

Dr. Sandeep Sadashivrao Kansurkar & Ors vs Union Of India & Ors on 27 October, 2015

Equivalent citations: 2015 AIR SCW 6086, 2016 (2) SCC 328, 2016 (1) AJR 833, (2015) 4 SCT 789, (2016) 1 ANDHLD 150, (2015) 4 ESC 670, (2016) 1 ALL WC 86, (2015) 12 SCALE 24, (2016) 2 SERVLR 1, 2015 (11) ADJ 23 NOC

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Bench: Prafulla C. Pant, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.444 OF 2015

Dr. Sandeep s/o Sadashivrao Kansurkar ... Petitioner(s)
and Others

Versus

Union of India and Others ... Respondent(s)

J U D G M E N T

Dipak Misra, J.

The gravamen of grievance and the substratum of discontent of the petitioners in this writ petition, preferred under Article 32 of the Constitution of India, is that though the primary eligibility criteria for appearing in the super-specialty entrance examination conducted in different States in India for admission to D.M. (Doctorate of Medicine) and M.Ch. (Masters of Chirurgiae) course regard being had to the purpose that it endows the students an excellent opportunity to prosecute super specialty subjects and to fulfill their aspirations for a bright and vibrant career as well as to serve the society in the institutes recognized by the Medical Council of India (MCI) and most of the States, namely, Maharashtra, Uttar Pradesh, Gujarat, Rajasthan, Delhi, Karnataka, Kerala, West Bengal, Bihar and Haryana, conduct the entrance examination for the eligible candidates from All Over India and permit them to appear in the entrance examination, yet the States like, Andhra Pradesh, Telangana and Tamil Nadu, confine the eligibility only to the candidates having domicile in their respective States. The fall out of the restriction is that candidates having the domicile in the said States can appear in other States' entrance examination without any restriction and compete with other candidates, and the said situation creates a clear disparity, and further a state of inequality has been allowed to reign in the aforesaid three States. The dissatisfaction is further accentuated by asserting that the institutes with super-specialty courses are distributed all over India in a heterogeneous manner and the States like, Punjab, Madhya Pradesh, Chhatisgarh, Manipur, Arunachal Pradesh,

Nagaland, Mizoram, Tripura, Sikkim, Uttarakhand are not having any government institutes offering super- specialty courses and the candidates from the said States have to depend on the other States' entrance examinations to seek a career in the discipline they are interested, but for the restriction imposed by the States like, Andhra Pradesh, Telangana and Tamil Nadu, they are deprived of the opportunity to participate in the entrance examination and that invites the frown of Articles 14 and 16 of the Constitution of India.

2. It is urged in the writ petition that the restraint imposed by the aforesaid three States amounts to reservation in respect of the post- graduate level; and as far as the super-specialty courses are concerned, the question of reservation based on residence or institutional preference is totally impermissible, for merit cannot be compromised by making reservation on the consideration, like residential requirement, as that would be absolutely against the national interest and plays foul of equality clause engrafted in the Constitution. It is put forth that the States of Andhra Pradesh and Telangana have drawn support from the Presidential order, namely, Andhra Pradesh Educational Institutions (Regulations and Admissions) order 1974 (for short "the Presidential Order") issued under Article 371-D of the Constitution and G.O.P. No.646 dated 10th July, 1979 issued by the State of Andhra Pradesh (for short, 'the 1979 circular'), which are really not applicable to the super-specialty courses, for the legal system which prevails throughout the territory of India is a singular and indivisible one and Article 14 lays a clear postulate for conferment of equal opportunity throughout the nation. It is asseverated that the reservations made by the States of Andhra Pradesh, Telangana and Tamil Nadu, ushers in a state of inequality by putting the residents of the said States in one class solely on the foundation of domicile and others in a different category altogether without any rationale and, therefore, the entire action smacks of arbitrariness and unreasonableness.

3. On the basis of aforesaid assertions prayers have been made to issue a command to the Respondent Nos.1 and 6 i.e. the Secretary, Ministry of Health and Family Welfare, Union of India and the Medical Council of India, respectively, to allow the petitioners to appear in the entrance examination conducted by the respondent Nos.3 to 5 i.e. the States of Tamil Nadu, Andhra Pradesh and Telangana for the year 2015-2016 for the super- specialty courses and further to issue a writ of mandamus directing the respondent Nos.1 and 6, as well as the respondent No.2, the Director General of Health Services of the Union of India, to conduct a common entrance test for admission to super-specialty courses, like DM/M.Ch. at All India Level, and for certain other ancillary reliefs.

4. A counter affidavit has been filed by the State of Andhra Pradesh contending, inter alia, that the claim of the petitioners to appear in the entrance test conducted by the State of Andhra Pradesh for admission into the medical super-specialty courses is contrary to the scheme of the Presidential Order and the 1979 circular. It is set forth in the counter affidavit that the two categories of institutions, namely, State wide educational Institutions and Non-State wide educational Institutions (Local Institutions) existed in the State of undivided Andhra Pradesh as per the Presidential Order and further clarified by 1979 circular all professional under-graduate and post-graduate courses are covered under the aforesaid two categories of institutions. It is contended that the erstwhile State of Andhra Pradesh was divided into three local areas that came under Andhra University, Osmania University and Sri Venkateswara University for the purpose of

admission into the educational institutions. Subsequent to the bifurcation of the State, the Andhra University area and Sri Venkateswara University area have come under the territory of State of Andhra Pradesh and the Osmania University area has come under the State of Telangana and 85% of the seats are reserved for the local candidates in each University area and the said system is to remain in vogue for a period of ten years. A reference has been made to paragraph 3 of the Presidential Order, indicating the division of the local areas. There is also reference to paragraphs 5 and 7 of the Presidential Order, which indicate that the reservations are available for the local candidates in the University areas in Non-State-wide educational institutions and State-wide educational institutions. Placing reliance on the same it is asserted that admissions upto 85% of Non-State-wide seats shall be reserved in favour of the local areas as per procedure specified in the 1979 circular as amended from time to time and remaining 15% seats are to be treated as unreserved seats for the Non-State candidates who have qualified in the Entrance Test. Elaborating the same, it is contended that admission upto 85% State-wide seats shall be reserved in favour of Andhra and Nagarjuna University, Osmania and Kakatiya University and Sri Venkateswara University in the ratio 42:36:22 respectively as per the procedure specified as per the 1979 circular. It is highlighted that paragraph 4 of the Presidential Order, defines the local candidate in reference to a local area and how the remaining 15% unreserved seats have to be dealt with. In essence, it is the stand of the State of Andhra Pradesh that according to Six Point Formula of the Constitution of India, as amended by 32nd Amendment, inserting Article 371-D, special provisions have been made in respect of the State of Andhra Pradesh which provide equal opportunities in different parts of the State in the matter of public employment and education. To bolster the stand that there is no provision for admission to the candidates of other States except the candidates belonging to the State of Andhra Pradesh, emphasis is laid on the schematic context of the Presidential Order and the 1979 circular and further it is reiterated that in view of the special status conferred on the State by the constitutional norms of equality which has been assiduously attempted to build is sans substance as per the Presidential Order read with 1979 circular.

