitions/SLP are devoid of substance. Rule 3(1)(c) of the Rules of 2017 is in consonance with the spirit of Article 14 of the Constitution of India. The writ petitions/SLP deserve dismissal and the same are hereby dismissed. Parties to bear their own costs.

.....J.
(Arun Mishra)

New Delhi;
August 17, 2018.

.....J.
(S. Abdul Nazeer)