5. The State of Telangana has also filed a counter affidavit wherein it has been stressed that the Presidential Order, as well as the 1979 circular are protective in nature and a distinction has been drawn between the local candidates and reservation for local candidates; and the candidates who are eligible to apply for admission in respect of the remaining 15% of the unreserved seats. It is urged that the 15% of unreserved seats as per the Presidential Order and the circular issued by the State Government in 1979, do not include the candidates from other States. The other grounds which have been put forth in the counter affidavit need not be stated because they are in a way repetition of the stand taken by the State of Andhra Pradesh.

6. The State of Tamil Nadu has also filed a counter affidavit, but we shall not refer to the same in praesenti. At the very outset, we would like to make it absolutely clear that when we reserved the matter, we had mentioned in our order that the controversy relating to the State of Tamil Nadu shall be taken up after the judgment is pronounced in respect of the States of Andhra Pradesh and Telangana.

7. We have heard Ms. Indu Malhotra and Mr. B.H. Marlapalle, learned senior counsel for the petitioners, Mr. Mukul Rohatgi, learned Attorney General for Union of India, Mr. H.P. Raval,

learned senior counsel, along with Mr. S. Udaya Kumar Sagar, learned counsel for the State of Telangana, Mr. Guntur Prabhakar, learned counsel for the State of Andhra Pradesh and Mr. Gaurav Sharma, learned counsel for the Medical Council of India.

8. It is submitted by Ms. Indu Malhotra, learned senior counsel appearing for the petitioners that though Article 371-D of the Constitution of India makes special provisions for the State, yet that would not extend to cover reservations as regards the super-specialty courses where merit alone matters as has been held by the Constitution Bench in *Dr. Preeti Srivastava and Another vs. State of M.P. and Others*[1]. It is urged by her that equality before law and equal protection of the law serve the purpose of excellence and if merit is compromised on the bedrock of geographical boundary, the basic normative principle of equality would be marred. Learned senior counsel would further contend that the residential requirement or institutional preference should not be allowed to have any room in this category of admissions in view of the pronouncements in *Nikhil Himthani vs. State of Uttarakhand*[2] and *Vishal Goel vs. State of Karnataka*[3]. It is astutely canvassed by her that the principle pertaining to domicile was laid down more than a decade back in *Saurabh Chaudri vs. Union of India*[4], but both the States, namely, Andhra Pradesh and Telangana have flagrantly violated the said principle and given an indecent burial to the guidelines issued by the Medical Council of India.

9. Mr. B.H. Marlapalle, learned senior counsel appearing for the impleaded petitioners would submit that Rule 9 of the Medical Council of India Postgraduate Medical Education Regulations, 2000, as amended on 21st December, 2010, deals with the selection of post-graduate students by all the medical educational institutions all over the country and these Regulations are indubitably binding on all the universities in both the States and they cannot be allowed to violate the same. It is his further submission that the Presidential Order, issued under Article 371-D of the Constitution is primarily aimed at removing disparities between the three different regions of Andhra Pradesh, namely, Andhra, Rayalaseema and Telangana, as prevailing at the time of its formation of the State of Andhra Pradesh consequent upon the States Reorganization Act, 1956, in respect of employment and education and the term “education” as finds place in Clause 2(1)(a) of the Presidential Order, defines the term “available seats”, which means number of seats in a course for admission at any time after excluding those reserved for candidates from outside the State. Learned senior counsel has referred to Clause 3 of the Presidential Order and highlighted that whatever manner the interpretation is placed on those clauses, 15% has to be demarcated as non-local quota or available for the candidates who are not residents of the State. He has emphatically argued that clause 2(1)(a) of the 1979 circular, is only a clarifactory one and hence, it cannot convey that the candidates who have passed the examination from any State other than Andhra Pradesh/Telangana, do not fall in the category of candidates from outside the State. That apart, it is urged that in the name of clarification it cannot place an erroneous interpretation on the Presidential Order, for that will make the said Order unworkable, and also would cause violence to the language employed in the Presidential Order.

10. Mr. Marlapalle has referred to paragraph 11 of the 1979 circular to buttress his stand that the procedure of implementation of reservation is clear to the extent that 15% reservation will be meant for non-local candidates. He has given an example by stating that if there are 12 seats available for a

particular super-specialty course in a university, the available seats will be arrived at by deducting the national quota, that may be 2 seats, and from the remaining 10 available seats, 85% will be earmarked for the local candidates and remaining 15% for those who are listed in Clause 2 of the Presidential Order would go to non-local quota. He has placed reliance on the prospectus issued for the academic year 2015- 2016 by Dr. N.T.R. University of Health Sciences, Andhra Pradesh, especially on Clause 3.8 to 3.8.6. Learned senior counsel has also drawn inspiration from Rule 2(2) of the Rules for Admission to Post Graduate Courses in the Medical Colleges in the State of Andhra Pradesh, 1983. Learned senior counsel has criticized that the prospectus of the academic year 2015-2016 of the universities, namely, Dr. N.T.R. University of Health Sciences, Andhra Pradesh and Nizam's Institute of Medical Sciences, which do not provide for All India quota and only provide for the "available seats" and, in that backdrop it is suggested that the Medical Council of India should issue appropriate directions under the approval of the Government of India to earmark national quota outside the State of Andhra Pradesh and Telangana in the super-specialty post-graduate medical courses; and for the current academic year, the Medical Council of India should be directed to consider to create additional seats for national quota in respect of these two States so that the Presidential Order is properly implemented.

11. Mr. Marlapalle has submitted that to understand the controversy in the proper perspective of the Presidential Order and how the States have worked it out, the examination of certain Acts, Rules and Regulations, namely. (i) A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983; (ii) Rules for Admission to Post Graduate Courses in the Medical Colleges in the State of Andhra Pradesh, 1983; (iii) The Andhra Pradesh Regulation of Admission to Super Specialties in the Medical Colleges Rules, 1983; (iv) Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses), Rules 1997, as modified from time to time and (v) Medical Council of India Postgraduate Medical Education Regulations, 2000, as amended from time to time are necessary . We must immediately state that their relevance shall depend upon our eventual analysis of the constitutional provision, the Presidential Order and the 1979 circular issued by the State of Andhra Pradesh.

12. Mr. Mukul Rohatgi, learned Attorney General appearing for the Union of India, would contend that Article 371-D of the Constitution enables the President of India to issue certain category of orders and in exercise of that power the Presidential Order had been issued in relation to the State of Andhra Pradesh which pertains to the field of education and that covers the super-specialty courses; and further the 1979 circular issued by the State Government is not an amendment to the Presidential Order, but only postulates the manner and method of implementation. It is canvassed by him that there can be no cavil that merit is the rule in case of super- specialty courses and there cannot be any reservation, as has been held in *Preeti Srivastava* (supra) and subsequent judgments, but this Court has consistently held that as far as the State of Andhra Pradesh is concerned, the super-specialty courses would fall beyond the said concept. It is propounded by Mr. Rohatgi that the submission that 15% would go to the students who have no domicile in the State, should go to candidates of other States, is absolutely incorrect in view of the procedure for implementation of the Presidential Order, which has been elaborately determined by the State of Andhra Pradesh in 1979. He has commended us to the decisions in *Dr. Pradeep Jain and Others vs. Union of India and Others*[5], *Reita Nirankari vs. Union of India*[6], *Dr. Dinesh Kumar vs. Motilal Nehru Medical*

College[7], C. Surekha vs. Union of India[8] and Dr. Fazal Ghafoor vs. Union of India and Others[9]. Needless to say, the learned Attorney General has submitted that the principles stated in the said authorities shall apply on all fours to the State of Telangana.

13. Mr. Harin P. Raval, learned senior counsel, along with Mr. S. Udaya Kumar Sagar, learned counsel, appearing for the State of Telangana have adopted the submissions advanced by the learned Attorney General.

14. To appreciate the controversy raised in this writ petition it is necessary to reflect upon the language employed in Article 371-D of the Constitution and the interpretation placed by this Court on the said provision. That apart, it would also be essential to understand the 1979 circular issued by the State of Andhra Pradesh in the year 1979 and how this Court has perceived the ambit and scope of the same and further also consider the concept of non-applicability of reservation in respect of the super speciality courses. Having stated so, we may reproduce Clauses 1 and 2 of Article 371-D of the Constitution, which are relevant for the present purpose, They read as follows:-

“371-D. Special provisions with respect to the State of Andhra Pradesh or the State of Telangana.- (1) The President may by order made with respect to the State of Andhra Pradesh or the State of Telangana, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the States.

An order made under clause (1) may, in particular,-

require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organized;

specify any part or parts of the State which shall be regarded as the local area – for direct recruitment to posts in any local cadre (whether organized in pursuance of an order under this article or constituted otherwise) under the State Government;

for direct recruitment to posts in any cadre under any local authority within the State; and for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made – in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order; in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf

in the order, to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be.”

15. At this stage we think it appropriate to refer to the relevant clauses of the Presidential Order. The pertinent clauses, we are inclined to think, are:-

“(2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall come into force on the 1st day of July, 1974.

2. Interpretation:- (1) In this Order, unless the context otherwise requires:-

(a) “available seats” in relation to any course of study, means the number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State.

(b) “Local area”, in respect of any University or other educational institution, means the local area specified in paragraph 3 of this Order for the purposes of admission to such University or other educational institution.

(c) “Local candidate”, in relation to any local area, means a candidate who qualifies under paragraph 4 of this Order as a local candidate in relation to such local area:

(d) “State Government” means the Government of Andhra Pradesh.

(e) “State-wide educational institution” means an educational institution or a department of an educational institution specified in the Schedule of this Order.

(f) “State-wide University” means the Andhra Pradesh Agricultural University constituted under the Andhra Pradesh Agricultural University Act, 1963 (Andhra Pradesh Act 24 of 1963), or the Jawaharlal Nehru Technological University constituted under the Jawaharlal Nehru Technological University Act, 1972 (Andhra Pradesh Act 16 of 1972).

(2) Any reference to any District in this Order shall be construed as a reference to the area comprised in that District on the 1st day of July, 1974.

(3) The General clauses Act, 1897(10 of 1897) applies for the interpretation of this order as it applies for the interpretation of a Central Act.

3. Local area:- (1) The part of the State comprising the district of Srikakulam, Visakhapatnam, West Godavari, East Godavari, Krishna, Guntur and Prakasam shall be regarded as the local area for the purposes of admission to the Andhra University, (the Nagarjuna University) and to any other

educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

(2) The part of the State comprising the districts of Adilabad, Hyderabad, Karimnagar, Khammam, Mahaboobnagar, Medak, Nalgonda, Nizamabad and Warangal shall be regarded as the local area for the purposes of admission to the Osmania University, (the Kakatiya University) and to any other educational institution (other than a State-wide University or State-wide Educational institution) which is subject to the control of the State Government and is situated in that part.

(3) The part of the State comprising the districts of Anantapur, Cuddapah, Kurnool, Chittoor and Nellore shall be regarded as the local area for the purposes of admission to Sri Venkateswara University and to any other educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

4. Local candidates:- (1) A Candidate for admission to any course of study shall be regarded as a local candidate in relation to a local area

(a) if he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination; or.

(b) Where during the whole of any part of the four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in any educational institution. If he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination in which he appeared or as the case may be first appeared.

(2) A candidate for admission to any course of study who is not regarded as a local candidate under sub-paragraph (1) in relation to any local area shall.

(a) if he has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, be regarded as a local candidate in relation to.

(i) such local area where he has studied for the maximum period out of the said period of seven years; or.

(ii) Where the periods of his study in two or more local areas are equal, such local area where he has studied last in such equal periods; or.

(b) if during the whole or any part of the seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying

examination, he has not studied in the educational institution in any local area, but has resided in the State during the whole of the said period of seven years be regarded as a local candidate in relation to.

(i) such local area where he has resided for the maximum period out of the said period of seven years, or.

(ii) Where the period of “his residence in two or more local areas are equal, such local area where he has resided last in such equal periods”.] Explanation – For the purpose of this paragraph.

(i) “Educational institution” means a University or any educational institution recognized by the State Government a University or other competent authority;

(ii) “relevant qualifying examination” in relation to admission to any course of study, means the examination, a pass in which is the minimum educational qualification for admission to such course of study;

(iii) in reckoning the consecutive academic years during which a candidate has studied,-

(a) any period of interruption of his study by reason of his failure to pass any examination; and

(b) any period of his study in a State-wide University or a State wide educational institution, shall be disregarded.

(iv) the question whether any candidate for admission to any course of study has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his parent or other guardian.]

5. Reservation in non-State-wide Universities and educational Institutions:-

(1) Admissions to eighty-five percent of the available seats in every course of study provided by the *(Andhra University, the Nagarjuna University, the Osmania University.** the Kakatiya University or Sri Venkateswara University) or by any other educational institution (other than a State-wide University or a Statewide educational institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one:

Provided that there shall be at least one unreserved seat.

6. Reservation in Statewide Universities and State-wide educational institutions (1) Admissions to eighty five percent of the available seats in every course of study provided by a State-wide University or a State- wide educational institution shall be reserved in favour of and allocated among the local candidates I relation, to the *(Local areas specified in sub-paragraph(1), sub-paragraph(2) and sub-paragraph(3) of paragraph 3, in the ratio of 42:36:22 respectively:

Provided that this sub-paragraph shall not apply in relation to any course of study in which the total number of available seats does not exceed three.

(2) While determining under sub-paragraph(1) the number of seats to be reserved in favour of the local candidates, any fraction of a seat shall be counted as one.

Provided that there shall be at least one unreserved seat.

(3) While allocating under sub-paragraph(1) the reserved seats among the local candidates in relation to the different local areas, fractions of a seat shall be adjusted by counting the greatest fraction as one and, if necessary, also the greater of the remaining fractions as another; and, where the fraction to be so counted cannot be selected by reason of the fractions being equal, the selection shall be by lot.

Provided that there shall be at least one seat allocated for the local candidate in respect of each local area.

7. Filling of reserved vacant seats.- If a local candidate in respect of a local area is not available to fill any seat reserved or allocated in favour of local candidate in respect of that local area, such seat shall be filled as if it had not been reserved.

8. Power to authorise issue of directions. – (1) the president may, by order, require the State Government to issue such directions as may be necessary or expedient for the purpose of giving effect to this Order to any University or to any other educational institution subject to the control of the State Government; and the University or other educational institution shall comply with such directions.

(2) The State Government may, for the purpose of issuing any directions under sub-paragraph (1) or for satisfying itself that any directions issued under that sub-paragraph have been complied with require, by order in writing, any University or any other educational institution subject to the Control of the State Government to furnish them such information, report or particulars as may be specified in the order; and the University or other educational institution shall comply with such order.”

16. The State Government issued the circular in 1979. The relevant paragraphs of the circular deserve to be reproduced. They read as follows:-

“2. The Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 provides for reservation of seats in favour of local candidates in courses of study provided by the Universities and other educational institutions subject to the Control of the State Government. Paragraph 9 of the order lays down that the provisions of that order shall have effect notwithstanding anything contained in any statute ordinance, rule, regulation or other order (whether made before or after the commencement of the Order) in respect of admissions to any University or any other educational institutions subject to the control of the State Government. Paragraph 10 of the said Order, however, declares that nothing in the Order shall affect the operation of any provisions made by the State Government or other competent authority (whether before or after the commencement of the Order) in respect of reservations in the matter of admission to any University or other education Institution in favor of women, socially and educationally backward classes of citizens, the Scheduled Castes and the Scheduled Tribes in so far as such provisions are not inconsistent with the Order.

3. After the coming into force of the above Presidential Order, with effect from 1-7-1974, admissions to the educational institutions in the entire State are to be made in the light of the provisions of the said order.

According to Paragraph 4 of the Order a candidate for admission to any course of study shall be regarded as a local candidate in relation to the local area, -

(a) If he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in relevant qualifying examination; or

(b) where during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in any educational institution, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination in which he appeared, or, as the case may be, first appeared.

4. It must be noted that para 4(a) as extracted above covers the cases of those candidates who studied in an educational institution or educational institutions for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination, while para 4 (b) applies to the case of other candidates. For purposes of para 4(a) educational institution has been defined as a University or any educational institution recognized by the State Government, a University or other competent authority. The eligibility of a candidate who has studied during any part of the four years period in an unrecognized institution will have to be dealt with the under para 4(b). While considering the eligibility of a candidate to be regarded as a local candidate, under paragraph 4(a) of the Order by virtue of four consecutive years of Study in a local area, it should be noted that in reckoning the consecutive academic years of study, any interruption in the period of his study, by reason of his

failure to pass any examination shall be disregarded. For instance, a candidate who has studied in the IXth and Xth Classes and the Junior and Senior Intermediate Classes in institutions of the same local area with a break of one year after the Xth class on account of failure to pass the Xth Class examination at the first attempt, shall be regarded as a local candidate in relation to that local area for admission to a degree course in any institution in that area.

5. The above definition of the local candidate (as it stood until it was amended with effect from 25-11-1976) had given rise to certain situations wherein some of the candidates belonging to the State of Andhra Pradesh who have studied or resided throughout within the State came to be regarded as non-local candidates in all the local areas within the State. In order to avoid such a situation, the Government of India have since issued the Andhra Pradesh Educational Institutions (Regulation of Admission) Second Amendment Order, 1976 amplifying the said definition in paragraph 4 of the Order

6. The Andhra Pradesh Educational Institutions (Regulation of Admissions) Second Amendment Order, 1976 inserts a new sub-paragraph in the said 1974 Order-viz., sub-paragraph (2) to Paragraph 4 thereby making provision for considering the claims of persons, who under the old definition would have become non-local in relation to all local areas in the State. According to sub-para (2) (a) of Para 4, after amendment, if such a candidate has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared on, as the case may be, first appeared for the relevant qualifying examination, he shall be regarded as a local candidate in relation to that local area where he had studied for the longest period out of the said period of seven years. In the event of the periods of study in two or more local areas being equal he shall be regarded as local candidate in relation to that local area where he studied during the last of the said equal periods. Clause (b) to sub-para (2) applies to a candidate who, during the whole or any part of the seven consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant qualifying examination has not studied in educational institutions in any local area, but has resided in the State during the whole of the said seven years, the candidate shall be regarded as a local candidate in relation to that local area where he has resided for the longest period out of the said seven year period. This residence test will be applies to candidates in whose cases there is a gap in study, occasioned otherwise than by reason of failure to pass in an examination, in the prescribed full term of seven years immediately preceding the relevant qualifying examination. It has also been provided that where the periods of residence in two or more local areas are equal, such a candidate shall be regarded as a local candidate in relation to the local area where he resided last in such equal periods. The application of the liberalized definitions made through the Second Amendment Order are illustrated by the examples given in the Annexure – I.

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9. The Government have directed that for the purpose of admission into educational institutions, those who claim to be local candidates with reference to para 4(1) (a) or para 4(2) (a) of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 should produce evidence in the form of study certificates issued by the heads of the educational institutions concerned indicating the details of the year or years in which the candidate has studied in an educational

institution or institutions in such local area for a period of not less than four or seven consecutive academic years ending with academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination. Those who do not qualify as local candidates under para 4(1)

(a) or 4(2) (a) but claim to qualify by virtue of residence under para 4(1)(b) or para 4 (2) (b) of the said order should produce a certificate issued by an Officer of the Revenue Department not below the rank of Tahsildar in the form annexed vide Annexure – II.

XXXXX XXXXX

11. As clarifications were being sought on the question as to who should be considered eligible to apply as candidates belonging to the State of Andhra Pradesh for the purpose of admission to courses of studies offered by educational institutions, subject to the control of the State Government against 15% of the available seats kept unreserved in terms of Andhra Pradesh Educational Institutions (Regulations of Admissions) Order, 1974 the Government after careful consideration have directed that the following categories of candidates may be treated as eligible to apply for admissions to educational institutions in the State subject to the control of the State Government, as candidates belonging to the State of Andhra Pradesh against the 15% of the available seats left unreserved in terms of the Presidential Order:

(i) All local candidates defined in the Presidential Order.

(ii) Candidates who have resided in the State for a total period of ten years excluding periods of study outside the State; or either of whose parents have resided in the State for a total period of ten years excluding periods of employment outside the state;

(iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector corporation, Local Bodies, Universities and other similar quasi-public institutions within the State;

and

(iv) Candidates who are spouses of those in the employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and educational institutions recognized by the Government a University or other competent authority and similar other quasi-Government institutions within the State.

12. It has been decided that persons in the employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and other similar Quasi-Public Institutions, within the State may be treated as eligible to apply for admission to the part-time course of study offered by the educational institutions in the State subject to the control of the state government as candidates belonging to the State of Andhra Pradesh.

13. The Government consider that in the large majority of cases falling under the above categories, “nativity” may not be in doubt. The Heads of Educational Institutions or other admission authorities may call for appropriate certificates of study/residence or employment in cases of doubt.” We shall, as we are obliged to in the instant case, proceed to deal with the purport of the said circular on the bedrock of the Presidential Order. Be it clarified, we are not called upon to decide upon the constitutional validity of the circular, but to understand the purport of the same through the interpretative purpose.

17. In Chief Justice of A.P. vs. L.V.A. Dixitulu^[10], the question arose before the Constitution Bench of this Court as to whether Clause 3 of Article 371-D of the Constitution that deals with civil services of the State would include the staff of the High Court or of the Sub-ordinate judiciary. The Constitution Bench held that the statements and objects of reasons do not indicate that there was any intention whatsoever on the part of the legislature to impair or derogate from the scheme of securing independence of the judiciary as enshrined in Articles 229 and 225; and indeed the amendment or abridgment of this basic scheme was never an issue of debate in Parliament. The Constitution Bench while commenting on the Article 371-D had to say this:-

“73. It will be seen from the above extract, that the primary purpose of enacting Article 371-D was two fold: (i) To promote “accelerated development of the backward areas of the State of Andhra so as to secure the balanced development of the State as a whole”, and (ii) to provide “equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service”.

74. To achieve this primary object, clause (1) of Article 371-D empowers the President to provide by order, “for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education”. Clause (2) of the article is complementary to clause (1). It particularises the matters which an order made under clause (1) may provide. For instance, its sub-

clause (c)(i) enables the President to specify in his Order, “the extent to which, the manner in which and the conditions subject to which”, preference or reservation shall be given or made in the matter of direct recruitment to posts in any local cadre under the State Government or under any local authority. Sub-clause (c) further makes it clear that residence for a specified period in the local area, can be made a condition for recruitment to any such local cadre. Thus, clause (4) also is directly designed to achieve the primary object of the legislation.”

18. After so stating the Constitution Bench has ruled that the evil that was sought to be remedied pertained to inequitable opportunities and facilities for the people belonging to different parts of the State of Andhra Pradesh in matters of public employment and in the matter of education and had no causal nexus whatever to the independence of the High Court and subordinate judiciary which the Founding Fathers have with solemn concern vouchsafed in Articles 229 and 235 of the Constitution. The Court also opined that the public agitation which led to the enactment of Article 371-D did not have any grievance against the basic scheme of Chapters V and VI in Part VI of the Constitution. The

Court interpreting the Article in entirety eventually expressed the view that the Parliament never had intended to confer a wide, liberal interpretation which will defeat or render otiose the scheme of Chapters IV and V, Part VI particularized in Articles 229 and 235 of the Constitution.

19. In *Dr. Pradeep Jain (supra)*, a three-Judge Bench was dealing with admissions to medical colleges, both at the undergraduate and at the post-graduate levels. The question that arose for consideration was whether regard being had to the constitutional values, admission to medical colleges or any other institution of higher learning situated in a State can be confined to those who have their domicile within the State or who are residents within the State for a specified number of years or can any reservation in admissions be made for them so as to give the precedence over those who do not possess domicile or residential qualification within the State, irrespective of merit. After referring to various aspects in the Constitution and authorities rendered in *N. Vasundara v. State of Mysore*[11], *Jagdish Saran v. Union of India*[12] and various other authorities the three-Judge Bench came to hold thus:-

“We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis.”

20. After the said judgment was delivered, the said three-Judge Bench passed a clarificatory order in *Reita Nirankari (supra)* wherein the Court considered three aspects one of which is relevant for the present case. We reproduce the same:-

“We may make it clear that the judgment will not apply to the States of Andhra Pradesh and Jammu and Kashmir because at the time of hearing of the main writ petitions, it was pointed out to us by the learned advocates appearing on behalf of those States that there were special constitutional provisions in regard to them which

would need independent consideration by this Court.”

21. The aforesaid clarificatory order has its own significance, for it undeniably excludes the applicability of the domicile test stated in Dr. Pradeep Jain (supra) in respect of the State of Andhra Pradesh. At this stage, it would be appropriate to refer to the case of C. Surekha (supra). The said case arose from Osmania University in Andhra Pradesh. The petitioner therein had passed from the said University and he intended to take the All India Entrance Examination for admission to P.G. medical course in 1988. He had challenged the constitutional validity of Article 371-D(2) (b) (iii) and C (ii) of the Constitution as well as the Presidential Order as a consequence of which the students of Andhra Pradesh have been excluded for competing in the aforesaid examination. The two- Judge Bench referred to the decisions in Dr. Pradeep Jain (supra), Reita Nirankari (supra), noted the stand of the Union of India and the Andhra Pradesh in their respective counter affidavits that had asserted that institutions in the State of Andhra Pradesh were kept out of from the purview of the scheme in view of the decision rendered in the case of Dr. Pradeep Jain (supra). The Court also took note of the fact that the issue was kept open in Reita Nirankari (supra), referred to the pronouncements in P. Sambamurthy v. State of Andhra Pradesh[13], Minerva Mills Ltd. v. Union of India[14], P. Sampath Kumar v. Union of India[15] and reiterated the principle that Article 371-D(3) was valid because clause (10) of the Article 371-D provides as follows:-

“The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.”

22. As has been stated earlier, Clause 5 of the Article 371-D was declared ultra vires earlier with which we are not concerned with in this case. Thereafter, the Court posed the question whether within the Presidential Order, the Scheme in Dr. Pradeep Jain (supra) can be worked out. After so stating, the Court noted thus:-

5.“The Presidential Order of 1974 defines “available seats” and “local area” as also “statewide educational institutions” in sub-clauses

(a), (b) and (e) of clause 2. Clause 3 describes the three local areas.

Clause 9 gives overriding effect to the Presidential Order. Under the Presidential Order, admission to the educational institutions is limited only to local and nonlocal candidates. It does not contemplate of admission into educational institutions otherwise. The contention of Mr Choudhary that if the Presidential Order has got to be given effect to in its true spirit, the scheme in Dr Pradeep Jain case cannot, consistently with the Presidential Order, be implemented cannot be brushed aside and bears serious examination on certain important aspects. If the 15 per cent seats are not treated as reserved in terms of the Presidential Order and are intended to go to those who qualify at the All India Entrance Examination it is a statable possibility that the Presidential Order might be diluted. It may be doubtful if, in ascertaining the import of ‘available seats’, it would be permissible to deduct the 15 per cent seats for non-locals applying the formula of Dr Pradeep Jain case. We are inclined to think that the contention advanced by Mr Choudhary on behalf of the respondent-State that within

the ambit of the Presidential Order, the scheme adopted by this Court in Dr Pradeep Jain case is eminently arguable and raises certain important issues. It is, however, not necessary to pronounce on this question finally as the petitioner, admittedly, has already been provided admission in one of the Medical Colleges.

6. Before we part with the case we would, however, like to indicate that the Scheme in Dr Pradeep Jain case is, in the opinion of this Court, in national interest as also in the interest of the States. Competition at the national level is bound to add to and improve quality. Andhra Pradesh students on the whole are not at all backward and we are of the opinion that they would stand well on comparative basis. It is for the State and the Central Governments, apart from the legal issues involved to decide whether in the general interest of the State, the scheme in the Presidential Order should either be so understood as to permit and assimilate the Pradeep Jain principle or should be explained, if necessary, by an appropriate amendment of the Presidential Order. We would, however, leave it to the respondents to take their decision in the matter. We would not like, therefore, to pronounce on the legal question finally in this case.

23. Relying on the said passages, it is submitted by Mr. Marlapalle, learned senior counsel that the observations made in 1988, despite expiry of two decades and seven years, has not been taken note of by the authorities which indicates an apathetic attitude. Learned senior counsel would contend that the State of Andhra Pradesh by no stretch of imagination can be regarded as an educationally backward region compared to rest of the country. It is also contended by him that the Presidential Order was issued at a stage feeling the need of the State but the same is not the condition after passage of more than 40 years. In fact, submits Mr. Marlapalle, renouncing the merit criteria on the domicile basis especially in respect of post graduate and super speciality courses would tantamount to denouncing the concept of merit which has been enshrined commencing from Dr. Pradeep Jain (supra) to many a judgment rendered thereafter in respect of the medical education. The protective affirmation meant for the State of Andhra Pradesh by the Presidential Order issued in 1974 has to be interpreted in such a manner so that the 50% which has been demarcated should go to otherwise meritorious candidates who have taken All India Entrance Examination for super speciality courses. The concept of continuity of education, its progress and the rise in time, submits Mr. Marlapalle, requires this Court to give a broader interpretation to the 15% quota and not to be guided by the 1979 clarificatory circular which is otherwise indefensible in law.

24. It is apt to note here that Mr. Marlapalle has commended us to the authority in Dr. Dinesh Kumar (supra), but we need not refer to the same as it dealt with the reservation on the domicile basis, regard being had to the principle stated in Dr. Pradeep Jain (supra) and as far as the State of Andhra Pradesh (undivided) is concerned, the said authority was not made applicable as stated in Reita Nirankari (supra).

25. At this juncture, it is absolutely necessitous to refer to a three- Judge Bench decision in NTR University of Health Sciences v. G. Babu Rajendra Prasad and Anr.[16] In the said case, the question that was posed was whether the Government of Andhra Pradesh while framing the 1979 circular in terms of Presidential Order issued in 1974 under Article 371-D of the Constitution of India was bound to provide reservation for 15% of non-local seats, although reservation in terms of the policy

decision had been taken in respect of the seats available for local candidates. It is worth mentioning here that the controversy had travelled to this Court questioning the validity of the policy of the State of Andhra Pradesh as regards the non-reservation of scheduled castes, scheduled tribes and backward classes within 15% that has been separately demarcated. The learned Single Judge of the High Court had directed to reserve 15% seats reserved for the reserved category. The Division Bench in Letters Patent appeal noted the conflict of views in earlier Division Bench judgments and referred the matter to the Full Bench on the issue whether the reservations in terms of Article 15(4) of the Constitution of India in favour of scheduled castes, scheduled tribes and backward classes could be provided in respect of 15% of the unreserved seats under the Presidential Order, 1974. The Full Bench analyzing the law in the field dismissed the appeals. This Court dealing with the controversy referred to Article 371-D of the Constitution, the Presidential Order, reproduced various paragraphs from the same, took note of the 1979 circular issued by the Government of Andhra Pradesh, noted the submissions of the learned counsel for the parties, took into consideration the formation of Universities by the undivided State of Andhra Pradesh after the Presidential Order and stated thus:-

“10. A bare perusal of the definition of local area read with paras 3, 4 and 5 of the Presidential Order, as referred to hereinbefore, it would be evident that 85% of the seats are reserved for local candidates in relation to local areas. So far as a university area is concerned, a local candidate in one particular university area would be a non-local one in another. The criteria for admission of a candidate in the superspeciality courses in the university on the ground of being local or non-local is, therefore directly referable to the university area and not the boundaries of the State of Andhra Pradesh.

11. In the matter of admission, the Health University had followed the procedure provided in Annexure III of GOP No. 646 dated 10-7-1979 having regard to the fact that by reason of the Presidential Order, 1974 only 85% of the seats are reserved in favour of the local candidates which are required to be confined to the university area only. We, thus, do not find any legal infirmity in the action of the appellants herein in directing that 15% reserved for candidates of non-local area may be filled up only on merit.

12. Article 371-D of the Constitution of India contains a special provision applicable to the State of Andhra Pradesh only. 54% of seats are required to be filled up from open categories and 46% of seats are to be filled up from the reserved category candidates in each of the three regions from the medical colleges and engineering colleges. Having regard to the reservations made regionwise, indisputably 85% of seats are to be filled up from amongst local candidates whereas only 15% of seats are to be filled up from amongst outside candidates.” [Emphasis Supplied]

26. Be it noted, it was contended on behalf of the appellant therein that the High Court had committed a manifest error by directing for reservation of seats for reserved category from 15% open seats also on the ground that such a reservation would exceed 50% which is not permissible. The Court referred to the Presidential Order and eventually opined thus:-

“In the event, the ratio of the impugned judgment of the High Court is given effect to having regard to the limited number of seats available by providing reservation of an additional seat, principle of reservation to the extent is 50% would be violated. Furthermore, it is not for the High Court to say as to the efficacy or otherwise of the policy of the State as regards providing for reservation for the reserved category candidates and in that view of the matter the High Court, in our opinion must be held to have committed a manifest error in issuing the impugned directions, as a result whereof percentage of reservation would exceed 46%. Such a direction by the High Court is not contemplated in law.”

27. Though the said authority had understood local area and the boundaries of the State, it was instructive to refer to the said passage. It is clear that it was addressing the controversy as regards the 15% but dealing with the reservation of scheduled castes, scheduled tribes and other backward classes within the said 15% percentage in the context of instructions/circular of 1979 issued by the State Government. The aforesaid decision makes it graphically clear that the 85% reservation has been in respect of local areas and non-locals area is directly referable to the University area. One has to bear in mind that the local areas and local candidates have been defined in the Presidential Order and it also empowers the State Government to issue appropriate directions for the purpose of giving effect to the Presidential Order. In pursuance of the power conferred in the said Presidential Order, the State Government has issued the Circular in 1979. The Circular, as is manifest, reiterates the definitions of “local area” and “local candidates” and simultaneously it also lays the postulate the manner of implementation of reservation of local candidates as stipulated in the Presidential Order. As far as 15% of the available seats which are kept unreserved in terms of Presidential Order, the State Government relies on the power conferred on it that the 15% of the available seats are kept unreserved subject to the control of the State Government. The State Government has clarified the position about the local candidates in respect of 15% as provided in the Presidential Order. It covers certain categories but the cavil does not relate to the same. In fact, on a keen scrutiny, it is demonstrable that it engulfs certain categories which takes within its umbrella such candidates who are working in the State of Andhra Pradesh in certain State Government or Central Government or other public undertakings or the candidates whose spouses are in the employment of the State or Central Government or public sector corporation, etc. It does not refer to candidates who are from outside. That is the only interpretation which can be placed on the circular. It is the situation in vogue in the State of Andhra Pradesh since 1979 and in the absence of any challenge to the circular, there is no need to get into it. Therefore, reference to the other Acts, Rules, Regulations which have been so done by Mr. Marlapalle do not require to be dwelt upon.

28. One aspect that has been highlighted by Mr. Marlapalle that almost 27 years back, this Court in C. Surekha (supra) had expressed the view that the scheme indicated in Dr. Pradeep Jain (supra) is in national interest and competition at the national level is bound to add to and improve quality and Andhra Pradesh students on the whole are not at all backward and they would stand well on the comparative basis. The need for assimilation of the principles stated in Dr. Pradeep Jain (supra) was felt and it was observed that there should be an appropriate amendment of the Presidential Order. However, as the Court cannot do it, it left to the competent authorities.

29. In this context, the decisions that have been cited by the learned counsel for the petitioner become relevant. In Preeti Srivastava (supra), the Constitution Bench expressed that the object of Article 15(4) is to advance the equality of principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and may be able to compete equally with others more fortunate, but simultaneously one cannot ignore the wider interests of society while devising such special provisions. The Court highlighted on the concept of national interest 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 are also to be borne in mind. Analysing further, the majority stated thus:-

“In the case of Dr Jagadish Saran v. Union of India this 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 potential great scientist or technologist would be a national loss. That is why the Court observed that the higher the level of education the lesser should be the reservation. There are similar observations in Dr Pradeep Jain v. Union of India. Undoubtedly, Dr Pradeep Jain v. Union of India did not deal with reservation in favour of the Scheduled Castes and the Scheduled Tribes. It dealt with reservation in favour of residents and students of the same University. Nevertheless it correctly extended the principle laid down in Dr Jagadish Saran v. Union of India to these kinds of reservation also, holding that at the highest levels of medical education excellence cannot be compromised to the detriment of the nation. Admissions to the highest available medical courses in the country at the superspeciality levels, where even the facilities for training are limited, must be given only on the basis of competitive merit. There can be no relaxation at this level.”

30. In Saurabh Chaudri (supra), the core question that arose for consideration centered around the constitutional validity of reservation whether based on domicile or institution in the matter of admission into post-graduate courses in Government run medical colleges. In the said case, the court referred to the writ petition filed by the candidates who were residents of Delhi. They had joined various medical colleges within Delhi for undertaking their MBBS courses against the 15% all-India quota on being qualified in the All-India Entrance Examination. They intended to join medical colleges in Delhi for their post-graduate medical courses. They were issued admission forms regard being had to the decision in Parag Gupta (Dr.) v. University of Delhi[17]. The University also informed them that the candidates would be entitled to admission in the post-graduate courses subject to the decision in the matter pending before this Court in Magan Mehrotra v. Union of India[18].

31. In Magan Mehrotra (supra) a three-Judge Bench of this Court held that reservation by way of institutional preference be maintained but also directed certain States to follow the pattern of institutional preferences as has been indicated in Dr. Pradeep Jain (supra). Delhi University issued a notification on the basis of the judgment rendered in Magan Mehrotra (supra). The writ petitioners assailed the notification issued by the Delhi University as reservation was made by way of institutional preference for admission to post graduate courses. After the decision was rendered in Magan Mehrotra (supra), a two-Judge Bench referred the matter to a three- Judge Bench which

ultimately directed it to be placed before a five-Judge Bench. The reservation of any kind, namely, residence or institutional preference in the constitutional backdrop was the subject matter of assail. The first question posed for consideration was whether the reservation on the basis of a domicile is permissible in terms of Clause 1 of Article 15 of the Constitution of India. The Court referred to the decision in *D.P. Joshi v. State of Madhya Bharat*[19] and *State of U.P. v. Pradip Tandon*[20], and answered the issue in the negative. The second issue that the Court addressed was whether reservation by way of institutional preference comes within the suspected classification warranting strict scrutiny test. The Court referred to *Ram Krishna Dalmia v. Justice S.R. Tendolkar*[21] and various other authorities and opined that no case had been made out for invoking the doctrine of strict construction or intermediate construction. The third issue that the Court dwelled upon was whether the reservation by institutional preference is valid. The Court referred to the authorities in *Jagdish Saran (supra)*, *Dr. D.P. Joshi (supra)*, *Chitra Ghosh v. Union of India*[22] and various other decisions including that of *Dr. Pradeep Jain (supra)* and opined that in *Dr. Pradeep Jain (supra)* a distinction was made between the undergraduate course i.e. MBBS course and post-graduate medical course as also super specialist courses and, therefore, the said authority sought to strike a balance of rights and interests of concerned. The Constitution Bench took note of the fact that the percentage of seats to be allotted on all-India basis, however, came to be modified in *Dr. Dinesh Kumar (supra)*. It also took note of the fact that the directions issued from time to time regulating the admissions in different courses of study in the said case, the deviation of the said dicta by the two-Judge Bench in *Dr. Parag Gupta (supra)* wherein it created reservation on domicile which was forbidden in *Dr. Pradeep Jain (supra)*. The larger Bench also referred to the authority in *AIIMS Students' Union v AIIMS*[23], *T.M. Pai Foundation v. State of Karnataka*[24] and eventually held as follows:-

70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in *Dr Pradeep Jain*. 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.

71. However, the test to uphold the validity of a statute on equality must be judged on the touchstone of reasonableness. It was noticed in *Dr Pradeep Jain* case that reservation to the extent of 50% was held to be reasonable.

Although subsequently, in *Dr Dinesh Kumar (II) case*[25] it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time produced a large number of postgraduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

32. In *Nikhil Himthani (supra)*, the Court was dealing with the grievance that related to equality in the matter of admissions to post-graduate medical course in the medical college in the State of Uttarakhand guaranteed by Article 14 of the Constitution which was violated by the respondents. After noting the contentions of the learned counsel for the parties, the Court referred to the

Constitution Bench judgment in Saurabh Chaudri (supra) and the pronouncements in Jagadish Saran (supra) and Dr. Pradeep Jain (supra) and came to hold thus:-

“We now come to Clauses 2 and 3 of the eligibility criteria in the Information Bulletin. Under Clauses 2 and 3, a domicile of Uttarakhand who has passed MBBS from a medical college of some other State having been admitted either through the 15% all-India quota or through the pre-medical test conducted by the State Government concerned has been made eligible for admission to a postgraduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to the postgraduate course under Clauses 2 and 3 of the eligibility criteria. Preference, therefore is given only on the basis of residence or domicile in the State of Uttarakhand under Clauses 2 and 3 of the eligibility criteria and such preference on the basis of residence or domicile within a State has been held to be violative of Article 14 of the Constitution in Pradeep Jain v. Union of India and Magan Mehrotra v. Union of India.

33. In Vishal Goel (supra), the two-Judge Bench reiterated the principle laid down in Nikhil Himthani (supra).

34. At this juncture, we may also refer to the Constitution Bench decision in Faculty Association of All India Institute of Medical Sciences v. Union of India[26]. In the said case issue arose about the applicability of reservation in respect of speciality and super speciality faculty posts in all-India Institute of Medical Sciences. The matter was referred to a larger Bench by the three-Judge Bench in view of the decisions rendered in Jagadish Saran (supra), Dr. Pradeep Jain (supra) and Indra Sawhney v. Union of India[27]. The Constitution Bench after noting various contentions ruled that:-

“22. Although the matter has been argued at some length, the main issue raised regarding reservation at the superspeciality level has already been considered in Indra Sawhney case by a nine-Judge Bench of this Court. Having regard to such decision, we are not inclined to take any view other than the view expressed by the nine-Judge Bench on the issue. Apart from the decisions rendered by this Court in Jagadish Saran case and Pradeep Jain case, the issue also fell for consideration in Preeti Srivastava case which was also decided by a Bench of five Judges. While in Jagadish Saran case and in Pradeep Jain case it was categorically held that there could be no compromise with merit at the superspeciality stage, the same sentiments were also expressed in Preeti Srivastava case as well.

23. In Preeti Srivastava case, the Constitution Bench had an occasion to consider Regulation 27 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, 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 came to the conclusion that Regulation 27 could not have any application at the

highest level of superspeciality as this would defeat the very object 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. Their Lordships ultimately went on to hold that there could not be any type of relaxation at the superspeciality level.”

35. Be it noted, the Court laid immense emphasis on paragraph 836 of *Indra Sawhney* (supra) wherein the nine-Judge Bench has observed:-

“...that there were certain services and posts where either on account of the nature of duties attached to them or the level in the hierarchy at which they stood, merit alone counts. In such situations, it cannot be advised to provide for reservations. In the paragraph following, the position was made even more clear when Their Lordships observed that they were of the opinion that in certain services in respect of certain posts, application of rule of reservation may not be advisable in regard to various technical posts including posts in superspeciality in medicine, engineering and other scientific and technical posts.”

36. Thereafter, the Court proceeded to state further:-

“We cannot take a different view, even though it has been suggested that such an observation was not binding, being obiter in nature. We cannot ascribe to such a view since the very concept of reservation implies mediocrity and we will have to take note of the caution indicated in *Indra Sawhney* case. While reiterating the views expressed by the nine-Judge Bench in *Indra Sawhney* case, we dispose of the two civil appeals in the light of the said views, which were also expressed in *Jagadish Saran* case, *Pradeep Jain* case, *Preeti Srivastava* case. We impress upon the Central and State Governments to take appropriate steps in accordance with the views expressed in *Indra Sawhney* case and in this case, as also the other decisions referred to above, keeping in mind the provisions of Article 335 of the Constitution.”

37. We have referred to the aforesaid judgments in extenso as learned counsel appearing for the petitioners have laid immense emphasis that there cannot be reservation of any kind in respect of post-graduate or super speciality courses regard being had to the law laid down by many a judgment of this Court. It is urged that the State of Andhra Pradesh and Telangana cannot apply the domicile test only to admit its own students and that too also in respect of 15% quota meant for non-local candidates. We have already analysed the factual score and the legal position. The undivided State of Andhra Pradesh enjoys a special privilege granted to it under Article 371-D of the Constitution and the Presidential Order. The judgments of the larger Bench do not refer to the said Article nor do they refer to the Presidential Order, for the said issue did not arise in the said cases. A scheme has been laid down in the case of *Dr. Pradeep Jain* (supra) and the concept of percentage had undergone certain changes. In *Reita Nirankari* (supra), the same three-Judge Bench clarified the position which we have already reproduced hereinbefore. However, in *C. Surekha* (supra), the Court had expressed its view about the amendment of the Presidential Order regard being had to the passage of time and

the advancement in the State of Andhra Pradesh. It has been vehemently urged by Mr. Marlapalle that despite 27 years having been elapsed, the situation remains the same. We take note of the said submission and we are also inclined to echo the observation that was made in the case of Fazal Ghafoor (supra) wherein it has been stated thus:-

“In Dr Pradeep Jain case this Court has observed that in Super Specialities there should really be no reservation. This is so in the general interest of the country and for improving the standard of higher education and thereby improving the quality of available medical services to the people of India. We hope and trust that the Government of India and the State Governments shall seriously consider this aspect of the matter without delay and appropriate guidelines shall be evolved by the Indian Medical Council so as to keep the Super Specialities in medical education unreserved, open and free.”

38. The fond hope has remained in the sphere of hope though there has been a progressive change. The said privilege remains unchanged, as if to compete with eternity. Therefore, we echo the same feeling and reiterate the aspirations of others so that authorities can objectively assess and approach the situation so that the national interest can become paramount. We do not intend to add anything in this regard.

39. Consequently, the writ petition as far as it pertains to the State of Andhra Pradesh and Telangana, is dismissed. As regards State of Tamil Nadu, the matter be listed on November 4, 2015 for hearing.

.....J. [Dipak Misra], J.

[Prafulla C. Pant] New Delhi October 27, 2015

- [1] (1999) 7 SCC 120
- [2] (2013) 10 SCC 237
- [3] (2014) 11 SCC 456
- [4] (2003) 11 SCC 146
- [5] (1984) 3 SCC 654
- [6] (1984) 3 SCC 706
- [7] (1986) 3 SCC 727
- [8] (1988) 4 SCC 526
- [9] (1988) Supp SCC 794
- [10] (1979) 2 SCC 34
- [11] (1971) 2 SCC 22
- [12] (1980) 2 SCC 768
- [13] (1987) 1 SCC 362
- [14] (1980) 3 SCC 625
- [15] (1985) 4 SCC 458
- [16] (2003) 5 SCC 350
- [17] (2000) 5 SCC 684

- [18] (2003) 11 SCC 186
- [19] (1955) 1 SCR 1215 = AIR 1955 SC 334
- [20] (1975) 1 SCC 267
- [21] AIR 1958 SC 538
- [22] (1969) 2 SCC 228
- [23] (2002) 1 SCC 428
- [24] (2002) 8 SCC 481
- [25] (1986) 3 SCC 727
- [26] (2013) 11 SCC 246
- [27] (1992) Supp (3) 217
